

YRC WORLDWIDE INC
Form 8-K
January 07, 2010

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of Report (Date of earliest event reported) December 31, 2009

YRC Worldwide Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

0-12255
(Commission
File Number)

48-0948788
(IRS Employer
Identification No.)

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10990 Roe Avenue, Overland Park, Kansas 66211

(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code (913) 696-6100

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Explanatory Note

YRC Worldwide Inc. (the Company) previously disclosed exchange offers expired at 11:59 p.m., New York City time, on December 30, 2009. The exchange offers had sought to exchange up to 42 million shares of the Company's common stock and up to 5 million shares of the Company's new Class A convertible preferred stock (the Preferred Stock) for its (i) 5.0% Net Share Settled Contingent Convertible Senior Notes due 2023 (the 5% Net Share Settled Notes) and 5.0% Contingent Convertible Senior Notes due 2023 (the Old 5% Notes and together with the 5% Net Share Settled Notes, the 5% Notes), (ii) 3.375% Net Share Settled Contingent Convertible Senior Notes due 2023 (the 3.375% Net Share Settled Notes) and 3.375% Contingent Convertible Senior Notes due 2023 (the Old 3.375% Notes and together with the 3.375% Net Share Settled Notes, the 3.375% Notes) and (iii) the US\$1 1/2% Notes due 2010 (the 8 1/2% Notes) issued by the Company's subsidiary, YRC Regional Transportation, Inc. (YRCRT), with an aggregate face value of approximately \$536.8 million (the Exchange Offers). The Company received tenders for \$470,209,000 in par value, representing approximately 88% of the Company's outstanding notes, including (i) \$105,043,000, or 70%, of its 8 1/2% Notes, (ii) \$2,350,000, or 100%, of Old 5% Notes, (iii) \$214,417,000, or 91.4%, of 5% Net Share Settled Notes, (iv) \$5,384,000, or 100%, of Old 3.375% Notes and (v) \$143,015,000, or 98.9%, of 3.375% Net Share Settled Notes. On December 31, 2009 (the Settlement Date), the Company issued to tendering noteholders 36,504,043 shares of its common stock and 4,345,514 shares of its Preferred Stock (957,229,823.92 shares of common stock, on an as-if converted basis as of December 31, 2009) which, together on an as-if converted basis, represent approximately 94% of the Company's total issued and outstanding common stock.

The Exchange Offers are described in the prospectus, dated December 30, 2009 (the Prospectus), filed pursuant to Rule 424(b)(3) of the Securities Act of 1933, as amended, on December 30, 2009.

Item 1.01 Entry into a Material Definitive Agreement.

In connection with the Exchange Offers, the Company solicited consents to amend the indentures governing its outstanding notes and consents to enter into a mutual release with the tendering noteholders.

Supplemental Indentures

On December 31, 2009, the Company and the trustee for the 3.375% Net Share Settled Notes and the 5% Net Share Settled Notes entered into a supplemental indenture to the indenture governing the 3.375% Net Share Settled Notes (the 3.375% Supplemental Indenture) and a supplemental indenture to the indenture governing the 5% Net Share Settled Notes (the 5% Supplemental Indenture), each of which removes substantially all material affirmative and negative covenants and related events of default other than the obligation to pay principal and interest on the notes, those relating to conversion rights and those relating to a repurchase right at the option of holders and certain limitations on the Company's ability to merge or transfer assets.

On December 31, 2009, YRCRT and the trustee for the 8 1/2% Notes entered into a supplemental indenture to the indenture governing the 8 1/2% Notes (the 8 1/2% Supplemental Indenture), which removes substantially all material affirmative and negative covenants and related events of default other than the obligation to pay principal and interest on the 8 1/2% Notes.

This summary does not purport to be complete and is subject to and qualified in its entirety by reference to the full text of the 3.375% Supplemental Indenture, the 5% Supplemental Indenture and the 8 1/2% Supplemental Indenture, which are filed as Exhibits 4.1 through 4.3 hereto and are incorporated by reference.

Mutual Release

On December 31, 2009, the Company, YRCRT and the tendering noteholders entered into a mutual release (the Mutual Release), under which they agreed to release the other parties to the Mutual Release and certain of their related parties from every, any and all claims, which claim against such party and its related parties ever had, now have or hereafter can, shall or may have, for, upon or by reason of any matter, act, failure to act, transaction, event, occurrence, cause or thing whatsoever up to the date of the consummation of the Exchange Offers, directly or indirectly relating to the outstanding notes, the indentures relating to the outstanding notes and the Exchange Offers,

subject to limited exceptions set forth in the Mutual Release. The Mutual Release also provides that the tendering noteholders waive certain appraisal rights in the event of a merger of the Company.

This summary does not purport to be complete and is subject to and qualified in its entirety by reference to the full text of the Mutual Release, which is filed as Exhibit 1.1 hereto and is incorporated by reference.

Item 3.03 Material Modification to Rights of Security Holders.

Upon issuance of the Preferred Stock on the Settlement Date (referenced in the Explanatory Note above), the ability of the Company to declare or pay dividends on, make distributions with respect to, or make a liquidation payment on its common stock, became subject to certain restrictions. In addition, the holders of the Preferred Stock will be entitled to vote on an as-converted basis with the holders of the common stock on all matters submitted to a vote of the Company's stockholders, and the Company may not take certain actions without the affirmative vote or written consent of holders representing at least a majority of the then outstanding Preferred Stock subject to certain exceptions. The information set forth in the section of the Prospectus entitled Description of the New Preferred Stock is incorporated herein by reference.

On December 31, 2009, the Company and the trustees entered into supplemental indentures which materially modified the rights of noteholders who did not tender their notes. The information in Item 1.01 under the caption Supplemental Indentures is responsive to this item and is incorporated herein by reference.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

The Company has entered into a Non-Competition, Non-Solicitation, Non-Disparagement and Confidentiality Agreement (the Agreement) with Timothy A. Wicks, its President and Chief Operating Officer.

Pursuant to the Agreement, Mr. Wicks agreed that for one year following his termination of employment (the Restricted Period) not to compete with the business of the Company or do any of the following:

cause, solicit, induce or encourage any employees, consultants or contractors of the Company to leave their respective employment or service with the Company;

solicit the employment of, or hire, employ or otherwise engage any employee of the Company; *provided* that it will not be a violation for an employer that Mr. Wicks works for or for a firm in which he maintains an interest to have hired an employee of the Company without his knowledge or participation;

cause, induce, or encourage any actual or prospective client, customer, supplier or licensor of the Company (including any existing or former customers of the Company) to terminate or modify any actual or prospective business relationship with the Company; and

develop or foster a business relationship with any actual or prospective client, customer, supplier or licensor to cause, induce, or encourage such individual to become a client, customer, supplier, or licensor of any business in which he is engaged that is competitive with the Company's business.

In exchange, the Company paid Mr. Wicks \$400,000 on January 6, 2010. In addition, the Company agreed to pay Mr. Wicks the following amounts if the following objectives are met:

First Incentive Payment. The Company agreed to pay Mr. Wicks \$200,000 on April 1, 2010 if Mr. Wicks is still employed by the Company on that date and the Company achieves certain specified operational and selling, general and administrative operating expense run rate

improvements on an annual basis during the measurement period beginning on September 1, 2009 and ending on March 31, 2010.

Second Incentive Payment. The Company agreed to pay Mr. Wicks \$200,000 on July 1, 2010 if Mr. Wicks is still employed by the Company on that date and the Company has increased its sales and marketing productivity by a specified percentage during the measurement period beginning on November 1, 2009 and ending on June 30, 2010.

In determining if the above objectives are met, the Company will calculate the measures consistent with past practice, and the Compensation Committee of the Board of Directors of the Company (or the full Board) will interpret, review and approve whether the objectives have been met on a reasonable basis of its choosing.

In addition, Mr. Wicks agreed not to disclose confidential information of the Company and to refrain from disparaging the Company and its officers and employees.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

On December 31, 2009, the Company filed a Certificate of Designations with the Delaware Secretary of State for the purposes of amending its certificate of incorporation, as amended, to fix the designations, preferences, powers and rights of the Preferred Stock. The information set forth in the section of the Prospectus entitled "Description of the New Preferred Stock" is incorporated herein by reference. The description of the Certificate of Designations is qualified in its entirety by reference to the full text of the Certificate of Designations, attached hereto as Exhibit 3.1 and incorporated by reference.

Item 8.01 Other Events.

On December 31, 2009, the Company settled the Exchange Offers as described in the Explanatory Note above.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit

Number	Description
1.1	Mutual Release, dated as of December 31, 2009, by and among YRC Worldwide Inc., YRC Regional Transportation, Inc. and certain holders of 8 1/2% Notes, Old 3.375% Notes, 3.375% Net Share Settled Notes, Old 5% Notes and 5% Net Share Settled Notes.
3.1	Certificate of Designations, Preferences, Powers and Rights of Convertible Preferred Stock.
4.1	Supplemental Indenture, dated as of December 31, 2009 between YRC Worldwide Inc. (formerly Yellow Corporation), the guarantors signatory thereto and Deutsche Bank Trust Company Americas, as trustee, supplementing the Indenture, dated as of December 31, 2004 (as supplemented and in effect as of the date of the Supplemental Indenture), relating to the 3.375% Net Share Settled Contingent Convertible Senior Notes due 2023.
4.2	Supplemental Indenture, dated as of December 31, 2009 between YRC Worldwide Inc. (formerly Yellow Corporation), the guarantors signatory thereto and Deutsche Bank Trust Company Americas, as trustee, supplementing the Indenture, dated as of December 31, 2004 (as supplemented and in effect as of the date of the Supplemental Indenture), relating to the 5.0% Net Share Settled Contingent Convertible Senior Notes due 2023.

- 4.3 Supplemental Indenture, dated as of December 31, 2009 between YRC Regional Transportation, Inc. (formerly USFreightways Corporation), the guarantors signatory thereto, and The Bank of New York Mellon Trust Company, N.A. (successor-in-interest to NBD Bank), as trustee, supplementing the Indenture, dated as of May 5, 1999 (as supplemented and in effect as of the date of the Supplemental Indenture), relating to the 8 1/2% Guaranteed Notes due April 15, 2010.

SIGNATURE

Pursuant to the requirements 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.

YRC WORLDWIDE INC.

Date: January 7, 2010

By: */s/* DANIEL J. CHURAY
Daniel J. Churay
Executive Vice President, General Counsel and Secretary

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EXHIBIT INDEX

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	Years Ended December 31,		
	2018	2017	2016
	(In thousands)		
Selling, general and administrative	\$ 38,361	\$ 40,004	\$ 32,073
Research and development	11,553	16,964	14,132
Total stock-based compensation	\$ 49,914	\$ 56,968	\$ 46,205

13. Employee Benefit Plans

The Company maintains a defined contribution plan, which is qualified under section 401(k) of the Internal Revenue Code for U.S. employees. Employees may make contributions by withholding a percentage of their salary up to the Internal Revenue Service annual limit of \$18,500 and \$24,500 in 2018 for employees under 50 years old and employees 50 years old or over, respectively. The Company's matching contribution vests over four years from the start of employment. The Company made approximately \$1.9 million, \$2.7 million and \$2.3 million in matching contributions for the years ended December 31, 2018, 2017 and 2016, respectively.

14. Income Taxes

The components of loss before income taxes for the years ended December 31, 2018, 2017 and 2016 includes the following:

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	Years Ended December 31,		
	2018	2017	2016
	(in thousands)		
United States	\$ (72,655)	\$ (102,586)	\$ (154,812)
Foreign	(236,587)	(257,781)	(258,018)
Total	\$ (309,242)	\$ (360,367)	\$ (412,830)

Income tax expense (benefit) differed from the amounts computed by applying the statutory U.S. Federal income tax rate of 21% (34% for 2017 and 2016) to loss before income taxes as a result of the following:

	Years Ended December 31,		
	2018	2017	2016
	(in thousands)		
Computed expected tax benefit	\$ (64,941)	\$ (122,525)	\$ (140,362)
State taxes, net of U.S. Federal benefit			
U.S. Federal rate reduction		84,787	
U.S. Federal valuation allowance	9,352	282	40,377
Stock-based compensation	6,423	(49,391)	5,161
Officer compensation	22	26	50
Foreign valuation allowance	44,896	52,521	57,759
Foreign tax rate differences	4,787	35,125	37,142
Other	(539)	(825)	(127)
Total	\$	\$	\$

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TABLE OF CONTENTS**INTERCEPT PHARMACEUTICALS, INC.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS****14. Income Taxes (continued)**

The tax effects of temporary differences that give rise to the deferred tax assets and liabilities at December 31, 2018 and 2017 are presented below:

	December 31,	
	2018	2017
	(in thousands)	
Deferred tax assets:		
Net operating loss and other carryforwards	\$ 329,088	\$ 276,481
Stock compensation	13,228	14,651
Deferred revenue	620	1,149
Accrued compensation	3,431	3,994
Accrued expense	2,340	1,139
Intellectual property		1,059
Interest limitation	2,913	
Other	1,021	492
Deferred tax assets before valuation allowance	352,641	298,965
Valuation allowance	(338,852)	(282,730)
Total deferred tax assets	13,789	16,235
Deferred tax liabilities:		
Convertible Note	(13,789)	(16,235)
Total deferred tax liabilities	(13,789)	(16,235)
Net deferred tax asset (liability)	\$	\$

Effects of the Tax Cuts and Jobs Act

In late 2017, the United States enacted the Tax Cuts and Jobs Act of 2017 (the TCJA), which significantly changed U.S. tax law by implementing a reduction in the corporate tax rate to 21%, moving from a worldwide tax system to a territorial system and imposing new or additional limitations on the deductibility of interest expense and executive compensation.

Given the significance of the legislation, the staff of the U.S. Securities and Exchange Commission (the SEC) issued Staff Accounting Bulletin No. 118 (SAB 118), which allowed registrants to record provisional amounts during a one year measurement period similar to that used when accounting for business combinations. The Company applied the guidance in SAB 118 when accounting for the enactment-date effects of the TCJA in 2017 and throughout 2018.

For the year ended December 31, 2017, amounts recorded principally related to the reduction in the U.S. corporate income tax rate to 21%, which resulted in the Company reducing its net deferred tax asset and associated valuation allowance by \$82.8 million. Additionally, the new law included a one-time mandatory repatriation transition tax on

the net accumulated earnings and profits of a U.S. taxpayer's foreign subsidiaries. As a result of accumulated losses since inception, there was no income tax effect.

At December 31, 2018, the Company completed its accounting of SAB 118 for all of the enactment-date income tax effects of the TCJA. The Company has not made any measurement-period adjustments and there were no additional material adjustments related to the TCJA.

Net Operating Losses

As of December 31, 2018 and 2017, the Company had net operating loss carryforwards (NOLs) for U.S. Federal income tax purposes of \$658.4 million and \$628.0 million, respectively. The enactment of the TCJA in late 2017 modified the ability of companies to utilize NOLs arising in tax years beginning on or after

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INTERCEPT PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

14. Income Taxes (continued)

January 1, 2018 by providing that such NOLs may be carried-forward indefinitely and used to offset up to 80 percent of taxable income in any given future year. Existing NOLs that arose in tax years beginning prior to January 1, 2018 were not affected by the TCJA and are generally eligible to be carried-forward for up to 20 years and used to fully offset taxable income in future years. The Company's pre-2018 NOLs will expire for U.S. Federal income tax purposes between 2024 and 2037. The Company also has certain state and foreign NOLs in varying amounts depending on the different state and foreign tax laws.

In addition, the Company's ability to utilize its NOLs may be limited under Section 382 of the Internal Revenue Code or similar rules. The Section 382 limitations apply if an ownership change occurs. Generally, an ownership change occurs when certain shareholders increase their aggregate ownership by more than 50 percentage points over their lowest ownership percentage in a testing period (typically three years). The Company has evaluated whether one or more ownership changes under Section 382 have occurred since its inception and has determined that there have been at least two such changes. Although the Company believes that these ownership changes have not resulted in material limitations on its ability to use these NOLs, its ability to utilize these NOLs may be limited due to future ownership changes or for other reasons. As a result, the Company may not be able to take full advantage of its carryforwards for U.S. Federal, state, and foreign tax purposes.

Valuation Allowance

At December 31, 2018 and 2017, the Company maintained a full valuation allowance on its deferred tax assets since it has not yet achieved sustained profitable operations. As a result, the Company has not recorded any income tax benefit since its inception. In 2018, the valuation allowance for deferred tax assets increased by approximately \$56.1 million. This includes an increase of \$9.4 million, \$1.9 million and \$44.9 million for U.S. Federal, state and foreign tax, respectively, partially offset by a decrease of \$0.1 million to equity. In 2017, the valuation allowance for deferred tax assets increased by approximately \$59.3 million. This includes an increase of \$0.3 million, \$6.8 million and \$52.5 million for U.S. Federal, state and foreign tax, respectively, partially offset by a decrease of \$0.3 million to equity.

Unrecognized Tax Benefits

At December 31, 2018 and 2017, the Company had no reserves for unrecognized tax benefits.

The Company and its subsidiaries are subject to taxation in the United States and various foreign jurisdictions. Of the major jurisdictions, the Company is subject to examination in: the United States for U.S. Federal purposes for 2015 and forward and generally for state purposes for 2014 and forward; and the United Kingdom for 2016 and forward.

However, NOLs are subject to audit in any tax year in which those losses are utilized, notwithstanding the year of origin.

15. Commitments and Contingencies

Facility Leases

In May 2014, the Company entered into a lease agreement with respect to office space in San Diego, California. The Company leases approximately 47,000 square feet of space at this property. The lease covering this property is scheduled to expire in July 2020.

In January 2016, Intercept Pharma Europe Ltd. (IPEL), a wholly owned subsidiary of the Company, entered into an underlease with respect to office space in London, United Kingdom. The Company is the guarantor to the underlease. IPEL leases approximately 8,500 square feet of space at this property. The lease covering this property is scheduled to expire in May 2024.

In December 2016, the Company entered into a lease agreement with respect to office space at 10 Hudson Yards in New York, New York, where the Company's corporate headquarters are located. The Company leases an aggregate of approximately 41,100 square feet of office space at this property. The lease covering this property is scheduled to expire at varying times through June 2021.

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The Company also leases office space in several other locations.

Rent expense under operating leases for facilities for the years ended December 31, 2018, 2017 and 2016 was approximately \$6.3 million, \$8.9 million and \$5.5 million, respectively. As of December 31, 2018, minimum contractually-obligated operating lease cash payments under non-cancelable leases, as amended, are as follows:

Year Ending December 31,	Amount (in thousands)
2019	\$ 9,506
2020	8,126
2021	4,841
2022	2,945
2023	2,982
Thereafter	1,531
Total future minimum operating lease payments	\$ 29,931

Purchase Commitments

The Company enters into contracts in the normal course of business with contract research organizations for its clinical trials, contract manufacturing organizations for the manufacture and supply of its clinical and commercial product needs and other vendors for other research and development and commercial activities, as well as services and products for operating purposes. The Company's agreements generally provide for termination with notice. Such agreements are cancelable contracts are not included as purchase commitments. The Company has included as purchase obligations its commitments under agreements to the extent they are quantifiable and are not cancelable. The Company had purchase obligations of approximately \$29.8 million as of December 31, 2018.

Legal Proceedings

The Company is involved in various disputes, governmental inquiries and investigations, legal proceedings and litigation in the course of its business, including the matters described below and, from time to time, intellectual property, employment and other litigation. These matters, which could result in damages, fines or other administrative, civil or criminal remedies, liabilities or penalties, are often complex and the outcome of such matters is often uncertain. The Company may from time to time enter into settlements to resolve such matters.

On September 27, 2017, a purported shareholder class action, initially styled DeSmet v. Intercept Pharmaceuticals, Inc., et al, was filed in the United States District Court for the Southern District of New York, naming the Company and certain of its officers as defendants. The Court appointed lead plaintiffs in the lawsuit on June 1, 2018, and the lead plaintiffs filed an amended complaint on July 31, 2018, captioned Hou Liu and Amy Fu v. Intercept

Pharmaceuticals, Inc., et al., naming the Company and certain of its current and former officers as defendants. The lead plaintiffs claim to be suing on behalf of anyone who purchased or otherwise acquired the Company's common stock between June 9, 2016 and September 20, 2017. This lawsuit alleges that material misrepresentations and/or omissions of material fact were made in the Company's public disclosures during the period from June 9, 2016 to September 20, 2017, in violation of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, as amended (the Exchange Act), and Rule 10b-5 promulgated thereunder. The alleged improper disclosures relate to statements regarding Ocaliva dosing, use and pharmacovigilance-related matters, as well as the Company's operations, financial performance and prospects. The plaintiffs seek unspecified monetary damages on behalf of the putative class, an award of costs and expenses, including attorney's fees, and rescissory damages. On September 14, 2018, the Company filed a motion to dismiss the amended complaint. Separately, on January 5, 2018, a follow-on derivative suit, styled

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

15. Commitments and Contingencies (continued)

Davis v. Pruzanski et al., was filed in New York state court by shareholder Gregg Davis based on substantially the same allegations as those set forth in the securities case. On December 1, 2017, a purported shareholder demand was made on the Company based on substantially the same allegations as those set forth in the securities case.

While the Company believes that it has a number of valid defenses to the claims described above and intends to vigorously defend itself, the matters are in the early stages of litigation and no assessment can be made as to the likely outcome of the matters or whether they will be material to the Company. Accordingly, an estimate of the potential loss, or range of loss, if any, to the Company relating to the matters is not possible at this time.

In May 2018, the Company received a subpoena from the SEC requesting information in connection with the Company's patient assistance program and certain of the Company's commercial activities. The SEC's letter enclosing the subpoena states that the investigation and the subpoena do not mean that the Company or anyone else has broken the law, or that the SEC has a negative opinion of any person, entity or security. The Company is cooperating fully with the SEC in this matter. At this time, the Company is unable to predict whether any proceeding may be instituted in connection with the subpoena, or the outcome of any such proceeding, if instituted.

In August 2018, the Company received an inquiry from the U.S. Department of Justice acting through the U.S. Attorney's office for the District of Massachusetts (the DOJ) requesting the voluntary production of certain information regarding the Company's activities and public statements concerning Ocaliva's dosing, use, adverse events, marketing and reimbursement. The Company cooperated fully with the DOJ in connection with this inquiry and in early 2019 the DOJ informed the Company that it had reviewed the information produced by the Company and did not plan to request further information in connection therewith. Subsequently, a qui tam complaint alleging that the Company violated federal and state false claims acts was unsealed in January 2019. The qui tam complaint was voluntarily dismissed without prejudice by the relator with the consent of the United States of America and various named state government plaintiffs.

16. Net Loss Per Share

Basic loss per share is computed by dividing net loss attributable to common stockholders (numerator) by the weighted average number of common shares outstanding (denominator) during the period. For the years ended December 31, 2018, 2017 and 2016, as the Company was in a net loss position, the diluted loss per share computations for such periods did not assume the conversion of the Convertible Notes, exercise of stock options or vesting of RSUs as they would have had an anti-dilutive effect on loss per share.

The following potentially dilutive securities have been excluded from the computations of diluted weighted average shares outstanding as of December 31, 2018, 2017 and 2016, as the inclusion thereof would have been anti-dilutive:

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	December 31,		
	2018	2017	2016
	(in thousands)		
Convertible Notes	2,316		
Options	1,874	1,808	1,553
Restricted stock units	441	493	382
Total	4,631	2,301	1,935

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The following table summarizes the unaudited quarterly financial data for the years ended December 31, 2018 and 2017:

	Quarters Ended				Total
	March 31,	June 30,	September 30,	December 31,	
	(in thousands, except for per share amounts)				
<u>2018</u>					
Revenues	\$35,963	\$43,575	\$46,986	\$53,280	\$179,804
Operating loss	(75,456)	(69,777)	(58,286)	(81,971)	(285,490)
Net loss	(81,590)	(75,193)	(64,454)	(88,005)	(309,242)
Net loss per common share basic and diluted	\$(3.22)	\$(2.58)	\$(2.18)	\$(2.97)	
<u>2017</u>					
Revenues	\$21,048	\$30,887	\$41,334	\$37,687	\$130,956
Operating loss	(83,963)	(80,509)	(66,171)	(104,969)	(335,612)
Net loss	(89,930)	(86,564)	(72,601)	(111,272)	(360,367)
Net loss per common share basic and diluted	\$(3.61)	\$(3.46)	\$(2.89)	\$(4.43)	

18. Prior Settlement

In February 2014, two purported shareholder class actions, styled *Scot H. Atwood v. Intercept Pharmaceuticals, Inc. et al.* and *George Burton v. Intercept Pharmaceuticals, Inc. et al.*, were filed in the United States District Court for the Southern District of New York, naming the Company and certain of its officers as defendants. These lawsuits were filed by stockholders who claimed to be suing on behalf of anyone who purchased or otherwise acquired the Company's securities between January 9, 2014 and January 10, 2014.

The lawsuits alleged that the Company made material misrepresentations and/or omissions of material fact in its public disclosures during the period from January 9, 2014 to January 10, 2014, in violation of Sections 10(b) and 20(a) of the Exchange Act and Rule 10b-5 promulgated thereunder. The alleged improper disclosures related to the Company's January 9, 2014 announcement that the FLINT trial had been stopped early based on a pre-defined interim efficacy analysis. Specifically, the lawsuits claimed that the January 9, 2014 announcement was misleading because it did not contain information regarding certain lipid abnormalities seen in the FLINT trial in OCA-treated patients compared to placebo.

A lead plaintiff was subsequently appointed by the Court and in June 2014, the lead plaintiff filed an amended complaint on behalf of the putative class seeking unspecified monetary damages on behalf of the putative class and an

award of costs and expenses, including attorneys' fees. In August 2014, the defendants filed a motion to dismiss the complaint. In March 2015, the defendants' motion to dismiss was denied by the Court. The defendants answered the amended complaint in April 2015. In July 2015, the plaintiff moved for class certification and appointment of class representatives and class counsel. In September 2015, the defendants opposed the plaintiff's class certification motion. The plaintiff filed its reply to the defendants' opposition in October 2015, to which the defendants filed a sur-reply in November 2015. Oral arguments on the class certification motion were held in January 2016.

In May 2016, the defendants reached an agreement with the lead plaintiff to seek Court approval of a proposed resolution, the plaintiffs moved for preliminary approval of the proposed settlement and the Court entered an order preliminarily approving the settlement. The Court ordered that notice be provided to the class and preliminarily approved the proposed settlement, including the payment of \$55.0 million, of which \$10.0 million was agreed to be funded by the Company's insurers. The one-time net expense of \$45.0 million

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

18. Prior Settlement (continued)

was recorded to selling, general, and administrative expenses in the statement of operations for the year ended December 31, 2016. The settlement was paid into escrow in June 2016, with distribution to the class to occur after the Court had finally approved the settlement and the plan of allocation of those proceeds. In September 2016, the Court granted final approval of the settlement. The final judgment and order of the Court included a dismissal of the action with prejudice against all defendants. The defendants did not admit any liability as part of the settlement.

19. Restructuring Charges

In December 2017, the Company initiated a 15% reduction in the workforce and concurrently notified the affected employees. The reduction in force supports the Company's strategy to fund its development organization with strategic collaborations and to focus the Company's resources to progress its development and commercialization initiatives.

The actions associated with the reductions were substantially completed during the fourth quarter of 2017 and, as a result of the reductions, the Company recorded a one-time restructuring charge of \$5.2 million for termination benefits in the same period. Of this charge, \$3.9 million was recorded in selling, general and administrative expense and \$1.3 million was recorded in research and development expense. The restructuring charge associated with cash payments of \$5.2 million were paid out in the first quarter of 2018.

No restructuring charges were incurred for the year ended December 31, 2018.