

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

FORM 10-K/A  
Amendment No. 2

(Mark One)

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

For the fiscal year ended December 31, 2009

☐ 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: 333-136424

**WaferGen Bio-systems, Inc.**

(Exact Name of Registrant as Specified in its Charter)

**Nevada**

(State or other jurisdiction of incorporation or organization)

**90-0416683**

(IRS Employer Identification No.)

**7400 Paseo Padre Parkway, Fremont, CA**

(Address of principal executive offices)

**94555**

(Zip Code)

**(510) 651-4450**

Registrant's telephone number, including area code

Securities registered under Section 12-(b) of the Exchange Act:

Title of each class: None

Name of each exchange on which registered: None

Securities registered under Section 12-(g) of the Exchange Act:

Common stock, \$0.001 par value per share  
(Title of Class)

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☐ No ☐

Indicate by check mark if disclosure of delinquent filers in response to Item 405 of Regulation S-K (229.405 of this chapter) 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 filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐

Accelerated filer ☐

Non-accelerated filer ☐ (Do not check if a smaller reporting company)

Smaller reporting company ☒

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

As of June 30, 2009 (the last business day of the registrant's most recently completed second fiscal quarter), the aggregate market value of voting and nonvoting common equity held by non-affiliates of the registrant was \$32,185,107. As of that date, 22,989,362 shares of the registrant's common stock, \$0.001 par value per share, were held by non-affiliates. For purposes of this information, the outstanding shares of common stock that were held by directors and executive officers of the registrant were deemed to be shares of common stock held by affiliates at that date. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

As of May 11, 2010, the registrant had a total of 33,619,399 shares of common stock issued and outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

None.

### Explanatory Note

This Amendment No. 2 to the Annual Report on Form 10-K/A (this "Amendment") filed by WaferGen Bio-systems, Inc. (the "Company") amends and replaces Items 7, 8 and 9A(T) of the Company's Form 10-K filed with the U.S. Securities and Exchange Commission (the "SEC"), on March 22, 2010, as amended by Amendment No. 1 thereto filed with the SEC on April 30, 2010 (collectively, the "Original Report"). New certifications of the Company's principal executive officer and principal financial officer have been filed as exhibits to this Amendment.

The Company is filing this Amendment in order to restate the Company's audited financial statements as of and for the year ended December 31, 2009, to reflect adjustments resulting from the Company's adoption of FASB ASC 815-40-15-5 ("ASC 815-40", formerly EITF 07-5), "Determining Whether an Instrument (or Embedded Feature) Is Indexed to an Entity's Own Stock," which became effective as of January 1, 2009.

On May 10, 2010, the Company determined that the impact of adopting ASC 815-40 with regard to certain warrants previously issued by the Company was material and, therefore, that the Company should restate its financial statements as of and for the year ended December 31, 2009, to reflect the adoption of ASC 815-40.

The Company's Original Report reflected warrants to purchase 3,489,979 shares of the Company's common stock as stockholders' equity as of December 31, 2009. In this Amendment, such warrants have been reclassified as liabilities in accordance with ASC 815-40. The resulting impact of this accounting change as of and for the year ended December 31, 2009 is an increase in the Company's net loss of \$564,122, a decrease in the Company's accumulated deficit at the start of the year of \$368,627, an increase in the Company's liabilities of \$2,778,191, and a decrease in additional paid in capital of \$2,582,696. The foregoing adjustments reflect non-cash items in the Company's financial statements.

This Amendment also includes restated unaudited financial statements for each of the quarterly periods in the year ended December 31, 2009, in order to reflect the adoption of ASC 815-40. The Company is not separately amending each of the Quarterly Reports on Form 10-Q for such periods affected by the restatement because the disclosures in any such amendments would in large part repeat the disclosures contained in this Amendment. As a result, the financial information contained in such Quarterly Reports should no longer be relied upon. All financial and other information included in this Amendment reflects the restatement of the Company's financial statements for such prior periods.

Except as set forth above, this Amendment speaks as of the date of the Original Report and has not been updated to reflect events occurring subsequent to the date of the Original Report. This Amendment should be read in conjunction with the Original Report as amended by this Amendment, and the Company's other filings made with the SEC subsequent to the date of the Original Report.

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## FORWARD LOOKING STATEMENTS

Information included in this Form 10-K/A may contain forward-looking statements. Except for the historical information contained in this discussion of the business and the discussion and analysis of financial condition and results of operations, the matters discussed herein are forward looking statements. These forward looking statements include but are not limited to the Company's plans for sales growth and expectations of gross margin, expenses, new product introduction, and the Company's liquidity and capital needs. This information may involve known and unknown risks, uncertainties and other factors which may cause our actual results, performance or achievements to be materially different from future results, performance or achievements expressed or implied by any forward-looking statements. Forward-looking statements, which involve assumptions and describe our future plans, strategies and expectations, are generally identifiable by use of the words "may," "will," "should," "expect," "anticipate," "estimate," "believe," "intend" or "project" or the negative of these words or other variations on these words or comparable terminology. In addition to the risks and uncertainties described in "Risk Factors" in the Original Report and elsewhere in this Form 10-K/A, these risks and uncertainties may include consumer trends, business cycles, scientific developments, changes in governmental policy and regulation, currency fluctuations, economic trends in the United States and inflation. Forward-looking statements are based on assumptions that may be incorrect, and there can be no assurance that any projections or other expectations included in any forward-looking statements will come to pass. Our actual results could differ materially from those expressed or implied by the forward-looking statements as a result of various factors. Except as required by applicable laws, we undertake no obligation to update publicly any forward-looking statements for any reason, even if new information becomes available or other events occur in the future.

*As used in this Annual Report on Form 10-K/A, all references to the "Company," "we," "our" and "us" for periods prior to May 31, 2007 refer to WaferGen, Inc. (or "WaferGen") and for periods on or after May 31, 2007 refer to WaferGen Bio-systems, Inc. (or "WBSI"). On May 31, 2007, WaferGen was acquired by WBSI. In the transactions, WaferGen merged with a subsidiary of WBSI and became a wholly owned subsidiary of WBSI (the "Merger"). WaferGen was considered the "acquirer" for accounting purposes, and accordingly the historical financial statements of WaferGen for periods prior to the Merger replaced those of WBSI.*

## PART II

### Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

*This discussion should be read in conjunction with the other sections of this Report, including Item 1 and Item 8 and the related exhibits. The various sections of this discussion contain a number of forward-looking statements, all of which are based on our current expectations and could be affected by the uncertainties and risk factors described throughout this Current Report on Form 10-K/A. See "Cautionary Factors That May Affect Future Results." Our actual results may differ materially.*

#### Company Overview

WaferGen was incorporated in Delaware on October 22, 2002. WaferGen is engaged in the development, manufacture and sale of systems for gene expression, genotyping and stem-cell research for the life sciences, pharmaceutical drug discovery and biomarker discovery and diagnostic products industries. WaferGen's products are aimed at professionals who perform genetic analysis and cell biology, primarily at pharmaceutical and biotech companies, academic and private research centers and diagnostics companies involved in biomarker research. WaferGen plans to provide new performance standards with significant savings of time and cost for professionals in the field of gene expression research and to facilitate biomarker discovery, toxicology and clinical research through the SmartChip System and SmartSlide™ System products.

WaferGen's revenue is subject to fluctuations due to the timing of sales of high-value products and service projects, the impact of seasonal spending patterns, the timing and size of research projects its customers perform, changes in overall spending levels in the life science industry and other unpredictable factors that may affect customer ordering patterns. Any significant delays in the commercial launch or any lack or delay of commercial acceptance of new products, unfavorable sales trends in existing product lines, or impacts from the other factors mentioned above, could adversely affect WaferGen's revenue growth or cause a sequential decline in quarterly revenue. Due to the possibility of fluctuations in WaferGen's revenue and net income or loss, WaferGen believes that quarterly comparisons of its operating results are not a good indication of future performance.

Since inception, WaferGen has incurred substantial operating losses. As of December 31, 2009, WaferGen's accumulated deficit was \$30,462,283 and the total stockholders' deficit was \$1,347,936. Losses have principally occurred as a result of the substantial resources required for the research, development, and manufacturing scale-up effort required to commercialize WaferGen's initial products and services. WaferGen expects to continue to incur substantial costs for research, development, and manufacturing scale-up activities over at least the next year. WaferGen will also need to increase its selling, general and administrative costs as it builds its sales and marketing infrastructure to expand and support the sale of systems, other products, and services.

We expect that the cash we have available, along with the net proceeds from the subsequent sale of common stock and Series B RCPS in our subsidiary, will fund our operations only through June 2010. We are currently considering several different financing alternatives to support the Company's operations thereafter. If we are unable to obtain such additional financing on a timely basis, we may have to curtail our development activities and growth plans and/or be forced to sell assets, perhaps on unfavorable terms, which would have a material adverse effect on our business, financial condition and results of operations, and ultimately could be forced to discontinue our operations and liquidate, in which event it is unlikely that stockholders would receive and distribution on their shares. See "Liquidity and Capital Resources" below.

## Results of Operations

### Year Ended December 31, 2009 Compared to Year Ended December 31, 2008

The following table presents selected items in our condensed consolidated statements of operations for the years ended December 31, 2009 and 2008, respectively:

	Year Ended December 31,	
	2009	2008
Revenue	\$ 379,373	\$ 621,866
Cost of revenue	263,041	241,033
Gross margin	116,332	380,833
Operating expenses:		
Sales and marketing	601,245	1,179,791
Research and development	5,142,083	4,628,262
General and administrative	4,383,082	2,603,180
Total operating expenses	10,126,410	8,411,233
Operating loss	(10,010,078)	(8,030,400)
Other income and (expenses):		
Interest income	14,493	82,318
Interest expense	(9,570)	(14,851)
Unrealized loss on fair value of warrants, net	(564,122)	—
Miscellaneous expense	(51,211)	(78,504)
Total other income (expense)	(610,410)	(11,037)
Net loss before provision for income taxes	(10,620,488)	(8,041,437)
Provision for income taxes	—	—
Net loss	\$ (10,620,488)	\$ (8,041,437)

## Revenue

The following table represents our revenue for the years ended December 31, 2009 and 2008:

	Year Ended December 31,		
	2009	2008	% Change
	\$ 379,373	\$ 621,866	(38.99)%

For the year ended December 31, 2009, revenue decreased by \$242,493, or 38.99%, as compared to the year ended December 31, 2008. The decrease resulted primarily from challenging economic conditions, a reduction in sales to new distributors, and reductions in government funding causing potential customers to defer their planned expenditures.

## Cost of Revenue

The following table represents our cost of revenue for the years ended December 31, 2009 and 2008:

	Year Ended December 31,		
	2009	2008	% Change
	\$ 263,041	\$ 241,033	9.13%

Cost of revenue includes the cost of products paid to third party vendors, along with any changes in provision for excess and obsolete inventory. For the year ended December 31, 2009, cost of revenue increased by \$22,008, or 9.13%, as compared to the year ended December 31, 2008. The increase related primarily to a provision for obsolete SmartSlide™ products inventory of \$130,478, offset by the decrease in revenues, for which the corresponding direct cost was \$132,563, giving a gross margin of 65% on product sold. This represents an increase over the 61% margin in 2008, as there were fewer discounted sales to distributors, while the costs for our products remained substantially unchanged.

#### ***Sales and Marketing Expenses***

The following table represents our sales and marketing expenses for the years ended December 31, 2009 and 2008:

<b>Year Ended December 31,</b>		
<b>2009</b>	<b>2008</b>	<b>% Change</b>
\$ 601,245	\$ 1,179,791	(49.04)%

Sales and marketing expenses consist primarily of compensation cost of our sales and marketing team, commissions, and the costs associated with various marketing programs. For the year ended December 31, 2009, sales and marketing expenses decreased by \$578,546, or 49.04%, as compared to the year ended December 31, 2008. The decrease resulted primarily from reductions in salaries and wages due to a decrease in the head count of sales employees, and also from reductions in consultant costs, sales commissions and travel expenses.

We expect selling expenses will increase in the future as the company increases its marketing activity and commission expense in conjunction with sales of its SmartChip products.

#### ***Research and Development Expenses***

The following table represents our research and development expenses for the years ended December 31, 2009 and 2008:

<b>Year Ended December 31,</b>		
<b>2009</b>	<b>2008</b>	<b>% Change</b>
\$ 5,142,083	\$ 4,628,262	11.10%

Research and development expenses consist primarily of salaries and other personnel-related expenses, laboratory supplies and other expenses related to the design, development, testing and enhancement of our products. Research and development expenses are expensed as they are incurred. For the year ended December 31, 2009, research and development expenses increased \$513,821, or 11.10%, as compared to the year ended December 31, 2008. The increase resulted primarily from a reduction in activity related to the SmartSlide™ System, which is in production, offset by an increase in activity related to development of the SmartChip System, including the cost of leased equipment, and of accelerated depreciation on, and expensing of, capital equipment related to both SmartChip and SmartSlide™ assessed as providing no future benefits.

We believe a substantial investment in research and development is essential in the long term to remain competitive and expand into additional markets, and in the short term to complete testing and establish the commercial viability of the SmartChip System. Accordingly, we expect our research and development expenses to remain at a high level of total expenditures as we grow.

#### ***General and Administrative Expenses***

The following table represents our general and administrative expenses for the years ended December 31, 2009 and 2008:

<b>Year Ended December 31,</b>		
<b>2009</b>	<b>2008</b>	<b>% Change</b>
\$ 4,383,082	\$ 2,603,180	68.37%

Our general and administrative expenses consist primarily of personnel costs for finance, human resources, business development, and general management, as well as professional fees, such as expenses for legal and accounting services. For the year ended December 31, 2009, general and administrative expenses increased \$1,779,902, or 68.37%, as compared to the year ended December 31, 2008. The increase was mostly due to severance costs related to the resignation of the company's former Chief Technology Officer and Chief Financial Officer, along with higher consultancy fees, most notably for investor relations and strategic planning, and higher legal and professional fees, principally relating to intellectual property matters.

We expect our general and administrative expenses to increase as the Company expands its staff, develops its infrastructure and incurs additional costs to support the growth in its business.

#### ***Interest Income***

The following table represents our interest income for the years ended December 31, 2009 and 2008:

<b>Year Ended December 31,</b>		
<b>2009</b>	<b>2008</b>	<b>% Change</b>
\$ 14,493	\$ 82,318	(82.39)%

The interest income is solely earned on cash balances held in interest-bearing bank accounts. For the year ended December 31, 2009, interest income decreased \$67,825, or 82.39%, as compared to the year ended December 31, 2008. The decrease was due to a reduction in the average cash invested in interest-bearing accounts, and the lower interest rates afforded.

#### ***Interest Expense***

The following table represents our interest expense for the years ended December 31, 2009 and 2008:

<b>Year Ended December 31,</b>		
<b>2009</b>	<b>2008</b>	<b>% Change</b>
\$ 9,570	\$ 14,851	(35.56)%

For the year ended December 31, 2009, interest expense decreased \$5,281, or 35.56%, as compared to the year ended December 31, 2008. The decrease was due to a reduction in the balances outstanding on our capital leases, offset by other miscellaneous interest charges in 2009.

#### ***Unrealized Loss on Fair Value of Warrants, net***

The following table represents our unrealized loss on fair value of warrants, net for the years ended December 31, 2009 and 2008:

<b>Year Ended December 31,</b>		
<b>2009</b>	<b>2008</b>	<b>% Change</b>
\$ 564,122	\$ —	N/A%

FASB ASC 815-40 "*Derivatives and Hedging – Contracts in Entity's own Equity*" became effective January 1, 2009 and required that derivative revaluations be recognized whenever the Company incurs a liability associated with the issuance of an equity-based instrument. The instrument is revalued for each reporting period until the liability is settled.

Net losses from warrant derivative revaluations for the year ended December 31, 2009 were \$564,122. The loss is attributed to revaluations of warrants and results primarily from an increase in the Company's stock price. There was no derivative revaluation expense during 2008, as this was prior to the adoption of FASB ASC 815-40, although had this been in effect, there would have been a net gain of \$368,627, primarily attributable to a decrease in the Company's stock price.

### **Miscellaneous Expense**

The following table represents our miscellaneous expense for the year ended December 31, 2009 and 2008:

Year Ended December 31,		
2009	2008	% Change
\$ 51,211	\$ 78,504	(34.77)%

For the year ended December 31, 2009, miscellaneous expense decreased \$27,293, or 34.77%, as compared to the year ended December 31, 2008. Miscellaneous expense was the result of net foreign currency exchange losses in our Malaysian subsidiary, WGBM, most notably a loss of \$18,029 on receipt of funds from EEV in June 2009 for 111,111 Series B RCPS issued by WGBM (see Note 6 to the Condensed Consolidated Financial Statements in Part II, Item 8), for which the local currency exchange rate had been fixed in 2008. The remaining expense in the years ended December 31, 2009 and 2008, is mainly due to revaluation of the intercompany account at the balance sheet date. The subsidiary's activities did not begin until the second quarter of 2008, so intercompany balances were lower, causing exchange losses to be lower in the comparative periods, but this was offset by lower exchange rate fluctuations between the dollar and ringgit in 2009.

### **Liquidity and Capital Resources**

From inception through December 31, 2009, the Company raised a total of \$3,665,991 from the issuance of notes payable, \$66,037 from the sale of Series A Preferred Stock, \$1,559,942 from the sale of Series B Preferred Stock, \$23,739,996, net of offering costs, from the sale of common stock and warrants, and \$3,056,887, net of offering costs, from the sale of redeemable convertible preference shares ("RCPS") in its Malaysian subsidiary. As of December 31, 2009, we had \$5,953,639 in cash and cash equivalents, and working capital of \$4,230,123.

#### *Net Cash Used in Operating Activities*

The Company experienced negative cash flow from operating activities for the years ended December 31, 2009 and 2008 in the amounts of \$7,832,332 and \$7,284,180, respectively. The restatement had no net impact on cash flow from operating activities. The cash used in operating activities in the year ended December 31, 2009 was due to cash used to fund a net operating loss of \$10,620,488, offset by non-cash expenses related to depreciation and amortization, stock-based compensation, issuance of warrants for services, unrealized loss on fair value of warrants, exchange loss, inventory provision and expensed equipment totaling \$2,205,776 and by cash provided from a change in working capital of \$582,380. The increase in cash used in the year ended December 31, 2009 compared to 2008 was driven primarily by the increase in the net operating loss, offset by the increases in non-cash expenses, and in accrued severance pay, to be paid to two former officers over the fourteen months commencing on June 17, 2009.

#### *Net Cash Used in Investing Activities*

The Company used \$263,291 in the year ended December 31, 2009, and \$601,897 (net of a deposit of \$51,446 made in 2007 applied to a 2008 purchase) in the year ended December 31, 2008, to acquire property and equipment. The cash used in the year ended December 31, 2009 includes the cost of equipment of \$123,998, which was capitalized, but not depreciated, at March 31, 2009, and was reassessed and expensed as research and development in the three months ended June 30, 2009.

#### *Net Cash Provided by Financing Activities*

Cash provided by financing activities in the year ended December 31, 2009 was \$11,401,545.

In June 2009, the Company received net cash of \$3,764,169 (after offering expenses of \$206,825 and a selling agent commission of \$160,256) from the sale in a private placement offering of 3,305,000 shares of common stock and warrants to purchase 991,500 shares of common stock with an exercise price of \$2.00 per share. In August 2009, the Company received further net cash of \$1,884,351 (after offering expenses of \$96,549 and a selling agent commission of \$149,100) from the sale of an additional 1,704,000 shares of common stock and warrants to purchase 511,200 shares of common stock with an exercise price of \$2.00 per share. The warrants have a five-year term and standard broad-based weighted-average anti-dilution protection. In December 2009, the Company received net cash of \$4,546,341 (after offering expenses of \$43,964 and a selling agent commission of \$372,195) from the sale in a private placement offering of 3,308,335 shares of common stock and warrants to purchase 827,085 shares of common stock with an exercise price of \$2.50 per share. These warrants also have a five-year term and standard broad-based weighted-average anti-dilution protection. In addition, in June 2009 the Company received \$100,168 when 71,041 warrants were exercised at a price of \$1.41 per share. Further, WaferGen received \$39,976 from the exercise of stock options in August and December 2009.

Also, in June 2009, the Company's Malaysian subsidiary, WGBM, received \$212,578, net of issuance costs and a currency exchange loss, in exchange for the issuance of 111,111 Series B RCPS, and in September 2009, WGBM received further net cash of \$904,309, net of issuance costs, in exchange for the issuance of a further 410,279 Series B RCPS (See Note 6 to the Consolidated Financial Statements in Part II, Item 8 for more information related to RCPS). This was offset by repayments on capital leases for equipment of \$50,347.

Net cash provided by financing activities in the year ended December 31, 2008 was \$5,277,141.

In May 2008, the Company received net cash of \$3,478,744 (after offering expenses) from the sale in a private placement offering of 1,585,550 shares of common stock and warrants to purchase 634,220 shares of common stock with an exercise price of \$3.00 per share. The warrants have a five-year term and standard broad-based weighted-average anti-dilution protection. Further, in May 2008, WaferGen received \$4,079 from the exercise of stock options.

In addition, in July 2008, the Company's Malaysian subsidiary, WGBM, received \$970,000, net of issuance costs, in exchange for the issuance of 444,444 Series A RCPS of WGBM, in a private placement to Malaysian Technology Development Corporation Sdn. Bhd. In November 2008, a "Subsequent Closing" was completed, and net proceeds of \$970,000 from the sale of an additional 444,444 Series A RCPS were received (See Note 6 to the Consolidated Financial Statements in Part II, Item 8 for more information related to RCPS). This was offset by repayments of \$145,682 on capital leases for equipment used in the lab for expansion and upgrading of our lab to accommodate our performance in the research and development of the SmartChip products.

#### *Availability of Additional Funds*

We believe funds available at December 31, 2009, along with the net proceeds from the subsequent sale of common stock and Series B RCPS in our subsidiary, (See Note 15 to the Consolidated Financial Statements in Part II, Item 8, for further information), will fund our operations through June 2010. Thereafter, we expect we will need to raise further capital, through the sale of additional equity securities or otherwise, to support the Company's future operations. Our operating needs include the planned costs to operate our business, including amounts required to fund working capital and capital expenditures. At the present time, we have no material commitments for capital expenditures. However, our future capital requirements and the adequacy of our available funds will depend on many factors, including our ability to successfully commercialize our SmartChip products and services, competing technological and market developments, and the need to enter into collaborations with other companies or acquire other companies or technologies to enhance or complement our product and service offerings.

While we believe we have sufficient cash to fund our operating, investing, and financing activities in the near term, we expect that additional working capital will be needed to fund the commercialization and manufacture of our SmartChip products and services which are currently foreseen by management. We may be unable to raise sufficient additional capital when we need it or to raise capital on favorable terms. The conversion of RCPS in our subsidiary, and the sale of equity or convertible debt securities in the future, may be dilutive to our stockholders, and debt financing arrangements may require us to pledge certain assets and enter into covenants that could restrict certain business activities or our ability to incur further indebtedness, and may contain other terms that are not favorable to us or our stockholders. If we are unable to obtain adequate funds on reasonable terms, we may be required to curtail operations significantly or to obtain funds by entering into financing agreements on unattractive terms.

#### Off-Balance Sheet Arrangements

We have no off-balance sheet arrangements that have or are reasonably likely to have a current or future effect on our financial condition, changes in financial condition, revenues or expenses, result of operations, liquidity, capital expenditures or capital resources that is material to stockholders.

#### Critical Accounting Policies and Estimates

**Deferred Tax Valuation Allowance.** We believe significant uncertainties exist regarding the future realization of deferred tax assets, and accordingly, a full valuation allowance is required, which amounts to \$11,768,786 at December 31, 2009. In subsequent periods, if and when we generate pre-tax income, a tax expense will not be recorded to the extent that the remaining valuation allowance can be used to offset that expense. Once a consistent pattern of pre-tax income is established or other events occur that indicate that the deferred tax assets will be realized, some or all of the existing valuation allowance will be reversed back to income. Should we generate pre-tax losses in subsequent periods, a tax benefit will not be recorded and the valuation allowance will be increased.

**Inventory Valuation.** Inventories are stated at the lower of cost and market value. We perform a detailed assessment of inventory at each balance sheet date, which includes, among other factors, a review of demand requirements and product lifecycle. Inventory valuation provisions are assessed on the amount of inventory, on a line by line basis, for which quantities on hand exceed of one year's projected demand. As a result of this assessment, we write down inventory for estimated obsolescence or unmarketable inventory equal to the difference between the cost of the inventory and the estimated liquidation value based upon assumptions about future demand and market conditions. If actual demand and market conditions are less favorable than those projected by management, additional inventory write-downs may be required.

**Stock-Based Compensation.** We measure the fair value of all stock option and restricted stock awards to employees on the grant date, and record the fair value of these awards, net of estimated forfeitures, as compensation expense over the service period. The fair value is estimated using the Black-Scholes valuation model. The weighted-average fair value of options granted was \$0.56 for the year ended December 31, 2009 and \$0.28 for the year ended December 31, 2008. Amounts expensed were \$838,952 and \$388,650, net of estimated annual forfeitures of 6% and 5%, respectively, for the years ended December 31, 2009 and 2008, respectively. The sum expensed in the year ended December 31, 2009 includes \$262,000 for restricted stock awards to consultants, for which the fair value is measured on the dates on which performance of services is completed.

The weighted-average grant date fair value of options awarded in the years ended December 31, 2009 and 2008, respectively, were \$0.56 and \$0.28. These fair values were estimated using the following assumptions:

	December 31, 2009	December 31, 2008
Risk-free interest rate	1.31% - 2.97%	2.37% - 3.34%
Expected term	4.75 Years	4.75 - 5.00 Years
Expected volatility	40.04% - 42.44%	16.97% - 33.31%
Dividend yield	0%	0%

**Risk-Free Interest Rate.** This is the United States Treasury rate for the day of the grant having a term equal to the expected term of the option. An increase in the risk-free interest rate will increase the fair value and the related compensation expense.

**Expected Term.** This is the period of time over which the award is expected to remain outstanding and is based on management's estimate, taking into consideration the vesting terms, the contractual life, and historical experience. An increase in the expected term will increase the fair value and the related compensation expense.

**Expected Volatility.** This is a measure of the amount by which the stock price has fluctuated or is expected to fluctuate. Since the Company's stock has not been traded for as long as the expected term of the options, the Company uses a weighted-average of the historic volatility of four comparable companies over the retrospective period corresponding to the expected life of the Company's own options on the grant date. Extra weighting is attached to those companies most similar in terms of size and business activity. An increase in the expected volatility will increase the fair value and the related compensation expense.

**Dividend Yield.** The Company has not made any dividend payments nor does it have plans to pay dividends in the foreseeable future. An increase in the dividend yield will decrease the fair value and the related compensation expense.

**Forfeiture Rate.** This is a measure of the amount of awards that are expected to not vest. An increase in the estimated forfeiture rates will decrease the related compensation expense.

**Warrant Derivative Liabilities.** We evaluate our warrants to determine whether they are indexed to our common stock, and if it is determined that they are not, they are treated as derivatives. We have determined that all of the warrants that we have issued which contain an anti-dilution provision are not indexed to our stock. We measure the fair value of these warrants at the dates of issuance, and at each period end, to determine the associated derivative liability.

At these measurement dates, we estimate the fair values of these securities using a Monte Carlo Simulation approach, using critical assumptions provided by management reflecting conditions at the valuation date. The fair value of warrants as at December 31, 2009 ranged from \$0.52 to \$0.97.

Fair values at measurement dates during the year ended December 31, 2009 were estimated using the following assumptions:

	<b>December 31, 2009</b>
Risk-free interest rate	<u>1.16% - 2.16%</u>
Expected remaining term	<u>2.71 - 4.00 Years</u>
Expected volatility	<u>43.26% - 49.78%</u>
Dividend yield	<u>0%</u>
Private Placement discount to stock price	<u>15%</u>

**Risk-Free Interest Rate.** This is the United States Treasury rate for the measurement date having a term equal to the expected remaining term of the warrant. An increase in the risk-free interest rate will increase the fair value and the associated derivative liability.

**Expected Remaining Term.** This is the period of time over which the warrant is expected to remain outstanding and is based on management's estimate, taking into consideration the remaining contractual life, and historical experience. An increase in the expected remaining term will increase the fair value and the associated derivative liability.

*Expected Volatility.* This is a measure of the amount by which the stock price has fluctuated or is expected to fluctuate. Since the Company's stock has not been traded for as long as the expected remaining term of the warrants, the Company uses a weighted-average of the historic volatility of four comparable companies over the retrospective period corresponding to the expected remaining term of the warrants on the measurement date. Extra weighting is attached to those companies most similar in terms of size and business activity. An increase in the expected volatility will increase the fair value and the associated derivative liability.

*Dividend Yield.* The Company has not made any dividend payments nor does it have plans to pay dividends in the foreseeable future. An increase in the dividend yield will decrease the fair value and the associated derivative liability.

*Private Placement Discount to Stock Price.* This is the percentage amount by which future stock offerings are expected to be priced at a discount from the trading price of our common stock at the offering closing dates, and is based on management's estimate, taking into consideration future expectations and historical experience. An increase in the expected discount to stock price will increase the fair value and the associated derivative liability.

#### **Contractual Obligations**

In October, 2009, the Company signed an operating lease for 19,186 square feet of office and laboratory space for our new headquarters in Fremont, California, covering the period November 1, 2009 through April 30, 2015, with no rent payable for the first six months. The total expenditure commitment is approximately \$2.2 million, plus maintenance fees.

#### **Recently Issued Accounting Pronouncements**

See the "Recent Accounting Pronouncements" in Note 2 to the Consolidated Financial Statements in Part II, Item 8 for information related to the adoption of new accounting standards in 2009, none of which had a material impact on our financial statements, and the future adoption of recently issued accounting pronouncements, which we do not expect will have a material impact on our financial statements.

#### **Cautionary Factors That May Affect Future Results**

This Report and other written reports and oral statements made from time to time by the Company may contain so-called "forward-looking statements," all of which are subject to risks and uncertainties. One can identify these forward-looking statements by their use of words such as "expects," "plans," "will," "estimates," "forecasts," "projects" and other words of similar meaning. One can identify them by the fact that they do not relate strictly to historical or current facts. These statements are likely to address the Company's growth strategy, financial results and product and development programs. One must carefully consider any such statement and should understand that many factors could cause actual results to differ from the Company's forward-looking statements. These factors include inaccurate assumptions and a broad variety of other risks and uncertainties, including some that are known and some that are not. No forward-looking statement can be guaranteed and actual future results may vary materially.

Information regarding market and industry statistics contained in this Report is included based on information available to the Company that it believes is accurate. It is generally based on industry and other publications that are not produced for purposes of securities offerings or economic analysis. The Company has not reviewed or included data from all sources, and cannot assure investors of the accuracy or completeness of the data included in this Report. Forecasts and other forward-looking information obtained from these sources are subject to the same qualifications and the additional uncertainties accompanying any estimates of future market size, revenue and market acceptance of products and services. The Company does not assume the obligation to update any forward-looking statement. You should carefully evaluate such statements in light of factors described in the Company's filings with the SEC, especially on Forms 10-K, 10-Q and 8-K. In various filings the Company has identified important factors that could cause actual results to differ from expected or historic results. You should understand that it is not possible to predict or identify all such factors. Consequently, the reader should not consider any such list to be a complete list of all potential risks or uncertainties.

Item 8. Financial Statements and Supplementary Data

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## Report of Independent Registered Public Accounting Firm

The Board of Directors and Stockholders of  
WaferGen Bio-systems, Inc.:

We have audited the accompanying consolidated balance sheets of WaferGen Bio-systems, Inc. (a development stage company) (the "Company") as of December 31, 2009 and 2008, and the related consolidated statements of operations, Series B preferred stock and stockholders' equity (deficit) and comprehensive income (loss), and cash flows for the years then ended and for the period from October 22, 2002 (inception) to December 31, 2009. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis of designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the consolidated financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Company as of December 31, 2009 and 2008, and the results of their operations and their cash flows for the years then ended and for the cumulative period from October 22, 2002 (inception) to December 31, 2009, in conformity with accounting principles generally accepted in the United States of America.

As discussed in Note 2 to the consolidated financial statements, effective January 1, 2009, the Company changed the manner in which it accounts for certain warrants pursuant to the new authoritative guidance in FASB ASC topic 815-40, "Contract in Entity's Own Equity."

As disclosed in Notes 1 and 16 to the consolidated financial statements, the Company has restated its 2009 consolidated financial statements to now account for warrants pursuant to the new authoritative guidance in FASB ASC topic 815-40, "Contracts in Entity's own Equity".

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As shown in the consolidated financial statements, the Company has incurred net losses since its inception and has experienced liquidity problems. Those conditions raise substantial doubt about the Company's ability to continue as a going concern. Management's plans in regarding to those matters are described in Note 1. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

*/s/ Rowbotham & Company LLP*

San Francisco, California

March 19, 2010 (except for Notes 1, 2, 8, 9, 10, 11, 14, 15 and 16 for which the date is May 12, 2010)

**WAFERGEN BIO-SYSTEMS, INC.**  
(A Development Stage Company)

**Consolidated Balance Sheets**

	<b>December 31, 2009</b>	<b>December 31, 2008</b>
	<b>(As restated, See Note 16)</b>	
<b><u>Assets</u></b>		
Current assets:		
Cash and cash equivalents	\$ 5,953,639	\$ 2,597,413
Accounts receivable	258,855	40,757
Inventories, net	39,970	227,272
Prepaid expenses and other current assets	138,712	135,629
Total current assets	6,391,176	3,001,071
Property and equipment, net	441,996	795,339
Other assets	57,982	15,690
Total assets	<u>\$ 6,891,154</u>	<u>\$ 3,812,100</u>
<b><u>Liabilities and Stockholders' Equity (Deficit)</u></b>		
Current liabilities:		
Accounts payable	\$ 1,240,397	\$ 904,094
Accrued rent	10,493	31,671
Accrued payroll	241,586	160,242
Accrued severance pay	371,596	—
Accrued vacation	117,619	181,377
Accrued other expenses	157,699	72,012
Current portion of capital lease obligations	21,663	55,934
Total current liabilities	2,161,053	1,405,330
Capital lease obligations, net of current portion	8,852	24,928
Warrant derivative liability	2,778,191	—
Redeemable convertible preference shares in subsidiary	3,290,994	1,977,916
Commitments and contingencies	—	—
Stockholders' equity (deficit):		
Preferred Stock, \$0.001 par value; 10,000,000 shares authorized; no shares issued and outstanding	—	—
Common Stock: \$0.001 par value; 300,000,000 shares authorized; 33,387,857 and 24,830,932 shares issued and outstanding at December 31, 2009 and December 31, 2008	33,388	24,831
Additional paid-in capital	29,017,578	20,397,789
Accumulated deficit	(30,462,283)	(20,032,260)
Accumulated other comprehensive income	63,381	13,566
Total stockholders' equity (deficit)	(1,347,936)	403,926
Total liabilities and stockholders' equity (deficit)	<u>\$ 6,891,154</u>	<u>\$ 3,812,100</u>

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

**WAFERGEN BIO-SYSTEMS, INC.**  
(A Development Stage Company)

**Consolidated Statements of Operations**

	<b>Year Ended December 31,</b>		<b>Period From</b>
	<b>2009</b>	<b>2008</b>	<b>October 22, 2002</b>
	<b>(As restated, See Note 16)</b>		<b>(Inception) to December 31, 2009</b>
			<b>(As restated, See Note 16)</b>
Revenue	\$ 379,373	\$ 621,866	\$ 1,295,507
Cost of revenue	263,041	241,033	604,940
Gross margin	116,332	380,833	690,567
Operating expenses:			
Sales and marketing	601,245	1,179,791	2,782,259
Research and development	5,142,083	4,628,262	15,838,473
General and administrative	4,383,082	2,603,180	11,773,236
Total operating expenses	10,126,410	8,411,233	30,393,968
Operating loss	(10,010,078)	(8,030,400)	(29,703,401)
Other income and (expenses):			
Interest income	14,493	82,318	259,858
Interest expense	(9,570)	(14,851)	(321,454)
Unrealized loss on fair value of warrants, net	(564,122)	—	(564,122)
Miscellaneous expense	(51,211)	(78,504)	(129,715)
Total other income and (expenses)	(610,410)	(11,037)	(755,433)
Net loss before provision for income taxes	(10,620,488)	(8,041,437)	(30,458,834)
Provision for income taxes	—	—	—
Net loss	(10,620,488)	(8,041,437)	(30,458,834)
Cumulative effect of reclassification of warrants	—	—	368,627
Accretion on Redeemable Convertible Preference Shares in Subsidiary	(178,162)	(37,916)	(216,078)
Accretion on Series B Preferred Stock	—	—	(155,998)
Net loss applicable to common stockholders	\$ (10,798,650)	\$ (8,079,353)	\$ (30,462,283)
Net loss per share - basic and diluted	\$ (0.39)	\$ (0.33)	
Shares used to compute net loss per share - basic and diluted	27,378,293	24,214,807	

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

WAFERGEN BIO-SYSTEMS, INC.  
(A Development Stage Company)

Consolidated Statements of Series B Preferred Stock and Stockholders' Equity (Deficit)

	Series B Preferred Stock		Series A Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated Deficit	Total
	Shares	Amount	Shares	Amount	Shares	Amount			
Balances as of October 22, 2002	—	\$ —	—	\$ —	—	—\$	—\$	—\$	—\$ —
Net loss	—	—	—	—	—	—	—	—	—
Balances as of December 31, 2002	—	\$ —	—	\$ —	—	—\$	—\$	—\$	—\$ —

	Series B Preferred Stock		Series A Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated Deficit	Total
	Shares	Amount	Shares	Amount	Shares	Amount			
Balances as of January 1, 2003	—	\$ —	—	\$ —	—	—\$	—\$	—\$	\$ —
Net loss	—	—	—	—	—	—	—	(533,985)	(533,985)
Balances as of December 31, 2003	—	\$ —	—	\$ —	—	—\$	—\$	—\$ (533,985)	\$(533,985)

	Series B Preferred Stock		Series A Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated Deficit	Total
	Shares	Amount	Shares	Amount	Shares	Amount			
Balances as of January 1, 2004	—	\$ —	—	\$ —	—	—\$	—\$	— \$ (533,985)	\$ (533,985)
Issuance of Common Stock in June for cash	—	—	—	—	2,483,610	2,484	(2,024)	—	460
Stock-based compensation	—	—	—	—	—	—	1,242	—	1,242
Net loss	—	—	—	—	—	—	—	(1,124,360)	(1,124,360)
Balances as of December 31, 2004	—	\$ —	—	\$ —	2,483,610	\$ 2,484	(782)	\$ (1,658,345)	\$(1,656,643)

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

**WAFERGEN BIO-SYSTEMS, INC.**  
(A Development Stage Company)

**Consolidated Statements of Series B Preferred Stock and Stockholders' Equity (Deficit)**

	Series B Preferred Stock		Series A Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated Deficit	Total
	Shares	Amount	Shares	Amount	Shares	Amount			
Balances as of January 1, 2005	—	\$ —	—	\$ —	2,483,610	\$ 2,484	(782)	\$ (1,658,345)	\$ (1,656,643)
Issuance of Series A Preferred Stock in February upon conversion of notes payable and accrued interest	—	—	5,915,219	592	—	—	3,134,481	—	3,135,073
Issuance of Common Stock in September for cash	—	—	—	—	917,856	918	(748)	—	170
Stock-based compensation	—	—	—	—	—	—	8,575	—	8,575
Net loss	—	—	—	—	—	—	—	(1,494,449)	(1,494,449)
Balances as of December 31, 2005	—	\$ —	5,915,219	\$ 592	3,401,466	\$ 3,402	3,141,526	\$ (3,152,794)	\$ (7,274)
	Series B Preferred Stock		Series A Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated Deficit	Total
	Shares	Amount	Shares	Amount	Shares	Amount			
Balances as of January 1, 2006	—	\$ —	5,915,219	\$ 592	3,401,466	\$ 3,402	3,141,526	\$ (3,152,794)	\$ (7,274)
Issuance of Common Stock in January for cash	—	—	—	—	4,049	4	(3)	—	1
Issuance of Series B Preferred Stock in February for cash	2,052,552	1,559,942	—	—	—	—	—	—	—
Issuance of restricted shares in March for services	—	—	—	—	24,296	24	(24)	—	—
Issuance of Common Stock in June for cash	—	—	—	—	8,099	8	(7)	—	1
Issuance of restricted shares in July for services	—	—	—	—	10,798	11	(11)	—	—
Issuance of restricted shares in August for services	—	—	—	—	16,197	16	(16)	—	—
Issuance of Common Stock in August for cash	—	—	—	—	17,007	17	(14)	—	3
Accretions on Series B Preferred Stock	—	104,000	—	—	—	—	—	(104,000)	(104,000)
Issuance of restricted shares in November for services	—	—	—	—	5,399	5	(5)	—	—
Issuance of Common Stock in November for cash	—	—	—	—	8,639	9	(7)	—	2
Stock-based compensation	—	—	—	—	—	—	642,076	—	642,076
Net loss	—	—	—	—	—	—	—	(2,686,451)	(2,686,451)
Balances as of December 31, 2006	2,052,552	\$ 1,663,942	5,915,219	\$ 592	3,495,950	\$ 3,496	3,783,515	\$ (5,943,245)	\$ (2,155,642)

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

**WAFERGEN BIO-SYSTEMS, INC.**  
(A Development Stage Company)

**Consolidated Statements of Series B Preferred Stock and Stockholders' Equity (Deficit)**

	<b>Series B Preferred Stock</b>		<b>Series A Preferred Stock</b>		<b>Common Stock</b>		<b>Additional Paid-in Capital</b>	<b>Accumulated Deficit</b>	<b>Total</b>
	<b>Shares</b>	<b>Amount</b>	<b>Shares</b>	<b>Amount</b>	<b>Shares</b>	<b>Amount</b>			
Balances as of January 1, 2007	2,052,552	\$ 1,663,942	5,915,219	\$ 592	3,495,950	\$ 3,496	\$ 3,783,515	\$ (5,943,245)	\$ (2,155,642)
Issuance of Common Stock in January for cash	—	—	—	—	26,996	27	473	—	500
Issuance of restricted shares in January for services	—	—	—	—	134,979	135	(135)	—	—
Issuance of Series A Preferred Stock in February for cash	—	—	471,698	47	—	—	65,990	—	66,037
Issuance of WaferGen Bio-systems, Inc. Common Stock to WaferGen, Inc.'s Preferred shareholders in May	(2,052,552)	(1,715,940)	(6,386,917)	(639)	4,556,598	4,557	1,712,022	—	1,715,940
Issuance of Units for cash and notes payable in May and June, net of offering costs of \$1,917,956	—	—	—	—	8,008,448	8,008	10,086,704	—	10,094,712
WaferGen Bio-systems, Inc. shares outstanding	—	—	—	—	11,277,782	11,278	(11,278)	—	—
Common Stock cancelled in May in accordance with Split-Off Agreement	—	—	—	—	(4,277,778)	(4,278)	4,278	—	—
Issuance of warrants in May and June to a placement agent	—	—	—	—	—	—	66,319	—	66,319
Issuance of warrants with debt in January, February and March	—	—	—	—	—	—	171,053	—	171,053
Stock-based compensation	—	—	—	—	—	—	648,988	—	648,988
Accretions on Series B Preferred Stock	—	51,998	—	—	—	—	—	(51,998)	(51,998)
Common Stock cancelled in July	—	—	—	—	(5,129)	(5)	—	—	(5)
Net loss	—	—	—	—	—	—	—	(5,957,664)	(5,957,664)
Balances as of December 31, 2007	—	\$ —	—	\$ —	23,217,846	\$ 23,218	\$ 16,527,929	\$ (11,952,907)	\$ 4,598,240

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

**WAFERGEN BIO-SYSTEMS, INC.**  
(A Development Stage Company)

**Consolidated Statements of Stockholders' Equity (Deficit) and Comprehensive Income (Loss)**

	<b>Preferred Stock</b>		<b>Common Stock</b>		<b>Additional Paid-in Capital</b>	<b>Accumulated Deficit</b>	<b>Accumulated Other Comprehensive Income</b>	<b>Total</b>
	<b>Shares</b>	<b>Amount</b>	<b>Shares</b>	<b>Amount</b>				
Balances as of January 1, 2008	—	\$ —	23,217,846	\$ 23,218	\$ 16,527,929	\$ (11,952,907)	\$ —	\$ 4,598,240
Issuance of Units for cash in May, net of offering costs of \$88,743	—	—	1,585,550	1,586	3,477,158	—	—	3,478,744
Issuance of Common Stock in May for cash	—	—	27,536	27	4,052	—	—	4,079
Stock-based compensation	—	—	—	—	388,650	—	—	388,650
Net loss	—	—	—	—	—	(8,041,437)	—	(8,041,437)
Accretion on Redeemable Convertible Preference Shares in Subsidiary	—	—	—	—	—	(37,916)	—	(37,916)
Translation adjustment	—	—	—	—	—	—	13,566	13,566
Balances as of December 31, 2008	—	\$ —	24,830,932	\$ 24,831	\$ 20,397,789	\$ (20,032,260)	\$ 13,566	\$ 403,926
Total comprehensive income (loss)						\$ (8,041,437)	\$ 13,566	\$ (8,027,871)

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

**WAFERGEN BIO-SYSTEMS, INC.**  
(A Development Stage Company)

**Consolidated Statements of Stockholders' Equity (Deficit) and Comprehensive Income (Loss)**

	<b>Preferred Stock</b>		<b>Common Stock</b>		<b>Additional Paid-in Capital</b>	<b>Accumulated Deficit</b>	<b>Accumulated Other Comprehensive Income</b>	<b>Total</b>
	<b>Shares</b>	<b>Amount</b>	<b>Shares</b>	<b>Amount</b>	<b>(As restated, See Note 16)</b>	<b>(As restated, See Note 16)</b>		<b>(As restated, See Note 16)</b>
Balances as of January 1, 2009	—	\$ —	24,830,932	\$ 24,831	\$ 20,397,789	\$ (20,032,260)	\$ 13,566	\$ 403,926
Cumulative effect of reclassification of warrants	—	—	—	—	(468,071)	368,627	—	(99,444)
Balances as of January 1, 2009, as adjusted	—	—	24,830,932	24,831	19,929,718	(19,663,633)	13,566	304,482
Issuance of Common Stock in June for cash upon exercise of warrants	—	—	71,041	71	100,097	—	—	100,168
Issuance of Units for cash in June and August, net of offering costs of \$781,122	—	—	5,009,000	5,009	4,489,117	—	—	4,494,126
Common Stock cancelled in June	—	—	(266)	—	—	—	—	—
Issuance of Common Stock in August, net of 4 shares forfeited in cashless exercise	—	—	10,794	11	(9)	—	—	2
Restricted Stock issued in July, August, September, October, November and December	—	—	130,000	130	(130)	—	—	—
Issuance of Units for cash in December, net of offering costs of \$534,028	—	—	3,308,335	3,308	3,582,802	—	—	3,586,110
Issuance of warrants in December for services	—	—	—	—	37,085	—	—	37,085
Issuance of Common Stock in December for cash	—	—	28,021	28	39,946	—	—	39,974
Stock-based compensation	—	—	—	—	838,952	—	—	838,952
Net loss	—	—	—	—	—	(10,620,488)	—	(10,620,488)
Accretion on Redeemable Convertible Preference Shares in Subsidiary	—	—	—	—	—	(178,162)	—	(178,162)
Translation adjustment	—	—	—	—	—	—	49,815	49,815
Balances as of December 31, 2009 (as restated)	—	\$ —	33,387,857	\$ 33,388	\$ 29,017,578	\$ (30,462,283)	\$ 63,381	\$ (1,347,936)
Total comprehensive income (loss) (as restated)						\$ (10,620,488)	\$ 49,815	\$ (10,570,673)

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

**WAFERGEN BIO-SYSTEMS, INC.**  
(A Development Stage Company)

**Consolidated Statements of Cash Flows**

	<b>Year Ended December 31,</b>		<b>Period From October 22, 2002 (Inception) to December 31, 2009</b>
	<b>2009</b>	<b>2008</b>	
	<b>(As restated, See Note 16)</b>		<b>(As restated, See Note 16)</b>
Cash flows from operating activities:			
Net loss	\$ (10,620,488)	\$ (8,041,437)	\$ (30,458,834)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation and amortization	493,112	294,249	913,660
Non cash miscellaneous income	—	—	(5)
Stock-based compensation	838,952	388,650	2,528,483
Issuance of warrants for services	37,085	—	37,085
Unrealized loss on fair value of warrants, net	564,122	—	564,122
Exchange loss on issuance of Redeemable Convertible Preference Shares in Subsidiary	18,029	—	18,029
Provision for excess and obsolete inventory	130,478	—	130,478
Equipment expensed as research & development costs	123,998	—	123,998
Issuance of Series A Preferred Stock for legal services	—	—	50,000
Issuance of Series A Preferred Stock for interest owed	—	—	107,494
Amortization of debt discount	—	—	171,053
Change in operating assets and liabilities:			
Accounts receivable	(218,098)	99,070	(258,855)
Inventories	56,824	(164,751)	(170,448)
Prepaid expenses and other current assets	(3,012)	(48,206)	(138,705)
Other assets	(42,209)	(13,225)	(58,004)
Accounts payable	337,363	344,804	1,242,808
Accrued rent	(21,135)	12,729	10,934
Accrued payroll	81,344	(254,277)	241,586
Accrued severance pay	371,596	—	371,596
Accrued vacation	(63,911)	25,255	117,578
Accrued other expenses	83,618	72,959	156,577
Net cash used in operating activities	(7,832,332)	(7,284,180)	(24,299,370)
Cash flows from investing activities:			
Purchase of property and equipment	(263,291)	(601,897)	(1,239,316)
Net cash used in investing activities	(263,291)	(601,897)	(1,239,316)
Cash flows from financing activities:			
Advances from (repayments to) related party, net	—	—	61,588
Repayment of capital lease obligations	(50,347)	(145,682)	(214,911)
Proceeds from issuance of notes payable	—	—	3,665,991
Net proceeds from issuance of Redeemable Convertible Preference Shares in Subsidiary	1,116,887	1,940,000	3,056,887
Repayments on notes payable	—	—	(510,000)
Proceeds from issuance of Series A Preferred Stock	—	—	66,037
Proceeds from issuance of Series B Preferred Stock	—	—	1,559,942
Proceeds from issuance of Common Stock, net of offering costs	10,335,005	3,482,823	23,739,996
Net cash provided by financing activities	11,401,545	5,277,141	31,425,530
Effect of exchange rates on cash	50,304	16,491	66,795
Net increase (decrease) in cash and cash equivalents	3,356,226	(2,592,445)	5,953,639
Cash and cash equivalents at beginning of the period	2,597,413	5,189,858	—
Cash and cash equivalents at end of the period	\$ 5,953,639	\$ 2,597,413	\$ 5,953,639

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

**WAFERGEN BIO-SYSTEMS, INC.**  
**(A Development Stage Company)**

**Notes to the Consolidated Financial Statements**

**NOTE 1. The Company**

**General**

WaferGen Bio-systems, Inc. and subsidiaries (the “Company”) are engaged in the development, manufacture and sales of systems for gene expression, genotyping and stem cell research for the life sciences, pharmaceutical drug discovery and biomarker discovery and diagnostic products industries. The Company’s products are aimed at professionals who perform genetic analysis and cell biology, primarily at pharmaceutical and biotech companies, academic and private research centers, and diagnostics companies involved in biomarker research. Through the SmartChip and SmartSlide™ products, the Company plans to provide new performance standards with significant savings of time and cost for professionals in the field of gene expression research facilitating biomarker discovery, toxicology, and clinical research.

WaferGen, Inc. was incorporated in the State of Delaware on October 22, 2002.

Scuttlebutt Yachts, Inc. was incorporated in the state of Nevada on August 4, 2005. On June 20, 2006, its name was changed to La Burbuja Café, Inc. On January 1, 2007, its name was changed to WaferGen Bio-systems, Inc.

**Restatement of Financial Statements**

The Company has restated its financial statements in this Form 10-K/A as of and for the year ended December 31, 2009, and for each of the quarterly periods in the year ended December 31, 2009, to reflect adjustments resulting from the Company’s adoption of FASB ASC 815-40-15-5 (“ASC 815-40”, formerly EITF 07-5), “Determining Whether an Instrument (or Embedded Feature) Is Indexed to an Entity’s Own Stock,” which became effective as of January 1, 2009. The restatement did not affect the Company’s cash position, its cash flows or its future cash requirements. See Notes 14 and 16 for more information regarding the restatement.

**Merger**

On May 31, 2007, WaferGen, Inc. was acquired by WaferGen Bio-systems, Inc. In the transactions, WaferGen, Inc. merged with a subsidiary of WaferGen Bio-systems, Inc. and became a wholly owned subsidiary of WaferGen Bio-systems, Inc. (the “Merger”). The officers and board members of WaferGen Bio-systems, Inc. resigned and were replaced by officers of WaferGen, Inc. along with newly elected board members.

Concurrent with the closing of the Merger, WaferGen Bio-systems, Inc. consummated a private offering (the “Offering”) of 7,178,444 units of its securities (the “Units”), at a purchase price of \$1.50 per Unit, consisting of an aggregate of 7,178,447 shares of Common Stock and warrants to purchase an aggregate of an additional 2,153,533 share of Common Stock for a period of five years at an exercise price of \$2.25 per share (the “Investor Warrants”), which Investor Warrants are callable by the Company under certain circumstances.

On June 12, 2007, WaferGen Bio-systems, Inc. sold an additional 830,000 Units consisting of an aggregate of 830,001 shares of Common Stock and warrants to purchase an aggregate of 249,000 shares of Common Stock.

WaferGen, Inc. had issued notes payable to a stockholder, our Chief Executive Officer, in the aggregate amount of \$750,000. Rather than accepting cash consideration for Units acquired by the same individual, the Company agreed to issue at the first closing 160,000 Units at a rate of one Unit for each \$1.50 of debt in consideration of his cancellation of \$240,000 of existing notes payable.

**WAFERGEN BIO-SYSTEMS, INC.**  
**(A Development Stage Company)**

**Notes to the Consolidated Financial Statements**

A summary is as follows:

Gross proceeds from initial offering	\$ 10,767,668
Gross proceeds from additional offering	1,245,000
	<u>12,012,668</u>
Gross proceeds	12,012,668
Offering costs:	
Paid	(1,851,637 )
Issuance of warrants to placement agent	(66,319)
	<u>(1,917,956)</u>
Total offering costs	(1,917,956)
Gross proceeds less offering costs	10,094,712
Issuance of warrants to placement agent	66,319
Cancellation of debt	(240,000)
	<u>(240,000)</u>
Net proceeds	<u>\$ 9,921,031</u>

We filed a registration statement (the "Registration Statement") registering for resale (i) the shares of Common Stock included in the units sold in the offering, (ii) the shares of Common Stock underlying the warrants included in the units sold and (iii) the shares of Common Stock underlying the warrants issued to the Placement Agent in connection with the offering, consistent with the terms and provisions of the Registration Rights Agreement from the offering, which Registration Statement became effective on January 18, 2008.

The exercise price and number of shares of our common stock issuable on exercise of the warrants may be adjusted in certain circumstances, including in the event of a stock dividend, or our recapitalization, reorganization, merger or consolidation. These warrants also provide the holders with weighted-average anti-dilution price protection.

The warrants, at the option of the holder, may be exercised by cash payment of the exercise price or by "cashless exercise." A "cashless exercise" means that in lieu of paying the aggregate purchase price for the share being purchased upon exercise of the warrants in cash, the holder will forfeit a number of shares underlying the warrants with a "fair market value" equal to such aggregate exercise price. WaferGen Bio-systems, Inc. will not receive additional proceeds to the extent that warrants are exercised by cashless exercise.

Contemporaneously with the closing of the Merger, WaferGen Bio-systems, Inc. executed a Split-Off Agreement with certain shareholders whereby all the assets and liabilities of WaferGen Bio-systems, Inc. just prior to the Merger were exchanged for 4,277,778 shares of common stock of WaferGen Bio-systems, Inc. In addition, all of WaferGen, Inc.'s existing Series A Preferred Stock, Series B Preferred Stock, and Common Stock was converted into Common Stock of WaferGen Bio-systems, Inc. pursuant to the terms of the merger agreement based on an exchange ratio of .53991522 for 1.

WaferGen Bio-systems, Inc. also assumed all outstanding WaferGen, Inc.'s stock options and warrants with proportionate adjustments to the number of underlying shares and exercise prices based on an exchange ratio of .53991522 for 1.

A summary of the Common Stock outstanding of WaferGen Bio-systems, Inc. subsequent to the above was as follows:

WaferGen Bio-systems, Inc. shares outstanding prior to the Merger	11,277,782
Shares issued to Wafergen, Inc. shareholders	8,214,523
Shares issued in the Offering	8,008,448
Shares cancelled in accordance with the Split-off Agreement	(4,277,778)
	<u>23,222,975</u>
Total shares outstanding	<u>23,222,975</u>

**WAFERGEN BIO-SYSTEMS, INC.**  
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**Notes to the Consolidated Financial Statements**

The transactions between WaferGen Bio-systems, Inc. and WaferGen, Inc. have been treated as a reverse merger and recapitalization of WaferGen, Inc. for reporting purposes. WaferGen, Inc. is the acquirer for accounting purposes. WaferGen Bio-systems, Inc. is the issuer. The historical financial statements for periods prior to the acquisition become those of the acquirer, WaferGen, Inc. In a recapitalization, historical stockholders' equity of the acquirer prior to the merger is retroactively restated for the equivalent number of shares received in the merger after giving effect to any difference in par value of the issuer's and acquirer's stock with an offset to additional paid-in capital. Accumulated deficit of the acquirer is carried forward after the acquisition. Operations prior to the merger are those of the accounting acquirer. Earnings per share for the periods prior to the merger are restated to reflect the equivalent number of shares outstanding.

On January 24, 2008, the Company formed a new subsidiary in Kulim Hi-Tech Park, Kedah, Malaysia. The subsidiary, WaferGen Biosystems (M) Sdn. Bhd., will launch various initiatives to support a number of the Company's ongoing development and commercialization goals. The Company owns 100% of the common stock and none of the preferred stock of this entity. See Note 6 below.

On May 19, 2008, the Company completed a private placement offering (the "2008 Offering") with certain accredited investors, pursuant to which the Company sold an aggregate of 1,585,550 units at a price of \$2.25 per unit, with each unit consisting of one share of its common stock and a warrant to purchase 40% of one share of the Company's common stock at an exercise price of \$3.00 per whole share. The Company sold an aggregate of 1,585,550 shares of its common stock and warrants to purchase 634,220 shares of its common stock at an exercise price of \$3.00 in the 2008 Offering, and received aggregate gross proceeds of \$3,567,487. At initial issuance, the fair value of these warrants was determined to be \$468,071. At December 31, 2008, the fair value of these warrants was determined to be \$99,444, a decrease in value of \$368,627. This has been recorded as a cumulative effect of reclassification of warrants as of January 1, 2009.

On June 16, 2009, the Company completed the first closing under a private placement offering (the "First 2009 Offering") with certain accredited investors, pursuant to which the Company sold an aggregate of 3,305,000 units at a price of \$1.25 per unit, with each unit consisting of one share of the Company's common stock and a warrant to purchase 30% of one share of the Company's common stock at an exercise price of \$2.00 per whole share. At initial issuance, the fair value of the 991,500 warrants was determined to be \$592,865. On August 21, 2009, the Company sold an additional 956,000 units in a second closing, including 286,800 warrants with a fair value of \$204,071. On August 31, 2009, the Company sold a further 748,000 units in a third closing, including 224,400 warrants with a fair value of \$189,066. Each unit in the second and third closing was sold at the same price, and with the same entitlements, as those sold in the first closing.

In total, the Company sold an aggregate of 5,009,000 shares of common stock and warrants to purchase 1,502,700 shares of common stock for \$2.00 in the First 2009 Offering, and received aggregate gross proceeds of \$6,261,250. The following reflects the breakdown of the components of gross proceeds from this offering:

Par value of common stock	\$	5,009
Paid-in capital		5,270,239
Derivative warrant instruments		<u>986,002</u>
Total	\$	<u>6,261,250</u>

The Company retained a selling agent in connection with this private placement offering, and pursuant to the terms of a selling agency agreement, the Company paid the selling agent a cash commission of \$309,356, and the Company issued the selling agent warrants to purchase 128,205, 66,920 and 52,360 shares of common stock at an exercise price of \$2.00 per whole share on the first, second and third closing, respectively. At initial issuance the Company determined the total allocated fair value of the warrants to be \$168,392. The warrants issued to the selling agent have substantially the same terms as the warrants issued to the investors in the First 2009 Offering.

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**Notes to the Consolidated Financial Statements**

On December 23, 2009, the Company completed the first closing under another private placement offering (the "Second 2009 Offering") with certain accredited investors, pursuant to which the Company sold an aggregate of 2,878,333 units at a price of \$1.50 per unit, with each unit consisting of one share of the Company's common stock and a warrant to purchase 25% of one share of the Company's common stock at an exercise price of \$2.50 per whole share. At initial issuance, the fair value of the 719,583 warrants was determined to be \$759,900. On December 30, 2009, the Company sold an additional 430,002 units in a second closing, including 107,502 warrants with a fair value of \$82,408. On January 6, 2010, the Company sold a further 82,000 units in a third closing, including 20,500 warrants with a fair value of \$15,715. Each unit in the second and third closing was sold at the same price, and with the same entitlements, as those sold in the first closing.

In total, the Company sold an aggregate of 3,390,335 shares of common stock and warrants to purchase 847,585 shares of common stock for \$2.50 in the Second 2009 Offering, and received aggregate gross proceeds of \$5,085,500. Of these totals, the Company sold 3,308,335 shares of common stock and 827,085 warrants for proceeds of \$4,962,500 in the year ended December 31, 2009. The following reflects the breakdown of the components of gross proceeds from this offering through December 31, 2009:

Par value of common stock	\$ 3,308
Paid-in capital	4,116,884
Derivative warrant instruments	<u>842,308</u>
 Total	 <u>\$ 4,962,500</u>

The Company retained a selling agent in connection with this private placement offering, and pursuant to the terms of a selling agency agreement, the Company paid the selling agent a cash commission of \$381,420 (of which \$372,195 related to closings in the year ended December 31, 2009), and the Company issued the selling agent warrants to purchase 100,742, 15,050 and 2,870 shares of common stock at an exercise price of \$2.50 per whole share on the first, second and third closing, respectively. At initial issuance the Company determined the total allocated fair value of the warrants to be \$120,123 (of which \$117,923 relates to warrants issued in the year ended December 31, 2009). The warrants issued to the selling agent have the same terms as the warrants issued to the investors in the Second 2009 Offering.

The warrants issued in the 2008 and 2009 Offerings have a term of five years and are subject to weighted average anti-dilution protection in the event the Company subsequently issues its shares of common stock, or securities convertible into shares of common stock, for a price per share less than the exercise price of the warrants. The warrants are immediately exercisable and under certain circumstances will be exercisable using cashless exercise. In connection with the closing of each private placement, the Company entered into registration rights agreements with the investors purchasing units in the offerings. Both purchase agreements for the units contains certain negative covenants that restrict: (i) for 180 days after the closing the ability of the Company and its subsidiaries to issue shares of common stock or equivalents (subject to certain exempt issuances), and (ii) for 24 months after closing, the ability of the Company to enter into variable rate transactions. The investors are also entitled to "piggyback" registration rights.

**Management's Plan.** The Company has incurred operating losses and negative cash flows from operations since its inception. Management expects that revenues will increase as a result of current and future product releases. However, the Company also expects to incur additional expenses for the development and expansion of its products, marketing campaigns, and operating costs as it expands its operations. Therefore, the Company expects operating losses and negative cash flows to continue for the foreseeable future and anticipates that losses will increase from current levels as the Company continues to grow and develop. It is management's plan to obtain additional working capital through additional financings. The Company believes that it will be successful in expanding operations, gaining market share, and raising additional funds. However, there can be no assurance that in the event the Company requires additional financing, such financing will be available at terms which are favorable, or at all. Failure to generate sufficient cash flows from operations or raise additional capital could have a material adverse effect on the Company's ability to achieve its intended business objectives. These factors raise substantial doubt about the Company's ability to continue as a going concern.

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**(A Development Stage Company)**

**Notes to the Consolidated Financial Statements**

**Going Concern.** The Company's consolidated financial statements have been presented on a basis that contemplates the realization of assets and the satisfaction of liabilities in the normal course of business. The Company continues to face significant risks associated with the successful execution of its strategy given the current market environment for similar companies and failure to generate sufficient revenues or raise additional capital could have a material adverse effect on the Company's ability to continue as a going concern and to achieve its intended business objectives. These facts raise substantial doubt about the Company's ability to continue as a going concern, and there can be no assurance that the Company will be successful in its efforts to enhance its liquidity situation. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

**NOTE 2. Summary of Significant Accounting Policies**

**Basis of Presentation.** The accompanying consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America.

**Principles of Consolidation.** The consolidated financial statements include the financial statements of WaferGen Bio-systems, Inc. and its subsidiaries. All significant transactions and balances between the WaferGen Bio-systems, Inc. and its subsidiaries have been eliminated in consolidation.

**Use of Estimates.** Preparing financial statements requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues, and expenses. Actual results and outcomes could differ from these estimates and assumptions.

**Cash and Cash Equivalents.** We consider all highly liquid debt investments with a remaining maturity of three months or less when purchased to be cash and cash equivalents.

**Foreign Currencies.** Assets and liabilities of non-U.S. subsidiaries that operate in a local currency environment, where that local currency is the functional currency, are translated into U.S. dollars at the exchange rate on the balance sheet date. Revenues and expenses are translated at the average rates of exchange prevailing during each reporting period. Remeasurement adjustments resulting from this process are charged or credited to other comprehensive income (loss).

**Fair Value of Financial Instruments.** The carrying amounts of accounts receivable, prepaid expenses and other current assets, other assets, accounts payable, accrued payroll, accrued severance pay, accrued vacation and other accrued expenses approximate fair value due to the short-term maturities of these instruments.

**Concentration of Credit Risk.** Financial instruments that potentially subject the Company to significant concentrations of credit risk consist principally of cash and accounts receivable. The Company places its cash in commercial banks. Accounts in the United States are secured by the Federal Deposit Insurance Corporation. Accounts in Malaysia are also guaranteed by the Malaysian government. The Company's total deposits at commercial banks usually exceed the balances insured.

The Company generally requires no collateral from its customers. At December 31, 2009, four customers accounted for 30%, 29%, 28% and 12% of accounts receivable. At December 31, 2008, two different customers accounted for 90% and 10% of accounts receivable. For the year ended December 31, 2009, four customers accounted for 20%, 20%, 19% and 18% of total revenues. For the year ended December 31, 2008, three different customers accounted for 13%, 11% and 9% of total revenues.

**Accounts Receivable.** An allowance for doubtful accounts will be recorded based on a combination of historical experience, aging analysis, and information on specific accounts. Account balances will be written off against the allowance after all means of collection have been exhausted and the potential for recovery is considered remote. The Company has not recorded an allowance against its receivables based on management's estimate that the balance at December 31, 2009 and 2008 is fully collectible.

**Inventory.** Inventory is recorded at the lower of cost (first-in, first-out) or market value. Additionally, the Company evaluates its inventory in terms of excess and obsolete exposures. Inventory cost includes the cost of the product the Company paid to third party vendors.

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**Notes to the Consolidated Financial Statements**

**Prepaid Expenses.** Prepaid expenses are advance payment for products or services that will be used in operations and expensed based on usage, events, or the passing of time.

**Property and Equipment.** Property and equipment are stated at cost and depreciated using the straight-line method over the estimated useful lives of the assets as follows:

Equipment	3 to 5 years
Tools and molds	3 years
Leasehold improvements	3 to 5 years, or remaining lease term if shorter
Furniture and fixtures	5 years

Costs of maintenance and repairs that do not improve or extend the lives of the respective assets are expensed as incurred. Upon retirement or sale, the cost and related accumulated depreciation are removed from the balance sheet and the resulting gain or loss is reflected in operating expenses.

**Impairment of Long-Lived Assets.** The Company continually evaluates whether events and circumstances have occurred that indicate the remaining estimated useful life of long-lived assets may warrant revision or that the remaining balance of long-lived assets may not be recoverable. When factors indicate that long-lived assets should be evaluated for possible impairment, the Company uses an estimate of the related undiscounted future cash flows over the remaining life of the long-lived assets in measuring whether they are recoverable. If the estimated undiscounted future cash flows exceed the carrying value of the asset, a loss is recorded as the excess of the assets carrying value over its fair value. No assets were determined to be impaired in 2009 and 2008.

**Income Taxes.** Income taxes are accounted for under the asset and liability method. Deferred tax assets and liabilities are recognized for the tax consequences attributable to differences between financial statement carrying amounts of existing assets and liabilities and their respective tax bases, and operating loss carry-forwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in the tax rates is recognized in income in the period that includes the enactment date. A valuation allowance is recorded for loss carry-forwards and other deferred tax assets where it is more likely than not that such loss carry-forwards and deferred tax assets will not be realized.

**Revenue Recognition.** The Company recognizes revenue when (i) delivery of product has occurred or services have been rendered, (ii) there is persuasive evidence of a sale arrangement, (iii) selling prices are fixed or determinable, and (iv) collectability from the customers (individual customers and distributors) is reasonable assured. Revenue consists primarily of revenue generated from the sale of the Company's products. Revenue is recorded when the risk and rewards of ownership are transferred to our customers (individual customers and distributors). This generally occurs when the Company's products are shipped from our facility as title has passed. Revenue is recorded net of estimated cash discount. The Company estimates and accrues warranty costs at the time the product is sold. To date, warranty accruals and warranty costs have not been material. The Company estimates and accrues an allowance for sale returns at the time the product is sold. To date, sales returns have not been material. Distributors have a fourteen day inspection period however this period is not an acceptance provision that purports to be a trial or evaluation purpose, is not an acceptance provision that grants a right of return or exchange on the basis of subjective matters, and is not an acceptance provision based on customer-specific objective criteria. The fourteen day inspection period is an acceptance provision that is based on seller-specified objective criteria.

**Expense Recognition.** Expenses are charged to expense as incurred.

**Stock-Based Compensation.** The Company measures the fair value of all stock-based awards to employees, including stock options, on the grant date and records the fair value of these awards, net of estimated forfeitures, to compensation expense over the service period. The fair value of awards to consultants is measured on the dates on which performance of services is completed, with interim valuations recorded at balance sheet dates while performance is in progress. The fair value of options is estimated using the Black-Scholes valuation model, and of restricted stock is based on the Company's closing share price on the measurement date.

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**Notes to the Consolidated Financial Statements**

The weighted-average grant date fair value of options awarded in the years ended December 31, 2009 and 2008, respectively, were \$0.56 and \$0.28. These fair values were estimated using the following assumptions:

	<u>December 31, 2009</u>	<u>December 31, 2008</u>
Risk-free interest rate	1.31% - 2.97%	2.37% - 3.34%
Expected term	4.75 Years	4.75 - 5.00 Years
Expected volatility	40.04% - 42.22%	16.97% - 33.31%
Dividend yield	0%	0%

**Risk-free Interest Rate.** This is the United States Treasury rate for the day of the grant having a term equal to the expected term of the option. An increase in the risk-free interest rate will increase the fair value and the related compensation expense.

**Expected Term.** This is the period of time over which the award is expected to remain outstanding and is based on management's estimate, taking into consideration the vesting terms, the contractual life, and historical experience. An increase in the expected term will increase the fair value and the related compensation expense.

**Expected Volatility.** This is a measure of the amount by which the stock price has fluctuated or is expected to fluctuate. Since the Company's stock has not been traded for as long as the expected term of the options, the Company uses a weighted-average of the historic volatility of four comparable companies over the retrospective period corresponding to the expected life of the Company's own options on the grant date. Extra weighting is attached to those companies most similar in terms of size and business activity. An increase in the expected volatility will increase the fair value and the related compensation expense.

**Dividend Yield.** The Company has not made any dividend payments nor does it have plans to pay dividends in the foreseeable future. An increase in the dividend yield will decrease the fair value and the related compensation expense.

**Forfeiture Rate.** This is a measure of the amount of awards that are expected to not vest. An increase in the estimated forfeiture rates will decrease the related compensation expense.

**Research and Development.** Research and development costs are charged to operations as incurred.

**Other Comprehensive Income.** Other Comprehensive Income arises solely due to the cumulative translation adjustments which ensue from our Accounting Policy for Foreign Currencies.

**Net Loss Per Share.** Basic net loss per share to common stockholders is calculated based on the weighted-average number of shares of common stock outstanding during the period excluding those shares that are subject to repurchase by the Company. Diluted net loss per share attributable to common shareholders would give effect to the dilutive effect of potential common stock consisting of stock options, warrants, and preferred stock. Dilutive securities have been excluded from the diluted net loss per share computations as they have an antidilutive effect due to the Company's net loss.

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**Notes to the Consolidated Financial Statements**

The following outstanding stock options, warrants, and preferred stock (on an as-converted into common stock basis) were excluded from the computation of diluted net loss per share attributable to holders of common stock as they had an antidilutive effect as of December 31, 2009 and 2008:

	<b>Year Ended December 31,</b>	
	<b>2009</b>	<b>2008</b>
Shares issuable upon exercise of common stock options	1,409,279	524,954
Shares issuable upon exercise of common stock warrants	96,125	—
Shares issuable upon conversion of RCPS	1,095,909	240,741
Total common share equivalents excluded from denominator for diluted EPS computation	2,601,313	765,695

**Segments.** Segments are defined as components of the Company's business for which separate financial information is available that is evaluated by the Company's chief operating decision maker (its CEO) in deciding how to allocate resources and assess performance. The Company presently has only one overall operating segment. See Note 12 below.

**Recent Accounting Pronouncements.**

In the third quarter of 2009, the Company adopted the Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC"). The ASC is the single official source of authoritative, nongovernmental GAAP, other than guidance issued by the SEC, and the FASB now issues new standards in the form of Accounting Standards Updates ("FASB ASUs"). The adoption of the ASC impacts our financial reporting process by eliminating all references to pre-codification standards; however, it did not have a material impact on our financial statements.

In February 2010, the FASB issued FASB ASU 2010-09, "Subsequent Events (Topic 855): Amendments to Certain Recognition and Disclosure Requirements". This guidance requires SEC filers to evaluate subsequent events through the date on which the financial statements are issued, and is effectively immediately. The new guidance does not have an effect on our consolidated financial condition or results of operations.

In December 2009, the FASB issued ASU 2009-17, "Consolidations (Topic 810): Improvements to Financial Reporting by Enterprises Involved with Variable Interest Entities". This guidance 1) replaces the quantitative-based risks and rewards calculation for determining whether an enterprise is the primary beneficiary in a variable interest entity ("VIE") with an approach that is primarily qualitative, 2) requires ongoing assessments of whether an enterprise is the primary beneficiary of a VIE, and 3) requires additional disclosures about an enterprise's involvement in VIEs. This guidance is effective for financial statements issued for fiscal years beginning after November 15, 2009, and will become effective for us on January 1, 2010. We expect the adoption of this guidance will not have a material impact on our consolidated financial condition or results of operations, as we have not engaged in transactions with VIEs.

In December 2009, the FASB issued ASU 2009-16, "Transfers and Servicing (Topic 860): Accounting for Transfers of Financial Assets". This guidance requires enhanced disclosures about transfers of financial assets and a company's continuing involvement in transferred assets. This guidance is effective for financial statements issued for fiscal years beginning after November 15, 2009, and will become effective for us on January 1, 2010. We expect the adoption of this guidance will not have a material impact on our disclosures, since we have not engaged in transfers of financial assets.

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**Recently Adopted Accounting Pronouncements.**

In June 2008, the FASB issued an update to ASC 815-40 (previously EITF 07-5), which took effect for the Company on January 1, 2009. Beginning on that date, the Company recognizes the fair value of warrants with an anti-dilution provision as liabilities. Warrants are valued when initially issued, and the liability is offset against additional paid in capital. Warrants are also revalued at each reporting date, and the change in their respective fair values is recorded as an unrealized gain or loss within other income and expenses in the statement of operations. The cumulative effect of the change in accounting for these instruments was recognized as an adjustment to the opening balance of accumulated deficit at January 1, 2009, and the transfer of the fair value of derivative warrant instruments as of January 1, 2009 from additional paid-in capital to derivative warrant derivative liability (see Note 1).

**NOTE 3. Inventories**

Inventories consisted of the following at December 31, 2009 and 2008:

	<u>December 31,</u> <u>2009</u>	<u>December 31,</u> <u>2008</u>
Finished goods	\$ 170,448	\$ 227,272
Less allowance for excess and obsolete inventory	(130,478)	—
Inventories, net	<u>\$ 39,970</u>	<u>\$ 227,272</u>

**NOTE 4. Property and Equipment**

Property and equipment consisted of the following at December 31, 2009 and 2008:

	<u>December 31,</u> <u>2009</u>	<u>December 31,</u> <u>2008</u>
Equipment	\$ 1,154,406	\$ 1,014,212
Tools and molds	72,437	72,437
Leasehold improvements	63,470	63,163
Furniture and fixtures	42,570	42,206
Total property and equipment	1,332,883	1,192,018
Less accumulated depreciation and amortization	(890,887)	(396,679)
Property and equipment, net	<u>\$ 441,996</u>	<u>\$ 795,339</u>

Depreciation and amortization expense totaled \$493,112 and \$294,249 for the years ended December 31, 2009 and 2008, and \$913,660 for the period from inception to December 31, 2009.

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Equipment includes the following amounts under leases at December 31, 2009 and 2008:

	<u>December 31, 2009</u>	<u>December 31, 2008</u>
Cost	\$ 178,712	\$ 178,712
Accumulated depreciation	(168,886)	(63,639)
Total	<u>\$ 9,826</u>	<u>\$ 115,073</u>

**NOTE 5. Commitments and Contingencies**

The Company leases its office space for use in its operations under non-cancellable operating leases that expire in April 2015 and March and December 2010. The Company leases equipment under two capital leases that expire in January 2010 and August 2011.

Aggregate future minimum lease obligations for leases in effect as of December 31, 2009 are as follows:

	<u>Operating Leases</u>	<u>Capital Leases</u>
Year ending December 31,		
2010	\$ 287,207	\$ 23,301
2011	399,069	9,117
2012	441,278	—
2013	464,301	—
2014	487,324	—
Thereafter	<u>168,837</u>	<u>—</u>
Total minimum lease obligations	<u>\$ 2,248,016</u>	32,418
Less amounts representing interest		<u>(1,903)</u>
Present value of future minimum lease payments		30,515
Less current portion of capital lease obligation		<u>(21,663)</u>
Capital lease obligation, less current portion		<u>\$ 8,852</u>

Rent expense totaled \$210,009 and \$210,133 for the years ended December 31, 2009 and 2008, respectively, and \$694,267 for the period from inception to December 31, 2009.

Interest expense related to capital leases totaled \$5,495 and \$14,851 for the years ended December 31, 2009 and 2008, respectively, and \$23,359 for the period from inception to December 31, 2009.

**NOTE 6. Redeemable Convertible Preference Shares in Subsidiary**

On July 18, 2008, the Company's Malaysian subsidiary, WaferGen Biosystems (M) Sdn. Bhd. ("WGBM"), received \$1,000,000, less 3% issuance costs, in exchange for the issuance of Series A Redeemable Convertible Preference Shares ("RCPS") of WGBM in a private placement to Malaysian Technology Development Corporation Sdn. Bhd. ("MTDC"), a venture capital and development firm in Malaysia. WGBM sold 444,444 Series A RCPS in this private placement at the U.S. dollar equivalent of \$2.25 per share. A second closing occurred on November 27, 2008, and proceeds of \$1,000,000, less 3% issuance costs, from the sale of an additional 444,444 shares of Series A RCPS were received.

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On June 8, 2009, WGBM received \$250,000, less an exchange loss of \$18,029 and issuance costs totaling \$19,393, in exchange for the issuance of 111,111 Series B RCPS to Expedient Equity Ventures Sdn. Bhd. ("EEV"), in a private placement at the U.S. dollar equivalent of \$2.25 per share. On September 23, 2009, WGBM received \$500,000, less issuance costs totaling \$7,500, in exchange for the issuance of 222,222 Series B RCPS to Prima Mahawangsa Sdn. Bhd. ("PMSB"), in a private placement at the U.S. dollar equivalent of \$2.25 per share. These represent the first of two equal tranches under a Share Subscription Agreement dated April 3, 2009 ("SSA") to sell 444,444 and 222,222 Series B RCPS to PMSB and EEV, respectively, both venture capital and development firms in Malaysia.

On September 18, 2009, WGBM received \$423,128, less issuance costs totaling \$11,319, in exchange for the issuance of 188,057 Series B RCPS to Kumpulan Modal Perdana Sdn. Bhd. ("KMP"), in a private placement at the U.S. dollar equivalent of \$2.25 per share. This represents the full amount receivable under an SSA dated July 1, 2009 to sell Series B RCPS to KMP, a venture capital and development firm in Malaysia.

Under the terms of a Deed of Adherence dated April 3, 2009, certain rights of the holders of the Series A RCPS were modified; also, the use of funds raised through the issuance of both Series A and Series B RCPS was restricted, requiring at least 60% of the total to be utilized for the Company's operations in Malaysia.

Following these modifications, the rights of the holders of RCPS include, but are not limited to, the right

(a) to put to the Company their RCPS (or ordinary shares in WGBM received on conversion of those RCPS under paragraph (c) below) at any time during the year 2011 if the share price is below \$2.25, to redeem for cash (or, for Series A, at the Company's option, and for Series B, at the holder's option, shares in the Company of equivalent value) the amount originally invested in USD plus a premium of 6% (for Series A) or 8% (for Series B), compounded annually, with yearly rests;

(b) to cause the Company to exchange their RCPS for common stock of the Company at an exchange rate of US\$2.25 per share of common stock, provided (in the case of Series B RCPS) that if during the 10-day trading period immediately prior to the holder's conversion notice the average closing price of the Company's common stock is less than US\$2.647, then the holder's RCPS shall convert at an exchange rate equal to 85% of such 10-day average closing price;

(c) to convert their RCPS into ordinary shares of the subsidiary, WGBM, at any time, at a conversion rate of \$33.33 per share;

(d) to cause the subsidiary, WGBM, to redeem the RCPS in whole or in part at any time after December 31, 2011 for the principal paid plus a premium of 20% per annum, not compounding, from funds legally available for distribution (i.e. retained earnings; there is presently an accumulated deficit in WGBM of approximately \$1.5 million);

(e) until December 31, 2010, to put to Alnoor Shivji, our CEO and President, their Series B RCPS (the Series A RCPS put rights expired on May 15, 2009) for \$5.625 in cash per share in the event that Mr. Shivji (a) transfers, in one or more transactions, more than 2,603,425 shares of Common Stock, approximating 80% of his stockholding, to one or more persons other than his affiliates or relatives or (b) voluntarily resigns from the board of directors of the Company if such resignation is not approved by, or is not pursuant to a restructuring of the Company or the Malaysian Subsidiary approved by, holders of a majority of the outstanding Series B RCPS at the time of such resignation;

(f) of first offer on any transfers or new issuance of subsidiary shares (for Series A only); and

(g) for each of Series A and Series B RCPS, to appoint one of the seven directors of the subsidiary.

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The balance in RCPS comprises the following at December 31, 2009 and 2008:

	<b>December 31, 2009</b>	<b>December 31, 2008</b>
<b>SERIES A</b>		
Proceeds from issuance of RCPS	\$ 2,000,000	\$ 2,000,000
Issuance costs	(60,000)	(60,000)
Accretion of issuance costs	25,416	5,416
Accretion of redemption premium	154,450	32,500
<b>Total Series A RCPS</b>	<b>2,119,866</b>	<b>1,977,916</b>
<b>SERIES B</b>		
Proceeds from issuance of RCPS	1,155,099	—
Issuance costs	(38,212)	—
Exchange loss on issuance	18,029	—
Accretion of issuance costs	4,538	—
Accretion of redemption premium	31,674	—
<b>Total Series B RCPS</b>	<b>1,171,128</b>	<b>—</b>
<b>Total RCPS</b>	<b>\$ 3,290,994</b>	<b>\$ 1,977,916</b>

WGBM is authorized to issue 200,000,000 RCPS with a par value of RM0.01. There were 1,410,278 and 888,888 RCPS issued and outstanding at December 31, 2009 and 2008, respectively.

**NOTE 7. Stock Awards**

In 2003, WaferGen's Board of Directors adopted the 2003 Incentive Stock Plan (the "2003 Plan"). The 2003 Plan authorized the Board of Directors to grant incentive stock options and non-statutory stock options to employees, directors, and consultants for up to 1,500,000 shares of common stock. Under the Plan, incentive stock options and nonqualified stock options could be granted. Incentive stock options were to be granted at a price that is no less than 100% of the fair value of the stock at the date of grant. Options vest over a period according to the Option Agreement, and are exercisable for a maximum period of ten years after date of grant. Options granted to stockholders who own more than 10% of the outstanding stock of WaferGen at the time of grant must be issued at an exercise price no less than 110% of the fair value of the stock on the date of grant. In November 2006, WaferGen increased the aggregate number of shares of Common Stock that may be issued under the 2003 Plan to a total authorized reserve of 2,500,000 shares, a 1,000,000 share increase. The 2003 Plan was frozen when the 2007 Plan was adopted, resulting in no further options available for grant.

In January, 2007 the Company's Board of Directors and stockholders adopted the 2007 Stock Option Plan (the "2007 Plan"). The purpose of the 2007 Plan was to provide an incentive to retain the employment of directors, officer, consultants, advisors and employees of the Company, persons of training, experience and ability, to attract new directors, officers, consultants, advisors and employees whose services are considered valuable, to encourage the sense of proprietorship, and to stimulate the active interest of such persons into the Company's development and financial success. Under the 2007 Plan, the Company was authorized to issue incentive stock options intended to qualify under Section 422 of the Code, non-qualified stock options and restricted stock. The 2007 Plan was frozen when the 2008 Plan was adopted, resulting in no further options available for grant.

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On June 5, 2008, the Company's stockholders adopted the 2008 Stock Incentive Plan (the "2008 Plan") following approval of the 2008 Plan by the Board of Directors. The 2008 Plan initially authorized the issuance of up to 2,000,000 shares of common stock pursuant to the terms of the 2008 Plan. On December 4, 2009, the Company's stockholders approved an amendment to the 2008 Plan, adding an additional 1,500,000 shares, bringing the total to 3,500,000 shares of our common stock available for issuance under the 2008 Plan. Notwithstanding the foregoing, no more than 1,750,000 shares of our common stock may be granted pursuant to awards restricted stock and restricted stock units. The number of shares of our common stock available under the 2008 Plan will be subject to adjustment in the event of a stock split, stock dividend or other extraordinary dividend, or other similar change in our common stock or our capital structure. The purpose of the 2008 Plan is to provide an incentive to retain the employment of directors, officers, consultants, advisors and employees of the Company, to attract new personnel whose training, experience and ability are considered valuable, to encourage the sense of proprietorship, and to stimulate the active interest of such persons in the Company's development and financial success. Under the 2008 Plan, the Company is authorized to issue incentive stock options intended to qualify under Section 422 of the Code, non-qualified stock options and restricted stock. Awards may vest over varying periods, as specified by the Company's Board of Directors for each grant, and have a maximum term of seven years from the grant date. The 2008 Plan is administered by the Company's Board of Directors.

The Company has issued both options and restricted stock under these Plans. Restricted stock grants afford the recipient the opportunity to receive shares of common stock, subject to certain terms, whereas options give them the right to purchase common stock at a set price. Both the Company's options and restricted stock issued to employees generally have vesting restrictions that are eliminated over a four-year period, although vesting may be over a shorter period, or may occur on the grant date, depending on the terms of each individual award.

A summary of stock option and restricted stock transactions in the last two years is as follows:

	Shares Available for Grant	Stock Options		Restricted Stock	
		Number of Options Outstanding	Weighted Average Exercise Price	Number of Options Outstanding	Weighted Average Grant-Date Fair Value
Balance at January 1, 2008	390,500	2,268,736	\$ 1.3469	36,556	\$ 1.0292
2008 Plan	2,000,000	—	\$ —	—	\$ —
2007 Plan frozen	(10,500)	—	\$ —	—	\$ —
Granted	(1,807,000)	1,807,000	\$ 1.6704	—	\$ —
Exercised	—	(27,536)	\$ 0.1482	—	\$ —
Vested	—	—	\$ —	(14,173)	\$ 1.0071
Forfeited	161,500	(310,458)	\$ 2.0023	—	\$ —
Cancelled	—	(51,042)	\$ 1.9751	—	\$ —
Balance at December 31, 2008	734,500	3,686,700	\$ 1.4505	22,383	\$ 1.0432
2008 Plan Amendment	1,500,000	—	\$ —	—	\$ —
Granted	(1,257,000)	1,127,000	\$ 1.6207	130,000	\$ 2.0154
Exercised	—	(38,819)	\$ 1.0298	—	\$ —
Vested	—	—	\$ —	(144,175)	\$ 1.9163
Forfeited	310,479	(393,135)	\$ 1.5072	—	\$ —
Cancelled	150,000	(232,344)	\$ 2.7135	—	\$ —
Balance at December 31, 2009	1,437,979	4,149,402	\$ 1.4246	8,208	\$ 1.1055

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The weighted average fair value of options granted in the years ended December 31, 2009 and 2008, was \$0.56 and \$0.28, respectively. The fair value of options vested in the years ended December 31, 2009 and 2008, was \$528,804 and \$371,887, respectively.

The following table summarizes information concerning outstanding options as of December 31, 2009:

Range of Exercise Prices	Options Outstanding			Options Exercisable		
	Number Outstanding as of December 31, 2009	Weighted Average Remaining Contractual Life (in Years)	Weighted Average Exercise Price	Number Exercisable as of December 31, 2009	Weighted Average Remaining Contractual Life (in Years)	Weighted Average Exercise Price
\$ 0.0002 - \$0.0185	191,668	4.30	\$ 0.0064	191,668	4.30	\$ 0.0064
\$ 0.1482 - \$0.4630	429,234	6.86	\$ 0.3561	402,692	6.87	\$ 0.3667
\$ 0.6000 - \$1.0000	273,000	5.87	\$ 0.9414	156,334	5.89	\$ 0.8977
\$ 1.1000 - \$1.6500	1,892,000	6.75	\$ 1.4060	913,935	7.05	\$ 1.4738
\$ 1.7800 - \$2.2500	1,363,500	7.19	\$ 2.0829	853,605	7.14	\$ 2.1319
	<u>4,149,402</u>	6.73	\$ 1.4246	<u>2,518,234</u>	6.77	\$ 1.3724

The aggregate intrinsic value of options outstanding and exercisable at December 31, 2009 was \$3,161,943 and \$2,059,610, respectively. Aggregate intrinsic value is the total pretax amount (i.e., the difference between the Company's stock price and the exercise price) that would have been received by the option holders had all their in-the-money options been exercised.

The Company received \$39,976 for the 38,819 options exercised during the year ended December 31, 2009, which had an intrinsic value of \$39,855. The Company received \$4,079 for the 27,536 options that were exercised during the year ended December 31, 2008, which had an aggregate intrinsic value of \$50,991.

The amounts expensed for stock-based compensation totaled \$838,952 and \$388,650 for the years ended December 31, 2009 and 2008, respectively, and \$2,528,483 for the period from inception to December 31, 2009. The sum expensed in the year ended December 31, 2009 includes \$262,000 for restricted stock awards to consultants.

At December 31, 2009, the total stock-based compensation cost not yet recognized, net of estimated forfeitures, was \$714,087. This cost is expected to be recognized over an estimated weighted average amortization period of 2.55 years. No amounts related to stock-based compensation costs have been capitalized. The tax benefit and the resulting effect on cash flows from operations and financial activities, related to stock-based compensation costs were not recognized as the Company currently provides a full valuation allowance for all of its deferred taxes.

**NOTE 8. Warrant Derivative Liabilities**

The Company has incurred liabilities for the estimated fair value of derivative warrant instruments. The estimated fair value of the derivative warrant instruments has been calculated using a Monte Carlo Simulation approach, with key input variables provided by management, as of each issuance date, with the valuation offset against additional paid in capital, and at each reporting date, with changes in fair value recorded as unrealized gains or losses in non-operating income (expense).

During the year ended December 31, 2009, a \$564,122 increase in the fair value of the warrant derivative liability was recorded as an unrealized loss on the fair value of warrants, net.

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The fair value of warrants as at December 31, 2009 ranged from \$0.52 to \$0.97. Fair values at measurement dates during the year ended December 31, 2009 were estimated using the following assumptions:

	<u>December 31, 2009</u>
Risk-free interest rate	1.16% - 2.16%
Expected remaining term	2.71 - 4.00 Years
Expected volatility	43.26% - 49.78%
Dividend yield	0%
Private Placement discount to stock price	15%

*Risk-Free Interest Rate.* This is the United States Treasury rate for the measurement date having a term equal to the expected remaining term of the warrant. An increase in the risk-free interest rate will increase the fair value and the associated derivative liability.

*Expected Remaining Term.* This is the period of time over which the warrant is expected to remain outstanding and is based on management's estimate, taking into consideration the remaining contractual life, and historical experience. An increase in the expected remaining term will increase the fair value and the associated derivative liability.

*Expected Volatility.* This is a measure of the amount by which the stock price has fluctuated or is expected to fluctuate. Since the Company's stock has not been traded for as long as the expected remaining term of the warrants, the Company uses a weighted-average of the historic volatility of four comparable companies over the retrospective period corresponding to the expected remaining term of the warrants on the measurement date. Extra weighting is attached to those companies most similar in terms of size and business activity. An increase in the expected volatility will increase the fair value and the associated derivative liability.

*Dividend Yield.* The Company has not made any dividend payments nor does it have plans to pay dividends in the foreseeable future. An increase in the dividend yield will decrease the fair value and the associated derivative liability.

*Private Placement Discount to Stock Price.* This is the percentage amount by which future stock offerings are expected to be priced at a discount from the trading price of our common stock at the offering closing dates, and is based on management's estimate, taking into consideration future expectations and historical experience. An increase in the expected discount to stock price will increase the fair value and the associated derivative liability.

A summary of activity in the warrant derivative liabilities is included in Note 11.

The Company has a total of 6,650,839 warrants outstanding and exercisable at December 31, 2009, as summarized below. The 752,040 warrants expiring in May 2013 were issuable in December 2009 to replace the 717,985 warrants with an exercise price of \$2.65 that were issuable in August 2009 to replace the 689,370 warrants with an exercise price of \$2.76 that were issuable in June 2009 to replace the 634,220 warrants with an exercise price of \$3.00 that were issued in May 2008. The 1,795,062 warrants expiring in June and August 2014 were issuable in December 2009 to replace the 1,750,185 warrants with an exercise price of \$2.00 that were issued in June and August 2009. All of these replacements were made due to the weighted-average anti-dilution price protection that is provided to the holders. The 150,000 warrants expiring in November 2015 were issued in exchange for the cancellation in September 2009 of an equal number of options, with substantially the same terms, that were issued to a consultant in November 2008 and vested on the award date.

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A summary of outstanding common stock warrants as of December 31, 2009 is as follows:

Securities into which warrants are convertible	Warrants outstanding	Warrants subject to anti-dilution	Exercise Price	Expiration Date
Common Stock	44,401	—	\$ 1.41	March 2012
Common Stock	1,795,062	1,795,062	\$ 1.95	June and August 2014
Common Stock	2,916,459	—	\$ 2.25	May and June 2012
Common Stock	942,877	942,877	\$ 2.50	December 2014
Common Stock	752,040	752,040	\$ 2.53	May 2013
Common Stock	150,000	—	\$ 3.00	November 2015
Common Stock	50,000	—	\$ 3.25	December 2014
Total	6,650,839	3,489,979		

**NOTE 9. Income Taxes**

The provision for income taxes consists of the following for the years ended December 31, 2009 and 2008, and the period from inception to December 31, 2009:

	December 31, 2009	December 31, 2008	Period From October 22, 2002 (Inception) to December 31, 2009
Current:			
Federal	\$ —	\$ —	\$ —
State	—	—	—
Foreign	—	—	—
Total Current	\$ —	\$ —	\$ —
Deferred:			
Federal	\$ —	\$ —	\$ —
State	—	—	—
Foreign	—	—	—
Total Deferred	\$ —	\$ —	\$ —
Provision for income taxes	\$ —	\$ —	\$ —

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A reconciliation of the provision for income taxes with the expected provision for income taxes computed by applying the federal statutory income tax rate 34% to the net loss before provision for income taxes for the years ended December 31, 2009 and 2008, and the period from inception to December 31, 2009, is as follows:

	<b>December 31, 2009</b>	<b>December 31, 2008</b>	<b>Period From October 22, 2002 (Inception) to December 31, 2009</b>
Provision for income taxes at federal statutory rate	\$ (3,610,966)	\$ (2,746,980)	\$ (10,368,895)
Federal research and development tax credits	(155,210)	(150,000)	(594,389)
Expenses not deductible	392,386	137,379	990,272
Foreign loss taxed at lower rates	44,792	64,774	109,566
Change in federal valuation allowance	3,328,998	2,694,827	9,863,446
Provision for income taxes	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>

The components of the deferred tax assets as of December 31, 2009 and 2008, are as follows:

	<b>December 31, 2009</b>	<b>December 31, 2008</b>
Deferred tax assets:		
Net operating loss carryforwards	\$ 9,703,709	\$ 6,613,525
Capitalized start-up cost and research and development cost	851,082	915,399
Research and development tax credit	973,788	700,546
Depreciation on property and equipment	38,410	12,603
Reserves and accruals	201,797	81,949
Total deferred tax asset	11,768,786	8,324,022
Valuation allowance	(11,768,786)	(8,324,022)
Net deferred tax assets	<u>\$ —</u>	<u>\$ —</u>

The following deferred income taxes were provided for the years ended December 31, 2009 and 2008, and the period from inception to December 31, 2009:

	<b>December 31, 2009</b>	<b>December 31, 2008</b>	<b>Period From October 22, 2002 (Inception) to December 31, 2009</b>
Deferred tax assets:			
Net operating loss carryforwards	\$ 3,090,184	\$ 3,388,042	\$ 9,703,709
Capitalized start-up cost and research and development cost	(64,317)	(130,771)	851,082
Research and development tax credit	273,242	117,564	973,788
Depreciation on property and equipment	25,807	(9,167)	38,410
Reserves and accruals	119,848	(97,972)	201,797
Valuation allowance	(3,444,764)	(3,267,696)	(11,768,786)
Net deferred income taxes	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>

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Based on the available objective evidence, management believes it is more likely than not that the net deferred tax assets will not be fully realizable. Accordingly, the Company has provided a full valuation allowance against its net deferred tax assets. There are no prior year tax returns under audit by taxing authorities, and management is not aware of any impending audits.

At December 31, 2009, the Company had federal and state net operating loss carry-forwards of approximately \$23,500,000 and foreign operating loss carry-forwards of approximately \$1,400,000. The federal, state, and foreign net operating loss carry-forwards will expire in various periods through 2029.

At December 31, 2009, the Company had federal and state research and development tax credits of approximately \$500,000. The federal research and development tax credits will expire in various periods through 2029 and the California state research and development tax credit can be carried forward indefinitely.

Utilization of net operating loss carry-forwards may be subject to substantial limitation due to the ownership change limitations provided by the Internal Revenue Code of 1986 and similar state provisions. The annual limitation may result in the expiration of net operating losses and tax credits before utilization.

Tax years that remain open for examination are 2005, 2006, 2007, 2008 and 2009.

**NOTE 10. Cash Flow Information**

Cash paid during the years ended December 31, 2009 and 2008, and the period from inception to December 31, 2009, is as follows:

	<b>Year Ended December 31,</b>		<b>Period From</b>
	<b>2009</b>	<b>2008</b>	<b>October 22, 2002 (Inception) to December 31, 2009</b>
Interest	\$ 9,204	\$ 14,851	\$ 42,541
Income taxes	\$ —	\$ —	\$ —

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Supplemental disclosure of non-cash investing and financing activities for the years ended December 31, 2009 and 2008, and the period from inception to December 31, 2009, is as follows:

	<b>Year Ended December 31,</b>		<b>Period From</b>
	<b>2009</b>	<b>2008</b>	<b>October 22, 2002</b>
			<b>(Inception) to</b>
			<b>December 31, 2009</b>
Accretion on Series B Preferred Stock	\$ —	\$ —	\$ 155,998
Accretion on Redeemable Convertible Preference Shares	\$ 178,162	\$ 37,916	\$ 216,078
Conversion of due to a stockholder to notes payable	\$ —	\$ —	\$ 61,588
Issuance of warrants with notes payable	\$ —	\$ —	\$ 171,053
Conversion of debt to Common Stock	\$ —	\$ —	\$ 240,000
Conversion of debt to Series A Preferred Stock	\$ —	\$ —	\$ 2,977,579
Deposit in equipment in 2007 lapsed in 2008	\$ —	\$ 51,446	\$ 51,446
Property and equipment acquired with capital leases	\$ —	\$ 131,550	\$ 256,326
Issuance of warrants to agents with private placement	\$ 286,315	\$ —	\$ 352,634
Cumulative effect of reclassification of warrants	\$ 99,444	\$ —	\$ 99,444

**NOTE 11. Fair Value of Financial Instruments**

Fair value measurements are determined under a three-level hierarchy for fair value measurements that prioritizes the inputs to valuation techniques used to measure fair value, distinguishing between market participant assumptions developed based on market data obtained from sources independent of the reporting entity (“observable inputs”) and the reporting entity’s own assumptions about market participant assumptions developed based on the best information available in the circumstances (“unobservable inputs”).

Fair value is the price that would be received to sell an asset or would be paid to transfer a liability (i.e., the “exit price”) in an orderly transaction between market participants at the measurement date. In determining fair value, we primarily use prices and other relevant information generated by market transactions involving identical or comparable assets (“market approach”). We also consider the impact of a significant decrease in volume and level of activity for an asset or liability when compared with normal activity to identify transactions that are not orderly.

The highest priority is given to unadjusted quoted prices in active markets for identical assets (Level 1 measurements) and the lowest priority to unobservable inputs (Level 3 measurements). Securities are classified in their entirety based on the lowest level of input that is significant to the fair value measurement.

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The three hierarchy levels are defined as follows:

Level 1 - Quoted prices in active markets that are unadjusted and accessible at the measurement date for identical, unrestricted assets or liabilities;

Level 2 - Quoted prices for identical assets and liabilities in markets that are not active, quoted prices for similar assets and liabilities in active markets or financial instruments for which significant inputs are observable, either directly or indirectly;

Level 3 - Prices or valuations that require inputs that are both significant to the fair value measurement and unobservable.

Credit risk adjustments are applied to reflect the company's own credit risk when valuing all liabilities measured at fair value. The methodology is consistent with that applied in developing counterparty credit risk adjustments, but incorporates the company's own credit risk as observed in the credit default swap market.

The following table presents the Company's assets and liabilities that are measured at fair value on a recurring basis at December 31, 2009:

	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>	<u>Total</u>
<b>Financial Assets:</b>				
Cash and cash equivalents	\$ 5,953,639	\$ —	\$ —	\$ 5,953,639
<b>Financial Liabilities:</b>				
Warrant derivative liabilities	\$ —	\$ —	\$ 2,778,191	\$ 2,778,191

The following table sets forth a reconciliation of changes in the fair value of warrant derivative liabilities classified as level 3 in the fair value hierarchy:

Balance at January 1, 2009	\$ —
Additions - fair value of warrants issued in June 2009	\$ 669,525
Additions - fair value of warrants issued in August 2009	484,869
Additions - fair value of warrants issued in December 2009	960,231
Total additions	2,114,625
Change in unrealized (gains) losses, net <sup>(1)</sup>	564,122
Transfers <sup>(2)</sup>	99,444
Balance at December 31, 2009	\$ 2,778,191

(1) Reported in the Statement of Operations.

(2) Represents the \$99,444 cumulative effect change in accounting principle as a result of the Company adopting FASB ASC Topic No. 815 - 40 (formerly EITF 07-5) effective January 1, 2009.

**WAFERGEN BIO-SYSTEMS, INC.**  
**(A Development Stage Company)**

**Notes to the Consolidated Financial Statements**

**NOTE 12. Contingencies**

From time to time we may be involved in claims arising in connection with our business. Although there can be no assurance as to the ultimate outcome, we generally have denied, or believe we have a meritorious defense and will deny, liability in all cases pending against the Company, including the matters described below, and we intend to defend vigorously each such case. Based on information currently available, we believe that the amount, or range, of reasonably possible losses in connection with the actions against us, including the matters described below, in excess of established reserves, in the aggregate, not to be material to our consolidated financial condition or cash flows. However, losses may be material to the Company's operating results for any particular future period, depending on the level of income for such period.

*Vida Communication v. WaferGen.* In July 2009, an action entitled Vida Communication, Inc. ("Vida") v. WaferGen Bio-systems, Inc. was filed in the San Francisco Superior Court. Vida, a company that had been providing investor relations services, is suing the Company for a total of \$165,000. The case is in the discovery stage. The Company believes the claims are without merit, and intends to vigorously defend itself against such action.

In addition, we anticipate that we will expend significant financial and managerial resources to defend our intellectual property rights in the future if we believe that our rights have been infringed. We also anticipate that we will expend significant financial and managerial resources to defend against claims that our products and services infringe upon the intellectual property rights of third parties.

**NOTE 13. Business Segment Information**

Operating segments are defined as component of the Company's business for which separate financial information is available that is evaluated by the Company's chief operating decision maker (its CEO) in deciding how to allocate resources and assessing performance. The Company presently has only one operating segment.

Revenue by geographic areas for the years ended December 31, 2009 and 2008, are as follows:

	<u>2009</u>	<u>2008</u>
North America	\$ 346,185	\$ 318,377
Asia	1,035	60,773
Europe	32,153	210,330
Other	—	32,386
	<u>\$ 379,373</u>	<u>\$ 621,866</u>
Total revenue		

Long-lived assets by geographic areas as of December 31, 2009 and 2008, are as follows:

	<u>2009</u>	<u>2008</u>
United States	\$ 287,770	\$ 613,256
Malaysia	154,226	182,083
	<u>\$ 441,996</u>	<u>\$ 795,339</u>
Total long-lived assets		

**WAFERGEN BIO-SYSTEMS, INC.**  
**(A Development Stage Company)**

**Notes to the Consolidated Financial Statements**

**NOTE 14. Quarterly Financial Data (Unaudited)**

The Company is restating its unaudited financial statements for each of the quarterly periods in the year ended December 31, 2009, to reflect adjustments resulting from the Company's adoption of FASB ASC 815-40-15-5 ("ASC 815-40", formerly EITF 07-5), "Determining Whether an Instrument (or Embedded Feature) Is Indexed to an Entity's Own Stock," which became effective as of January 1, 2009. On May 10, 2010, the Company determined that the impact of adopting ASC 815-40 with regard to certain warrants previously issued by the Company was material and, therefore, that the Company should restate its financial statements to reflect the adoption of ASC 815-40.

Below is selected summarized quarterly financial information for fiscal 2009 and 2008. For fiscal 2009, such quarterly information is presented both as restated and as previously reported.

Selected summarized quarterly financial information for fiscal 2009 and 2008 is as follows:

	<b>Year Ended December 31, 2009</b>			
	<b>First</b>	<b>Second</b>	<b>Third</b>	<b>Fourth</b>
<b>As restated</b>				
Revenue	\$ 41,838	\$ 68,918	\$ 78,860	\$ 189,757
Gross margin	\$ 26,006	\$ (55,014)	\$ 11,963	\$ 133,377
Net loss	\$ (1,764,057)	\$ (2,836,659)	\$ (3,012,482)	\$ (3,007,290)
Net loss applicable to common stockholders	\$ (1,799,057)	\$ (2,873,075)	\$ (3,056,158)	\$ (3,070,360)
Net loss per share - basic and diluted	\$ (0.07)	\$ (0.11)	\$ (0.11)	\$ (0.10)

	<b>Year Ended December 31, 2009</b>			
	<b>First</b>	<b>Second</b>	<b>Third</b>	<b>Fourth</b>
<b>As previously reported</b>				
Revenue	\$ 41,838	\$ 68,918	\$ 78,860	\$ 189,757
Gross margin	\$ 26,006	\$ (55,014)	\$ 11,963	\$ 133,377
Net loss	\$ (1,777,800)	\$ (2,870,984)	\$ (2,464,031)	\$ (2,943,551)
Net loss applicable to common stockholders	\$ (1,812,800)	\$ (2,907,400)	\$ (2,507,707)	\$ (3,006,621)
Net loss per share - basic and diluted	\$ (0.07)	\$ (0.11)	\$ (0.09)	\$ (0.10)

	<b>Year Ended December 31, 2008</b>			
	<b>First</b>	<b>Second</b>	<b>Third</b>	<b>Fourth</b>
<b>No changes from previously reported amounts</b>				
Revenue	\$ 181,640	\$ 176,851	\$ 197,951	\$ 65,424
Gross margin	\$ 106,623	\$ 119,803	\$ 123,995	\$ 30,412
Net loss	\$ (1,892,291)	\$ (2,143,217)	\$ (2,070,317)	\$ (1,935,612)
Net loss applicable to common stockholders	\$ (1,892,291)	\$ (2,143,217)	\$ (2,084,900)	\$ (1,958,945)
Net loss per share - basic and diluted	\$ (0.08)	\$ (0.09)	\$ (0.08)	\$ (0.08)

**NOTE 15. Subsequent Events**

The Company's management has evaluated its subsequent events through May 12, 2010, the date on which the Financial Statements were reissued, and has identified the following event:

On March 9, 2010, the Company's Malaysian subsidiary received \$250,000, less an exchange loss and issuance costs, in exchange for the issuance of Series B RCPS (See Note 6). WGBM sold 111,111 Series B RCPS in the private placement at the U.S. dollar equivalent of \$2.25 per share to EEV, bringing the total issued to 444,444 of the 666,666 Series B RCPS issuable under the terms of the SSA dated April 3, 2009.

**WAFERGEN BIO-SYSTEMS, INC.**  
**(A Development Stage Company)**

**Notes to the Consolidated Financial Statements**

**NOTE 16. Restatement of Consolidated Financial Statements**

The Company is restating its audited financial statements as of and for the year ended December 31, 2009, to reflect adjustments resulting from the Company's adoption of FASB ASC 815-40-15-5 ("ASC 815-40", formerly EITF 07-5), "Determining Whether an Instrument (or Embedded Feature) Is Indexed to an Entity's Own Stock," which became effective as of January 1, 2009. On May 10, 2010, the Company determined that the impact of adopting ASC 815-40 with regard to certain warrants previously issued by the Company was material and, therefore, that the Company should restate its financial statements to reflect the adoption of ASC 815-40.

As a result of the restatement, warrants containing anti-dilution provisions to purchase 3,489,979 shares of the Company's common stock have been reclassified as liabilities in accordance with ASC 815-40. This reclassification has resulted in certain other non-cash adjustments to our financial statements, which are described in detail below.

	December 31, 2009		
	As Previously Reported	Adjustment	As Restated
<b>Consolidated Balance Sheet Data:</b>			
Warrant derivative liability	\$ —	\$ 2,778,191 <sup>(1)</sup>	\$ 2,778,191
Additional paid-in capital	31,600,274	(2,582,696) <sup>(2)</sup>	29,017,578
Accumulated deficit	(30,266,788)	(195,495) <sup>(3)</sup>	(30,462,283)
Total stockholders' equity (deficit)	1,430,255	(2,778,191)	(1,347,936)

	December 31, 2009		
	As Previously Reported	Adjustment	As Restated
<b>Consolidated Statements of Operations Data:</b>			
Revenue	\$ 379,373	\$ —	\$ 379,373
Gross margin	116,332	—	116,332
Operating loss	(10,010,078)	—	(10,010,078)
Unrealized loss on fair value of warrants, net	—	(564,122) <sup>(4)</sup>	(564,122)
Total other income and (expenses)	(46,288)	(564,122)	(610,410)
Net loss	(10,056,366)	(564,122)	(10,620,488)
Net loss applicable to common stockholders	(10,234,528)	(564,122)	(10,798,650)
Net loss per share - basic and diluted	(0.37)	(0.02)	(0.39)

<b>Consolidated Statements of Cash Flows Data:</b>			
Net loss	(10,056,366)	(564,122)	(10,620,488)
Unrealized loss on fair value of warrants, net	—	564,122	564,122
Net cash used in operating activities	(7,832,332)	—	(7,832,332)

- (1) Represents the warrant derivative liability balance as at December 31, 2009 related to 3,489,979 warrants with anti-dilution provisions (see Note 8).
- (2) Represents the issuance date fair value of warrants with anti-dilution provisions issued in May 2008, and June, August and December 2009 (see Note 8).
- (3) Represents the cumulative net unrealized loss arising from the revaluation of outstanding warrants with anti-dilution provisions, including an unrealized gain that would have been recorded in the year ended December 31, 2008 had ASC 815-40 been in effect for that year.
- (4) Represents the cumulative net unrealized loss arising from the revaluation of outstanding warrants with anti-dilution provisions that arose in the year ended December 31, 2009.

**WAFERGEN BIO-SYSTEMS, INC.**  
**(A Development Stage Company)**

**Notes to the Consolidated Financial Statements**

**Item 9A(T). Controls and Procedures.**

As of the end of the period covered by this Report, management performed, with the participation of our principal executive officer and principal financial officer, an evaluation of the effectiveness of our disclosure controls and procedures as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Our disclosure controls and procedures are those designed to ensure that information required to be disclosed in the report we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosures. Based on the evaluation and the identification of the material weaknesses in internal control over financial reporting described below, our principal executive officer and principal financial officer concluded that, as of December 31, 2009, the Company's disclosure controls and procedures were not effective.

**Management's Report on Internal Control Over Financial Reporting**

Management is responsible for establishing and maintaining adequate internal control over financial reporting, as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act. Internal control over financial reporting is a process designed by, or under the supervision of, our principal executive officer and principal financial officer, and effected by our Board of Directors, management and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external reporting purposes in accordance with generally accepted accounting principles (GAAP). Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projection of any evaluation of effectiveness to future periods is subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Management has conducted, with the participation of our principal executive officer and principal financial officer, an assessment, including testing of the effectiveness, of our internal control over financial reporting as of December 31, 2009. Management's assessment of internal control over financial reporting was conducted using the criteria in Internal Control over Financial Reporting – Guidance for Smaller Public Companies issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO").

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the Company's annual or interim financial statements will not be prevented or detected on a timely basis. In connection with management's assessment of our internal control over financial reporting as required under Section 404 of the Sarbanes-Oxley Act of 2002, we identified the following material weaknesses in our internal control over financial reporting as of December 31, 2009:

1. We had not designed or otherwise maintained adequate controls to ensure that we adopted new accounting policies with respect to non-routine matters, such as the accounting of warrants with anti-dilution protection. In particular, subsequent to the filing of the Original Report on March 22, 2010, we determined that FASB ASC 815-40-15-5 ("ASC 815-40", formerly EITF 07-5), "Determining Whether an Instrument (or Embedded Feature) Is Indexed to an Entity's Own Stock", had not been properly adopted on January 1, 2009 with regard to certain warrants we previously issued, and we thereafter determined that certain prior period financial statements required restatement. As a result, as disclosed in the Explanatory Note on page 2 of this Form 10-K/A and in Note 16 to our consolidated financial statements included in this Form 10-K/A, we restated our consolidated financial statements as of and for the fiscal year ended December 31, 2009 and each of the quarterly periods in the fiscal year ended December 31, 2009;
2. We have not adequately divided, or compensated for, incompatible functions among personnel to reduce the risk that a potential material misstatement of the financial statements would occur without being prevented or detected; and
3. We have insufficient documentation of our information technology general control environment.

Because of the material weaknesses noted above, management has concluded that we did not maintain effective internal control over financial reporting as of December 31, 2009, based on Internal Control over Financial Reporting – Guidance for Smaller Public Companies issued by COSO.

## Remediation of Material Weaknesses in Internal Control Over Financial Reporting

Management is in the process of addressing its material weaknesses in an effort to improve its system of internal control over financial reporting through the following actions:

1. We have designed new controls to help ensure that we adopt new accounting policies with respect to non-routine matters on a timely manner. We have provided further technical training to our accounting personnel relating to the timely adoption of new accounting pronouncements in the future and intend to provide additional such training in the future. With respect to the adoption of ASC 815-40 in particular, we have provided additional technical training to our accounting personnel on the appropriate accounting requirements for convertible securities and the valuation models and processes required with respect to the accounting of convertible securities, and we have engaged outside experts to assist the Company with the periodic valuations of any such convertible securities.
2. We have introduced employee access restrictions within our accounting system, in accordance with the formally adopted Financial Delegation Policy, which is kept up to date. Further, we have formalized procedures for independent review and approval. Nevertheless, as a small company, we do not have the resources to fund sufficient staff to ensure a complete segregation of responsibilities within the accounting function, and we remain reliant on management oversight.
3. We intend to hire a full-time IT employee, who will design and document procedures addressing our information technology general controls and management information systems.

We believe that the foregoing initiatives will enable us to improve our internal controls over financial reporting. Management is committed to continuing efforts aimed at improving the design adequacy and operational effectiveness of its system of internal controls. The remediation efforts noted above will be subject to the Company's internal control assessment, testing and evaluation process.

This Report does not include an attestation report of the Company's registered public accounting firm regarding internal control over financial reporting. Management's report was not subject to attestation by the Company's registered public accounting firm pursuant to temporary rules of the SEC that permit the Company to provide only management's report in this Report.

## Changes in Internal Control over Financial Reporting

There have not been any changes in the Company's internal control over financial reporting (as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the most recent fiscal quarter that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting, except for assigning additional resources and expertise to financial statement preparation and technical research, and introducing the formal completion and review of checklists, to improve the accuracy and completeness of the preparation of our annual and quarterly financial statements. These control improvements were implemented to address two material weaknesses identified by management relating to (i) strong reliance on the external auditors to review and adjust the annual and quarterly financial statements and related financial disclosure, to monitor new accounting principles and their implementation, and to ensure compliance with GAAP and SEC disclosure requirements, and (ii) strong reliance on the external attorneys to review and edit our periodic, annual and quarterly reports and to ensure compliance with SEC disclosure requirements. The control improvements have been operating effectively for a sufficient period to address these two material weaknesses that were first identified by management in the year ended December 31, 2007, neither of which was reported as remediated as at September 30, 2009.

## PART IV

### Item 15. Exhibits and Financial Statement Schedules.

#### Financial Statement Schedules

All financial statement schedules are omitted because they are not applicable or the required information is shown in the financial statements or notes thereto.

#### Exhibits

The following Exhibits are being filed with this Annual Report on Form 10-K/A.

*In reviewing the agreements included as exhibits to this Form 10-K/A, please remember that they are included to provide you with information regarding their terms and are not intended to provide any other factual or disclosure information about the Company or the other parties to the agreements. The agreements may contain representations and warranties by each of the parties to the applicable agreement. These representations and warranties have been made solely for the benefit of the parties to the applicable agreement and:*

- *should not in all instances be treated as categorical statements of fact, but rather as a way of allocating the risk to one of the parties if those statements prove to be inaccurate;*
- *have been qualified by disclosures that were made to the other party in connection with the negotiation of the applicable agreement, which disclosures are not necessarily reflected in the agreement;*
- *may apply standards of materiality in a way that is different from what may be viewed as material to you or other investors; and*
- *were made only as of the date of the applicable agreement or such other date or dates as may be specified in the agreement and are subject to more recent developments.*

*Accordingly, these representations and warranties may not describe the actual state of affairs as of the date they were made or at any other time. Additional information about the Company may be found elsewhere in this Form 10-K and the Company's other public filings, which are available without charge through the SEC's website at <http://www.sec.gov>. See "Available Information."*

Exhibit Number	Exhibit Description	Filed Herewith	Incorporated by Reference			
			Form	Period Ending	Exhibit	Filing Date
2.1	Agreement and Plan of Merger and Reorganization, dated as of May 31, 2007, by and among WBSI, WaferGen Acquisition Corp., and WaferGen, Inc.		8-K		2.1	6/5/2007
2.2	Certificate of Merger of WaferGen Acquisition Corp. with and into WaferGen, Inc., dated May 31, 2007		8-K		2.2	1/16/2008
3.1	Certificate of Incorporation of WBSI		SB-2		3.1	8/9/2006
3.2	Certificate of Amendment to the Certificate of Incorporation of WBSI, dated January 31, 2007		8-K		3.1	2/1/2007
3.3	Bylaws of WBSI		SB-2		3.2	8/9/2006
4.1	Lockup Agreement dated January 14, 2008, among WBSI, Rodman & Renshaw LLC and R&R Biotech Partners LLC		SB-2/A		4.1	1/16/2008
10.1 †	Form of Warrants, made as of May 5, 2007, to purchase up to an aggregate of 115,424 shares of WBSI's Common Stock		10-K	12/31/2009	10.1	3/22/2010
10.2	Form of Common Stock Purchase Warrant issued to investors in a private placement, the initial closing of which was held on May 31, 2007		8-K		10.21	6/5/2007
10.3	Form of Warrant issued to Placement Agent in connection with a private placement, the initial closing of which was held on May 31, 2007		8-K		10.22	6/5/2007

Exhibit Number	Exhibit Description	Filed Herewith	Incorporated by Reference			
			Form	Period Ending	Exhibit	Filing Date
10.4 †	Employment Agreement dated May 31, 2007, between WBSI and Alnoor Shivji		8-K		10.26	6/5/2007
10.5	Securities Purchase Agreement, dated May 19, 2008, by and among WaferGen Bio-systems, Inc. and the purchasers identified on the signature pages thereto		8-K		10.1	5/21/2008
10.6	Form of Common Stock Purchase Warrant issued to investors identified in the Securities Purchase Agreement dated May 19, 2008		8-K		10.2	5/21/2008
10.7 †	WaferGen Bio-Systems, Inc. 2008 Stock Incentive Plan		8-K		10.1	7/3/2008
10.8 †	Form of Non-Qualified Stock Option award under 2008 Stock Incentive Plan		10-K	12/31/2008	10.35	3/27/2009
10.9	Share Subscription Agreement and Shareholders' Agreement dated May 8, 2008, by and among WaferGen Bio-systems, Inc., Malaysian Technology Development Corporation Sdn. Bhd. and WaferGen Biosystems (M) Sdn. Bhd.		10-Q	9/30/2008	10.1	11/14/2008
10.10	Put Agreement dated May 28, 2008, by and among WaferGen Bio-systems, Inc. and Holders of the Series A Redeemable Convertible Preference Shares in WaferGen Biosystems (M) Sdn. Bhd.		10-Q	9/30/2008	10.2	11/14/2008
10.11	Put Option Agreement dated May 28, 2008, by and among Alnoor Shivji and Malaysian Technology Development Corporation Sdn. Bhd.		10-Q	9/30/2008	10.3	11/14/2008
10.12 †	Letter Agreement dated January 16, 2009, by and between WBSI and Alnoor Shivji		10-K	12/31/2008	10.39	3/27/2009
10.13	Form of WBSI Distribution Agreement		10-K	12/31/2008	10.42	3/27/2009
10.14	Share Subscription Agreement dated April 3, 2009, by and among WaferGen Bio-systems, Inc., WaferGen Biosystems (M) Sdn. Bhd., Primar Mahawangsa Sdn. Bhd. and Expedient Equity Ventures Sdn. Bhd.		8-K		10.1	4/14/2009
10.15	Put Agreement dated April 3, 2009, by and among WaferGen Bio-systems, Inc. and Holders of Series B Redeemable Convertible Preference Shares in WaferGen Biosystems (M) Sdn. Bhd.		8-K		10.2	4/14/2009
10.16	Form of Put Option Agreement dated April 3, 2009, by and among Alnoor Shivji and Holders of Series B Redeemable Convertible Preference Shares in WaferGen Biosystems (M) Sdn. Bhd.		8-K		10.3	4/14/2009
10.17	Deed of Adherence to the Share Subscription and Shareholders' Agreement dated May 8, 2008, by and among WaferGen Bio-systems, Inc., WaferGen Biosystems (M) Sdn. Bhd., Primar Mahawangsa Sdn. Bhd., Expedient Equity Ventures Sdn. Bhd. and Malaysian Technology Development Corporation Sdn. Bhd.		10-Q	3/31/2009	10.4	5/12/2009
10.18	Form of Subscription Agreement between WaferGen Bio-systems, Inc., and the investors party thereto in connection with the Company's 2009 private placement offering of units of securities		10-Q	6/30/2009	10.5	8/10/2009
10.19	Form of Warrants to purchase shares of Common Stock of the Company, issued June 16, 2009, to investors in the Company's 2009 private placement offering of units of securities		10-Q	6/30/2009	10.6	8/10/2009
10.20	Registration Rights Agreement, dated June 16, 2009, between WaferGen Bio-systems, Inc., and the investors party thereto in connection with the Company's 2009 private placement offering of units of securities		10-Q	6/30/2009	10.7	8/10/2009
10.21	Form of Warrant to purchase shares of Common Stock of the Company, issued to Spencer Trask Ventures, Inc. and certain related parties in connection with the Company's 2009 private placement offering of units of securities		10-Q	6/30/2009	10.8	8/10/2009
10.22 †	Employment Separation Agreement, dated June 17, 2009, by and among Amjad Huda and WaferGen Bio-systems, Inc.		10-K	12/31/2009	10.22	3/22/2010
10.23 †	Employment Separation Agreement, dated June 17, 2009, by and among Victor Joseph and WaferGen Bio-systems, Inc.		10-K	12/31/2009	10.23	3/22/2010
10.24	Share Subscription Agreement dated July 1, 2009, by and among WaferGen Bio-systems, Inc., WaferGen Biosystems (M) Sdn. Bhd. and Kumpalan Modal Perdana Sdn. Bhd.		10-Q	9/30/2009	10.1	11/13/2009

Exhibit Number	Exhibit Description	Filed Herewith	Incorporated by Reference			
			Form	Period Ending	Exhibit	Filing Date
10.25	Put Agreement dated July 1, 2009, by and among WaferGen Bio-systems, Inc. and Holders of Series B Redeemable Convertible Preference Shares in WaferGen Biosystems (M) Sdn. Bhd.		10-Q	9/30/2009	10.2	11/13/2009
10.26	Put Option Agreement dated July 1, 2009, by and among Alnoor Shivji and Kumpalan Modal Perdana Sdn. Bhd.		10-Q	9/30/2009	10.3	11/13/2009
10.27	Deed of Adherence dated July 1, 2009, to the Share Subscription and Shareholders' Agreement dated May 8, 2008, and the Share Subscription Agreement dated April 3, 2009, by and among WaferGen Bio-systems, Inc., WaferGen Biosystems (M) Sdn. Bhd., Primar Mahawangsa Sdn. Bhd., Expedient Equity Ventures Sdn. Bhd., Malaysian Technology Development Corporation Sdn. Bhd. and Kumpalan Modal Perdana Sdn. Bhd.		10-Q	9/30/2009	10.4	11/13/2009
10.28 †	Employment Agreement, effective October 29, 2009, by and between the Company and Mona Chadha		10-Q	9/30/2009	10.5	11/13/2009
10.29	Lease Agreement by and between WaferGen, Inc. and LBA Realty Fund III-Company VII, LLC dated October 22, 2009		10-Q	9/30/2009	10.6	11/13/2009
10.30 †	WaferGen Bio-Systems, Inc. 2008 Stock Incentive Plan, as amended		8-K		10.1	12/10/2009
10.31	Form of Subscription Agreement between WaferGen Bio-systems, Inc., and the investors party thereto in connection with the Company's December 2009 and January 2010 private placement offering of units of securities		S-1		10.58	3/2/2010
10.32	Form of Warrants to purchase shares of Common Stock of the Company, issued December 23, 2009, to investors in the Company's December 2009 and January 2010 private placement offering of units of securities		S-1		10.59	3/2/2010
10.33	Registration Rights Agreement, dated December 23, 2009, between WaferGen Bio-systems, Inc., and the investors party thereto in connection with the Company's December 2009 and January 2010 private placement offering of units of securities		S-1		10.60	3/2/2010
21.1	Subsidiaries of the Registrant		10-K	12/31/2008	21.1	3/27/2009
23.1	Letter of Consent from Independent Registered Public Accounting Firm, Rowbotham & Company LLP	X				
31.1	Rule 13a-14(a)/15d-14(a) Certification of principal executive officer	X				
31.2	Rule 13a-14(a)/15d-14(a) Certification of principal financial officer	X				
32.1	Section 1350 Certification of principal executive officer <i>(This certification is being furnished and shall not be deemed "filed" with the SEC for purposes of Section 18 of the Exchange Act, or otherwise subject to the liability of that section, and shall not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the Registrant specifically incorporates it by reference.)</i>	X				
32.2	Section 1350 Certification of principal financial officer <i>(This certification is being furnished and shall not be deemed "filed" with the SEC for purposes of Section 18 of the Exchange Act, or otherwise subject to the liability of that section, and shall not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the Registrant specifically incorporates it by reference.)</i>	X				

† Indicates a management contract or compensatory plan or arrangement.

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) 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.

WAFERGEN BIO-SYSTEMS, INC.

By: /s/ Alnoor Shivji

Alnoor Shivji

Chairman, President and Chief Executive Officer

Date: May 12, 2010

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

<u>SIGNATURE</u>	<u>TITLE</u>	<u>DATE</u>
<u>/s/ Alnoor Shivji</u> Alnoor Shivji	Chairman, President and Chief Executive Officer (principal executive officer)	May 12, 2010
<u>/s/ Hector Brush</u> Hector Brush	Treasurer (principal financial officer)	May 12, 2010
<u>/s/ Dr. R. Dean Hautamaki</u> Dr. R. Dean Hautamaki	Director	May 12, 2010
<u>/s/ Joel Kanter</u> Joel Kanter	Director	May 12, 2010
<u>/s/ Makoto Kaneshiro</u> Makoto Kaneshiro	Director	May 12, 2010
<u>/s/ Nadine Smith</u> Nadine Smith	Director	May 12, 2010
<u>Dr. Robert Hariri</u>	Director	
<u>/s/ Robert Coradini</u> Robert Coradini	Director	May 12, 2010

## EXHIBIT INDEX

Exhibit Number	Exhibit Description
23.1	Letter of Consent from Independent Registered Public Accounting Firm, Rowbotham & Company LLP
31.1	Rule 13a-14(a)/15d-14(a) Certification of principal executive officer
31.2	Rule 13a-14(a)/15d-14(a) Certification of principal financial officer
32.1	Section 1350 Certification of principal executive officer <i>(This certification is being furnished and shall not be deemed "filed" with the SEC for purposes of Section 18 of the Exchange Act, or otherwise subject to the liability of that section, and shall not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the Registrant specifically incorporates it by reference.)</i>
32.2	Section 1350 Certification of principal financial officer <i>(This certification is being furnished and shall not be deemed "filed" with the SEC for purposes of Section 18 of the Exchange Act, or otherwise subject to the liability of that section, and shall not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the Registrant specifically incorporates it by reference.)</i>

**Report of Independent Registered Public Accounting Firm**

We have issued our report dated March 19, 2010 (except for Notes 1, 2, 8, 9, 10, 11, 14, 15 and 16 for which the date is May 12, 2010) with respect to the consolidated financial statements included in the Annual Report of WaferGen Bio-systems, Inc. on Form 10-K/A for the year ended December 31, 2009. We hereby consent to the incorporation by reference of said report in the Registration Statements of WaferGen Bio-systems, Inc. on Form SB-2 (File No. 333-146239), Forms S-1 (File Nos. 333-162470 and 333-165155), and Forms S-8 (File Nos. 333-152597 and 333-164558).

/s/ Rowbotham and Company LLP

San Francisco, California  
May 12, 2010

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CERTIFICATION

I, Alnoor Shivji, certify that:

1. I have reviewed this annual report on Form 10-K/A of WaferGen Bio-systems, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting;
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 12, 2010

/s/ Alnoor Shivji  
Alnoor Shivji  
Chief Executive Officer  
(principal executive officer)

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CERTIFICATION

I, Hector Brush, certify that:

1. I have reviewed this annual report on Form 10-K/A of WaferGen Bio-systems, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting;
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 12, 2010

/s/ Hector Brush  
Hector Brush  
Treasurer  
(principal financial officer)

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CERTIFICATION  
PURSUANT TO 18 U.S.C. SECTION 1350,  
AS ENACTED BY  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C. Section 1350), I, Alnoor Shivji, certify that:

1. The Annual Report of WaferGen Bio-systems, Inc. (the "Company") on Form 10-K/A for the year ended December 31, 2009 (the "Report") as filed with the Securities and Exchange Commission as of the date hereof, 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.

Date: May 12, 2010

/s/ Alnoor Shivji  
Alnoor Shivji  
Chief Executive Officer  
(principal executive officer)

*A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to WaferGen Bio-systems, Inc., and will be retained by WaferGen Bio-systems, Inc., and furnished to the Securities and Exchange Commission or its staff upon request.*

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CERTIFICATION  
PURSUANT TO 18 U.S.C. SECTION 1350,  
AS ENACTED BY  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C. Section 1350), I, Hector Brush, certify that:

1. The Annual Report of WaferGen Bio-systems, Inc. (the "Company") on Form 10-K/A for the year ended December 31, 2009 (the "Report") as filed with the Securities and Exchange Commission as of the date hereof, 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.

Date: May 12, 2010

/s/ Hector Brush  
Hector Brush  
Treasurer  
(principal financial officer)

*A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to WaferGen Bio-systems, Inc., and will be retained by WaferGen Bio-systems, Inc., and furnished to the Securities and Exchange Commission or its staff upon request.*

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