

OPEXA THERAPEUTICS, INC.

FORM 10QSB/A

(Amended Quarterly Report of Financial Condition)

Filed 11/30/07 for the Period Ending 09/30/07

Address	2635 TECHNOLOGY FOREST BLVD. THE WOODLANDS, TX 77381
Telephone	(281) 272-9331
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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, DC 20549

**FORM 10-QSB/A
(Amendment No. 1)**

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

For the quarterly period ended September 30, 2007

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

For the transition period from _____ to _____

Commission File Number: 001-33004



Opexa Therapeutics, Inc.

(Exact name of Issuer as specified in its charter)

Texas
(State of Incorporation)

76-0333165
(IRS Employer Identification No.)

2635 North Crescent Ridge Drive
The Woodlands, Texas 77381
(Address of Principal Executive Offices)

(281) 272-9331
Issuer's Telephone Number, Including Area Code

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

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

Number of shares outstanding of the issuer's classes of common equity, as of November 29, 2007: 6,696,784 shares of common stock.

Transitional Small Business Disclosure Format (Check one): Yes ☐ No ☒

OPEXA THERAPEUTICS, INC.
INDEX TO FORM 10-QSB
September 30, 2007

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Explanatory Note

We are amending our Quarterly Report on Form 10-QSB for the for the quarter ending September 30, 2007 in connection with restating our consolidated financial statements for the three months and nine months ended September 30, 2007 and 2006 and for the period January 22, 2003(Inception) to September 30, 2007. The restatement of our financial statements is the result of our determination that the intangible assets associated with the acquisition of Opexa Pharmaceuticals, Inc., the University of Chicago technology license and the Shanghai Institutes for Biological Sciences, Chinese Academy of Sciences of the Peoples Republic of China technology license should have been recorded as acquired in process research and development.

The purpose of this amendment is to restate the accompanying financial statements for the reasons further described in Note 3 to the financial statements included in Item 1 (Financial Information) herein.

PART I

FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS.

OPEXA THERAPEUTICS, INC.
(a development stage company)
BALANCE SHEETS (RESTATED)
(unaudited)

	Restated September 30, 2007	Restated December 31, 2006
Assets		
Current assets:		
Cash and cash equivalents	\$ 5,844,299	\$ 12,019,914
Investment in marketable securities	-	2,952,096
Other current assets	385,717	472,881
Total current assets	6,230,016	15,444,891
Property & equipment, net accumulated depreciation of \$532,585 and \$395,284, respectively	1,355,753	1,361,377
Total assets	<u>\$ 7,585,769</u>	<u>\$ 16,806,268</u>
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	\$ 1,226,879	\$ 868,862
Stock payable	-	112,440
Accrued expenses	791,134	135,069
Note payable	-	1,500,000
Current maturity of loan payable	59,224	14,080
Derivative liability	-	6,656,677
Total current liabilities	2,077,237	9,287,128
Long term liabilities:		
Loan payable	177,339	96,242
Total liabilities	<u>2,254,576</u>	<u>9,383,370</u>
Commitments and contingencies	-	-
Stockholders' equity:		
Convertible preferred stock, no par value, 10,000,000 shares authorized, none issued and outstanding	-	-
Common stock, \$0.50 par value, 100,000,000 shares authorized, 6,696,784 shares issued and outstanding	3,348,351	3,348,351
Additional paid in capital	75,863,587	63,118,180
Deficit accumulated during the development stage	(73,880,745)	(59,043,633)
Total stockholders' equity	<u>5,331,193</u>	<u>7,422,898</u>
Total liabilities and stockholders' equity	<u>\$ 7,585,769</u>	<u>\$ 16,806,268</u>

OPEXA THERAPEUTICS, INC.
(a development stage company)
STATEMENTS OF EXPENSES (RESTATED)
Three and Nine Months ended September 30, 2007 and 2006 and the
Period from January 22, 2003 (Inception) to September 30, 2007
(unaudited)

	Restated Three Months Ended September 30, 2007	Restated Three Months Ended September 30, 2006	Restated Nine Months Ended September 30, 2007	Restated Nine Months Ended September 30, 2006	Restated Inception through September 30, 2007
Research and development	\$ 3,189,256	\$ 2,113,878	\$ 10,148,930	\$ 4,532,240	\$ 50,834,610
General and administrative	842,079	1,430,507	2,557,609	5,676,221	16,764,078
Depreciation	50,446	49,824	149,371	122,469	434,627
Loss on disposal of assets	-	2,015	4,034	2,377	486,343
Operating loss	<u>(4,081,781)</u>	<u>(3,596,224)</u>	<u>(12,859,944)</u>	<u>(10,333,307)</u>	<u>(68,519,658)</u>
Interest income	102,292	259,141	423,086	477,547	1,199,307
Other income	-	-	-	46,450	77,003
Gain on extinguishment of debt	1,612,440	-	1,612,440	-	1,612,440
Gain (loss) on derivative liability	-	2,418,078	-	(860,130)	-
Interest expense	(4,731)	(278)	(10,875)	(891)	(8,249,838)
Net loss	<u><u>\$ (2,371,780)</u></u>	<u><u>\$ (919,283)</u></u>	<u><u>\$ (10,835,293)</u></u>	<u><u>\$ (10,670,331)</u></u>	<u><u>\$ (73,880,745)</u></u>
Basic and diluted loss per share	\$ (0.35)	\$ (0.14)	\$ (1.62)	\$ (2.16)	N/A
Weighted average shares outstanding	6,696,784	6,696,784	6,696,784	4,950,862	N/A

OPEXA THERAPEUTICS, INC.
(a development stage company)
STATEMENTS OF CASH FLOWS (RESTATED)
Nine Months Ended September 30, 2007 and 2006 and the
Period from January 22, 2003 (Inception) to September 30, 2007
(unaudited)

	Restated Nine Months Ended September 30, 2007	Restated Nine Months Ended September 30, 2006	Restated Inception through September 30, 2007
Cash flows from operating activities			
Net loss	\$ (10,835,293)	\$ (10,670,331)	\$ (73,880,745)
Adjustments to reconcile net loss to net cash used in operating activities			
Stock payable for services	-	-	112,440
Stock issued for acquired research and development	-	-	26,286,589
Stock issued for services	-	180,000	1,861,400
Stock issued for debt in excess of principal	-	-	109,070
Amortization of discount on notes payable due to warrants and beneficial conversion feature	-	-	6,313,205
Realized gain on marketable securities	25,912	-	-
Loss on derivative liability	-	860,130	-
(Gain) on extinguishment of debt	(1,612,440)	-	(1,612,440)
Depreciation	149,371	122,469	434,627
Debt financing costs	-	-	365,910
Option and warrant expense	2,086,911	3,649,583	11,390,455
Loss on disposition of fixed assets	4,034	2,377	486,343
Changes in:			
Accounts payable	358,018	381,109	802,580
Marketable securities	2,926,184	-	-
Prepaid expenses	87,164	(387,217)	(380,847)
Accrued expenses	656,065	(37,419)	605,806
Other assets	-	-	(388,210)
Net cash used in operating activities	<u>(6,154,074)</u>	<u>(5,899,299)</u>	<u>(27,493,817)</u>
Cash flows from investing activities			
Purchase of property & equipment	<u>(147,782)</u>	<u>(487,567)</u>	<u>(1,198,836)</u>
Net cash used in investing activities	<u>(147,782)</u>	<u>(487,567)</u>	<u>(1,198,836)</u>
Cash flows from financing activities			
Common stock sold for cash, net of offering costs	-	21,153,520	26,509,412
Proceeds from debt	137,286	-	8,102,199
Repayments on notes payable	<u>(11,045)</u>	<u>-</u>	<u>(74,659)</u>
Net cash provided by financing activities	<u>126,241</u>	<u>21,153,520</u>	<u>34,536,952</u>
Net change in cash and cash equivalents	(6,175,615)	14,766,654	5,844,299
Cash and cash equivalents at beginning of period	12,019,914	2,560,666	-
Cash and cash equivalents at end of period	<u>\$ 5,844,299</u>	<u>\$ 17,327,320</u>	<u>\$ 5,844,299</u>
Cash paid for:			
Income tax	\$ -	\$ -	\$ -
Interest	-	-	429
NON-CASH TRANSACTIONS			
Issuance of common stock to Sportan shareholders	-	-	147,733
Issuance of common stock for accrued interest	-	-	525,513
Conversion of notes payable to common stock	-	-	6,407,980
Conversion of accrued liabilities to common stock	-	-	197,176
Conversion of accounts payable to note payable	-	-	93,364
Discount on convertible notes relating to:			
- warrants	-	-	3,309,790
- beneficial conversion feature	-	-	1,715,973
- stock attached to notes	-	-	1,287,440
Reclassification of derivative liabilities	6,656,677	-	6,656,677

OPEXA THERAPEUTICS, INC.
(a development stage company)
NOTES TO FINANCIAL STATEMENTS
(unaudited)

NOTE 1 – BASIS OF PRESENTATION

The accompanying unaudited interim financial statements of Opexa Therapeutics, Inc., a development stage company, have been prepared in accordance with accounting principles generally accepted in the United States of America and the rules of the Securities and Exchange Commission and should be read in conjunction with the audited financial statements and notes thereto contained in Opexa's latest Annual Report filed with the SEC on Form 10-KSB. In the opinion of management, all adjustments, consisting of normal recurring adjustments, necessary for a fair presentation of financial position and the results of operations for the interim periods presented have been reflected herein. The results of operations for interim periods are not necessarily indicative of the results to be expected for the full year. Notes to the financial statements that would substantially duplicate the disclosure contained in the audited financial statements for the most recent fiscal year as reported in Form 10-KSB, have been omitted.

NOTE 2 - GOING CONCERN

Opexa incurred a net loss of approximately \$10.7 million for the nine months ended September 30, 2007 and has an accumulated deficit of approximately \$73.9 million. Cash balance of \$5.8 million as of September 30, 2007 is not sufficient to fund our operations for the next twelve months with a current burn rate of approximately \$1 million per month. These conditions raise substantial doubt as to Opexa's ability to continue as a going concern. Management will seek to raise additional capital through sales of convertible debt and/or equity. The financial statements do not include any adjustments that might be necessary if Opexa is unable to continue as a going concern.

NOTE 3 – RESTATEMENT OF FINANCIAL STATEMENTS

The Company is restating these financial statements for the three months and nine months ended September 30, 2006 and 2007 and the period January 22, 2003 (Inception) to September 30, 2007.

Following is a description of the restatements:

The Company acquired Opexa Pharmaceuticals in October 2004 and originally accounted for the acquired in process research and development of \$23,991,128 as intangible assets. In November 2007 the Company re-evaluated its accounting for acquired research and development and upon further consideration of Paragraph 11(c) of Statement of Financial Accounting Standards No. 2 (SFAS No. 2) and accounting guidance from Financial Accounting Standards Board Interpretation No. 4 "Applicability of FASB Statement No. 2 to Business Combinations Accounted for by the Purchase Method" (FIN 4), the Company determined that these assets did not have an alternative future use at the date of acquisition. Thus, they had no separate economic value and should be accordingly expensed to research and development in the period acquired.

In February 2004, the Company obtained a license from the University of Chicago for an adult stem cell technology. Costs associated with the acquisition of this license were originally accounted for as an intangible asset. The amounts originally capitalized as intangible assets were \$3,051,706, \$976,497 and \$112,440 for the years ended December 31, 2004, 2005 and 2006 respectively. Upon further consideration of Paragraph 11(c) of SFAS No. 2, the Company determined that these assets had not reached technological feasibility at the date of acquisition and had no alternative future use. Therefore, the intangible asset should have been expensed to in process research and development in the period acquired.

In March 2006, the Company obtained an exclusive worldwide license for the intellectual property rights and research results of an autologous T cell vaccine for rheumatoid arthritis from the Shanghai Institutes for Biological Sciences (SIBS), Chinese Academy of Sciences of the People's Republic of China. The Company made a \$125,000 license payment and accounted for the license as an intangible asset. Upon further consideration of Paragraph 11(c) of SFAS No. 2, the Company determined that this asset had not reached technological feasibility at the date of acquisition and had no alternative future use. Therefore, the intangible asset should have been expensed to in process research and development in the period acquired.

In the Consolidated Statements of Expenses, the effect of the adjustments on operating expenses, loss from operations and net loss for each of the three months and nine months ended September 30, 2006 and 2007 and the period January 22, 2003 (Inception) to September 30, 2007 was as follows:

	Three Months Ended September 30,					
	2007			2006		
	As Reported	Adjustment	As Restated	As Reported	Adjustment	As Restated
Research and development	\$ 3,189,256	\$ ⁽¹⁾	\$ 3,189,256	\$ 2,113,878	\$ ⁽¹⁾	\$ 2,113,878
General and administrative	842,079	-	842,079	1,430,507	-	1,430,507
Depreciation and amortization	463,630	(413,184) ⁽²⁾	50,446	462,098	(412,274) ⁽²⁾	49,824
Loss on impairment of intangible asset	1,139,677	(1,139,677) ⁽³⁾	-	-	⁽³⁾	-
Loss on disposal of assets	-	-	-	2,015	-	2,015
Operating loss	<u>(5,634,642)</u>	<u>1,552,861</u>	<u>(4,081,781)</u>	<u>(4,008,498)</u>	<u>412,274</u>	<u>(3,596,224)</u>
Interest income	102,292	-	102,292	259,141	-	259,141
Other income	-	-	-	-	-	-
Gain on extinguishment of debt	1,612,440	-	1,612,440	-	-	-
Gain (loss) on derivative liability	-	-	-	2,418,078	-	2,418,078
Interest expense	(4,731)	-	(4,731)	(278)	-	(278)
Net loss	<u>\$ (3,924,641)</u>	<u>\$ 1,552,861</u>	<u>\$ (2,371,780)</u>	<u>\$ (1,331,557)</u>	<u>\$ 412,274</u>	<u>\$ (919,283)</u>
Basic and diluted loss per share	<u>\$ (0.59)</u>	<u>\$ 0.23</u>	<u>\$ (0.35)</u>	<u>\$ (0.20)</u>	<u>\$ 0.06</u>	<u>\$ (0.14)</u>

	Nine Months Ended September 30,					
	2007			2006		
	As Reported	Adjustment	As Restated	As Reported	Adjustment	As Restated
Research and development	\$ 10,148,930	\$ ⁽¹⁾	\$ 10,148,930	\$ 4,407,240	\$ 125,000 ⁽¹⁾	\$ 4,532,240
General and administrative	2,557,609	-	2,557,609	5,676,221	-	5,676,221
Depreciation and amortization	1,387,106	(1,237,735) ⁽²⁾	149,371	1,354,873	(1,232,404) ⁽²⁾	122,469
Loss on impairment of intangible asset	1,139,677	(1,139,677) ⁽³⁾	-	-	⁽³⁾	-
Loss on disposal of assets	4,034	-	4,034	2,377	-	2,377
Operating loss	<u>(15,237,356)</u>	<u>2,377,412</u>	<u>(12,859,944)</u>	<u>(11,440,711)</u>	<u>1,107,404</u>	<u>(10,333,307)</u>
Interest income	423,086	-	423,086	477,547	-	477,547
Other income	-	-	-	46,450	-	46,450
Gain on extinguishment of debt	1,612,440	-	1,612,440	-	-	-
Gain (loss) on derivative liability	-	-	-	(860,130)	-	(860,130)
Interest expense	(10,875)	-	(10,875)	(891)	-	(891)
Net loss	<u>\$ (13,212,705)</u>	<u>\$ 2,377,412</u>	<u>\$ (10,835,293)</u>	<u>\$ (11,777,735)</u>	<u>\$ 1,107,404</u>	<u>\$ (10,670,331)</u>
Basic and diluted loss per share	<u>\$ (1.97)</u>	<u>\$ 0.36</u>	<u>\$ (1.62)</u>	<u>\$ (2.38)</u>	<u>\$ 0.22</u>	<u>\$ (2.16)</u>

	January 22, 2003 (Inception) to September 30, 2007		
	As Reported	Adjustment	As Restated
Research and development	\$ 22,577,839	\$ 28,256,771 ⁽¹⁾	\$ 50,834,610
General and administrative	16,764,078	-	16,764,078
Depreciation and amortization	5,205,929	(4,771,302) ⁽²⁾	434,627
Loss on impairment of intangible asset	1,139,677	(1,139,677) ⁽³⁾	-
Loss on disposal of assets	486,343	-	486,343
Operating loss	(46,173,866)	(22,345,792)	(68,519,658)
Interest income	1,199,307	-	1,199,307
Other income	77,003	-	77,003
Gain on extinguishment of debt	1,612,440	-	1,612,440
Gain (loss) on derivative liability	-	-	-
Interest expense	(8,249,838)	-	(8,249,838)
Net loss	<u>\$ (51,534,954)</u>	<u>\$ (22,345,792)</u>	<u>\$ (73,880,745)</u>
Basic and diluted loss per share	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>

- (1) Adjustment for capitalizing acquired research and development to intangible assets that should have been expensed to research and development (i) for the three months ended 9/30/2007 and 9/30/2006 in the amount of \$-0-, (ii) for the nine months ended 9/30/2007 in the amount of \$-0- and for the nine months ended 9/30/2006 in the amount of \$125,000 and (iii) for the period inception to 9/30/2007 in the amount of \$28,256,771.
- (2) Reversal of amortization of intangible assets that should have been expensed to research and development (i) for the three months ended 9/30/2007 \$413,184 and for the three months ended 9/30/2006 in the amount of \$412,274 (ii) for the nine months ended 9/30/2007 in the amount of \$1,237,735 and for the nine months ended 9/30/2006 in the amount of \$1,232,404 and (iii) for the period inception to 9/30/2007 in the amount of \$4,771,302.
- (3) Reversal of impairment of intangible assets that should have been expensed to research and development (i) for the three months ended 9/30/2007 \$1,139,677 and for the three months ended 9/30/2006 in the amount of \$-0-, (ii) for the nine months ended 9/30/2007 in the amount of \$1,139,677 and for the nine months ended 9/30/2006 in the amount of \$-0-and (iii) for the period inception to 9/30/2007 in the amount of \$1,139,677.

In the Balance Sheet, the effect of the adjustments on Intangible Assets and Accumulated Deficit as of September 30, 2007 and December 31, 2006 was as follows:

	September 30, 2007			December 31, 2006		
	As Reported	Adjustment	As Restated	As Reported	Adjustment	As Restated
Assets						
Intangible Assets	\$ 22,345,791	\$ (22,345,791) ⁽¹⁾	\$ -	\$ 24,723,203	\$ (24,723,203) ⁽¹⁾	\$ -
Stockholders' Equity						
Accumulated Deficit	\$ (51,534,954)	\$ (22,345,791) ⁽¹⁾	\$ (73,880,745)	\$ (34,320,430)	\$ (24,723,203) ⁽¹⁾	\$ (59,043,633)

- (1) Adjustment for capitalizing acquired research and development to intangible assets that should have been expensed to research and development, reversal of amortization of intangible assets that should have been expensed to research and development and reversal of impairment of intangible assets that should have been expensed to research and development. Adjustments include:
- Adjustment for capitalizing acquired research and development to intangible assets that should have been expensed to research and development as of 9/30/2007 in the amount of \$28,256,771 and as of December 31, 2006 in the amount of \$28,256,771.
 - Reversal of amortization of intangible assets that should have been expensed to research and development as of 9/30/2007 in the amount of \$4,771,302 and as of December 31, 2006 in the amount of \$3,533,568.
 - Reversal of impairment of intangible assets that should have been expensed to research and development for the period inception to 9/30/2007 in the amount of \$1,139,677 and as of December 31, 2006 in the amount of \$-0-.

NOTE 4 – CASH AND CASH EQUIVALENTS

Opexa considers all highly liquid investments with an original maturity of three months or less, when purchased, to be cash equivalents. Investments with maturities in excess of three months but less than one year are classified as short-term investments and are stated at fair market value.

The primary objectives for our fixed income investment portfolio are liquidity and safety of principal. Investments are made with the objective of achieving the highest rate of return consistent with these two objectives. Opexa's investment policy limits investments to certain types of instruments issued by institutions primarily with investment grade credit ratings and places restrictions on maturities and concentration by type and issuer.

At September 30, 2007, Opexa invested approximately \$4.0 million in A-1/P-1 commercial paper with an average market yield of 5.24% and average time to maturity of less than one month. At September 30, 2007, approximately \$1.9 million was invested in a money market account with an average yield of 5.29%. Interest income of \$423,086 was recognized for the nine months ended September 30, 2007 in the statement of expenses.

NOTE 5 – COMMITMENTS AND CONTINGENCIES

In September 2006, Opexa entered into an Individual Project Agreement (IPA) with PharmaNet, LLC, a contract research organization focused on managing central nervous system trials. Pursuant to such IPA, PharmaNet, LLC will provide Opexa with services in connection with its Phase IIb clinical trial. Under the terms of the IPA, Opexa is required to advance funds in the amount of (i) \$400,000 for professional fees, (ii) \$60,000 for out of pocket expenses and (iii) \$175,000 for investigator grants. The professional fee advance is applied 1/12th per month to invoices and replenished once 75% depleted. The out of pocket advance will be held and applied to the final invoice. The investigator grant advance is used as a draw down advance and replenished once 75% depleted. This process will continue until the end of the study. At the conclusion of the program, advance balances remaining will be applied to outstanding invoices. These advances are treated as prepaid items and included in the other current assets section of the balance sheet. As of September 30, 2007, the advance balance to PharmaNet, LLC was \$293,336.

In July 2007, Opexa entered into a seconded amended and restated license agreement with the University of Chicago that requires Opexa to make milestone payments of up to \$1,350,000 if certain late stage clinical trial and FDA approval milestones are achieved. Opexa has determined that these payments are not probable at this time and thus no liability has been recorded as of September 30, 2007.

NOTE 6 – LOAN PAYABLE

Loan payable consists of an equipment line of \$250,000 with Wells Fargo of which \$236,563 was outstanding as of September 30, 2007. This loan has an interest rate of 7.61% per annum, matures in May 2011 and is secured by Opexa's furniture and equipment purchased with the loan proceeds. Payments are due and payable monthly on the same day of each month until maturity.

NOTE 7 – OPTIONS AND WARRANTS

During the first quarter of 2007, Opexa issued options to purchase 9,900 shares of common stock of Opexa to its new employees. These options are for a term of ten years, have an exercise price of \$4.04 and vest over three years. Fair value of \$32,914 was calculated using the Black-Scholes model. Variables used in the Black-Scholes option-pricing model during the three months ended March 31, 2007, include (1) 4.52% discount rate, (2) option life is the expected term of 6 years, (3) expected volatility of 103.91%, and (4) zero expected dividends. Option expense of \$4,141 was recorded during the nine months ended September 30, 2007.

During the second quarter of 2007, Opexa issued options to purchase 209,000 shares of common stock of Opexa to its management and employees. These options are for a term of ten years, have an exercise price of \$5.47 and vest over three years. Fair value of \$907,968 was calculated using the Black-Scholes option-pricing model. Variables used in the Black-Scholes option-pricing model for options issued during the three months ended June 30, 2007, include (1) 5.07% discount rate, (2) option life is the expected term of 6 years, (3) expected volatility of 95.88%, and (4) zero expected dividends. Option expense of \$86,473 was recorded during the nine months ended September 30, 2007.

During the second quarter of 2007, Opexa issued options to purchase 48,000 shares of common stock of Opexa to consultants and directors. These options are for a term of ten years, have an exercise price of \$5.47 and have vesting dates that vary from either full or partial vesting at date of grant to full vesting at the one year anniversary of the date of grant. Fair value of \$202,937 was calculated using the Black-Scholes option-pricing model. Variables used in the Black-Scholes option-pricing model for options issued during the three months ended June 30, 2007, include (1) 5.07% discount rate, (2) option life is the expected term ranging from 5 to 5.5 years, (3) expected volatility of 95.88%, and (4) zero expected dividends. Option expense of \$122,828 was recorded during the nine months ended September 30, 2007.

During the third quarter of 2007, Opexa issued options to purchase 5,500 shares of common stock of Opexa to its new employees. These options are for a term of ten years, have an exercise price of \$3.96 and vest over three years. Fair value of \$17,129 was calculated using the Black-Scholes model. Variables used in the Black-Scholes option-pricing model during the three months ended September 30, 2007, include (1) 4.22% discount rate, (2) option life is the expected term of 6 years, (3) expected volatility of 95.36%, and (4) zero expected dividends. Option expense of \$279 was recorded during the three months ended September 30, 2007.

During the third quarter of 2007, Opexa issued an option to purchase 1,500 shares of common stock of Opexa to a consultant. These options are for a term of ten years, have an exercise price of \$3.96 and vest at date of grant. Fair value of \$4,412 was calculated using the Black-Scholes option-pricing model. Variables used in the Black-Scholes option-pricing model for options issued during the three months ended September 30, 2007, include (1) 4.22% discount rate, (2) option life is the expected term of 5 years, (3) expected volatility of 95.36%, and (4) zero expected dividends. Option expense of \$4,412 was recorded during the three months ended September 30, 2007.

During the third quarter of 2007, Opexa issued options to purchase 20,000 shares of common stock of Opexa to a new director. These options are for a term of ten years, have an exercise price of \$3.95 and vest 50% at date of grant and 25% vest on the first and second year anniversary of date of grant. Fair value of \$61,326 was calculated using the Black-Scholes option-pricing model. Variables used in the Black-Scholes option-pricing model for options issued during the three months ended September 30, 2007, include (1) 4.20% discount rate, (2) option life is the expected term of 5.75 years, (3) expected volatility of 95.36%, and (4) zero expected dividends. Option expense of \$31,210 was recorded during the three months ended September 30, 2007.

NOTE 8 – DERIVATIVE INSTRUMENTS

In June 2006, Opexa evaluated the application of SFAS 133 and EITF 00-19 for all of its financial instruments and it was determined that certain of the warrants to purchase common stock issued by Opexa associated with the bridge note exchange and private placement offerings in June 2005 and July 2005 were derivatives that Opexa was required to account for as free-standing derivative instruments under GAAP. These three series of warrants were considered at the time to be derivatives because the liquidated damage provision in the registration rights agreement covering each warrant resulted in the conclusion that it was more economic to issue registered shares than to issue unregistered shares and pay the penalty. Because issuing registered shares is outside of Opexa's control, Opexa concluded the warrants should be accounted for as derivative liabilities under SFAS 133 and EITF 00-19. As a result, Opexa reported the value of these derivatives as current liabilities on its balance sheet and reported changes in the value of these derivatives as non-operating gains or losses on its statements of operations in the consolidated financial statements beginning with the year ended December 31, 2005 and re-measured and reported on a quarterly basis thereafter based on the Black Scholes Pricing Model.

In December 2006, the FASB issued FASB Staff Position No. EITF 00-19-2, Accounting for Registration Payment Arrangements (EITF 00-19-2). EITF 00-19-2 addresses an issuer's accounting for registration payment arrangements. It specifies that the contingent obligation to make future payments or otherwise transfer consideration under a registration payment arrangement, whether issued as a separate agreement or included as a provision of a financial instrument or other agreement, should be separately recognized and measured in accordance with FASB Statement No. 5, Accounting for Contingencies. The guidance in EITF 00-19-2 amends FASB Statements No. 133, Accounting for Derivative Instruments and Hedging Activities, and No. 150, Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity, and FASB Interpretation No. 45, Guarantor's Accounting and Disclosure Requirements for Guarantees, including Indirect Guarantees of Indebtedness of Others, to include scope exceptions for registration payment arrangements. EITF 00-19-2 also requires additional disclosure regarding the nature of any registration payment arrangements, alternative settlement methods, the maximum potential amount of consideration and the current carrying amount of the liability, if any. This EITF is effective immediately for registration payment arrangements and the financial instruments subject to those arrangements that are entered into or modified subsequent to the date of issue of this EITF. For registration payment arrangements and financial instruments subject to those arrangements that were entered into prior to the issuance of this EITF, this is effective for financial statements issued for fiscal years beginning after December 15, 2006, and interim periods within those fiscal years.

Opexa evaluated the application of EITF 00-19-2 for all its financial instruments and determined that certain warrants to purchase common stock issued by Opexa associated with the bridge note exchange and private placement offerings in June 2005 and July 2005 no longer qualified to be classified as derivative liabilities. In addition, Opexa accounts for registration rights agreement penalties as contingent liabilities, applying the accounting guidance of Financial Accounting Standard No. 5, "Accounting for Contingencies" ("FAS 5"). This accounting is consistent with views established by the FASB Staff Positions FSP EITF 00-19-2 "Accounting for Registration Payment Arrangements", which was issued December 21, 2006. Accordingly, Opexa recognizes the damages when it becomes probable that they will be incurred and amounts are reasonably estimable.

4,600,000 shares of common stock and 2,513,720 warrants to purchase common stock are subject to a registration payment arrangement that provides if a resale registration statement is not effective for any period after April 13, 2007, the warrant holders may exercise their warrants on a cashless basis during the period the resale registration statement is not effective. If Opexa fails to register, achieve effectiveness of registration or maintain effectiveness of registration of shares underlying the warrants and shares, they are required to make certain liquidated damage payments of 1.5% of the aggregate amount of proceeds of the offering per month for every month in default with a maximum of 24%. Opexa does not believe these payments are probable and thus no contingent liability has been recorded.

1,272,356 shares of common stock and 1,714,410 shares of common stock issuable upon the exercise of common stock purchase warrants issued in June 2005 and July 2005 are subject to a registration payment arrangement that provides if a resale registration statement is not effective for any period after the first anniversary of the warrant, the warrant holders may exercise their warrants on a cashless basis during the period the resale registration statement is not effective. If Opexa fails to register, achieve effectiveness of registration or maintain effectiveness of registration of shares underlying the warrants and shares, they are required to make certain liquidated damage payments of 1.0% of the aggregate amount of proceeds of the offering per month for the first calendar month of registration default and 2% for every month in default after the first month. Opexa does not believe these payments are probable and thus no contingent liability has been recorded.

The impact of implementing EITF 00-19-2 for the nine months ended September 30, 2007 resulted in a cumulative effect of a change in accounting principle with a decrease in the derivative liability of \$6,656,677 and a decrease to beginning retained earnings of \$4,001,819 reversing gains posted to date and a reclassification of the original value of the warrants from liability to equity of \$10,658,496.

NOTE 9 – LICENSES AND GAIN ON EXTINGUISHMENT OF DEBT

University of Chicago License Agreement

In 2004, Opexa entered into an agreement with the University of Chicago (“University”) for the worldwide license to technology developed at Argonne National Laboratory, a U.S. Department of Energy Laboratory operated by the University. The license was later amended granting Opexa an exclusive, non-transferable worldwide license to the University’s stem cell technology. In consideration for the license and amendment, Opexa paid the University a total of \$232,742 and issued the University 53,462 shares of common stock valued at \$2,295,461. Opexa also agreed to pay the University \$1.5 million and to issue the University 21,623 shares of Opexa common stock. In April 2007, the \$1.5 million cash payment obligation was extended until July 31, 2007 and the obligation to issue shares of Opexa’s common stock was extended until July 31, 2007, with \$112,440 accrued as of June 30, 2007. The Company determined that these assets had not reached technological feasibility at the date of acquisition and had no alternative future use. Therefore, the costs were expensed to research and development in the period incurred.

On July 31, 2007, Opexa entered into a second amended and restated license agreement with the University of Chicago that eliminated the obligations under the prior agreement for the payment of \$1.5 million due July 31, 2007 and the obligation to issue 21,623 shares of Opexa common stock. These obligations were recorded as an intangible asset, with the liabilities recorded as a notes payable - current portion of \$1.5 million and a stock payable of \$112,440. As a result of the amendment and restatement of the license agreement with the University of Chicago \$1,612,440 was reported as a gain on extinguishment of liability. Opexa applied the accounting guidance of Financial Accounting Standard No. 140, “Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities” (“FAS 140”) and EITF 96-19 “Debtor’s Accounting for a Modification or Exchange of Debt Instruments”.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS

The following discussion of our financial condition and results of operations should be read in conjunction with the accompanying financial statements and the related footnotes thereto.

Forward-Looking Statements

Some of the statements contained in this report discuss future expectations, contain projections of results of operations or financial condition, or state other "forward-looking" information. The words "believe," "intend," "plan," "expect," "anticipate," "estimate," "project," "goal" and similar expressions identify such statement was made. These statements are subject to known and unknown risks, uncertainties, and other factors that could cause the actual results to differ materially from those contemplated by the statements. The forward-looking information is based on various factors and is derived using numerous assumptions. Factors that might cause or contribute to such a discrepancy include, but are not limited to the risks discussed in this and our other SEC filings. We do not promise to update forward-looking information to reflect actual results or changes in assumptions or other factors that could affect those statements. Future events and actual results could differ materially from those expressed in, contemplated by, or underlying such forward-looking statements.

The following discussion and analysis of our financial condition is as of September 30, 2007. Our results of operations and cash flows should be read in conjunction with our unaudited financial statements and notes thereto included elsewhere in this report and the audited financial statements and the notes thereto included in our Form 10-KSB for the year ended December 31, 2006.

Business Overview

We are a biopharmaceutical company developing autologous cellular therapies to treat several major illnesses, including multiple sclerosis (MS), rheumatoid arthritis (RA), diabetes, and cardiovascular disease. These therapies are based on our proprietary T-cell and adult stem cell technologies.

Our lead product, Tovaxin®, is a T-cell based therapeutic vaccine for MS licensed from the Baylor College of Medicine, which offers a unique and personalized approach to treating the disease by inducing an immune response against the autoimmune myelin peptide-reactive T-cells (MRTCs), which are believed to be responsible for the initiation of the disease process.

Tovaxin is currently in a Phase IIb clinical trial. Initial Phase I/II open-label human trials show that T-cell vaccination (TCV) appears to safely induce immune responses that deplete and regulate MRTCs. In two open-label Phase I/II clinical trials, the annualized relapse rates of patients were reduced by an average of approximately 90% compared to their prior history of relapses. Some patients also appear to experience an improvement of their Kurtzke Expanded Disability Status Scale (EDSS), a scoring method used to measure the disability of MS patients. Improvements in EDSS are not frequently observed in patients following treatment with other currently licensed therapies. Although the data from our Phase I/II trials appears to be promising, the Phase IIb trial is being conducted to confirm these results. With additional and continuing positive clinical evidence, we believe that Tovaxin could be ready for commercialization as early as 2012.

We also hold an exclusive worldwide license for the intellectual property rights and research results of an autologous T-cell vaccine for RA from the Shanghai Institutes for Biological Sciences (SIBS), Chinese Academy of Sciences of the People's Republic of China.

Our RA T-cell vaccination (TCV) technology is conceptually similar to Tovaxin. RA is an autoimmune T-cell-mediated disease in which pathogenic T-cells trigger an inflammatory autoimmune response of the synovial joints of the wrists, shoulders, knees, ankles and feet which causes pain, stiffness, and swelling around the joints and erosion into cartilage and bone. The RA TCV technology allows the isolation of these pathogenic T-cells from synovial fluid drawn from a patient. These T-cells may be grown to therapeutic levels and attenuated by gamma irradiation in our laboratory. The attenuated T-cells may be injected subcutaneously into patients thereby inducing an immune response directed at the pathogenic T-cells in the patient's body. This immune response is expected to regulate the level of pathogenic T-cells and thus reduce joint swelling in RA patients. Human trials that have been conducted in China show minimal side-effects and promising efficacy measured as a reduction of joint swelling following the T-cell vaccination.

We also have an exclusive license from the University of Chicago, through its prime contractor relationship with Argonne National Laboratory, to a stem cell technology in which adult multipotent stem cells are derived from monocytes (white blood cells) obtained from the patient's own blood. We are initially pursuing indications in diabetes mellitus with our stem cell therapy and are conducting preclinical animal studies.

Our stem cell technology isolates novel multipotent stem cells derived from peripheral blood monocytes. *In vitro* experiments with monocyte-derived stem cells (MDSC) have shown their capacity to differentiate into a wide variety of cell types including pancreatic β cells. We have demonstrated that these pancreatic islets clusters derived from MDSCs are composed of three pancreatic cells types (α , β and δ). These islet clusters are responsive to glucose and mimic the normal pulsatile pattern observed in human islets. The importance of these stem cells is the ability to easily isolate them from an individual's circulating monocytes, expand them and administer them back into the same patient. This autologous approach provides a method to overcome any rejection issues and the need for immunosuppressant drugs which are often associated with current islet cell transplantations. This technology may lead to the formation of an unlimited source of pancreatic islet cells suitable for an autologous cell therapy for the treatment of diabetes mellitus.

Critical Accounting Policies

General

The Financial Statements and Notes to Financial Statements contain information that is pertinent to this Management's Discussion and Analysis. The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of any contingent assets and liabilities. Management believes these accounting policies involve judgment due to the sensitivity of the methods, assumptions and estimates necessary in determining the related asset and liability amounts. Management believes it has exercised proper judgment in determining these estimates based on the facts and circumstances available to it at the time the estimates were made. The significant accounting policies are described in the Company's financial statements.

Results of Operations and Financial Condition

Three Months Ended September 30, 2007 Compared with the Three Months Ended September 30, 2006

Net Sales. We recorded no sales for the three months ended September 30, 2007 and 2006.

General and Administrative Expenses. Our general and administrative expense was \$842,079 for the three months ended September 30, 2007, as compared to \$1,430,507 for the three months ended September 30, 2006. The decrease in expenses is primarily due to a decrease in stock compensation expenses, professional service fees and overhead expenses. We anticipate increases in general and administrative expenses as we continue to develop and prepare for commercialization of our technology.

Research and Development Expenses. Research and development expense was \$3,189,256 for the three months ended September 30, 2007, compared to \$2,113,878 for the three months ended September 30, 2006. The increase in expenses was primarily due to the costs of the Phase IIb clinical trial for Tovaxin and stock compensation expense recorded in 2007. We have made and expect to continue to make substantial investments in research and development in order to develop and market our technology. We expense research and development costs as incurred. Acquired research and development that has no alternative future use is expensed when acquired. We expect our research and development expense to increase as we continue to invest in the development of our technology.

Interest Expense. Interest expense was \$4,731 for the three months ended September 30, 2007, compared to \$278 for the three months ended September 30, 2006. The increase in interest expense was primarily due to a loan payable consisting of an equipment line of up to \$250,000 with Wells Fargo of which \$236,563 was outstanding as of September 30, 2007.

Interest Income. Interest income was \$102,292 for the three months ended September 30, 2007 compared to \$259,141 for the three months ended September 30, 2006. The decrease was due to the reduction in cash balances that were available for investment in cash equivalent investments.

Net loss. We had a net loss for the three months ended September 30, 2007, of \$2,371,780, or \$0.35 per share (basic and diluted), compared with a net loss of \$919,283, or \$0.14 per share (basic and diluted), for the three months ended September 30, 2006. The increase in net loss is primarily due to the costs of the Phase IIb clinical trial for Tovaxin offset by a reduction in stock-based compensation expense and gain on extinguishment of debt.

Nine Months Ended September 30, 2007 Compared with the Nine Months Ended September 30, 2006

Net Sales. We recorded no sales for the nine months ended September 30, 2007 and 2006.

General and Administrative Expenses. General and administrative expense was \$2,557,609 for the nine months ended September 30, 2007, as compared to \$5,676,221 for the nine months ended September 30, 2006. The decrease in expenses is primarily due to a decrease in stock compensation expenses, professional service fees and overhead expenses. We anticipate increases in general and administrative expenses as we continue to develop and prepare for commercialization of our technology.

Research and Development Expenses. Research and development expense was \$10,148,930 for the nine months ended September 30, 2007, compared to \$4,532,240 for the nine months ended September 30, 2006. The increase in expenses was primarily due to the costs of the Phase IIb clinical trial for Tovaxin, research and development in support of pre-clinical diabetes stem cell therapies and stock compensation expense recorded in 2007. We have made and expect to continue to make substantial investments in research and development in order to develop and market our technology. We expense research and development costs as incurred. Acquired research and development that has no alternative future use is expensed when acquired. We expect our research and development expense to increase as we continue to invest in the development of our technology.

Interest Expense. Interest expense was \$10,875 for the nine months ended September 30, 2007, compared to \$891 for the nine months ended September 30, 2006. The increase in interest expense was primarily due to a loan payable consisting of an equipment line of up to \$250,000 with Wells Fargo of which \$236,563 was outstanding as of September 30, 2007.

Interest Income. Interest income was \$423,086 for the nine months ended September 30, 2007 compared to \$477,547 for the nine months ended September 30, 2006. The decrease was due to the reduction in cash balances that were available for investment in cash equivalent investments.

Net loss. We had a net loss for the nine months ended September 30, 2007, of \$10,835,293, or \$1.62 per share (basic and diluted), compared with a net loss of \$10,670,331, or \$2.16 per share (basic and diluted), for the nine months ended September 30, 2006. The increase in net loss is primarily due to the costs associated with the Phase IIb clinical trial for Tovaxin offset by a reduction in stock-based compensation expense, gain on extinguishment of liability and loss on derivative instruments.

Liquidity and Capital Resources

Changes in cash flow. Cash used in operations for the nine month period ended September 30, 2007 was \$6,154,074, as compared to \$5,899,299 used in operations for the nine months ended September 30, 2006. The increase in cash used in operations is primarily due to an increase in operating expenses offset in part by the maturity of approximately \$2.9 million in marketable securities and its reclassification to cash and cash equivalents and by an increase in accrued expenses resulting from the Phase IIb clinical trial. Cash used in investing activities for the nine month period ended September 30, 2007 was \$147,782, as compared to \$487,567 for the nine months ended September 30, 2006. The decrease was primarily due to a decrease in equipment purchases and the license payment made to Shanghai Institute related to the license obtained during the nine months ended September 30, 2006 for its rheumatoid arthritis T-cell technology. Cash provided from financing activities for the nine month period ended September 30, 2007 was \$126,241, as compared to \$21,153,520 for the nine months ended September 30, 2006. The decrease was due to the proceeds from the April 2006 equity financing.

Liquidity . Historically, the Company has financed its operations primarily from the sale of its debt and equity securities. As of September 30, 2007, the Company had cash, cash equivalents and marketable securities of approximately \$5.8 million.

Our current burn rate is approximately \$1 million per month excluding capital expenditures. We will need to raise additional capital to fund our working capital needs beyond the first quarter of 2008. We must rely upon third-party debt or equity funding and we can provide no assurance that we will be successful in any funding effort. The failure to raise such funds will necessitate the curtailment or ceasing of operations and impact the completion of the clinical trials.

Off-Balance Sheet Arrangements

As of September 30, 2007, we had no off-balance sheet arrangements.

Recent Accounting Pronouncements

For the period ended September 30, 2007, there were no other changes to our critical accounting policies as identified in our annual report of Form 10-KSB for the year ended December 31, 2006.

Risk Factors

The following factors affect our business and the industry in which we operate. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties not presently known or which we currently consider immaterial may also have an adverse effect on our business. If any of the matters discussed in the following risk factors were to occur, our business, financial condition, results of operations, cash flows, or prospects could be materially adversely affected.

Our business is at an early stage of development.

Our business is at an early stage of development. We do not have any products in late-stage clinical trials or on the market. We are still in the early stages of identifying and conducting research on potential products. Only one of our products has progressed to the stage of being studied in human clinical trials in the U.S. Our potential products will require significant research and development and preclinical and clinical testing prior to regulatory approval in the United States and other countries. We may not be able to develop any products, to obtain regulatory approvals, to enter clinical trials for any of our product candidates, or to commercialize any products. Our product candidates may prove to have undesirable and unintended side effects or other characteristics adversely affecting their safety, efficacy or cost-effectiveness that could prevent or limit their use. Any product using any of our technology may fail to provide the intended therapeutic benefits, or achieve therapeutic benefits equal to or better than the standard of treatment at the time of testing or production.

We have a history of operating losses and do not expect to be profitable in the near future.

We have not generated any profits since our entry into the biotechnology business, have no source of revenues, and have incurred significant operating losses. We expect to incur additional operating losses for the foreseeable future and, as we increase our research and development activities, we expect our operating losses to increase significantly. We do not have any sources of revenues and may not have any in the foreseeable future.

We will need additional capital to conduct our operations and develop our products and our ability to obtain the necessary funding is uncertain.

We need to obtain significant additional capital resources from sources including equity and/or debt financings, license arrangements, grants and/or collaborative research arrangements in order to develop products and continue our business. As of September 30, 2007, we had cash, cash equivalents and marketable securities of approximately \$5.8 million. Our current burn rate is approximately \$1 million per month excluding capital expenditures. We will need to raise additional capital to fund our working capital needs beyond first quarter 2008. We must rely upon third-party debt or equity funding and we can provide no assurance that we will be successful in any funding effort. The failure to raise such funds will necessitate the curtailment or ceasing of operations and impact the completion of the clinical trials.

The timing and degree of any future capital requirements will depend on many factors, including:

- the accuracy of the assumptions underlying our estimates for capital needs in 2008 and beyond;
- scientific progress in our research and development programs;
- the magnitude and scope of our research and development programs;
- our ability to establish, enforce and maintain strategic arrangements for research, development, clinical testing, manufacturing and marketing;
- our progress with preclinical development and clinical trials;
- the time and costs involved in obtaining regulatory approvals;
- the costs involved in preparing, filing, prosecuting, maintaining, defending and enforcing patent claims; and
- the number and type of product candidates that we pursue.

We do not have any committed sources of capital, although we have issued and outstanding warrants that, if exercised, would result in an equity capital raise transaction. Additional financing through strategic collaborations, public or private equity financings, capital lease transactions or other financing sources may not be available on acceptable terms, or at all. Additional equity financings could result in significant dilution to our stockholders. Further, if additional funds are obtained through arrangements with collaborative partners, these arrangements may require us to relinquish rights to some of our technologies, product candidates or products that we would otherwise seek to develop and commercialize ourselves. If sufficient capital is not available, we may be required to delay, reduce the scope of or eliminate one or more of our programs, any of which could have a material adverse effect on our financial condition or business prospects.

Clinical trials are subject to extensive regulatory requirements, very expensive, time-consuming and difficult to design and implement. Our products may fail to achieve necessary safety and efficacy endpoints during clinical trials.

Human clinical trials are very expensive and difficult to design and implement, in part because they are subject to rigorous regulatory requirements. The clinical trial process is also time consuming. We estimate that clinical trials of our product candidates will take at least several years to complete. Furthermore, failure can occur at any stage of the trials, and we could encounter problems that cause us to abandon or repeat clinical trials. The commencement and completion of clinical trials may be delayed by several factors, including:

- unforeseen safety issues;
- determination of dosing issues;
- lack of effectiveness during clinical trials;
- slower than expected rates of patient recruitment;
- inability to monitor patients adequately during or after treatment; and
- inability or unwillingness of medical investigators to follow our clinical protocols.

In addition, we or the FDA may suspend our clinical trials at any time if it appears that we are exposing participants to unacceptable health risks or if the FDA finds deficiencies in our IND submissions or the conduct of these trials.

We are dependent upon our management team and a small number of employees.

Our business strategy is dependent upon the skills and knowledge of our management team. We believe that the special knowledge of these individuals gives us a competitive advantage. If any critical employee leaves, we may be unable on a timely basis to hire suitable replacements to effectively operate our business. We also operate with a very small number of employees and thus have little or no backup capability for their activities. The loss of the services of any member of our management team or the loss of a number of other employees could have a material adverse effect on our business.

We are dependent on contract research organizations and other contractors for clinical testing and for certain research and development activities, thus the timing and adequacy of our clinical trials and such research activities are, to a certain extent, beyond our control.

The nature of clinical trials and our business strategy requires us to rely on contract research organizations, independent clinical investigators and other third party service providers to assist us with clinical testing and certain research and development activities. As a result, our success is dependent upon the success of these outside parties in performing their responsibilities. Although we believe our contractors are economically motivated to perform on their contractual obligations, we cannot directly control the adequacy and timeliness of the resources and expertise applied to these activities by our contractors. If our contractors do not perform their activities in an adequate or timely manner, the development and commercialization of our drug candidates could be delayed.

Our current research and manufacturing facility is not large enough to manufacture future stem cell and T-cell therapies.

We conduct our research and development in a 10,200 square foot facility in The Woodlands, Texas, which includes an approximately 800 square foot suite of three rooms for the manufacture of stem cell and T-cell therapies through Phase III trials. Our current facility is not large enough to conduct commercial-scale manufacturing operations. We will need to expand further our manufacturing staff and facility, obtain a new facility or contract with corporate collaborators or other third parties to assist with future drug production.

In the event that we decide to establish a commercial-scale manufacturing facility, we will require substantial additional funds and will be required to hire and train significant numbers of employees and comply with applicable regulations, which are extensive. We do not have funds available for building a manufacturing facility, and we may not be able to build a manufacturing facility that both meets regulatory requirements and is sufficient for our commercial-scale manufacturing.

We may arrange with third parties for the manufacture of our future products. However, our third-party sourcing strategy may not result in a cost-effective means for manufacturing our future products. If we employ third-party manufacturers, we will not control many aspects of the manufacturing process, including compliance by these third parties with the FDA's current Good Manufacturing Practices and other regulatory requirements. We further may not be able to obtain adequate supplies from third-party manufacturers in a timely fashion for development or commercialization purposes, and commercial quantities of products may not be available from contract manufacturers at acceptable costs.

Patents obtained by other persons may result in infringement claims against us that are costly to defend and which may limit our ability to use the disputed technologies and prevent us from pursuing research and development or commercialization of potential products.

A number of pharmaceutical, biotechnology and other companies, universities and research institutions have filed patent applications or have been issued patents relating to cell therapy, stem cells, T-cells, and other technologies potentially relevant to or required by our expected products. We cannot predict which, if any, of such applications will issue as patents or the claims that might be allowed. We are aware that a number of companies have filed applications relating to stem cells. We are also aware of a number of patent applications and patents claiming use of stem cells and other modified cells to treat disease, disorder or injury.

If third party patents or patent applications contain claims infringed by either our licensed technology or other technology required to make and use our potential products and such claims are ultimately determined to be valid, there can be no assurance that we would be able to obtain licenses to these patents at a reasonable cost, if at all, or be able to develop or obtain alternative technology. If we are unable to obtain such licenses at a reasonable cost, we may not be able to develop some products commercially. There can be no assurance that we will not be obliged to defend ourselves in court against allegations of infringement of third party patents. Patent litigation is very expensive and could consume substantial resources and create significant uncertainties. An adverse outcome in such a suit could subject us to significant liabilities to third parties, require disputed rights to be licensed from third parties, or require us to cease using such technology.

If we are unable to obtain future patents and other proprietary rights our operations will be significantly harmed.

Our ability to compete effectively is dependent in part upon obtaining patent protection relating to our technologies. The patent positions of pharmaceutical and biotechnology companies, including ours, are uncertain and involve complex and evolving legal and factual questions. The coverage sought in a patent application can be denied or significantly reduced before or after the patent is issued. Consequently, we do not know whether the patent applications for our technology will result in the issuance of patents, or if any future patents will provide significant protection or commercial advantage or will be circumvented by others. Since patent applications are secret until the applications are published (usually eighteen months after the earliest effective filing date), and since publication of discoveries in the scientific or patent literature often lags behind actual discoveries, we cannot be certain that the inventors of our licensed patents were the first to make the inventions covered by the patent applications or that the licensed patent applications were the first to be filed for such inventions. There can be no assurance that patents will issue from the patent applications or, if issued, that such patents will be of commercial benefit to us, afford us adequate protection from competing products, or not be challenged or declared invalid.

Our competition includes fully integrated biopharmaceutical and pharmaceutical companies that have significant advantages over us.

The markets for therapeutic stem cell products, multiple sclerosis products, and rheumatoid arthritis products are highly competitive. We expect that our most significant competitors are fully integrated pharmaceutical companies and more established biotechnology companies. These companies are developing stem cell-based products and they have significantly greater capital resources and expertise in research and development, manufacturing, testing, obtaining regulatory approvals, and marketing than we currently do. Many of these potential competitors are further along in the process of product development and also operate large, company-funded research and development programs. As a result, our competitors may develop more competitive or affordable products, or achieve earlier patent protection or product commercialization than we are able to achieve. Competitive products may render any products or product candidates that we develop obsolete.

If we fail to meet our obligations under our license agreements, we may lose our rights to key technologies on which our business depends.

Our business depends on three licenses from third parties. These third party license agreements impose obligations on us, such as payment obligations and obligations to diligently pursue development of commercial products under the licensed patents. If a licensor believes that we have failed to meet our obligations under a license agreement, the licensor could seek to limit or terminate our license rights, which could lead to costly and time-consuming litigation and, potentially, a loss of the licensed rights. During the period of any such litigation, our ability to carry out the development and commercialization of potential products could be significantly and negatively affected. If our license rights were restricted or ultimately lost, our ability to continue our business based on the affected technology platform could be severely adversely affected.

Restrictive and extensive government regulation could slow or hinder our production of a cellular product.

The research and development of stem cell therapies is subject to and restricted by extensive regulation by governmental authorities in the United States and other countries. The process of obtaining U.S. Food and Drug Administration, or FDA, and other necessary regulatory approvals is lengthy, expensive and uncertain. We may fail to obtain the necessary approvals to continue our research and development, which would hinder our ability to manufacture or market any future product.

To be successful, our product candidates must be accepted by the health care community, which can be very slow to adopt or unreceptive to new technologies and products.

Our product candidates, if approved for marketing, may not achieve market acceptance since hospitals, physicians, patients or the medical community in general may decide to not accept and utilize these products. The product candidates that we are attempting to develop represent substantial departures from established treatment methods and will compete with a number of more conventional drugs and therapies manufactured and marketed by major pharmaceutical companies. The degree of market acceptance of any of our developed products will depend on a number of factors, including:

- our establishment and demonstration to the medical community of the clinical efficacy and safety of our product candidates;
- our ability to create products that are superior to alternatives currently on the market;
- our ability to establish in the medical community the potential advantage of our treatments over alternative treatment methods; and
- reimbursement policies of government and third-party payers.

If the health care community does not accept our products for any of the foregoing reasons, or for any other reason, our business would be materially harmed.

There is currently a limited market for our common stock, and any trading market that exists in our common stock may be highly illiquid and may not reflect the underlying value of the Company's net assets or business prospects.

Although our common stock is traded on the Nasdaq Global Market, there is currently a limited market for our common stock and there can be no assurance that an improved market will ever develop. Investors are cautioned not to rely on the possibility that an active trading market may develop.

As our share price is volatile, we may be or become the target of securities litigation, which is costly and time-consuming to defend.

In the past, following periods of market volatility in the price of a company's securities or the reporting of unfavorable news, security holders have often instituted class action litigation. If the market value of our common stock experiences adverse fluctuations and we become involved in this type of litigation, regardless of the outcome, we could incur substantial legal costs and our management's attention could be diverted from the operation of our business, causing our business to suffer.

Our "blank check" preferred stock could be issued to prevent a business combination not desired by management or our current majority shareholders.

Our articles of incorporation authorize the issuance of "blank check" preferred stock with such designations, rights and preferences as may be determined by our board of directors without shareholder approval. Our preferred stock could be utilized as a method of discouraging, delaying, or preventing a change in our control and as a method of preventing shareholders from receiving a premium for their shares in connection with a change of control.

Future sales of our common stock in the public market could lower our stock price.

We may sell additional shares of common stock in subsequent public or private offerings. We may also issue additional shares of common stock to finance future acquisitions. We cannot predict the size of future issuances of our common stock or the effect, if any, that future issuances and sales of shares of our common stock will have on the market price of our common stock. Sales of substantial amounts of our common stock (including shares issued in connection with an acquisition), or the perception that such sales could occur, may adversely affect prevailing market prices for our common stock.

We presently do not intend to pay cash dividends on our common stock.

We currently anticipate that no cash dividends will be paid on the common stock in the foreseeable future. While our dividend policy will be based on the operating results and capital needs of the business, it is anticipated that all earnings, if any, will be retained to finance the future expansion of the our business.

ITEM 3 . CONTROLS AND PROCEDURES

(a) Evaluation of Disclosure Controls and Procedures.

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed by us in the reports that we file or submit to the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended, is recorded, processed, summarized, and reported within the time periods specified by the Securities and Exchange Commission's rules and forms, and that information is accumulated and communicated to our management, including our principal executive and principal financial officers (whom we refer to in this periodic report as our Certifying Officers), as appropriate to allow timely decisions regarding required disclosure. Our management evaluated, with the participation of our Certifying Officers, the effectiveness of our disclosure controls and procedures as of September 30, 2007, pursuant to Rule 13a-15(b) under the Securities Exchange Act. Based upon that evaluation, our Certifying Officers concluded that, as of September 30, 2007, our disclosure controls and procedures were not effective for the reason described below:

In connection with receiving comments from the Securities & Exchange Commission regarding our Annual Report on form 10-KSB filed March 16 2007, we reviewed the appropriateness of the capitalization of certain costs of acquiring various intellectual property rights versus treatment of such costs as a period expense for the period in which such rights were acquired. We identified deficiencies in our internal controls and disclosure controls related to the accounting for acquired research and development in accordance with Paragraph 11(c) of Statement of Financial Accounting Standards No. 2 (SFAS No. 2) and accounting guidance from Financial Accounting Standards Board Interpretation No. 4 "Applicability of FASB Statement No. 2 to Business Combinations Accounted for by the Purchase Method" (FIN 4). We restated our consolidated financial statements for the year ended December 31, 2006 and for the interim periods ending March 31, 2007, June 30, 2007 and September 30, 2007, in order to correct the accounting in such financial statements with respect to acquired research and development that has no alternative future use. Since November 2007, we have undertaken improvements to our internal controls in an effort to remediate these deficiencies by improving supervision and training of our accounting staff to understand and implement the requirements of complex accounting issues. We have also adopted a policy whereby financial management, when dealing with the reporting of transactions that involve complex and unusual accounting matters, will formally research relevant accounting literature relating to the issues and, if necessary, retain the services of a qualified certified public accountant, other than our independent auditor, to assist us with respect to accounting for the transaction(s).

(b) Changes in Internal Control Over Financial Reporting.

There were changes in our internal control over financial reporting that occurred during our most recently completed fiscal year that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting. We will continue to evaluate the effectiveness of internal controls and procedures on an on-going basis.

PART II

OTHER INFORMATION

ITEM 1 . LEGAL PROCEEDINGS.

None.

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

None.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES.

None.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS.

None.

ITEM 5. OTHER INFORMATION.

None.

ITEM 6. EXHIBITS.

Exhibit 31.1	Chief Executive Officer Certification Pursuant to Section 13a-14 of the Securities Exchange Act (1)
Exhibit 31.2	Chief Financial Officer Certification Pursuant to Section 13a-14 of the Securities Exchange Act (1)
Exhibit 32.1	Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes- Oxley Act of 2002 (1)
Exhibit 32.2	Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes- Oxley Act of 2002 (1)
(1) Filed herewith.	

SIGNATURES

In accordance with Section 13 or 15(d) of the Exchange Act, the registrant has caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

OPEXA THERAPEUTICS, INC.

By: /s/ DAVID B. MCWILLIAMS
David B. McWilliams
President and Chief Executive Officer

By: /s/ LYNNE HOHLFELD
Lynne Hohlfeld
Chief Financial Officer and Principal Accounting Officer

Date: November 29, 2007

**CERTIFICATION PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT**

I, David B. McWilliams, certify that:

1. I have reviewed this quarterly report on Form 10-QSB/A of Opexa Therapeutics, Inc. (the "small business issuer");
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 small business issuer as of, and for, the periods presented in this report;
4. The small business issuer's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the small business issuer 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 small business issuer, 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 small business issuer'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 small business issuer's internal control over financial reporting that occurred during the small business issuer's fourth fiscal quarter that has materially affected, or is reasonably likely to materially affect, the small business issuer's internal control over financial reporting; and
5. The small business issuer's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the small business issuer's auditors and the audit committee of the small business issuer'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 small business issuer'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 small business issuer's internal control over financial reporting.

By: /s/ DAVID B. MCWILLIAMS

David B. McWilliams

President and Chief Executive Officer

Date: November 29, 2007

**CERTIFICATION PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT**

I, Lynne Hohlfeld, certify that:

1. I have reviewed this quarterly report on Form 10-QSB/A of Opexa Therapeutics, Inc. (the "small business issuer");
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 small business issuer as of, and for, the periods presented in this report;
4. The small business issuer's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the small business issuer 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 small business issuer, 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 small business issuer'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 small business issuer's internal control over financial reporting that occurred during the small business issuer's fourth fiscal quarter that has materially affected, or is reasonably likely to materially affect, the small business issuer's internal control over financial reporting; and
5. The small business issuer's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the small business issuer's auditors and the audit committee of the small business issuer'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 small business issuer'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 small business issuer's internal control over financial reporting.

By: /s/ LYNNE HOHLFELD

Lynne Hohlfeld
Chief Financial Officer and Principal Accounting Officer

Date: November 29, 2007

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

Pursuant to 18 U.S.C. Section 1350, the undersigned Officer of Opexa Therapeutics, Inc. (the "Company"), hereby certifies, to such officer's knowledge, that the Company's Quarterly Report on Form 10-QSB/A for the quarter ended September 30, 2007 (the "Report") fully complies with the requirements of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934 and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

By: /s/ DAVID B. MCWILLIAMS

David B. McWilliams

President and Chief Executive Officer

Date: November 29, 2007

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

Pursuant to 18 U.S.C. Section 1350, the undersigned Officer of Opexa Therapeutics, Inc. (the "Company"), hereby certifies, to such officer's knowledge, that the Company's Quarterly Report on Form 10-QSB/A for the quarter ended September 30, 2007 (the "Report") fully complies with the requirements of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934 and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

By: /s/ LYNNE HOHLFELD

Lynne Hohlfeld

Chief Financial Officer and Principal Accounting Officer

Date: November 29, 2007