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

# FORM 10-Q

(Mark One)

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

For the quarterly period ended September 30, 2017

**OR**

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

For the transition period _____ to_____.

Commission file number: 000-50644

# Cutera, Inc.

**(Exact name of registrant as specified in its charter)**

| | |
|---|---|
| **Delaware** | **77-0492262** |
| **(State or other jurisdiction of incorporation or organization)** | **(I.R.S. employer identification no.)** |

**3240 Bayshore Blvd., Brisbane, California 94005**
**(Address of principal executive offices)**

**(415) 657-5500**
**(Registrant's telephone number, including area code)**

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

Large accelerated filer ☐ Accelerated filer ☒ Non-accelerated filer ☐ Smaller reporting company ☐ Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.☐

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

The number of shares of Registrant's common stock issued and outstanding as of October 31, 2017 was 13,854,966.

**CUTERA, INC.**

**FORM 10-Q**

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## PART I. FINANCIAL INFORMATION

### ITEM 1. FINANCIAL STATEMENTS

**CUTERA, INC.**

**CONDENSED CONSOLIDATED BALANCE SHEETS**
**(in thousands, except share and per share data)**
**(unaudited)**

| | September 30, 2017 | December 31, 2016 |
|---|---|---|
| **Assets** | | |
| Current assets: | | |
| Cash and cash equivalents | $ 14,784 | $ 13,775 |
| Marketable investments | 35,692 | 40,299 |
| Accounts receivable, net | 19,604 | 16,547 |
| Inventories | 23,728 | 14,977 |
| Other current assets and prepaid expenses | 2,894 | 2,251 |
| Total current assets | 96,702 | 87,849 |
| | | |
| Property and equipment, net | 1,842 | 1,907 |
| Deferred tax asset | 384 | 377 |
| Intangibles, net | — | 2 |
| Goodwill | 1,339 | 1,339 |
| Other long-term assets | 381 | 380 |
| Total assets | $ 100,648 | $ 91,854 |
| | | |
| **Liabilities and Stockholders' Equity** | | |
| Current liabilities: | | |
| Accounts payable | $ 5,805 | $ 2,598 |
| Accrued liabilities | 22,203 | 17,397 |
| Deferred revenue | 8,801 | 8,394 |
| Total current liabilities | 36,809 | 28,389 |
| | | |
| Deferred revenue, net of current portion | 1,950 | 1,705 |
| Income tax liability | 171 | 168 |
| Other long-term liabilities | 505 | 582 |
| Total liabilities | 39,435 | 30,844 |
| | | |
| Commitments and Contingencies (Note 11) | | |
| | | |
| Stockholders' equity: | | |
| Convertible preferred stock, $0.001 par value; authorized: 5,000,000 shares; none issued and outstanding | — | — |
| Common stock, $0.001 par value; authorized: 50,000,000 shares; issued and outstanding: 13,906,439 and 13,773,389 shares at September 30, 2017 and December 31, 2016, respectively | 14 | 14 |
| Additional paid-in capital | 81,195 | 88,114 |
| Accumulated deficit | (19,933) | (27,046) |
| Accumulated other comprehensive loss | (63) | (72) |
| Total stockholders' equity | 61,213 | 61,010 |
| | | |
| Total liabilities and stockholders' equity | $ 100,648 | $ 91,854 |

The accompanying notes are an integral part of these unaudited Condensed Consolidated Financial Statements.

**CUTERA, INC.**

**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**
**(in thousands, except per share data)**
**(unaudited)**

| | Three Months Ended September 30, 2017 | Three Months Ended September 30, 2016 | Nine Months Ended September 30, 2017 | Nine Months Ended September 30, 2016 |
|---|---|---|---|---|
| Net revenue: | | | | |
| Products | $ 33,486 | $ 25,493 | $ 89,688 | $ 65,903 |
| Service | 4,687 | 4,788 | 14,173 | 14,278 |
| Total net revenue | 38,173 | 30,281 | 103,861 | 80,181 |
| Cost of revenue: | | | | |
| Products | 13,859 | 10,160 | 38,843 | 26,804 |
| Service | 2,104 | 2,378 | 6,241 | 7,155 |
| Total cost of revenue | 15,963 | 12,538 | 45,084 | 33,959 |
| Gross profit | 22,210 | 17,743 | 58,777 | 46,222 |
| Operating expenses: | | | | |
| Sales and marketing | 13,148 | 10,574 | 36,708 | 30,002 |
| Research and development | 3,467 | 2,914 | 9,393 | 8,335 |
| General and administrative | 3,379 | 2,716 | 10,143 | 9,933 |
| Lease termination income | (4,000) | — | (4,000) | — |
| Total operating expenses | 15,994 | 16,204 | 52,244 | 48,270 |
| Income (loss) from operations | 6,216 | 1,539 | 6,533 | (2,048) |
| Interest and other income, net | 197 | 166 | 746 | 527 |
| Income (loss) before income taxes | 6,413 | 1,705 | 7,279 | (1,521) |
| Provision for income taxes | 225 | 61 | 166 | 115 |
| Net income (loss) | $ 6,188 | $ 1,644 | $ 7,113 | $ (1,636) |
| Net income (loss) per share: | | | | |
| Basic | $ 0.44 | $ 0.12 | $ 0.51 | $ (0.12) |
| Diluted | $ 0.42 | $ 0.12 | $ 0.48 | $ (0.12) |
| Weighted-average number of shares used in per share calculations: | | | | |
| Basic | 13,973 | 13,163 | 13,917 | 13,102 |
| Diluted | 14,767 | 13,544 | 14,733 | 13,102 |

The accompanying notes are an integral part of these unaudited Condensed Consolidated Financial Statements.

**CUTERA, INC.**

**CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)**
**(in thousands)**
**(unaudited)**

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|---|---|---|---|---|
| | 2017 | 2016 | 2017 | 2016 |
| Net income (loss) | $ 6,188 | $ 1,644 | $ 7,113 | $ (1,636) |
| Other comprehensive income (loss): | | | | |
| Available-for-sale investments | | | | |
| Net change in unrealized gains (losses) on available-for-sale investments | 5 | (24) | 13 | 56 |
| Less: Reclassification adjustment for gains on investments recognized during the period | — | (1) | (4) | (1) |
| Net change in unrealized gain and losses on available-for-sale investments | 5 | (25) | 9 | 55 |
| Tax provision (benefit) | — | (9) | — | 20 |
| Other comprehensive income (loss), net of tax | 5 | (16) | 9 | 35 |
| Comprehensive income (loss) | $ 6,193 | $ 1,628 | $ 7,122 | $ (1,601) |

The accompanying notes are an integral part of these unaudited Condensed Consolidated Financial Statements.

**CUTERA, INC.**

**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**
**(in thousands)**
**(unaudited)**

| | Nine Months Ended September 30, 2017 | 2016 |
|---|---|---|
| **Cash flows from operating activities:** | | |
| Net income (loss) | $ 7,113 | $ (1,636) |
| Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities: | | |
| Stock-based compensation | 3,623 | 2,652 |
| Depreciation and amortization | 750 | 733 |
| Other | (67) | (45) |
| Changes in assets and liabilities: | | |
| Accounts receivable | (3,048) | (61) |
| Inventories | (8,751) | (4,400) |
| Other current assets and prepaid expenses | (633) | (690) |
| Other long-term assets | (1) | (60) |
| Accounts payable | 3,207 | 1,324 |
| Accrued liabilities | 4,757 | 886 |
| Other long-term liabilities | — | (247) |
| Deferred revenue | 652 | (1,187) |
| Income tax liability | 3 | (18) |
| Net cash provided by (used) in operating activities | 7,605 | (2,749) |
| | | |
| **Cash flows from investing activities:** | | |
| Acquisition of property, equipment and software | (443) | (311) |
| Disposal of property and equipment | 53 | 17 |
| Proceeds from sales of marketable investments | 9,154 | 6,153 |
| Proceeds from maturities of marketable investments | 39,612 | 20,135 |
| Purchase of marketable investments | (44,156) | (23,944) |
| Net cash provided by investing activities | 4,220 | 2,050 |
| | | |
| **Cash flows from financing activities:** | | |
| Repurchase of common stock | (13,776) | (4,873) |
| Proceeds from exercise of stock options and employee stock purchase plan | 4,566 | 6,798 |
| Taxes paid related to net share settlement of equity awards | (1,332) | (601) |
| Payments on capital lease obligations | (274) | (218) |
| Net cash used in financing activities | (10,816) | 1,106 |
| | | |
| Net increase in cash and cash equivalents | 1,009 | 407 |
| Cash and cash equivalents at beginning of period | 13,775 | 10,868 |
| Cash and cash equivalents at end of period | $ 14,784 | $ 11,275 |
| | | |
| **Supplemental disclosure of non-cash items:** | | |
| Assets acquired under capital lease | $ 257 | $ 580 |

The accompanying notes are an integral part of these unaudited Condensed Consolidated Financial Statements.

**CUTERA, INC.**
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**

**Note 1. Summary of Significant Accounting Policies**

***Description of Operations and Principles of Consolidation***

Cutera, Inc. (the "Company") is a global provider of laser and other energy-based aesthetic systems for practitioners worldwide. The Company designs, develops, manufactures, and markets laser and other energy-based product platforms for use by physicians and other qualified practitioners which enable them to offer safe and effective aesthetic treatments to their customers. The Company currently markets the following key system platforms: *enlighten®, excel HR®, truSculpt®, excel V®, and xeo®.* The Company's systems offer multiple hand pieces and applications, which allow customers to upgrade their systems. The sales of (i) systems, system upgrades and hand pieces (classified as "Systems" revenue); (ii) hand piece refills applicable to *Titan®* and *truSculpt* (classified as "Hand Piece Refills"); and (iii) the distribution of third party manufactured skincare products (classified as "Skincare" revenue); and collectively classified as "Products" revenue. In addition to Products revenue, the Company generates revenue from the sale of post-warranty service contracts, parts, detachable hand piece replacements (except for *Titan* and *truSculpt*) and service labor for the repair and maintenance of products that are out of warranty, all of which is classified as "Service" revenue.

Headquartered in Brisbane, California, the Company has wholly-owned subsidiaries that are currently operational in Australia, Belgium, Canada, France, Hong Kong, Japan, Switzerland and the United Kingdom. These subsidiaries market, sell and service the Company's products outside of the United States. The Condensed Consolidated Financial Statements include the accounts of the Company and its subsidiaries. All inter-company accounts, transactions and balances have been eliminated.

***Unaudited Interim Financial Information***

The interim financial information included in this report is unaudited. The Condensed Consolidated Financial Statements included in this report reflect all adjustments (consisting only of normal recurring adjustments) that the Company considers necessary for the fair presentation of the results of operations for the interim periods covered and of the financial condition of the Company at the date of the interim balance sheet. The December 31, 2016 Condensed Consolidated Balance Sheet was derived from audited financial statements, but does not include all disclosures required by generally accepted accounting principles in the United States of America ("GAAP"). The results for interim periods are not necessarily indicative of the results for the entire year or any other interim period. The Condensed Consolidated Financial Statements should be read in conjunction with the Company's previously filed audited financial statements and the notes thereto included in the Company's annual report on Form 10-K for the year ended December 31, 2016 filed with the Securities and Exchange Commission (the "SEC") on March 15, 2017.

***Use of Estimates***

The preparation of interim Condensed Consolidated Financial Statements in conformity with GAAP requires the Company's management to make estimates and assumptions that affect the amounts reported and disclosed in the Condensed Consolidated Financial Statements and the accompanying notes. These estimates are based on management's best knowledge of current events and actions we may undertake in the future. Actual results could differ materially from those estimates. On an ongoing basis, the Company evaluates these estimates, including those related to revenue elements, warranty obligations, sales commissions, accounts receivable and sales allowances, provision for excess and obsolete inventories, fair values of marketable investments, useful lives of property and equipment, fair values of performance stock units and options to purchase the Company's stock, recoverability of deferred tax assets, legal matters and claims, and effective income tax rates, among others. Management bases these estimates on historical experience and on various other assumptions that are believed to be reasonable, the results of which form the basis for making judgments about the carrying values of assets and liabilities.

***Recent Accounting Pronouncements Not Yet Adopted***

Revenue Recognition

In May 2014, the Financial Accounting Standards Board ("FASB"), jointly with the International Accounting Standards Board, issued Accounting Standards Update ("ASU") No. 2014-09, Revenue from Contracts with Customers. This new standard will replace most of the existing revenue recognition guidance in GAAP when it becomes effective and permits the use of either the retrospective or the modified retrospective method (or cumulative effect transition method).

The standard's core principle is that a reporting entity will recognize revenue when it transfers promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. In applying this new guidance to contracts within its scope, an entity will: (1) identify the contract(s) with a customer, (2) identify the performance obligation in the contract, (3) determine the transaction price, (4) allocate the transaction price to the performance obligations in the contract, and (5) recognize revenue when (or as) the entity satisfies a performance obligation. Additionally, this new guidance would require significantly expanded disclosures about revenue. The new standard is effective for annual reporting periods (including interim reporting periods within those annual periods) beginning after December 15, 2017. Entities have the option of using either a full retrospective or a modified retrospective approach to adopt this new standard.

While the Company has not completed its evaluation, the Company currently plans to adopt this accounting standard in the first quarter of fiscal year 2018 using the modified retrospective method. Based on the analysis performed through the third quarter of 2017, the Company believes that the timing and measurement of revenue recognition under its contracts with customers for its Products and Services will not change significantly. However, the basis of revenue recognition will change to one based on the transfer of control of products and services. Also based on the analysis performed, the Company expects that incremental contract acquisition costs of obtaining revenue generating contracts, such as sales commissions paid in connection with system sales with multi-year post-warranty service contracts, would be capitalized and amortized over the customer relationship period. Under the current guidance, the Company expenses such costs when incurred. The Company is in the process of calculating the adjustment that would be required for capitalizing the sales commissions to accumulated deficit and completing the analysis and documentation required for the implementation of ASC 606 upon adoption of the standard on January 1, 2018.

The new revenue standard is principle-based and interpretation of those principles may vary from company to company based on their unique circumstances. It is possible that interpretation, industry practice, and guidance may evolve as companies and the accounting profession work to implement this new standard. As the Company completes its evaluation of this new standard, new information may arise that could change the Company's current understanding of the impact to revenue and expense recognized. Additionally, the Company will continue to monitor industry activities and any additional guidance provided by regulators, standards setters, or the accounting profession and adjust the Company's assessment and implementation plans accordingly.

The new standard requires comprehensive disclosures of quantitative and qualitative information that enables users of financial statements to understand the nature, amount, timing, and uncertainty of revenue and cash flows arising from contracts with customers. The Company is in the process of preparing the expanded disclosures required under ASC 606.

Accounting for Leases

In February 2016, the FASB issued ASU No. 2016-02, Leases (Topic 842), which amends the existing accounting standards for leases. The new standard requires lessees to record a right-of-use asset and a corresponding lease liability on the balance sheet (with the exception of short-term leases). The new standard also requires expanded disclosures regarding leasing arrangements. The new standard becomes effective for the Company in the first quarter of fiscal year 2019 and early adoption is permitted. The new standard is required to be adopted using the modified retrospective approach and requires application of the new standard at the beginning of the earliest comparative period presented. The Company generally does not finance purchases of equipment or other capital, but does lease some of its facilities. Several of the Company's customers finance purchases of its system products through third party lease companies and not directly with the Company. The Company does not believe that the new standard will change customer buying patterns or behaviors for its products. The Company expects that upon adoption, right-of-use assets and lease liabilities will be recognized in the balance sheet in amounts that will be material.

Accounting for Income Taxes

In October 2016, the FASB issued ASU No. 2016-16, Income Taxes (Topic 740): Intra-Entity Transfer of Assets Other than Inventory, which requires the recognition of the income tax consequences of an intra-entity transfer of an asset, other than inventory, when the transfer occurs. This ASU will be effective for the Company in the first quarter of 2018. This ASU is required to be adopted using the modified retrospective approach, with a cumulative catch-up adjustment to retained earnings in the period of adoption. The Company does not believe that adopting this ASU will have a material impact on the financial Statements.

***Adopted Accounting Pronouncement***

Beginning fiscal year 2017, the Company adopted ASU No. 2016-09, Improvements to Employee Share-based Payment Accounting, which changes among other things, how the tax effects of share-based awards are recognized. ASU No. 2016-09 requires excess tax benefits and tax deficiencies to be recognized in the provision for income taxes as discrete items in the period when the awards vest or are settled, whereas previously such income tax effects were generally recorded as part of additional paid-in capital. The provision for income taxes for the three and nine months ended September 30, 2017, included excess tax benefits of $50,000 and $160,000, respectively. The recognized excess tax benefits resulted from share-based compensation awards primarily associated with employee equity plans that were vested or settled in the three and nine months ended September 30, 2017. This ASU also eliminates the requirement to reclassify cash flows related to excess tax benefits from operating activities to financing activities on the consolidated statements of cash flows. The Company also excluded the related tax benefits when applying the treasury stock method for computing diluted shares outstanding on a prospective basis as required by this ASU. In addition, the Company elected to continue its current practice of estimating expected forfeitures. The amount of excess tax benefits and deficiencies recognized in the provision for income taxes will fluctuate from period to period based on the price of the Company's stock, the volume of share-based instruments settled or vested, and the value assigned to share-based instruments under GAAP.

***Significant Accounting Policies***

There have been no additional new or material changes to the significant accounting policies discussed in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2016, that are of significance or potential significance to the Company.

**Note 2. Cash, Cash Equivalents and Marketable Investments**

The Company invests its cash primarily in money market funds, commercial paper, corporate notes and bonds, municipal bonds, and debt securities issued by the U.S. government and its agencies. The Company considers all highly liquid investments, with an original maturity of three months or less at the time of purchase, to be cash equivalents. Investments with maturities of greater than three months at the time of purchase are accounted for as "available-for-sale," are carried at fair value with unrealized gains and losses reported as a component of stockholders' equity, are held for use in current operations and are classified in current assets as "marketable investments."

The following tables summarize the components, and the unrealized gains and losses position, related to the Company's cash, cash equivalents and marketable investments (in thousands):

| September 30, 2017 | Amortized Cost | Gross Unrealized Gains | Gross Unrealized Losses | Fair Market Value |
|---|---|---|---|---|
| Cash and cash equivalents: | | | | |
| Cash | $ 6,703 | $ — | $ — | $ 6,703 |
| Money market funds | 1,636 | — | — | 1,636 |
| Commercial paper | 6,445 | — | — | 6,445 |
| Total cash and cash equivalents | 14,784 | — | — | 14,784 |
| Marketable investments: | | | | |
| U.S. government notes | 5,133 | — | (4) | 5,129 |
| U.S. government agencies | — | — | — | — |
| Municipal securities | 201 | — | — | 201 |
| Commercial paper | 15,942 | 1 | (1) | 15,942 |
| Corporate debt securities | 14,419 | 9 | (8) | 14,420 |
| Total marketable investments | 35,695 | 10 | (13) | 35,692 |
| Total cash, cash equivalents and marketable investments | $ 50,479 | $ 10 | $ (13) | $ 50,476 |

| December 31, 2016 | Amortized Cost | Gross Unrealized Gains | Gross Unrealized Losses | Fair Market Value |
|---|---|---|---|---|
| Cash and cash equivalents: | | | | |
| Cash | $ 6,672 | $ — | $ — | $ 6,672 |
| Money market funds | 6,053 | — | — | 6,053 |
| Commercial paper | 1,050 | — | — | 1,050 |
| Total cash and cash equivalents | 13,775 | — | — | 13,775 |
| Marketable investments: | | | | |
| U.S. government notes | 8,403 | 4 | (9) | 8,398 |
| U.S. government agencies | 3,918 | — | (2) | 3,916 |
| Municipal securities | 1,325 | — | — | 1,325 |
| Commercial paper | 12,299 | 2 | (2) | 12,299 |
| Corporate debt securities | 14,366 | 3 | (8) | 14,361 |
| Total marketable investments | 40,311 | 9 | (21) | 40,299 |
| Total cash, cash equivalents and marketable investments | $ 54,086 | $ 9 | $ (21) | $ 54,074 |

As of September 30, 2017 and December 31, 2016, total gross unrealized losses were $13,000 and $21,000, respectively, and were related to interest rate changes on available-for-sale marketable investments. The Company has concluded that it is more- likely- than- not that the securities will be held until maturity or the recovery of their cost basis. No securities were in an unrealized loss position for more than 12 months.

The following table summarizes the contractual maturities of the Company's available-for-sale securities, classified as marketable investments as of September 30, 2017 (in thousands):

| | Amount |
|---|---|
| Due in less than one year | $ 30,410 |
| Due in 1 to 3 years | 5,282 |
| Total marketable investments | $ 35,692 |

**Note 3. Fair Value of Financial Instruments**

Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The fair value hierarchy distinguishes between (1) market participant assumptions developed based on market data obtained from independent sources *(observable inputs)* and (2) an entity's own assumptions about market participant assumptions developed based on the best information available in the circumstances (*unobservable inputs*). The fair value hierarchy consists of three broad levels, which gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities *(Level 1)* and the lowest priority to unobservable inputs *(Level 3).* The three levels of the fair value hierarchy are described below:

- ***Level 1:*** Quoted prices (unadjusted) in active markets that are accessible at the measurement date for assets or liabilities.
- ***Level 2:*** Directly or indirectly observable inputs as of the reporting date through correlation with market data, including quoted prices for similar assets and liabilities in active markets and quoted prices in markets that are not active. Level 2 also includes assets and liabilities that are valued using models or other pricing methodologies that do not require significant judgment since the input assumptions used in the models, such as interest rates and volatility factors, are corroborated by readily observable data from actively quoted markets for substantially the full term of the financial instrument.
- ***Level 3:*** Unobservable inputs that are supported by little or no market activity and reflect the use of significant management judgment. These values are generally determined using pricing models for which the assumptions utilize management's estimates of market participant assumptions.

In determining fair value, the Company utilizes valuation techniques that maximize the use of observable inputs and minimize the use of unobservable inputs to the extent possible as well as considers counterparty credit risk in its assessment of fair value.

As of September 30, 2017, financial assets measured and recognized at fair value on a recurring basis and classified under the appropriate level of the fair value hierarchy as described above were as follows (in thousands):

| September 30, 2017 | Level 1 | Level 2 | Level 3 | Total |
|---|---|---|---|---|
| Cash equivalents: | | | | |
| Money market funds | $ 1,636 | $ — | $ — | $ 1,636 |
| Commercial paper | — | 6,445 | — | 6,445 |
| Marketable investments: | | | | |
| Available-for-sale securities | — | 35,692 | — | 35,692 |
| Total assets at fair value | $ 1,636 | $ 42,137 | $ — | $ 43,773 |

As of December 31, 2016, financial assets measured and recognized at fair value on a recurring basis and classified under the appropriate level of the fair value hierarchy as described above was as follows (in thousands):

| December 31, 2016 | Level 1 | Level 2 | Level 3 | Total |
|---|---|---|---|---|
| Cash equivalents: | | | | |
| Money market funds | $ 6,053 | $ — | $ — | $ 6,053 |
| Commercial paper | — | 1,050 | — | 1,050 |
| Marketable investments: | | | | |
| Available-for-sale securities | — | 40,299 | — | 40,299 |
| Total assets at fair value | $ 6,053 | $ 41,349 | $ — | $ 47,402 |

The Company's Level 2 investments include U.S. government-backed securities and corporate securities that are valued based upon observable inputs that may include benchmark yields, reported trades, broker/dealer quotes, issuer spreads, two-sided markets, benchmark securities, bids, offers and reference data including market research publications. The weighted average remaining maturity of the Company's Level 2 investments as of September 30, 2017 is less than 1 year and all of these investments are rated by S&P and Moody's at A- or better.

**Note 4. Balance Sheet Details**

***Inventories***

As of September 30, 2017 and December 31, 2016, inventories consist of the following (in thousands):

| | September 30, 2017 | December 31, 2016 |
|---|---|---|
| Raw materials | $ 18,201 | $ 10,966 |
| Finished goods | 5,527 | 4,011 |
| Total | $ 23,728 | $ 14,977 |

***Accrued Liabilities***

As of September 30, 2017 and December 31, 2016, accrued liabilities consist of the following (in thousands):

| | September 30, 2017 | December 31, 2016 |
|---|---|---|
| Accrued payroll and related expenses | $ 10,869 | $ 9,036 |
| Sales and marketing programs | 3,060 | 706 |
| Warranty liability | 2,940 | 2,461 |
| Sales tax | 2,206 | 2,373 |
| Other | 3,128 | 2,821 |
| Total | $ 22,203 | $ 17,397 |

**Note 5. Warranty**

The Company provides a standard one-year warranty on all systems. For direct sales to end customers, warranty coverage provided is for labor and parts necessary to repair the systems during the warranty period. For sales to distributors, we provide a 14 to 16 month warranty for parts only. The distributor provides the labor to their end customer.

The Company has a direct field service organization in the U.S. Internationally, the Company provides direct service support through its wholly-owned subsidiaries in Australia, Belgium, Canada, France, Hong Kong, Japan, Switzerland and the United Kingdom. In several other countries where it does not have a direct presence, the Company provides service through a network of distributors and third-party service providers.

After the original warranty period, maintenance and support are offered on a service contract basis or on a time and materials basis. The Company provides for the estimated cost to repair or replace products under warranty at the time of sale. The following table provides the changes in the product warranty accrual for the three and nine months ended September 30, 2017 and 2016 (in thousands):

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|---|---|---|---|---|
| | 2017 | 2016 | 2017 | 2016 |
| Beginning Balance | $ 2,877 | $ 2,000 | $ 2,461 | $ 1,819 |
| Add: Accruals for warranties issued during the period | 959 | 1,202 | 5,038 | 3,634 |
| Less: Warranty related expenses during the period | (896) | (1,102) | (4,559) | (3,353) |
| Ending Balance | $ 2,940 | $ 2,100 | $ 2,940 | $ 2,100 |

**Note 6. Deferred Service Contract Revenue**

The Company generates Service revenue from the sale of extended service contracts and from time and material services provided to customers who are not under a warranty or extended service contract. Service contract revenue is recognized on a straight-line basis over the period of the applicable contract. Service revenue from time and material services is recognized as the services are provided.

The following table provides changes in the deferred service contract revenue balance for the three and nine month ended September 30, 2017 and 2016 (in thousands):

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|---|---|---|---|---|
| | 2017 | 2016 | 2017 | 2016 |
| Beginning Balance | $ 10,013 | $ 10,223 | $ 9,431 | $ 10,469 |
| Add: Payments received | 3,178 | 2,517 | 10,290 | 8,825 |
| Less: Revenue recognized | (3,233) | (3,447) | (9,763) | (10,001) |
| Ending Balance | $ 9,958 | $ 9,293 | $ 9,958 | $ 9,293 |

Costs incurred by the Company for servicing extended service contracts were $1.2 million and $1.7 million for the three months ended September 30, 2017 and 2016, respectively; and $4.2 million and $4.9 million for the nine months ended September 30, 2017 and 2016, respectively.

**Note 7. Stockholders' Equity and Stock-based Compensation Expense**

***Amended and Restated 2004 Equity Incentive Plan***

The Company's Board of Directors ("Board") and stockholders approved the amendment and restatement of the 2004 equity incentive plan ("Amended and Restated 2004 Equity Incentive Plan") in April and June 2017, respectively. The amendments included the extension of the term of the plan to the date of the annual meeting of the Company's stockholders in 2022, an increase in the number of shares available for future grant by 1,600,000 shares, and other terms of the plan. The Amended and Restated 2004 Equity Incentive Plan provides for the grant of incentive stock options, non-statutory stock options, restricted stock, restricted stock units ("RSUs"), stock appreciation rights, performance stock units ("PSUs"), performance shares, and other stock or cash awards.

Activity under the Company's Amended and Restated 2004 Equity Incentive Plan for the nine months ended September 30, 2017 is summarized as follows:

| | | Options Outstanding | |
|---|---|---|---|
| | Shares Available for Grant | Number of Stock Options Outstanding | Weighted-Average Exercise Price |
| **Balance as of December 31, 2016** | 721,657 | 1,116,472 | $ 9.56 |
| Additional shares reserved | 1,600,000 | | |
| Options granted | (154,000) | 154,000 | 21.82 |
| Stock awards granted(1) (2) | (558,694) | | |
| Options exercised | — | (447,673) | 8.90 |
| Options canceled | 53,393 | (53,393) | 16.58 |
| Stock awards canceled(1) | 110,278 | | |
| **Balance as of September 30, 2017** | 1,772,634 | 769,406 | $ 11.91 |

(1) *The Company has a "fungible share" provision in its Amended and Restated 2004 Equity Incentive Plan whereby for each full-value award issued or canceled under the Amended and Restated 2004 Equity Incentive Plan requires the subtraction or addition of 2.12 shares from or to the shares available for grant, as applicable.*

(2) *Included in the 'Stock awards granted' total of 558,694, are 221,540 fungible shares relating to 104,500 of PSUs granted. These PSUs may result in a lower number of shares of common stock that may be released on January 1, 2018, based on PSUs forfeited due to employment terminations and the degree of achievement of two performance goals compared to targets that were pre-determined by the Board and disclosed in a Current Report on Form 8-K filed with the SEC on January 11, 2017.*

As of September 30, 2017, unrecognized compensation expense, net of projected forfeitures, related to non-vested equity awards issued under the Company's Amended and Restated 2004 Equity Incentive Plan and the 2004 Employee Stock Purchase Plan ("ESPP"), was approximately $4.9 million. This expense is expected to be recognized over the remaining weighted-average period of 1.88 years. The actual expense recorded in the future may be higher or lower based on a number of factors, including, actual forfeitures experienced and the degree of achievement of the performance goals related to the granted PSUs.

Pursuant to the Company's Amended and Restated 2004 Equity Incentive Plan and the ESPP, the Company issued the following number of shares of common stock during the three and nine months ended September 30, 2017 and 2016:

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|---|---|---|---|---|
| | 2017 | 2016 | 2017 | 2016 |
| Stock options | 77,511 | 413,588 | 447,673 | 706,522 |
| Stock awards, net of shares withheld to satisfy employees' minimum income tax withholding | 9,881 | 8,107 | 152,972 | 114,832 |
| ESPP | — | — | 51,185 | 41,980 |
| Total stock issued | 87,392 | 421,695 | 651,830 | 863,334 |

***Stock Repurchase Program***

On February 8, 2016, the Company announced that Board approved the expansion of its Stock Repurchase Program by $10 million, under which the Company is authorized to repurchase shares of its common stock. As of December 31, 2016, there remained an additional $5.1 million in the Stock Repurchase Program to use for repurchasing the Company's common stock. On February 13, 2017 and July 28, 2017 the Company's Board of Directors approved the expansion of its Stock Repurchase Program by an additional $5 million and $25 million, respectively.

In the three and nine months ended September 30, 2017, the Company repurchased 184,536 and 518,780 shares of its common stock for approximately $6.7 million and $13.8 million, respectively. As of September 30, 2017, there remained an additional $21.4 million available in the Stock Repurchase Program to repurchase shares of common stock. All shares repurchased were retired and returned to authorized but unissued status.

***Stock-based Compensation Expense***

Stock-based compensation expense by department recognized during the three and nine months ended September 30, 2017 and 2016, were as follows (in thousands):

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|---|---|---|---|---|
| | 2017 | 2016 | 2017 | 2016 |
| Cost of revenue | $ 101 | $ 73 | $ 377 | $ 254 |
| Sales and marketing | 394 | 239 | 1,215 | 844 |
| Research and development | 157 | 131 | 633 | 416 |
| General and administrative | 345 | 127 | 1,398 | 1,138 |
| Total stock-based compensation expense | $ 997 | $ 570 | $ 3,623 | $ 2,652 |

**Note 8. Lease Termination Income**

On May 2, 2017, the Company entered into a building lease with the intent to relocate its corporate headquarters to a new facility in Fremont, California. On July 6, 2017, the Company agreed to terminate this lease in return for a lump sum receipt from the lessor of $4.0 million. Simultaneously with the execution of the lease termination, the Company entered into an amendment to its existing lease agreement for the Company to maintain its corporate headquarters in its current facility in Brisbane, California. This amendment extends the term of the lease from December 31, 2017 to January 31, 2023. The $4.0 million is reported as "Lease termination income," as a component of operating expenses, in the Company's Condensed Consolidated Statements of Operations for the three and nine month periods ending September 30, 2017.

**Note 9. Net Income (Loss) Per Share**

Basic net income (loss) per share is computed using the weighted-average number of shares outstanding during the period. In periods of net income, diluted shares outstanding include the dilutive effect of in-the-money equity awards (stock options, restricted stock units, performance stock units and employee stock purchase plan contributions), which is calculated based on the average share price for each fiscal period using the treasury stock method. Under the treasury stock method, the amount the employee must pay for the equity award, and the amount of compensation cost for future service that the Company has not yet recognized, are all assumed to be used to repurchase shares. Diluted earnings per share is the same as basic earnings per share for the periods in which the Company had a net loss because the inclusion of outstanding common stock equivalents would be anti-dilutive.

The following table sets forth the computation of basic and diluted net income (loss) and the weighted average number of shares used in computing basic and diluted net income (loss) per share (in thousands, except per share data):

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|---|---|---|---|---|
| | 2017 | 2016 | 2017 | 2016 |
| *Numerator* | | | | |
| Net income (loss) | $ 6,188 | $ 1,644 | $ 7,113 | $ (1,636) |
| *Denominator* | | | | |
| Weighted average shares of common stock outstanding used in computing net income (loss) per share, basic | 13,973 | 13,163 | 13,917 | 13,102 |
| Dilutive effect of incremental shares and share equivalents | 794 | 381 | 816 | — |
| Weighted average shares of common stock outstanding used in computing net income (loss) per share, diluted | 14,767 | 13,544 | 14,733 | 13,102 |
| *Net income (loss) per share:* | | | | |
| Net income (loss) per share, basic | $ 0.44 | $ 0.12 | $ 0.51 | $ (0.12) |
| Net income (loss) per share, diluted | $ 0.42 | $ 0.12 | $ 0.48 | $ (0.12) |

The following numbers of weighted shares outstanding, prior to the application of the treasury stock method, were excluded from the computation of diluted net income (loss) per common share for the period presented because including them would have had an anti-dilutive effect (in thousands):

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|---|---|---|---|---|
| | 2017 | 2016 | 2017 | 2016 |
| Options to purchase common stock | 42 | 1,740 | 31 | 1,952 |
| Restricted stock units | — | 334 | 6 | 395 |
| Performance stock units | — | 64 | — | 81 |
| Employee stock purchase plan shares | — | 40 | — | 83 |
| Total | 42 | 2,178 | 37 | 2,511 |

**Note 10. Income Taxes**

The Company calculates the provision for income taxes during interim reporting periods by applying an estimate of the annual effective tax rate for the full fiscal year to “ordinary” income or loss (pretax income or loss excluding unusual or infrequently occurring discrete items) for the reporting period. When applicable, the year-to-date tax provision reflects adjustments from discrete tax items. In the quarter ended December 31, 2016, the Company adopted ASU No. 2016-09, Improvements to Employee Share-Based Payment Accounting. As a result of the adoption of the ASU No. 2016-09, the nine months ended September 30, 2017 tax provision includes the discrete accounting of the net tax benefit of excess compensation cost (“windfalls”). In the periods prior to the adoption of ASU No. 2016-09, the tax benefit of windfalls and tax deficiencies (“shortfalls”) were recorded in equity to the extent of previous windfalls, and then to the income statement.

For the nine- month period ended September 30, 2016, the Company used a discrete effective tax rate method to calculate the provision for income taxes. The Company determined that since small changes in estimated “ordinary” income would result in significant changes in the estimated annual effective tax rate, the historical method would not provide a reliable estimate for the fiscal nine-month period ended September 30, 2016.

The Company’s income tax expense of $225,000 and $166,000 for the three and nine months ended September 30, 2017, respectively, related primarily to the Company’s U.S. and non-U.S. operations based on the annual effective tax rate method. In addition, it included a tax benefit for excess tax deductions of approximately $50,000 and $160,000 recorded discretely in the three and nine months ended September 30, 2017, respectively. The Company’s income tax expense for the three and nine months ended September 30, 2016 was $61,000 and $115,000, respectively, and related primarily to income taxes of the Company’s non-U.S. operations.

The Company utilizes the asset and liability method of accounting for income taxes, under which deferred taxes are determined based on the temporary differences between the financial statement and tax basis of assets and liabilities using enacted tax rates expected to be in effect during the years in which the basis differences reverse. A valuation allowance is recorded when it is more likely than not that some of the deferred tax assets will not be realized. Significant management judgment is required in determining any valuation allowance recorded against deferred tax assets. In evaluating the ability to recover deferred tax assets, the Company considered available positive and negative evidence giving greater weight to its recent historical financial results and lesser weight to its projected financial results, due to the subjectivity involved in forecasting future periods. The Company also considered, commensurate with its objective verifiability, the forecast of future taxable income including the reversal of temporary differences and the implementation of feasible and prudent tax planning strategies. As of September 30, 2017 and December 31, 2016 the Company had a 100% valuation allowance against its U.S. deferred tax assets. In the near future, as and when the Company concludes that sufficient positive evidence, including its estimate of future taxable income, exists to support a reversal of all or a portion of the valuation allowance, then the Company expects that a significant portion of any release of the valuation allowance will be recorded as an income tax benefit at the time of release, which will have a material impact on the financial statements. Thereafter, the income tax expense recorded in future quarters could also be significantly higher than it has been since fiscal year 2009, when we recorded a valuation allowance for our U.S. deferred tax assets.

## Note 11. Commitments and Contingencies

***Operating Leases***

The Company leases space for operations in United States, Japan and France. Future minimum lease commitments under the Company's facility operating leases as of September 30, 2017 were as follows (in thousands):

| Year Ending September 30, | | Amount |
|---|---|---|
| 2018 | $ | 2,446 |
| 2019 | | 2,677 |
| 2020 | | 2,743 |
| 2021 | | 2,593 |
| 2022 | | 2,477 |
| 2023 and beyond | | 838 |
| Total future minimum lease payments | $ | 13,774 |

In addition to the above facility leases, the Company also routinely leases automobiles for certain sales and field service employees under operating leases for which the remaining committed lease payments are not material.

***Contingencies***

The Company is named from time to time as a party to product liability, contractual lawsuits and other general corporate matters in the normal course of business. The Company routinely assesses the likelihood of any adverse judgments or outcomes related to legal matters and claims, as well as ranges of probable losses. A determination of the amount of the reserves required, if any, for these contingencies is made after analysis of each known issue, historical experience, whether it is more likely than not that the Company shall incur a loss, and whether the loss is estimable. As of September 30, 2017, there were no material exposures beyond the amounts accrued in the Company's financial statements.

The Company is not currently a party to any material legal proceedings.

## ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

**Caution Regarding Forward-Looking Statements**

This Quarterly Report on Form 10-Q ("Form 10-Q") contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). The Private Securities Litigation Reform Act of 1995 provides a "safe harbor" for certain forward-looking statements. The words "believe," "potential," "forecast," "project," "expect," "anticipate," "plan," "intend," "foresee," "should," "would," "could," "may," "estimate," "project" or other similar expressions are intended to identify forward-looking statements. These forward-looking statements are based on our current expectations and beliefs concerning future developments and their potential effects on us. There can be no assurance that future developments affecting us will be those that we anticipate. All discussion concerning our expectations for future revenues and operating results are based on our forecasts for our existing operations. These forward-looking statements involve significant risks and uncertainties (some of which are beyond our control) and assumptions. They are subject to change based on various factors, including but not limited to the risks and uncertainties summarized below:

- changes in our common stock price;
- changes in our profitability;
- regulatory activities and announcements, including the failure to obtain regulatory approvals for our new products;
- effectiveness of our internal controls over financial reporting;
- fluctuations in future quarterly operating results;
- failure to comply with, or changes in, laws, regulations or administrative practices affecting government regulation of our products, including, but not limited to, United States Food and Drug Administration laws and regulations;
- failure to establish, expand or maintain market acceptance or payment for the purchase of our products;
- failure to maintain the current regulatory approvals for our indications;
- unfavorable results from clinical studies;
- variations in sales and operating expenses relative to estimates;
- our dependence on certain suppliers and manufacturers to provide certain materials, components and contract services necessary for the production of our products;
- product liability-related losses and costs;
- protection, expiration and validity of our intellectual property;
- changes in technology, including the development of superior or alternative technology or devices by competitors;
- failure to comply with applicable domestic laws and regulations, including federal and state privacy and security laws and regulations;
- failure to comply with foreign laws and regulations;
- international operational and economic risks and concerns;
- failure to attract or retain key personnel;
- losses or costs from pending or future lawsuits and governmental investigations;
- changes in accounting rules that adversely affect the characterization of our consolidated results of income, financial position or cash flows;
- changes in customer spending patterns;
- continued volatility in the global market and worldwide economic conditions;
- changes in tax laws or exposure to additional income tax liabilities;
- failure to adequately secure our information technology systems from hacker intrusion, malicious viruses and other cybercrime attacks; and
- weather or natural disasters that interrupt our business operations or the business operations of our customers.

Other factors that could cause our actual results to differ from our projected results are described in (1) "Part II, Item 1A. Risk Factors" and elsewhere in this Form 10-Q, (2) our Annual Report on Form 10-K for the period ended December 31, 2016 ("2016 Form 10-K"), (3) our reports and registration statements filed and furnished from time to time with the U.S. Securities and Exchange Commission ("SEC") and (4) other announcements we make from time to time.

Readers are cautioned not to place undue reliance on forward-looking statements, which speak only as of the date of this report. We undertake no obligation to update or revise any forward-looking statements after the date they are made, whether as a result of new information, future events or otherwise. You should read the following discussion and analysis in conjunction with our unaudited Condensed Consolidated Financial Statements and related notes included elsewhere in this report. Operating results for the three and nine months ended September 30, 2017 are not necessarily indicative of future results, including the full fiscal year. You should also refer to our "Annual Consolidated Financial Statements," "Notes" thereto, "Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Risk Factors" contained in our 2016 Form 10-K.

**Introduction**

The Management's Discussion and Analysis, or MD&A, is organized as follows:

- ***Executive Summary.*** This section provides a general description and history of our business, a brief discussion of our product lines and the opportunities, trends, challenges and risks we focus on in the operation of our business.
- ***Critical Accounting Policies and Estimates.*** This section describes the key accounting policies that are affected by critical accounting estimates.
- ***Results of Operations.*** This section provides our analysis and outlook for the significant line items on our Condensed Consolidated Statements of Operations.
- ***Liquidity and Capital Resources.*** This section provides an analysis of our liquidity and cash flows, as well as a discussion of our commitments.

**Executive Summary**

***Company Description***

We are a leading medical device company specializing in the research, development, manufacture, marketing and servicing of laser and other energy-based aesthetics systems for practitioners worldwide. We offer easy-to-use products which enable physicians and other qualified practitioners to perform safe and effective aesthetic procedures, including treatment of vascular conditions and removal of benign pigmented lesions, hair removal, skin rejuvenation, body contouring, skin resurfacing, tattoo removal and toenail fungus treatment. Our platforms are designed to be easily upgraded to add applications and hand pieces, which provide flexibility for our customers as they expand their practices. The sales of systems, system upgrades, hand pieces, hand piece refills (applicable to *Titan* and *truSculpt*) and the distribution of third party manufactured skincare products are classified as "Products" revenue. In addition to Products revenue, we generate revenue from the sale of post-warranty service contracts, parts, detachable hand piece replacements (except for *Titan* and *truSculpt*) and service labor for the repair and maintenance of products that are out of warranty, all of which is classified as "Service" revenue.

Our corporate headquarters and U.S. operations are located in Brisbane, California, where we conduct our manufacturing, warehousing, research and development, regulatory, sales and marketing, service, and administrative activities. We have wholly-owned subsidiaries located in Australia, Belgium, Canada, France, Hong Kong, Japan, Switzerland and the United Kingdom. We market, sell and service our products outside of the United States through our direct employees, third party service providers, as well as a global distributor network in over 40 countries.

***Products and Services***

Our revenue is derived from the sale of Products and Services. Our Products revenue is derived from the sale of Systems, Hand Piece Refills (applicable to *Titan* and *truSculpt*) and the distribution of third party manufactured Skincare products. Systems revenue includes the sales of new systems and additional applications that customers purchase as their practice grows. A system consists of a console that incorporates a universal graphic user interface, a laser and/or other energy-based module, control system software, high voltage electronics and one or more hand pieces. Our primary system platforms include:

- *enlighten*
- *excel HR*
- *truSculpt*
- *excel V*
- *xeo*

Other than the above mentioned five primary systems, we continue to generate revenue from our legacy products such as *GenesisPlus*™, *CoolGlide*®, and a third-party sourced system called *myQ*® for the Japanese market. We have renewed our distribution contract for the sale of *myQ* in Japan on a non-exclusive basis through September 30, 2018. For our *Titan* and *truSculpt* hand pieces, after a set number of treatments have been performed, the customer is required to send the hand piece back to the factory for refurbishment, which we refer to as "refilling" the hand piece. In Japan, we also distribute ZO Medical Health Inc. ("ZO") skincare products.

Service revenue relates to service contracts, direct billings for detachable hand piece replacements (except for *Titan* and *truSculpt*) and revenue for parts and labor on out-of-warranty products.

***Significant Business Trends***

We believe that our ability to grow revenue will be primarily dependent on the following:

- Consumer demand for the applications of our products;
- Customer (physicians and other practitioners) demand for our products;
- Continuing to expand our product offerings — both through internal development and sourcing from other vendors;

- Ongoing investment in our global sales and marketing infrastructure;
- Use of clinical results to support new aesthetic products and applications;
- Increased collaboration with key opinion leaders of our industry to assist us in selling efforts;
- Marketing to physicians in the core dermatology and plastic surgery specialties, as well as outside those specialties; and
- Generating ongoing revenue from our growing installed base of customers through the sale of systems, system upgrades, hand piece refills, skincare products, and services.

For a detailed discussion of the significant business trends impacting our business, please see the section titled "Results of Operations" below.

***Factors that May Impact Future Performance***

Our industry is impacted by numerous competitive, regulatory, macroeconomic and other significant factors. Our industry is highly competitive and our future performance depends on our ability to compete successfully. Additionally, our future performance depends on our ability to continue to expand our product offerings, develop innovative technologies, obtain regulatory clearances for our products, protect the proprietary technology of our products and our manufacturing processes, manufacture our products cost-effectively, and successfully market and distribute our products in a profitable manner. If we fail to execute on the aforementioned initiatives, our business could be adversely affected. A detailed discussion of these and other factors that could impact our future performance are provided in (1) "Part II, Item 1A. Risk Factors" and elsewhere in this Form 10-Q, (2) our 2016 Form 10-K, (3) our reports and registration statements filed and furnished from time to time with the SEC, and (4) other announcements we make from time to time.

**Critical Accounting Policies and Estimates**

The preparation of our Condensed Consolidated Financial Statements and related disclosures in conformity with GAAP requires us to make estimates, judgments and assumptions that affect the reported amounts of assets, liabilities, revenue and expenses. These estimates, judgments and assumptions are based on historical experience and on various other factors that we believe are reasonable under the circumstances. We periodically review our estimates and make adjustments when facts and circumstances dictate. To the extent that there are material differences between these estimates and actual results, our financial condition or results of operations will be affected.

Critical accounting estimates, as defined by the SEC, are those that are most important to the portrayal of our financial condition and results of operations and require our management's most difficult and subjective judgments and estimates of matters that are inherently uncertain. The accounting policies and estimates that we consider to be critical, subjective, and requiring judgment in their application are summarized in "Item 7—Management's Discussion and Analysis of Financial Condition and Results of Operations" in our 2016 Form 10-K. There have been no significant changes to the accounting policies and estimates disclosed in our Form 10-K.

**Results of Operations**

The following table sets forth selected consolidated financial data for the periods indicated, expressed as a percentage of net total revenue. Percentages in this table and throughout our discussion and analysis of financial condition and results of operations may reflect rounding adjustments.

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|---|---|---|---|---|
| | 2017 | 2016 | 2017 | 2016 |
| Net revenue | 100% | 100% | 100% | 100% |
| Cost of revenue | 42% | 41% | 43% | 42% |
| Gross margin | 58% | 59% | 57% | 58% |
| **Operating expenses:** | | | | |
| Sales and marketing | 34% | 35% | 35% | 37% |
| Research and development | 9% | 10% | 9% | 11% |
| General and administrative | 9% | 9% | 10% | 12% |
| Lease termination income | (10)% | — | (3)% | — |
| Total operating expenses | 42% | 54% | 51% | 60% |
| Income (loss) from operations | 16% | 5% | 6% | (2)% |
| Interest and other income, net | 1% | 1% | 1% | — |
| Income (loss) before income taxes | 17% | 6% | 7% | (2)% |
| Provision for income taxes | 1% | —% | —% | —% |
| Net income (loss) | 16% | 6% | 7% | (2)% |

***Total Net Revenue***

| | Three Months Ended September 30, | | | Nine Months Ended September 30, | | |
|---|---|---|---|---|---|---|
| **(Dollars in thousands)** | **2017** | **% Change** | **2016** | **2017** | **% Change** | **2016** |
| **Revenue mix by geography:** | | | | | | |
| United States | $ 23,275 | 52% | $ 15,356 | $ 64,058 | 52% | $ 42,216 |
| Rest of World | 14,898 | — | 14,925 | 39,803 | 5% | 37,965 |
| Consolidated total revenue | $ 38,173 | 26% | $ 30,281 | $ 103,861 | 30% | $ 80,181 |
| *United States as a percentage of total revenue* | *61%* | | *51%* | *62%* | | *53%* |
| *Rest of World as a percentage of total revenue* | *39%* | | *49%* | *38%* | | *47%* |
| **Revenue mix by product category:** | | | | | | |
| Systems – North America | $ 21,869 | 57% | $ 13,896 | $ 58,955 | 60% | $ 36,808 |
| Systems – International | 9,993 | — | 9,983 | 26,014 | 6% | 24,448 |
| Total Systems | 31,862 | 33% | 23,879 | 84,969 | 39% | 61,256 |
| Service | 4,687 | (2)% | 4,788 | 14,173 | (1)% | 14,278 |
| Hand Piece Refills | 595 | (1)% | 602 | 1,743 | (8)% | 1,886 |
| Skincare | 1,029 | 2% | 1,012 | 2,976 | 8% | 2,761 |
| Consolidated total revenue | $ 38,173 | 26% | $ 30,281 | $ 103,861 | 30% | $ 80,181 |

***Total Net Revenue:***

Our total revenue increased by $7.9 million, or 26%, and $23.7 million, or 30%, in the three and nine months ended September 30, 2017, respectively, compared to the same periods in 2016, due primarily to an increase in the volume of systems sold.

***Revenue by Geography:***

Our U.S. revenue increased by $7.9 million, or 52%, and by $21.8 million, or 52%, in the three and nine months ended September 30, 2017, respectively, compared to the same periods in 2016. This growth was due primarily to an increase in the volume of *truSculpt* systems sold as a result of the launch of our *truSculpt 3D* in the second quarter ended June 30, 2017, as well as increased sales headcount, marketing and promotional activities.

Our revenue outside the U.S. was $14.9 million for each of the three month periods ended September 30, 2017 and September 30, 2016. For the nine months ended September 30, 2017, compared to the same period in 2016, revenue outside the U.S. increased by $1.8 million, or 5%. This growth was primarily attributable to revenue growth in Japan, Australia, and the Middle East, offset in part by a decline in revenue from Latin America.

***Revenue by Product Type:***

Systems Revenue

Systems revenue in North America increased by $7.9 million, or 57%, and by $22.2 million, or 60%, in the three and nine months ended September 30, 2017, respectively, compared to the same periods in 2016. This growth was primarily attributable to an increase in revenue from *truSculpt 3D, enlighten III, xeo* and *excel HR* products, offset by a small decline in revenue from *excel V*. In addition, the North America revenue growth was the result of increased sales headcount, higher productivity of our field sales representatives, and the impact of additional marketing and promotional activities.

International Systems revenue was $10 million for each of the three months ended September 30, 2017 and September 30, 2016. International Systems revenue increased by $1.6 million, or 6%, in the nine months ended September 30, 2017, compared to the same period in 2016. This growth was driven primarily by increased revenue from *enlighten III* and *xeo,* partially offset by a decline in revenue from our *excel V* product.

Service Revenue

Our worldwide Service revenue was relatively flat in the three and nine months ended September 30, 2017, compared to the same periods in 2016.

Hand Piece Refills Revenue

Revenue from our Hand Piece Refills was flat during the three months ended September 30, 2017, and declined by $143,000 or 8%, in the nine months ended September 30, 2017, compared to the same periods in 2016. This decrease was primarily due to reduced utilization of the *Titan* hand pieces.

Skincare Revenue

Revenue from our Skincare products in Japan was flat during the three months ended September 30, 2017, and increased by $215,000, or 8%, in the nine months ended September 30, 2017, compared to the same periods in 2016. This increase was primarily due to the launch of new product lines as well as increased marketing and promotional activities for this distributed product.

***Gross Profit***

| | Three Months Ended September 30, | | | Nine Months Ended September 30, | | |
|---|---|---|---|---|---|---|
| **(Dollars in thousands)** | **2017** | **% Change** | **2016** | **2017** | **% Change** | **2016** |
| Gross profit | $ 22,210 | 25% | $ 17,743 | $ 58,777 | 27% | $ 46,222 |
| *As a percentage of total net revenue* | *58%* | | *59%* | *57%* | | *58%* |

Our cost of revenue consists primarily of material, personnel expenses, product warranty costs and manufacturing overhead expenses. Gross margin in the three and nine months ended September 30, 2017, compared to same periods in 2016, declined slightly primarily due to:

- a reduction in the average selling prices in international markets, largely driven by *enlighten* system sales; and
- increased warranty, personnel and overhead costs in support of higher revenue levels; partially offset by
- higher margins generated from our *truSculpt 3D* system launched in North America in May 2017 and in select European countries in September 2017.

***Sales and Marketing***

| | Three Months Ended September 30, | | | Nine Months Ended September 30, | | |
|---|---|---|---|---|---|---|
| **(Dollars in thousands)** | **2017** | **% Change** | **2016** | **2017** | **% Change** | **2016** |
| Sales and marketing | $ 13,148 | 24% | $ 10,574 | $ 36,708 | 22% | $ 30,002 |
| *As a percentage of total net revenue* | *34%* | | *35%* | *35%* | | *37%* |

Sales and marketing expenses consist primarily of personnel expenses, expenses associated with customer-attended workshops and trade shows, post-marketing studies, and advertising. Sales and marketing expenses as a percentage of revenue declined to 34% and 35% during the three and nine months ended September 30, 2017, respectively, compared to 35% and 37% during the three and nine months ended September 30, 2016, respectively. The reduction in sales and marketing expense as a percent of revenue was due primarily to improved leverage of our sales and marketing expenses, as well as an increase in our direct sales employee productivity.

The $2.6 million, or 24%, increase in sales and marketing expenses during the three months ended September 30, 2017, compared to the same period in 2016, was due primarily to:

- $2.0 million increase in personnel related expenses, largely driven by increased headcount and commission expenses in support of higher revenue levels;
- $217,000 increased promotional expenses, primarily in North America; and
- $185,000 increased marketing consulting services in the U.S.

Sales and marketing expenses increased by $6.7 million, or 22%, in the nine months ended September 30, 2017, compared to the same period in the prior year, due primarily to:

- $4.6 million increase in personnel related expenses, largely driven by increased headcount and commission expenses in support of higher revenue levels;
- $781,000 increased promotional expenses, primarily in North America;
- $574,000 increased marketing consulting services in the U.S.; and
- $512,000 increased travel related expenses, primarily in North America, resulting from the increased headcount supporting higher revenue levels.

***Research and Development ("R&D")***

| | Three Months Ended September 30, | | | Nine Months Ended September 30, | | |
|---|---|---|---|---|---|---|
| **(Dollars in thousands)** | **2017** | **% Change** | **2016** | **2017** | **% Change** | **2016** |
| Research and development | $ 3,467 | 19% | $ 2,914 | $ 9,393 | 13% | $ 8,335 |
| *As a percentage of total net revenue* | *9%* | | *10%* | *9%* | | *11%* |

R&D expenses consist primarily of personnel expenses, clinical research, regulatory and material costs. R&D expenses increased by $553,000, and represented 9% of total net revenue, in the three months ended September 30, 2017, compared to 10% for the same period in 2016. This increase in expense was due primarily to:

- $336,000 increase in personnel and consulting related expenses due to increased headcount and product development activities; and
- $141,000 increased material spending relating to new product development.

R&D expenses increased by $1.1 million, and represented 9% of total net revenue, in the nine months ended September 30, 2017, compared to 11% for the same period in 2016. This increase in expense was due primarily to:

- $749,000 increase in personnel and consulting related expenses due to increased headcount and product development activities; and
- $136,000 increased material spending relating to new product development.

***General and Administrative ("G&A")***

| | Three Months Ended September 30, | | | Nine Months Ended September 30, | | |
|---|---|---|---|---|---|---|
| **(Dollars in thousands)** | **2017** | **% Change** | **2016** | **2017** | **% Change** | **2016** |
| General and administrative | $ 3,379 | 24% | $ 2,716 | $ 10,143 | 2% | $ 9,933 |
| *As a percentage of total net revenue* | *9%* | | *9%* | *10%* | | *12%* |

G&A expenses consist primarily of personnel expenses, legal fees, accounting, audit and tax consulting fees, and other general and administrative expenses. G&A expenses increased by $663,000 and represented 9% of total net revenue in both the three months ended September 30, 2017 and 2016. The increase in G&A expenses was due primarily to:

- $595,000 increase in personnel related expenses due to increased headcount; and
- $112,000 increased consulting service fees; partially offset by
- $146,000 reduction in legal fees.

G&A expenses increased by $210,000 and represented 10% of total net revenue in the nine months ended September 30, 2017, compared to 12% in the same period in 2016, due primarily to:

- $720,000 increase in personnel related expenses due primarily to increased headcount;
- $471,000 increased consulting service fees; and
- $155,000 increased credit card fees as a result of increased North America system revenue; partially offset by
- $1.2 million one-time litigation settlement expense and related legal fees associated with a matter settled in the second quarter of 2016, not recurring in 2017.

***Lease Termination Income***

In July 2017, we agreed to terminate the building lease for a new facility in Fremont, California, which was entered into in May 2017. In conjunction with this lease termination, we received a lump sum termination payment of $4.0 million from the landlord.

***Interest and Other Income, Net***

Interest and other income (net), consists of the following:

| | Three Months Ended September 30, | | | Nine Months Ended September 30, | | |
|---|---|---|---|---|---|---|
| **(Dollars in thousands)** | **2017** | **% Change** | **2016** | **2017** | **% Change** | **2016** |
| Interest income | $ 145 | 81% | $ 80 | $ 388 | 65% | $ 235 |
| Other income (expense), net | 52 | (40)% | 86 | 358 | 23% | 292 |
| Total interest and other income, net | $ 197 | 19% | $ 166 | $ 746 | 42% | $ 527 |

Interest and other income, net, increased $31,000 in the three months ended September 30, 2017, compared to the same period in 2016. This was due primarily to an increase in interest income from our marketable investments resulting from higher investment balances as well as higher rates of return, partially offset by a reduction in net foreign exchange gains.

Interest and other income (net) increased $219,000 in the nine months ended September 30, 2017, compared to the same period in 2016. This was due primarily to an increase in interest income from our marketable investments resulting from higher investment balance as well as higher rates of return, and increase in vendor discounts for early payments, partially offset by higher interest payments for leased vehicles.

***Provision for Income Taxes***

| | Three Months Ended September 30, | | | Nine Months Ended September 30, | | |
|---|---|---|---|---|---|---|
| **(Dollars in thousands)** | **2017** | **% Change** | **2016** | **2017** | **% Change** | **2016** |
| Income (loss) before income taxes | $ 6,413 | 276% | $ 1,705 | $ 7,279 | 579% | $ (1,521) |
| Provision for income taxes | 225 | 269% | 61 | 166 | 44% | 115 |

For the three months ended September 30, 2017, our income tax expense was $225,000, compared to $61,000 in the same period in 2016. For the nine months ended September 30, 2017, our income tax expense was $166,000, compared to $115,000 in the same period in 2016.

In the three and nine months ended September 30, 2017, we calculated the provision for income taxes for interim reporting periods by applying an estimate of the "annual effective tax rate" for the full fiscal year to ordinary income. The result related primarily to U.S. alternative minimum taxes as we are able to utilize our net operating losses brought forward. In addition, we recorded discretely the net tax benefit of excess equity compensation costs (“windfalls”) of approximately $50,000 and $160,000 in the three and nine months ended September 30, 2017, respectively.

For our income tax provision in the three and nine months ended September 30, 2016, the tax expense was primarily related to income taxes of our non-U.S. operations as our U.S. operations were in a loss position and we had a 100% valuation allowance against them. We did not record a year-to-date tax benefit associated with the projected 2016 U.S. tax expense due to historical losses and uncertainties related to the projected income.

Due to the uncertainty regarding the timing and extent of our future profitability, we continue to record a full valuation allowance to offset our U.S. deferred tax assets, which primarily represent future income tax benefits associated with our operating losses because we do not currently believe that the positive evidence outweighs the negative evidence. In the near future, if we conclude that sufficient positive evidence (including our estimate of future taxable income) exists to support a reversal of all or a portion of the valuation allowance, we expect that a significant portion of any release of the valuation allowance will be recorded as an income tax benefit at the time of release, which will have a material impact on our financial statements. In addition, as and when we discontinue recording a valuation allowance against our deferred tax assets, we expect that our income tax expense recorded in future quarters will also be significantly higher than it has been since fiscal year 2009, when we recorded a valuation allowance for our U.S. deferred tax assets.

**Liquidity and Capital Resources**

Liquidity is the measurement of our ability to meet potential cash requirements, fund the planned expansion of our operations and acquire businesses. Our sources of cash include operating activities, stock option exercises, ESPP contributions, and the liquidation of marketable investments. We actively manage our cash usage and investment of liquid cash to ensure the maintenance of sufficient funds to meet our daily needs. The majority of our cash and investments are held in U.S. banks and our foreign subsidiaries maintain a limited amount of cash in their local banks to cover their short-term operating expenses.

***Cash, Cash Equivalents and Marketable Investments***

The following table summarizes our cash, cash equivalents and marketable investments:

| (Dollars in thousands) | September 30, 2017 | December 31, 2016 | Change |
|---|---|---|---|
| Cash and cash equivalents | $ 14,784 | $ 13,775 | $ 1,009 |
| Marketable investments | 35,692 | 40,299 | (4,607) |
| Total | $ 50,476 | $ 54,074 | $ (3,598) |

***Cash Flows***

| (Dollars in thousands) | Nine Months Ended September 30, 2017 | 2016 |
|---|---|---|
| Net cash flow provided by (used in): | | |
| Operating activities | $ 7,605 | $ (2,749) |
| Investing activities | 4,220 | 2,050 |
| Financing activities | (10,816) | 1,106 |
| Net increase (decrease) in cash and cash equivalents | $ 1,009 | $ 407 |

***Cash Flows from Operating Activities***

Net cash generated from operating activities in the nine months ended September 30, 2017 was $7.6 million, due primarily to:

- $11.4 million generated by net income of $7.1 million, which included a non-recurring $4.0 million of lease termination income, and was further increased by non-cash related items of $3.6 million of stock-based compensation expense and $750,000 in depreciation and amortization expenses;
- $4.8 million of increased cash due to an increase in accrued liabilities as a result of higher personnel and warranty costs;
- $3.2 million of increased cash due to an increase in accounts payable as a result of increased material purchases to support higher revenue levels;
- $652,000 generated from an increase in deferred revenue; partially offset by
- $8.8 million used to increase inventories in support of a greater volume of product sales;
- $3.0 million used as a result of increased accounts receivables resulting from the higher revenue; and
- $633,000 used to increase other assets and pre-paid expenses.

Net cash used in operating activities in the nine months ended September 30, 2016 was $2.7 million, which was due primarily to:

- $1.7 million generated by a net loss of $1.6 million, offset by non-cash related items of $2.7 million stock-based compensation expense and $733,000 in depreciation and amortization expenses;
- $1.3 million generated from an increase in accounts payable primarily as a result of higher inventory purchases for the increased volume of business;
- $886,000 generated from an increase in accrued liabilities primarily related to higher personnel expenses; partially offset by

- $4.4 million used to increase inventory;
- $1.2 million used in deferred revenue resulting primarily from the amortization of deferred service contract revenue; and
- $690,000 used to increase other current assets and prepaid expenses primarily related to insurance premiums and future marketing tradeshows.

***Cash Flows from Investing Activities***

We generated net cash of $4.2 million in our investing activities in the nine months ended September 30, 2017, which was attributable primarily to:

- $48.8 million in net proceeds from the sales and maturities of marketable investments; partially offset by
- $44.2 million of cash used to purchase marketable investments; and
- $443,000 of cash used to purchase property, equipment and software.

We generated net cash of $2.1 million in our investing activities in the nine months ended September 30, 2016, which was attributable primarily to:

- $26.3 million in net proceeds from the sales and maturities of marketable investments; partially offset by
- $23.9 million of cash used to purchase marketable investments; and
- $311,000 of cash used to purchase property, equipment and software.

***Cash Flows from Financing Activities***

Net cash used in financing activities was $10.8 million in the nine months ended September 30, 2017, which was primarily due to:

- $13.8 million used to repurchase common stock;
- $1.3 million of cash used for taxes paid related to net share settlement of equity awards;
- $274,000 used to pay down our capital lease obligations; partially offset by
- $4.6 million of cash generated from the issuance of common stock due to employees exercising their stock options and purchasing stock through the ESPP program.

Net cash provided by financing activities was $1.1 million in the nine months ended September 30, 2016, which was primarily due to:

- proceeds of $6.2 million from the issuance of common stock due to employees exercising their stock options and purchasing stock through the ESPP program; partially offset by
- repurchase of common stock for $4.9 million; and
- payments for capital lease obligations of $218,000.

***Adequacy of Cash Resources to Meet Future Needs***

We had cash, cash equivalents, and investments of $50.5 million as of September 30, 2017. For the nine months ended September 30, 2017, we financed our operations and stock repurchases through cash generated by our operating activities, sales and maturities of marketable investments and from the sale of stock due to employees exercising their stock options and purchasing stock through the ESPP program.

As of September 30, 2017, we had $21.4 million remaining under our Board approved Stock Repurchase Program. We believe the existing capital resources, including cash, cash equivalents and investments of $50.5 million, are sufficient to meet our operating and capital requirements for the next several years, and enable us to repurchase stock pursuant to our Stock Repurchase Program.

In July 2017, we agreed to terminate the building lease for a new facility in Fremont, California, entered into in May 2017. In conjunction with this lease termination, we received a lump sum termination payment of $4.0 million from the landlord. Except for the foregoing, cash used to fund our operating activities in certain historical quarters, purchase fixed assets and repurchase our common stock, we are unaware of any other known trends or any known demands, commitments, events or uncertainties, including collectability of our accounts receivable, that will result in, or that are reasonably likely to result in, liquidity increasing or decreasing in any material way.

***Commitments and Contingencies***

*Contractual Obligations*

The following are our contractual obligations, consisting of future minimum lease commitments related to facility leases as of September 30, 2017:

| | Payments Due by Period ($'000's) | | | | |
|---|---|---|---|---|---|
| **Contractual Obligations** | Total | Less Than 1 Year | 1-3 Years | 3-5 Years | More Than 5 Years |
| Operating leases | 13,774 | 2,446 | $ 5,420 | $ 5,070 | $ 838 |

In addition to the above facility leases, we also routinely lease automobiles for certain sales and field service employees under operating leases for which the remaining committed lease payments are not material.

Except as set forth above, there have been no material changes to our commitments and contingencies from those disclosed in our 2016 Form 10-K.

## ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

There have been no material changes to the Company's market risk during the nine months ended September 30, 2017. For a discussion of the Company's exposure to market risk, refer to the Company's market risk disclosures set forth in Part II, Item 7A, "Quantitative and Qualitative Disclosures About Market Risk" of the 2016 Form 10-K.

## ITEM 4. CONTROLS AND PROCEDURES

***Evaluation of Disclosure Controls and Procedures***

Attached as exhibits to this Quarterly Report are certifications of our Chief Executive Officer ("CEO") and consultant Chief Financial Officer ("CFO"), which are required in accordance with Rule 13a-14 of the Securities Exchange Act of 1934, as amended ("Exchange Act"). This Controls and Procedures section includes the information concerning the controls evaluation referred to in the certifications, and it should be read in conjunction with the certifications for a more complete understanding of the topics presented.

We conducted an evaluation of the effectiveness of the design and operation of its disclosure controls and procedures (as defined in the Rules 13a-15(e) and 15d-15(e) under the Exchange Act) ("Disclosure Controls") as of the end of the period covered by this Report required by Exchange Act Rules 13a-15(b) or 15d-15(b). The controls evaluation was conducted under the supervision and with the participation of our management, including the CEO and CFO. Based on this evaluation, the CEO and CFO have concluded that as of the end of the period covered by this report the disclosure controls and procedures were effective at a reasonable assurance level.

***Definition of Disclosure Controls***

Disclosure Controls are controls and procedures designed to reasonably assure that information required to be disclosed in our reports filed under the Exchange Act, such as this Report, is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms. Disclosure Controls are also designed to reasonably assure that such information is accumulated and communicated to our management, including the CEO and CFO, as appropriate to allow timely decisions regarding required disclosure. Our Disclosure Controls include components of internal control over financial reporting, which consists of control processes designed to provide reasonable assurance regarding the reliability of its financial reporting and the preparation of financial statements in accordance with generally accepted accounting principles in the U.S. To the extent that components of our internal control over financial reporting are included within Disclosure Controls, they are included in the scope of our annual controls evaluation.

***Limitations on the Effectiveness of Controls***

Our management, including the CEO and CFO, does not expect that our disclosure controls or internal control over financial reporting will prevent all error and all fraud. A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the control system's objectives will be met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, have been detected. These inherent limitations include the realities that judgments in decision making can be faulty and that breakdowns can occur because of simple error or mistake. Controls can also be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the controls. The design of any system of controls is based in part on certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Over time, controls may become inadequate because of changes in conditions or deterioration in the degree of compliance with policies or procedures. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

***Changes in Internal Control over Financial Reporting***

There were no changes in our internal control over financial reporting that occurred during the most recent fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## PART II. OTHER INFORMATION

### ITEM 1. LEGAL PROCEEDINGS

We are named from time to time as a party to product liability and contractual lawsuits in the normal course of business. We routinely assess the likelihood of any adverse judgments or outcomes related to legal matters and claims, as well as ranges of probable losses. A determination of the amount of the reserves required, if any, for these contingencies is made after analysis of each known issue, historical experience, whether it is more likely than not that we shall incur a loss, and whether the loss is estimable. We are not currently a party to any material legal proceedings.

### ITEM 1A. RISK FACTORS

Our business faces many risks. Any of the risks referenced in this Form 10-Q or our other SEC filings could have a material impact on our business and consolidated financial position or results of operations. Additional risks and uncertainties not presently known to us or that we currently believe to be immaterial may also impair our business operations.

For detailed discussion of risk factors that should be understood by any investor contemplating investment in our stock, please refer to "Part I. Item 1A. Risk Factors" in our 2016 Form 10-K and elsewhere in this Form 10-Q.

***Our ability to reverse all or any part of the valuation allowance against our U.S. deferred tax assets is uncertain.***

We have recorded a full valuation allowance against our U.S. deferred tax assets due to the uncertainty of the ultimate realization of the future benefits of those assets. To the extent we determine that all, or a portion of, our valuation allowance is no longer necessary, we will reverse the valuation allowance and recognize an income tax benefit in the reported financial statement earnings in that period. Once the valuation allowance is eliminated or reduced, its reversal will no longer be available to offset our current financial statement tax provision in future periods. We believe that there is a possibility that, within the next 3-12 months, sufficient positive evidence may become available to allow us to reach a conclusion that a significant portion of the valuation allowance will no longer be needed. Release of the valuation allowance would result in the recognition of certain deferred tax assets and a decrease to income tax expense for the period the release is recorded. However, the exact timing and amount of the valuation allowance release are subject to change on the basis of the level of profitability that we are able to actually achieve. Due to significant estimates used to determine the valuation allowance and the potential for changes in facts and circumstances, the Company cannot guarantee that it will be able to reverse all or any of the valuation allowance or that the Company will not need to increase its deferred tax asset valuation allowance in the future.

### ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

The following table summarizes the activity related to stock repurchases for the three months ended September 30, 2017 **(in thousands except per share data)**:

| Period | Total Number of Shares Purchased | Average Price Paid per Share | Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs | Approximate Dollar Value of Shares That May Yet Be Purchased Under the Plans or Program |
|---|---|---|---|---|
| July 1-31, 2017 | — | — | — | 28,110 |
| August 1-31, 2017 | 109 | 34.71 | 109 | 24,340 |
| September 1-30, 2017 | 76 | 38.99 | 76 | 21,380 |
| July 1, 2017 - September 30, 2017 | 185 | $ 36.47 | 185 | $ 21,380 |

As of December 31, 2016, we had $5.1 million available in our Stock Repurchase Program. On February 13, 2017 and July 28, 2017, our Board of Directors approved an incremental $5 million and $25 million, respectively, to be added to the Stock Repurchase Program.

In the three months ended September 30, 2017, we repurchased 184,536 shares for approximately $6.7 million, or $36.47 per share, and retired and returned them to an authorized but unissued status. As of September 30, 2017, $21.4 million remained available for future repurchases of our stock.

**ITEM 6. EXHIBITS**

| Exhibit No. | Description |
|---|---|
| 3.4(1) | Bylaws of the Company. |
| 3.5(5) | Second Amended and Restated Certificate of Incorporation of the Company (as filed with the state of Delaware). |
| 4.1(2) | Specimen Common Stock certificate of the Company. |
| 10.26(3) | Lease termination agreement relating to 6530 Paseo Padre Parkway Fremont, California, dated July 6, 2017 by and between the Company and SI 28, LLC. |
| 10.27(4) | Second Amendment to Brisbane Technology Park Lease dated July 6, 2017 by and between the Company and BMR-BAYSHORE BOULEVARD LP. |
| 10.28(5) | Transition Agreement dated July 12, 2017 by and between the Company and Ronald J. Santilli. |
| 10.29(5) | Consulting Agreement dated July 12, 2017 by and between the Company and Sandra A. Gardiner |
| 31.1 | Certification of the Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. |
| 31.2 | Certification of the Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. |
| 32.1 | Certification of the Chief Executive Officer and the Chief Financial Officer pursuant to 18 U.S.C Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. |
| 101.ins | XBRL Instance Document |
| 101.sch | XBRL Taxonomy Extension Schema Document |
| 101.cal | XBRL Taxonomy Extension Calculation Linkbase Document |
| 101.def | XBRL Taxonomy Extension Definition Linkbase Document |
| 101.lab | XBRL Taxonomy Extension Label Linkbase Document |
| 101.pre | XBRL Taxonomy Extension Presentation Linkbase Document |

(1) *Incorporated by reference from our Current Report on Form 8-K filed on January 8, 2015.*
(2) *Incorporated by reference from our Annual Report on Form 10-K filed with the SEC on March 25, 2005.*
(3) *Filed as Exhibit 10.26 to the Company's Quarterly Report on Form 10-Q filed with the SEC on August 7, 2017, and incorporated by reference.*
(4) *Filed as Exhibit 10.27 to the Company's Quarterly Report on Form 10-Q filed with the SEC on August 7, 2017, and incorporated by reference.*
(5) *Filed herewith.*

**SIGNATURE**

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, in the city of Brisbane, State of California, on the 7th day of November, 2017.

**CUTERA, INC.**

*/S/ SANDRA A. GARDINER*

**Sandra A. Gardiner**
**Consultant Chief Financial Officer**
**(Principal Financial and Accounting Officer)**

**Exhibit 3.5**

**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION**

**OF**

**CUTERA, INC.**

***(as adopted by the board of directors on April 13, 2017***

***and approved by stockholders on June 14, 2017)***

Cutera, Inc., a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

A. The name of the corporation is Cutera, Inc. The original Certificate of Incorporation of the corporation was filed with the Delaware Secretary of State on August 10, 1998 under the name of Acme Medical, Inc.

B. Pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware, this Amended and Restated Certificate of Incorporation restates and amends the provisions of the Certificate of Incorporation of this corporation.

C. The text of the Certificate of Incorporation is hereby amended and restated in its entirety to read as follows:

ARTICLE I

The name of the corporation is Cutera, Inc. (the "Corporation").

ARTICLE II

The address of the Corporation's registered office in the State of Delaware is 1209 Orange Street, City of Wilmington, County of New Castle, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

ARTICLE III

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

ARTICLE IV

The Corporation is authorized to issue two classes of shares of stock to be designated, respectively, Common Stock, $0.001 par value, and Preferred Stock, $0.001 par value. The total number of shares that the Corporation is authorized to issue is 55,000,000 shares. The number of shares of Common Stock authorized is 50,000,000. The number of shares of Preferred Stock authorized is 5,000,000.

The Preferred Stock may be issued from time to time in one or more series pursuant to a resolution or resolutions providing for such issue duly adopted by the Board of Directors (authority to do so being hereby expressly vested in the board). The Board of Directors is further authorized to determine or alter the rights, preferences, privileges and restrictions granted to or imposed upon any wholly unissued series of Preferred Stock and to fix the number of shares of any series of Preferred Stock and the designation of any such series of Preferred Stock. The Board of Directors, within the limits and restrictions stated in any resolution or resolutions of the Board of Directors originally fixing the number of shares constituting any series, may increase or decrease (but not below the number of shares in any such series then outstanding) the number of shares of any series subsequent to the issue of shares of that series.

The authority of the Board of Directors with respect to each such class or series shall include, without limitation of the foregoing, the right to determine and fix:

(a) the distinctive designation of such class or series and the number of shares to constitute such class or series;

(b) the rate at which dividends on the shares of such class or series shall be declared and paid, or set aside for payment, whether dividends at the rate so determined shall be cumulative or accruing, and whether the shares of such class or series shall be entitled to any participating or other dividends in addition to dividends at the rate so determined, and if so, on what terms;

(c) the right or obligation, if any, of the Corporation to redeem shares of the particular class or series of Preferred Stock and, if redeemable, the price, terms and manner of such redemption;

(d) the special and relative rights and preferences, if any, and the amount or amounts per share, which the shares of such class or series of Preferred Stock shall be entitled to receive upon any voluntary or involuntary liquidation, dissolution or winding up of the Corporation;

(e) the terms and conditions, if any, upon which shares of such class or series shall be convertible into, or exchangeable for, shares of capital stock of any other class or series, including the price or prices or the rate or rates of conversion or exchange and the terms of adjustment, if any;

(f) the obligation, if any, of the Corporation to retire, redeem or purchase shares of such class or series pursuant to a sinking fund or fund of a similar nature or otherwise, and the terms and conditions of such obligation;

(g) voting rights, if any, on the issuance of additional shares of such class or series or any shares of any other class or series of Preferred Stock;

(h) limitations, if any, on the issuance of additional shares of such class or series or any shares of any other class or series of Preferred Stock; and

(i) such other preferences, powers, qualifications, special or relative rights and privileges thereof as the Board of Directors of the Corporation, acting in accordance with this Amended and Restated Certificate of Incorporation, may deem advisable and are not inconsistent with law and the provisions of this Amended and Restated Certificate of Incorporation.

ARTICLE V

The Corporation reserves the right to amend, alter, change, or repeal any provision contained in this Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon the stockholders herein are granted subject to this right.

ARTICLE VI

The Corporation is to have perpetual existence.

ARTICLE VII

1 Limitation of Liability. To the fullest extent permitted by the General Corporation Law of the State of Delaware as the same exists or as may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director.

2 Indemnification. The Corporation may indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that such person or his or her testator or intestate is or was a director, officer or employee of the Corporation, or any predecessor of the Corporation, or serves or served at any other enterprise as a director, officer or employee at the request of the Corporation or any predecessor to the Corporation.

3 Amendments. Neither any amendment nor repeal of this Article VII, nor the adoption of any provision of the Corporation's Certificate of Incorporation inconsistent with this Article VII, shall eliminate or reduce the effect of this Article VII, in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this Article VII, would accrue or arise, prior to such amendment, repeal, or adoption of an inconsistent provision.

ARTICLE VIII

1 Number of Directors. The number of directors which constitutes the whole Board of Directors of the Corporation shall be designated in the Bylaws of the Corporation. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

Vacancies occurring on the Board of Directors for any reason and newly created directorships resulting from an increase in the authorized number of directors may be filled only by vote of a majority of the remaining members of the Board of Directors, although less than a quorum, at any meeting of the Board of Directors.

2 Election of Directors. Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

ARTICLE IX

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, alter, amend or repeal the Bylaws of the Corporation.

ARTICLE X

No action shall be taken by the stockholders of the Corporation except at an annual or special meeting of the stockholders called in accordance with the Bylaws and no action shall be taken by the stockholders by written consent. The affirmative vote of sixty-six and two-thirds percent (66 2/3%) of the then outstanding voting securities of the Corporation, voting together as a single class, shall be required for the amendment, repeal or modification of the provisions of Article VIII or Article X of this Amended and Restated Certificate of Incorporation or Sections 2.3 (Special Meeting), 2.4 (Advance Notice Procedures; Notice of Stockholders' Meetings) or 2.9 (Voting) of the Corporation's Bylaws.

ARTICLE XI

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the Corporation may be kept (subject to any provision contained in the statutes) outside of the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

D. This Amended and Restated Certificate of Incorporation has been duly adopted by the Board of Directors of the Corporation in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware, as amended.

E. This Amended and Restated Certificate of Incorporation has been duly approved by the written consent of the stockholders of the corporation in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware, as amended.

In witness whereof, the Corporation has caused this Certificate to be signed by James Reinstein, its President and Chief Executive Officer, this 13th day of April, 2017.

*/s/ James Reinstein*
James Reinstein, President and
Chief Executive Officer

**Exhibit 10.28**

CUTERA™

SAN FRANCISCO HEADQUARTERS
3240 Bayshore Boulevard, Brisbane, CA 94005
Phone: 415-657-5500 | Fax: 415-330-2444 | www.cutera.com

*Via Hand Delivery*

April 17, 2017

Ron Santilli

Dear Ron:

Since you have informed the Company of your desire to leave to pursue other opportunities, and in exchange for signing a separation agreement containing a full release of claims, non-compete and non-solicitation provisions, the Company is willing to offer the following plan:

- You work a full-time schedule until Cutera finds a successor CFO and the successor begins employment with the Company. The tentative work schedule, subject to special work requirements, is to work in the office Tuesday through Thursday, and work from home on Monday and Friday.
- When your successor begins employment he/she will fill your role as CFO and Section 16 Officer in the Company.
- You will be paid full-time salary for one month following the start of the new CFO and will receive full benefits and full vesting for this month. Your work schedule during this month will be to transition duties to the new CFO.
- You will be paid two-thirds (2/3) salary for the second month following the start of the new CFO. You will receive full benefits and full vesting for this month. Your work schedule during this month will be to transition duties to the new CFO.
- You will be paid one-third (1/3) salary for the third month following the start of the new CFO. You will receive full benefits and full vesting for this month. Your work schedule during this month will be to transition duties to the new CFO.
- At the end of the third month, but no earlier than August 16, 2017, your employment will terminate with Cutera. Benefits coverage will cease on August 31, 2017, and vesting will cease as of August 16, 2017. The company will transfer your laptop computer and cellphone to you personally on your termination date.
- You will become eligible for COBRA effective the first of the month following your termination date at regular COBRA rates.

The Company expects that you will continue to honor the Proprietary Information Agreement that you signed when you joined the Company to include the non-solicitation clauses contained therein.

Sincerely,

/s/ James Reinstein
James Reinstein
Chief Executive Officer

Accepted by:

/s/ Ronald J. Santilli
Ron Santilli.
Date April 17, 2017

# CHIEF FINANCIAL OFFICER CONSULTING AGREEMENT

This Agreement ("Agreement") is effective as of the 12th day of July, 2017 (the "Effective Date"), between **Cutera, Inc.**, with an address at 3240 Bayshore Blvd., Brisbane, CA 94005 ("Company") and **Sandra A. Gardiner** with an address at 4121 Grant Court, Pleasanton, CA 94566 ("Consultant").

**WHEREAS,** the Company desires to retain Consultant to act as the Company's principal accounting and financial officer (as defined in the rules under the Securities Exchange Act of 1934), and Consultant desires to serve in that capacity; and

**WHEREAS,** in that role Consultant will serve as the Company's Consulting Chief Financial Officer and will perform all functions related thereto, including but not limited to overseeing the Company's accounting and finance organization, preparing the Company's financial statements and certifying the Company's reports on Form 10-Q and 10-K, communicating with shareholders and assisting in any financing or other strategic transactions (collectively, the "Services").

**NOW, THEREFORE,** in consideration of the mutual promises and obligations herein, and other valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

## AGREEMENT

1. **Performance of Services.** During the term of this Agreement, Consultant will provide the Services as the Company's Consulting Chief Financial Officer, and will report directly to James A. Reinstein, the Company's Chief Executive Officer ("CEO"). Consultant agrees to provide, and the Company will guarantee the payment of, the Services for a minimum of thirty (30) hours per week from the Effective Date through January 12, 2018, working at least three (3) days a week at the Company's headquarters in Brisbane, California. In 2018, Consultant agrees to be available to assist in the preparation and completion, and if appropriate, certification of the Company's 2017 financial audit, the Company's annual report on Form 10-K, and the Company's proxy statement. Consultant's exact schedule and the days on which she works in 2017 and 2018 will be mutually agreed to by her and the CEO. Consultant's Service will begin on Effective Date.

2. **Term & Termination.** This Agreement commences on the Effective Date and continues through January 12, 2018 (the "Term"), unless terminated or extended as set forth below:

   a. Termination for Convenience. Either party may terminate this Agreement at any time for any or for no reason by giving thirty (30) days' written notice of termination to the other party ("For Convenience").

b. Termination for Cause.

i. The Company may immediately terminate the Agreement for Cause upon written notice of termination to Consultant, with the particular Cause being specified in such notice. With respect to a termination by the Company, "Cause" means any of the following in the Company's judgment: (i) Consultant's act or acts amounting to gross negligence or willful misconduct to the detriment of the Company; (ii) Consultant's fraud or embezzlement of funds or property, or misappropriation involving the Company's assets, business, customers, suppliers, or employees; (iii) Consultant's failure to observe or perform any covenant, condition or provision of this Agreement; (iv) Consultant's willful failure to comply with a lawful directive of the Company's CEO; (v) Consultant's failure to comply with any of the Company's written policies and procedures, including, but not limited to, the Company's Corporate Code of Ethics and Insider Trading Policy; or (vi) Consultant's conviction of, or plea of guilty or nolo contendere to a felony.

ii. Consultant may immediately terminate this agreement for Cause upon written notice of termination to the Company. With respect to a termination by Consultant, "Cause" means any of the following in Consultant's judgment: (a) any act or omission by the Company that constitutes a material breach of this Agreement, or (b) any request by the Company to act, attest, certify, or otherwise perform any function in violation of any local, state, or federal statute or regulation, or any other recognized rules related to her performance as the CFO, and remains uncured two (2) weeks after Consultant provides written notice of the alleged breach or request to the Company's General Counsel.

c. Extension. Upon the mutual agreement of Consultant and the Company's CEO, the term of this Agreement may be extended beyond January 12, 2018. In the event Consultant continues at the CEO's request to perform Services to the Company beyond January 12, 2018, the Agreement will be extended for successive three (3) month periods. Any agreed extension will be considered part of the Term.

Any termination of this Agreement discontinues Company's payment obligations, other than (i) payment of the Hourly Fee or Travel Hourly Fee for Services satisfactorily rendered prior to the date of termination, which will be made within fifteen (15) days after termination and submission of an acceptable invoice from Consultant, (ii) any un-submitted, reimbursable expenses incurred in the course of performing the Services, and (iii) payment of the Termination Fee under the limited circumstances described in Section 4.d. below. Upon termination, Consultant agrees to promptly return to the Company all copies of any Company data, records, or material of whatever nature or kind, including all materials incorporating any Confidential Company Information (defined below).

3. **Status as an Independent Consultant.** Consultant will render all Services solely in her capacity as an independent contractor. Consultant is not an employee, partner or principal of Company. Consultant will have no authority to assume or create any obligations on behalf of Company. Consultant will assume all risks of loss incurred in performing services hereunder. Consultant will be solely responsible for paying all taxes when due incurred as a result of compensation and/or payments made by Company to Consultant in connection with the Services. Consultant will at all times exercise full control of the Services. Consultant is solely responsible for his or her own acts. Consultant is not eligible to participate in any benefits or programs sponsored or financed by the Company for its employees, including, but not limited to, any health insurance, workers' compensation, retirement, vacation, sick, or holiday programs and benefits.

4. **Compensation.** In consideration for the full performance of Consultant's obligations and duties hereunder, during the term of this Agreement, the Company agrees to pay Consultant as follows:

   a. Four hundred ten dollars ($410.00) for each hour Consultant provides Services (the "Hourly Fee"), to be paid within fifteen (15) days after submission of an acceptable invoice from Consultant.

      i. Consultant must provide an invoice detailing the number of hours worked during a bi-monthly period, as well as a general description of the nature of the Services performed during the period. Consultant agrees to provide these invoices twice monthly to the CEO within five (5) business days following the 15th day of each month and the last day of each month during the Term ("Invoice Period"). The parties agree that Consultant's ordinary commute to Company headquarters is not billable as time spent performing the Services.

      ii. To the extent Consultant exceeds fifty (50) hours in a standard work week, Consultant agrees to notify the Company's CEO as soon as possible.

   b. For time spent travelling on Company business (described as the time Consultant leaves her house or the office until Consultant arrives at her destination by private vehicle or common carrier), Consultant's hourly fee will be two hundred five dollars ($205.00) (the "Travel Hourly Fee"), it being understood and agreed that Consultant's ordinary commute to the Company headquarters is not considered business travel for purposes of this section.

   c. Reimbursement of all actual, reasonable, and customary business expenses incurred during the Term and any extension by Consultant in performing services for the Company, including all reasonable expenses of travel on business; provided that, such expenses are incurred and accounted for in accordance with policies and procedures established by the Company.

   d. Upon expiration of the Term or termination of this Agreement for any reason other than:

      i. by the Company for Cause;

      ii. by the Consultant For Convenience before she has performed Services for at least ninety (90) days; or

      iii. by mutual agreement of the Parties because Consultant becomes a full-time employee of the Company in a mutually agreeable position;

   the Company agrees to pay Consultant an amount ("Termination Fee") equal to the Hourly Fee times average number of monthly hours worked by Consultant during the Term multiplied by three (3). In addition, in the event that this Agreement is terminated prior to expiration of the Term by the Company for any reason other than Cause, the Termination Fee also will include an amount equal to the product of (x) the Hourly Fee, multiplied by (y) the average number of monthly hours worked (calculated in accordance with Section 4.d. below), multiplied by (z) the quotient of the total number of calendar days remaining in the Term divided by 30.

The average number of monthly hours worked for purposes of the Termination Fee is calculated by the number of total hours worked in all completed Invoice Periods divided by the number of Invoice Periods and multiplied by two (2) as set forth in the following equation:

***[Total Hours Worked in All Completed Invoice Periods ÷ Number of Completed Invoice Periods] x 2***

If required, payment of the Termination Fee will be made within fifteen (15) days of Consultant's last day performing the Services.

**5. <u>Confidentiality.</u>**

a. Consultant has obtained or may now or hereafter obtain from Company certain of Company's confidential information, including such information relating to customer lists, employee lists and compensation information, product development plans and manufacturing processes (collectively, "Confidential Information"). Consultant acknowledges that Company is the owner of all such Confidential Information, and all intellectual property rights therein or associated therewith.
b. Consultant agrees that for three years following disclosure to it of any of Company's Confidential Information, Consultant will not, without first obtaining Company's written consent, (i) disclose such Confidential Information or any portion to any person or entity, or (ii) make any use of such Confidential Information other than in connection with his or her performance of the Services.
c. Consultant agrees that all Confidential Information disclosed to Consultant in tangible form is and will remain Company's property, will not be copied by Consultant without Company's prior written consent, and will be returned to Company (along with any copies) immediately upon request therefore or upon the termination of this Agreement, whichever is first to occur.
d. Consultant acknowledges that Company has received and may hereafter receive from third parties their proprietary information subject to a duty on Company's part to maintain the confidentiality of such information and to use it only for certain limited purposes. Consultant agrees that Consultant owes Company and any such third party, during this Agreement and thereafter, a duty to hold all such information in the strictest confidence and not to disclose it or any portion thereof to any person or entity, or make use of such information in any way without Company's and such third party's prior written consent.
e. Consultant agrees that Consultant will not, during the term of this Agreement, improperly use or disclose any proprietary information or trade secrets of any former or current employer or other person or entity with which Consultant has an agreement or duty to keep in confidence information acquired by Consultant, if any, and that Consultant will not bring onto the premises of the Company any unpublished document or proprietary information belonging to such employer, person or entity unless consented to in writing by such employer, person or entity.
f. Consultant acknowledges that a remedy at law for any breach of this Section would not be adequate relief, and agrees that Company will be entitled to injunctive relief in case of any such breach or threatened breach by Consultant.

6. **<u>Non-Solicitation of Employees, Consultants, and Customers</u>.**

a. Non-Solicitation of Employees and Consultants. Consultant recognizes the highly competitive nature of the business of the Company and that Company employees are exposed to Trade Secrets of the Company, which may include Confidential Information regarding its employees and consultants. Accordingly, Consultant may not either directly or indirectly, on his/her own behalf or on behalf of others (i) solicit, induce, recruit, or encourage any of the Company's employees or consultants to leave their employment or consulting relationship with the Company to work for a competitor of the Company, or (ii) attempt to do any of the foregoing. Additionally, for a period of twelve (12) months immediately following the termination of Consultants employment with the Company for any reason, whether for Convenience or For Cause, Consultant may not directly or indirectly, on his/her own behalf or on behalf of others (iii) solicit, induce, recruit, or encourage any of the Company's employees or consultants to leave their employment or consulting relationship with the Company to work for a competitor of the Company, or (iv) attempt to do any of the foregoing.
b. Non-Solicitation of Customers. Consultant recognizes the highly competitive nature of the business of the Company, and acknowledge that Company employees are exposed to Trade Secrets of the Company which may include information regarding its customers and clients. Accordingly, Consultant agrees not use such Trade Secrets to solicit, on his/her own behalf or on behalf of others, business from any person or entity.

7. **<u>Representations and Warranties.</u>**

a. Consultant represents and warrants that she is not subject to any employment agreement or confidentiality agreement that conflicts, or is likely to conflict, with Consultant's obligations to the Company under this Agreement. Consultant further represents and warrants that she will not provide to the Company any proprietary intellectual property of a third party that might subject the Company to a claim of misappropriation of trade secrets.

b. The Company represents and warrants that the Company carries and maintains a D&O insurance policy, which coverage extends to Consultant in her capacity as the Consulting Chief Financial Officer of the Company.

8. **<u>Indemnification</u>**. If Consultant is made a party to or is threatened to be made a party to or is otherwise involved in any action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that Consultant is or was performing the consulting duties of the CFO of the Company, whether the basis of such proceeding is alleged action in her capacity as the CFO or in any other capacity while performing her duties as a Consultant, then Consultant will be indemnified and held harmless by the Company to the fullest extent authorized by the Delaware General Corporate Law, as the same exists or may hereafter be amended, against all expense, liability, and loss (including attorneys' fees, judgments, fines, excise taxes or penalties, and amounts paid in settlement) reasonably incurred or suffered by Consultant in connection therewith; provided, however, that, except with respect to proceedings to enforce her right to indemnification hereunder, the Company agrees to indemnify Consultant in connection with a proceeding (or part thereof) initiated by Consultant only if such proceeding (or part thereof) was authorized by the Company.

9. **<u>Governing Law.</u>** This Agreement will be governed by and construed in accordance with the laws of California (excluding laws and principles relating to the conflict of laws). In any action relating to this Agreement, the prevailing party will be entitled to recover reasonable attorneys' fees and other costs incurred therein, in addition to any other appropriate relief.

10. **No License.** Notwithstanding any other provision, no license, by implication or otherwise, is granted to Consultant under this Agreement or through any disclosure contemplated hereby.

11. **Proprietary Rights.** Consultant will disclose promptly in writing to Company all inventions he or she may conceive of or make in the performance of this Agreement. Consultant hereby assigns and agrees to assign to Company all right, title and interest in and to any and all inventions, designs, works of authorship and related documentation (collectively, "Inventions") that is conceived, developed or reduced to practice by Consultant pursuant to this Agreement, and/or included in the Services. Consultant agrees, at Company's request, to execute all documents that are necessary or desirable to obtain and preserve Company's interests in the Inventions.

12. **Miscellaneous.** Neither this Agreement nor any duties or obligations hereunder may be assigned by Consultant without the prior written consent of Company. If any term or provision herein is held invalid or unenforceable to any extent, the remainder of this Agreement will not be affected and each other term and provision will be valid to the fullest extent permitted by law. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements, representations and understandings. No supplement, modification or amendment of this Agreement will be binding unless executed in writing by both parties. No waiver of any of the provisions herein will be deemed or will constitute a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver. No waiver is binding unless executed in writing by the party to be charged. This Agreement is binding on and inures to the benefit of the parties and their respective heirs, representatives, successors and permitted assigns.

This Agreement may be signed in one or more counterparts, each of which is an original, and all of which together will be deemed one instrument.

| | |
|---|---|
| **CUTERA, INC.** | **CONSULTANT:** |
| By: /s/ James A. Reinstein<br>James A. Reinstein<br>President & Chief Executive Officer | By: /s/ Sandra A. Gardiner<br>Sandra A. Gardiner |
| Date: June 27, 2017__________ | Date: June 27, 2017________ |

**EXHIBIT 31.1**

**Certification of Chief Executive Officer**
**Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, James A. Reinstein, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Cutera, 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 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; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
    a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
    b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 7, 2017

*/S/ JAMES A. REINSTEIN*

**James A. Reinstein**
**President, Chief Executive Officer**
**(Principal Executive Officer)**

**EXHIBIT 31.2**

**Certification of Chief Financial Officer**
**Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, Sandra A. Gardiner, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Cutera, 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 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; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditor and of the audit committee of registrant's board of directors (or persons performing the equivalent functions):
   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 7, 2017

*/S/ SANDRA A. GARDINER*

**Sandra A. Gardiner**
**Consultant Chief Financial Officer**
**(Principal Financial and Accounting Officer)**

**Exhibit 32.1**

**CERTIFICATIONS OF CHIEF EXECUTIVE OFFICER**
**AND CHIEF FINANCIAL OFFICER**
**PURSUANT TO**
**18 U.S.C. SECTION 1350,**
**AS ADOPTED PURSUANT TO**
**SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, James A. Reinstein , certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that;

i. the accompanying Quarterly Report on Form 10-Q of the Company for the quarterly period ended September 30, 2017 (the "Report") fully complies with the requirements of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and
ii. the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 7, 2017

*/S/ JAMES A. REINSTEIN*
**James A. Reinstein**
**President, Chief Executive Officer**
**(Principal Executive Officer)**

I, Sandra A. Gardiner, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that;

i. the accompanying Quarterly Report on Form 10-Q of the Company for the quarterly period ended September 30, 2017 (the "Report") fully complies with the requirements of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and
ii. the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 7, 2017

*/S/ SANDRA A. GARDINER*
**Sandra A. Gardiner**
**Consultant Chief Financial Officer**
**(Principal Financial and Accounting Officer)**

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