

IR BIOSCIENCES HOLDINGS INC
Form 10KSB/A
May 08, 2007

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

FORM 10-KSB/A

Amendment No. 2

x **Annual Report
Pursuant to Section
13 or 15(d) of the
Securities Exchange
Act of 1934
For the fiscal year
ended December 31,
2006.**

OR

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

COMMISSION FILE NUMBER: 33-05384

IR BIOSCIENCES HOLDINGS, INC.
(Name of Small Business Issuer in its Charter)

DELAWARE
(State or Other
Jurisdiction of
Incorporation or
Organization)

13-3301899
(I.R.S. Employer
Identification No.)

4021 N. 75th Street,
Suite 201, Scottsdale,
AZ

(Address of Principal
Executive Offices)

85251

(Zip Code)

(480) 922-3926

(Issuer's Telephone Number, Including Area Code)

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

NONE

SECURITIES REGISTERED PURSUANT TO SECTION 12(G) OF THE EXCHANGE ACT:

COMMON STOCK, \$ 0.001 PAR VALUE PER SHARE

(Title of class)

Check whether the issuer is not required to file reports pursuant to Section 13 or Section 15(d) of the Exchange Act.

Check whether the issuer: (1) filed all reports required to be filed by Section 13 or 15(d) of the Exchange Act of 1934 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

Check if there is no disclosure of delinquent filers in response to Item 405 of Regulation S-B is not contained in this form, and no disclosure will be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-KSB or any amendment to this Form 10-KSB.

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

State issuer's revenues for its most recent fiscal year: \$ 0

The aggregate market value of the Registrant's issued and outstanding shares of common stock held by non-affiliates of the Registrant as of April 23, 2007 (based on the average of the bid and asked prices as reported by the NASD OTC Bulletin Board as of that date) was approximately \$16,077,467.

The number of shares outstanding of Registrant's Common Stock, par value \$0.001 as of April 23, 2007: 114,322,536.

Documents Incorporated by reference: None.

Transitional Small Business Disclosure Format Yes No

Explanatory Note

IR BioSciences Holdings, Inc. (hereinafter, "we," "us," "our," or the "Company") is filing this Amendment No. 2 on Form 10-KSB/A to correct the beneficial ownership of our Chief Executive Officer, Michael K. Wilhelm, and a Director, Robert J. Hariri, M.D. Ph.D., as reported on our annual report on SEC Form 10-KSB filed with the Securities and Exchange Commission on April 17, 2007 and Form 10-KSB/A filed with the Securities and Exchange Commission on April 30, 2007 ("Form 10-KSB").

In connection with the filing of this Amendment No. 2 and pursuant to Rule 12b-15 under the Securities Exchange Act of 1934, as amended, we are including currently dated certifications. Except as described above, no other amendments are being made to the Form 10-KSB. This Amendment No. 2 does not reflect events occurring after the filing of the Form 10-KSB or modify or update the disclosure contained therein in any way other than as required to reflect the amendments discussed above.

PART III**ITEM 11. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS****PRINCIPAL STOCKHOLDERS**

The following table sets forth certain information relating to the ownership of common stock by (i) each person known by us to be the beneficial owner of more than five percent of the outstanding shares of our common stock, (ii) each of our directors, (iii) each of our named executive officers, and (iv) all of our executive officers and directors as a group. Unless otherwise indicated, the information relates to these persons, beneficial ownership as of April 4, 2007. Except as may be indicated in the footnotes to the table and subject to applicable community property laws, each person has the sole voting and investment power with respect to the shares owned.

| Name of Beneficial Owner (1) | Common Stock Beneficially Owned(2) | Percentage of Common Stock (3) |
|---|---|---|
| Michael K. Wilhelm | 9,030,659(4) | 7.4% |
| John N. Fermanis | 180,000(5) | *% |
| Hal N. Siegel, Ph.D. | 249,900(6) | *% |
| Theodore E. Staahl, M.D. | 3,489,464(7) | 3.0% |
| Robert J. Hariri, M.D., Ph.D. | 960,545(8) | *% |
| Mark Witten 1501 N. Campbell Avenue Room 3352 Tucson, AZ 85724 | 8,960,778(9) | 7.8% |
| All executive officers and directors as a group (5 persons) | 13,910,568(10) | 11.4% |

(1) Except as otherwise indicated, the address of each beneficial owner is c/o IR BioSciences Holdings, Inc., 4021 North 75th Street, Suite 201, Scottsdale, Arizona 85251.

(2) Beneficial ownership is determined in accordance with the rules of the Securities and Exchange Commission. In general, a person who has voting power or investment power with respect to securities is treated as beneficial owner of those securities. Common shares subject to options and warrants currently exercisable or exercisable within 60 days of April 4, 2007 count as outstanding for computing the percentage beneficially owned by the person holding these options or warrants.

(3) Percentages are based on 114,318,315 shares of common stock outstanding as of April 4, 2007.

(4) Includes 1,870,141 shares of common stock underlying warrants and 4,942,450 shares of common stock underlying options that are currently exercisable or exercisable within 60 days of April 4, 2007. Includes 266,138 common stock purchase warrants issued by a third party to Foresight Capital Partners, a company controlled by Michael Wilhelm that are currently exercisable or exercisable within 60 days of April 4, 2007. Includes 289,002 shares of common stock and 61,000 common stock purchase warrants held by immediate family members.

- (5) Includes 80,000 shares of common stock underlying warrants that are currently exercisable or exercisable within 60 days of March 10, 2006.
- (6) Includes 49,900 shares of common stock underlying warrants and 200,000 shares of common stock underlying options that are currently exercisable or exercisable within 60 days of April 4, 2007.
- (7) Includes 203,000 shares of common stock underlying warrants that are currently exercisable or exercisable within 60 days of April 4, 2007. Includes 35,000 common stock purchase warrants issued by a third party that are exercisable or exercisable within 60 days of April 4, 2007.
- (8) Includes 625,000 shares of common stock and 312,500 common stock purchase warrants held in a partnership that the individual is the administrative manager thereof.
- (9) Includes 712,000 shares of common stock underlying warrants that are currently exercisable or exercisable within 60 days of April 4, 2007.
- (10) Includes 2,576,541 shares of common stock underlying warrants and 5,142,450 shares of common stock underlying options that are currently exercisable or exercisable within 60 days of April 4, 2007. Includes 301,138 common stock purchase warrants issued by third parties that are exercisable or exercisable within 60 days of April 4, 2007.

The information as to shares beneficially owned has been individually furnished by our respective directors, named executive officers and other stockholders, or taken from documents filed with the SEC.

ITEM 13. EXHIBITS

Exhibit

Number

Description of Exhibit

- 2.1 Agreement and Plan of Merger dated July 2, 2003 among the Registrant, GPN Acquisition Corporation and ImmuneRegen BioSciences, Inc. (incorporated by reference to exhibit 2 of the Registrant's current report on Form 8-k filed with the Securities and Exchange Commission on July 7, 2003).
- 3.1 Certificate of Incorporation filed with the Delaware Secretary of State on June 4, 1985 (incorporated by reference to exhibit 3.1 of the Registrant's annual report on Form 10-KSB for the year ended December 31, 2001 filed with the Securities and Exchange Commission on April 16, 2002).
- 3.1(a) Certificate of Amendment filed with the Delaware Secretary of State on July 16, 1987 (incorporated by reference to exhibit 3.1(a) of the Registrant's annual report on Form 10-KSB for the year ended December 31, 2001 filed with the Securities and Exchange Commission on April 16, 2002).
- 3.1(b) Certificate of Amendment filed with the Delaware Secretary of State on February 3, 1992 (incorporated by reference to exhibit 3.1(b) of the Registrant's annual report on Form 10-KSB for the year ended December 31, 2001 filed with the Securities and Exchange Commission on April 16, 2002).
- 3.1(c) Certificate of Amendment filed with the Delaware Secretary of State on November 23, 1992 (incorporated by reference to exhibit 3.1(c) of the Registrant's annual report on Form 10-KSB for the year ended December 31, 2001 filed with the Securities and Exchange Commission on April 16, 2002).
- 3.1(d) Certificate of Amendment filed with the Delaware Secretary of State on December 15, 1994 (incorporated by reference to exhibit 3.1(d) of the Registrant's annual report on Form 10-KSB for the year ended December 31, 2001 filed with the Securities and Exchange Commission on April 16, 2002).
- 3.1(e) Certificate of Amendment filed with the Delaware Secretary of State on November 7, 1995 (incorporated by reference to exhibit 3.1(e) of the Registrant's annual report on Form 10-KSB for the year ended December 31, 2001 filed with the Securities and Exchange Commission on April 16, 2002).
- 3.1(f) Certificate of Amendment filed with the Delaware Secretary of State on December 30, 1996 (incorporated by reference to exhibit 3.1(f) of the Registrant's annual report on Form 10-KSB for the year ended December 31, 2001 filed with the Securities and Exchange Commission on April 16, 2002).
- 3.1(g) Certificate of Amendment filed with the Delaware Secretary of State on November 8, 2000 (incorporated by reference to exhibit 3.1(h) of the Registrant's annual report on Form 10-KSB for the year ended December 31, 2001 filed with the Securities and Exchange Commission on April 16, 2002).
- 3.2

Amended and Restated Bylaws of the Registrant dated as of January 1, 2002 (incorporated by reference to exhibit 3(b) of the Registrant's annual report on Form 10-KSB for the year ended December 31, 2001 filed with the Securities and Exchange Commission on April 16, 2002).

- 4.1 Specimen Common Stock Certificate (incorporated by reference to exhibit 4.1 of the Registrant's registration statement on Form SB-2 (File No. 333-120784) filed with the Securities and Exchange Commission on November 24, 2004).

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| Exhibit Number | Description of Exhibit |
|-----------------------|---|
| 4.2 | 2003 Stock Option, Deferred Stock and Restricted Stock Plan (incorporated by reference to exhibit 4.1 of the Registrant's registration statement on Form S-8 (file no. 333-113511) filed with the Securities and Exchange Commission on March 11, 2004). |
| 4.3 | Form of Warrant by and between the Registrant and each of the Investors or Creditors, as the case may be, who entered into an Agreement filed as Exhibit 10.6, 10.7, 10.8 or 10.9 herewith (incorporated by reference to exhibit 4.1 of the Registrant's current report on Form 8-K filed with the Securities and Exchange Commission on October 19, 2004). |
| 4.4 | Form of Registration Rights (Annex A to Subscription Agreement) by and between the Registrant and each of the Investors who entered into the Agreements filed as Exhibits 10.6 and 10.8 herewith (incorporated by reference to exhibit 4.2 of the Registrant's current report on Form 8-K filed with the Securities and Exchange Commission on October 19, 2004). |
| 4.5 | Form of Anti-Dilution Rights (Annex B to Subscription Agreement) by and between the Registrant and each of the Investors who entered into the Agreements filed as Exhibits 10.6 and 10.8 herewith (incorporated by reference to exhibit 4.3 of the Registrant's current report on Form 8-K filed with the Securities and Exchange Commission on October 19, 2004). |
| 4.6 | Promissory Note issued from the Registrant to SBM Certificate Company as of April 28, 2004 (incorporated by reference to exhibit 4.6 of the Registrant's registration statement on Form SB-2 (File No. 333-120784) filed with the Securities and Exchange Commission on November 24, 2004). |
| 4.7 | Form of Warrant by and between the Registrant and each of the investors who entered into the Subscription Agreements filed as Exhibits 10.18, 10.19 and 10.20 herewith (incorporated by reference from Exhibit 4.1 to the Quarterly Report on Form 10-QSB as filed with the Securities and Exchange Commission on November 14, 2006). |
| 10.1 | License Agreement dated December 16, 2002 among ImmuneRegen BioSciences, Inc., a subsidiary of the Registrant, David Harris and Mark Witten (incorporated by reference to exhibit 10.4 of the Registrant's registration statement on Form SB-2 (File No. 333-120784) filed with the Securities and Exchange Commission on November 24, 2004). |
| 10.1(a) | First Amendment to License Agreement dated December 20, 2002 among ImmuneRegen BioSciences, Inc., a subsidiary of the Registrant, David Harris and Mark Witten (incorporated by reference to exhibit 10.4(a) of the Registrant's registration statement on Form SB-2 (File No. 333-120784) filed with the Securities and Exchange Commission on November 24, 2004). |

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- 10.1(b) Second Amendment to License Agreement dated June 26, 2003 among ImmuneRegen BioSciences, Inc., a subsidiary of the Registrant, David Harris and Mark Witten (incorporated by reference to exhibit 10.4(b) of the Registrant's registration statement on Form SB-2 (File No. 333-120784) filed with the Securities and Exchange Commission on November 24, 2004).
- 10.1(c) Assignment Agreement dated February 23, 2005 between ImmuneRegen BioSciences, Inc., a subsidiary of the Registrant and Mark Witten (incorporated by reference to exhibit 10.4(c) of the Registrant's registration statement on Form SB-2 (File No. 333-120784) filed with the Securities and Exchange Commission on July 20, 2005).
- 10.1(d) Assignment Agreement dated February 23, 2005 among ImmuneRegen BioSciences, Inc., a subsidiary of the Registrant, David Harris and Mark Witten (incorporated by reference to exhibit 10.4(d) of the Registrant's registration statement on Form SB-2 (File No. 333-120784) filed with the Securities and Exchange Commission on July 20, 2005).
- 10.1(e) Assignment Agreement dated November 7, 2005 between ImmuneRegen BioSciences, Inc., a subsidiary of the Registrant and Mark Witten (incorporated by reference to exhibit 10.4(e) of the Registrant's registration statement on Form SB-2 (File No. 333-120784) filed with the Securities and Exchange Commission on November 16, 2005).
- 10.1(f) Assignment Agreement dated November 7, 2005 between ImmuneRegen BioSciences, Inc., a subsidiary of the Registrant and Mark Witten (incorporated by reference to exhibit 10.4(f) of the Registrant's registration statement on Form SB-2 (File No. 333-120784) filed with the Securities and Exchange Commission on February 22, 2006).
- 10.1(g) Assignment Agreement dated November 7, 2005 between ImmuneRegen BioSciences, Inc., a subsidiary of the Registrant and Mark Witten (incorporated by reference to exhibit 10.4(g) of the Registrant's registration statement on Form SB-2 (File No. 333-120784) filed with the Securities and Exchange Commission on November 16, 2005).
- 10.1(h) Assignment Agreement dated November 7, 2005 between ImmuneRegen BioSciences, Inc., a subsidiary of the Registrant and Mark Witten (incorporated by reference to exhibit 10.4(h) of the Registrant's registration statement on Form SB-2 (File No. 333-120784) filed with the Securities and Exchange Commission on November 16, 2005).
- 10.2 Lease Agreement dated July 1, 2004 between ImmuneRegen BioSciences, Inc., a subsidiary of the Registrant, and The Clayton Companies (incorporated by reference to exhibit 10.5 of the Registrant's registration statement on Form SB-2 (File No. 333-120784) filed with the Securities and Exchange Commission on November 24, 2004).

| Exhibit Number | Description of Exhibit |
|-----------------------|--|
| 10.3 | Form of Subscription Agreement entered into as of October 13, 2004 between the Registrant and each of the Investors set forth on the Schedule of Investors thereto (incorporated by reference to exhibit 10.1 of the Registrant's current report on Form 8-K filed with the Securities and Exchange Commission on October 19, 2004). |
| 10.4 | Form of Settlement Agreement entered into as of October 13, 2004 between the Registrant and each of the Creditors set forth on the Schedule of Creditors thereto (incorporated by reference to exhibit 10.2 of the Registrant's current report on Form 8-K filed with the Securities and Exchange Commission on October 19, 2004). |
| 10.5 | Form of Subscription Agreement entered into as of October 26, 2004 between the Registrant and each of the Investors set forth on the Schedule of Investors thereto (incorporated by reference to exhibit 10.1 of the Registrant's current report on Form 8-K filed with the Securities and Exchange Commission on October 27, 2004). |
| 10.6 | Form of Settlement Agreement entered into as of October 26, 2004 between the Registrant and each of the Creditors set forth on the Schedule of Creditors thereto (incorporated by reference to exhibit 10.2 of the Registrant's current report on Form 8-K filed with the Securities and Exchange Commission on October 27, 2004). |
| 10.7 | Employment Agreement dated February 15, 2005 between the Registrant and John N. Fermanis (incorporated by reference to exhibit 10.10 of the Registrant's Amendment No. 1 on Form 10-K/A to its annual report for the year ended December 31, 2004). |
| 10.8 | Employment Agreement dated August 10, 2005 by and between the Registrant and Michael K. Wilhelm (incorporated by reference to exhibit 10.1 of the Registrant's quarterly report on Form 10-QSB for the three months ended September 30, 2005). |
| 10.9 | Change of Control Agreement dated August 10, 2005 by and between the Registrant and Michael K. Wilhelm (incorporated by reference to exhibit 10.2 of the Registrant's quarterly report on Form 10-QSB for the three months ended September 30, 2005). |
| 10.10 | Severance Agreement dated November 7, 2005 by and between the Registrant and Michael K. Wilhelm (incorporated by reference to exhibit 10.3 of the Registrant's quarterly report on Form 10-QSB for the three months ended September 30, 2005). |
| 10.11 | Authorization for Regulatory Contact dated November 7, 2005 between ImmuneRegen BioSciences, Inc., a subsidiary of the Registrant, and Synergos, Inc. (incorporated by reference to exhibit 10.14 of the Registrant's registration statement on Form SB-2 (File No. 333-120784) filed with the Securities and Exchange Commission on February 22, 2006). |
| 10.12 | Proforma invoice/quotation dated November 7, 2005 from Sigma-Aldrich, Inc. to ImmuneRegen BioSciences, Inc., a subsidiary of the Registrant (incorporated by |

reference to exhibit 10.15 of the Registrant's registration statement on Form SB-2 (File No. 333-120784) filed with the Securities and Exchange Commission on November 16, 2005).

- 10.13 Letter of acceptance dated October 2, 2003, from Huntingdon Life Sciences to ImmuneRegen BioSciences, Inc., a subsidiary of the Registrant (incorporated by reference to exhibit 10.16 of the Registrant's registration statement on Form SB-2 (File No. 333-120784) filed with the Securities and Exchange Commission on February 22, 2006).
- 10.14 Price Quotation dated June 27, 2003 received by ImmuneRegen BioSciences, Inc., a subsidiary of the Registrant from AppTec Laboratory Services (incorporated by reference to exhibit 10.17 of the Registrant's registration statement on Form SB-2 (File No. 333-120784) filed with the Securities and Exchange Commission on February 22, 2006).

| Exhibit Number | Description of Exhibit |
|-----------------------|---|
| 10.15 | Consulting Agreement dated March 15, 2005 between ImmuneRegen BioSciences, Inc., a subsidiary of the Registrant and Dr. Hal Siegel, Ph.D. (Siegel Consultancy) (incorporated by reference to exhibit 10.18 of the Registrant's registration statement on Form SB-2 (File No. 333-120784) filed with the Securities and Exchange Commission on February 22, 2006). |
| 10.16 | Consulting Agreement dated November 3, 2005 between ImmuneRegen BioSciences, Inc., a subsidiary of the Registrant and Dr. Jack Caravelli, Ph.D (incorporated by reference to exhibit 10.19 of the Registrant's registration statement on Form SB-2 (File No. 333-120784) filed with the Securities and Exchange Commission on February 22, 2006). |
| 10.17 | Consulting Agreement dated July 29, 2005 between ImmuneRegen BioSciences, Inc., a subsidiary of the Registrant and Dr. Kelly McQueen, MD, MPH (incorporated by reference to exhibit 10.20 of the Registrant's registration statement on Form SB-2 (File No. 333-120784) filed with the Securities and Exchange Commission on February 22, 2006). |
| 10.18 | Form of Subscription Agreement entered into as of December 6, 2006 between the Registrant and each of the Investors set forth on the Schedule of Investors contained therein (incorporated by reference from Exhibit 10.1 to the Report on Form 8-K as filed with the Securities and Exchange Commission on December 7, 2006). |
| 10.19 | Form of Subscription Agreement entered into as of October 4, 2006 between the Registrant and each of the Investors set forth on the Schedule of Investors contained therein. (incorporated by reference from Exhibit 10.2 to the Quarterly Report on Form 10-QSB as filed with the Securities and Exchange Commission on November 14, 2006). |
| 10.20 | Form of Subscription Agreement entered into as of October 26, 2006 between the Registrant and each of the Investors set forth on the Schedule of Investors contained therein (incorporated by reference from Exhibit 10.2 to the Quarterly Report on Form 10-QSB as filed with the Securities and Exchange Commission on November 14, 2006). |
| 10.21 | Standard Form of Director Indemnification Agreement. |
| 14.1 | Code of Ethics, dated April 29, 2005. |
| 21.1 | Subsidiaries of Registrant (incorporated by reference to exhibit 21.1 of the Registrant's registration statement on Form SB-2 (File No. 333-120784) filed with the Securities and Exchange Commission on November 24, 2004). |
| 23.1 | Consent of Russell Bedford Stefanou Mirchandani LLP |
| 31.1 | Certification of Chief Executive Officer pursuant to Item 601(b)(31) of Regulation S-B, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. |

- 31.2 Certification of Chief Financial Officer pursuant to Item 601(b)(31) of Regulation S-B, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 32.1 Certifications of Chief Executive Officer pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.*
- 32.2 Certifications of Chief Financial Officer pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.*

* This exhibit shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934 or otherwise subject to the liabilities of that section, nor shall it be deemed incorporated by reference in any filing under the Securities Act of 1933 or the Securities Exchange Act of 1934, whether made before or after the date hereof and irrespective of any general incorporation language in any filings.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, on May 8, 2007.

IR BIOSCIENCES HOLDINGS, INC.

Date: May 8, 2007

By: /s/ Michael K. Wilhelm
 Michael K. Wilhelm
 President and Chief Executive Officer

In accordance with the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

| SIGNATURE | TITLE | DATE |
|--|--|-------------|
| <u>/s/ Michael K. Wilhelm</u> Michael K. Wilhelm | Chief Executive Officer, President and Director (Principal Executive Officer) | May 8, 2007 |
| <u>/s/ John N. Fermanis</u> John N. Fermanis | Chief Financial Officer (Principal Financial and Accounting Officer) | May 8, 2007 |
| <u>/s/ Hal N. Siegel</u> Hal N. Siegel, Ph.D. | Director | May 8, 2007 |
| <u>/s/ Theodore E. Staahl</u> Theodore E. Staahl, M.D. | Director | May 8, 2007 |
| <u>/s/ Robert J. Hariri</u> Robert J. Hariri, M.D., Ph.D. | Director | May 8, 2007 |