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NEOPROBE CORP
Form 10QSB
August 14, 2003

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 10-QSB

(Mark One)

QUARTERLY REPORT UNDER SECTION 13 OR 15 (D) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE QUARTERLY PERIOD ENDED: JUNE 30, 2003

OR

TRANSITION REPORT UNDER SECTION 13 OR 15 (D) OF THE EXCHANGE ACT FOR THE TRANSITION PERIOD FROM _____ TO _____

COMMISSION FILE NUMBER: 0-26520

NEOPROBE CORPORATION
(Exact name of small business issuer as specified in its charter)

DELAWARE 31-1080091
(State or other jurisdiction of incorporation or organization) (I.R.S. employer identification no.)

425 METRO PLACE NORTH, SUITE 300, DUBLIN, OHIO 43017
(Address of principal executive offices)

614.793.7500
(Issuer's telephone number)

38,589,009 SHARES OF COMMON STOCK, PAR VALUE \$.001 PER SHARE
(Number of shares of issuer's common equity outstanding as of the close of business on August 4, 2003)

Transitional Small Business Disclosure Format (check one) Yes No

PART I - FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

NEOPROBE CORPORATION AND SUBSIDIARY
CONSOLIDATED BALANCE SHEETS

ASSETS	JUNE 30, 2003 (UNAUDITED)	DECEMBER 31, 2002
	-----	-----
Current assets:		
Cash and cash equivalents	\$ 368,703	\$ 700,5
Accounts receivable, net	1,505,538	746,1
Inventory	953,095	1,191,9
Prepaid expenses and other	345,735	451,5

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Total current assets	3,173,071	3,090,0
Property and equipment	2,369,646	2,346,4
Less accumulated depreciation and amortization	2,021,551	1,883,7
	348,095	462,6
Patents and trademarks	3,144,900	3,129,0
Non-compete agreements	584,516	584,5
Acquired technology	237,271	237,2
	3,966,687	3,950,8
Less accumulated amortization	827,061	584,4
	3,139,626	3,366,3
Other assets	216,099	160,7
Total assets	\$ 6,876,891	\$ 7,079,8

CONTINUED

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NEOPROBE CORPORATION AND SUBSIDIARY
CONSOLIDATED BALANCE SHEETS, CONTINUED

LIABILITIES AND STOCKHOLDERS' EQUITY	JUNE 30, 2003 (UNAUDITED)	DECEMBER 31 2002
Current liabilities:		
Note payable to CEO, net of discount	\$ 224,596	\$ 172,3
Other notes payable, net of discount	197,390	14,6
Capital lease obligation, current	12,905	397,1
Accrued liabilities	487,767	432,1
Accounts payable	554,342	933,8
Deferred revenue, current	1,061,647	
Total current liabilities	2,538,647	1,950,2
Capital lease obligation	--	5,3
Deferred revenue	289,442	703,6
Contingent consideration for acquisition	--	288,0
Other liabilities	208,437	172,4

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	-----	-----
Total liabilities	3,036,526	3,119,7
	-----	-----
Commitments and contingencies		
Stockholders' equity:		
Preferred stock; \$.001 par value; 5,000,000 shares authorized at June 30, 2003 and December 31, 2002; none issued and outstanding (500,000 shares designated as Series A, \$.001 par value, at June 30, 2003 and and December 31, 2002; none outstanding)	--	
Common stock; \$.001 par value; 75,000,000 shares authorized; 38,588,009 shares issued and outstanding at June 30, 2003; 36,502,183 shares issued and outstanding at December 31, 2002	38,588	36,5
Additional paid-in capital	125,037,853	124,601,7
Accumulated deficit	(121,236,076)	(120,678,1
	-----	-----
Total stockholders' equity	3,840,365	3,960,1
	-----	-----
Total liabilities and stockholders' equity	\$ 6,876,891	\$ 7,079,8
	=====	=====

See accompanying notes to the consolidated financial statements

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NEOPROBE CORPORATION AND SUBSIDIARY
CONSOLIDATED STATEMENTS OF OPERATIONS
(UNAUDITED)

	THREE MONTHS ENDED JUNE 30,		SIX MO JUN
	2003	2002	2003
	-----	-----	-----
Revenues:			
Net sales	\$ 1,637,060	\$ 905,941	\$ 2,940,706
License and other revenue	252,655	359,442	488,045
	-----	-----	-----
Total revenues	1,889,715	1,265,383	3,428,751
	-----	-----	-----
Cost of goods sold	775,727	727,135	1,614,789
	-----	-----	-----
Gross profit	1,113,988	538,248	1,813,962
	-----	-----	-----
Operating expenses:			
Research and development	437,815	697,431	856,584
Selling, general and administrative	721,506	724,640	1,475,589

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Total operating expenses	1,159,321	1,422,071	2,332,173
Loss from operations	(45,333)	(883,823)	(518,211)
Other income (expenses):			
Interest income	2,589	20,386	5,139
Interest expense	(36,026)	(5,217)	(40,662)
Other	(602)	(2,506)	(4,206)
Total other (expenses) income	(34,039)	12,663	(39,729)
Net loss	\$ (79,372)	\$ (871,160)	\$ (557,940)
Net loss per common share:			
Basic	\$ 0.00	\$ (0.02)	\$ (0.01)
Diluted	\$ 0.00	\$ (0.02)	\$ (0.01)
Weighted average shares outstanding:			
Basic	38,458,009	36,023,659	38,403,202
Diluted	38,458,009	36,023,659	38,403,202

See accompanying notes to the consolidated financial statements.

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NEOPROBE CORPORATION AND SUBSIDIARY
CONSOLIDATED STATEMENTS OF CASH FLOWS
(UNAUDITED)

	SIX MONTHS ENDED JUNE 30,	
	2003	2002
Cash flows from operating activities:		
Net loss	\$ (557,940)	\$ (1,716,285)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	389,908	456,743
Amortization of debt discount	22,599	--
Change in operating assets and liabilities:		
Accounts receivable	(759,431)	108,252
Inventory	230,925	(111,681)
Accrued and other liabilities	116,567	13,318
Accounts payable	122,202	(185,331)
Deferred revenue	(286,396)	(400,000)
Other assets and liabilities	132,817	169,836
Net cash used in operating activities	(588,749)	(1,665,148)

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Cash flows from investing activities:		
Purchases of available-for-sale securities	--	(2,491,361)
Maturities of available-for-sale securities	--	250,000
Purchases of property and equipment	(15,720)	(165,216)
Patent and trademark costs	(15,870)	(13,020)
Subsidiary acquisition costs	--	(24,028)
	-----	-----
Net cash used in investing activities	(31,590)	(2,443,625)
	-----	-----
Cash flows from financing activities:		
Payment of common stock offering costs	(2,867)	(34,631)
Proceeds from notes payable, net of offering costs	458,489	1,000,000
Payment of notes payable	(159,999)	(133,912)
Payments under capital lease	(7,106)	(6,250)
	-----	-----
Net cash provided by financing activities	288,517	825,207
	-----	-----
Net decrease in cash and cash equivalents	(331,822)	(3,283,566)
Cash and cash equivalents, beginning of period	700,525	4,287,101
	-----	-----
Cash and cash equivalents, end of period	\$ 368,703	\$ 1,003,535
	=====	=====

See accompanying notes to the consolidated financial statements.

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NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

1. BASIS OF PRESENTATION

The information as of June 30, 2003 and 2002 and for the periods then ended is unaudited, but includes all adjustments (which consist only of normal recurring adjustments) that the management of Neoprobe Corporation (Neoprobe or we) believes to be necessary for the fair presentation of results for the periods presented. Certain information and footnote disclosures normally included in financial statements prepared in accordance with generally accepted accounting principles have been condensed or omitted pursuant to the rules and regulations of the U.S. Securities and Exchange Commission. The results for the interim period are not necessarily indicative of results to be expected for the year. The financial statements should be read in conjunction with Neoprobe's audited financial statements for the year ended December 31, 2002, which were included as part of our Annual Report on Form 10-KSB. Certain 2002 amounts have been reclassified to conform to the 2003 presentation.

Our consolidated financial statements include the accounts of Neoprobe and our wholly-owned subsidiary, Cardiosonix Ltd. (Cardiosonix). All significant intercompany accounts were eliminated in consolidation.

2. COMPREHENSIVE INCOME (LOSS)

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We had no accumulated other comprehensive income (loss) activity during the three-month and six-month periods ended June 30, 2003.

Due to our net operating loss position, there are no income tax effects on comprehensive income (loss) components for the three-month and six-month periods ended June 30, 2002.

	THREE MONTHS ENDED JUNE 30, 2002	SIX MONTHS ENDED JUNE 30, 2002
	-----	-----
Net loss	\$(871,160)	\$(1,716,285)
Unrealized gains on securities	19,829	13,461
	-----	-----
Other comprehensive loss	\$(851,331)	\$(1,702,824)
	=====	=====

3. EARNINGS PER SHARE

Basic earnings (loss) per share is calculated using the weighted average number of common shares outstanding during the periods. Diluted earnings (loss) per share is calculated using the weighted average number of common shares outstanding during the periods, adjusted for the effects of convertible securities, options and warrants, if dilutive.

	THREE MONTHS ENDED JUNE 30, 2003		THREE MONTHS ENDED JUNE 30, 2002	
	-----	-----	-----	-----
	BASIC EARNINGS PER SHARE	DILUTED EARNINGS PER SHARE	BASIC EARNINGS PER SHARE	DILUTED EARNINGS PER SHARE
	-----	-----	-----	-----
Outstanding shares	38,588,009	38,588,009	36,502,183	36,502,183
Effect of weighting changes in outstanding shares	--	--	(38,524)	(38,524)
Contingently issuable shares	(130,000)	(130,000)	(440,000)	(440,000)
	-----	-----	-----	-----
Adjusted shares	38,458,009	38,458,009	36,023,659	36,023,659
	=====	=====	=====	=====

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	SIX MONTHS ENDED JUNE 30, 2003		SIX MONTHS ENDED JUNE 30, 2002	
	-----	-----	-----	-----
	BASIC EARNINGS	DILUTED EARNINGS	BASIC EARNINGS	DILUTED EARNINGS
	-----	-----	-----	-----

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	PER SHARE -----	PER SHARE -----	PER SHARE -----	P ---
Outstanding shares	38,588,009	38,588,009	36,502,183	36
Effect of weighting changes in outstanding shares	(54,807)	(54,807)	(45,780)	
Contingently issuable shares	(130,000)	(130,000)	(440,000)	
	-----	-----	-----	---
Adjusted shares	38,403,202 =====	38,403,202 =====	36,016,403 =====	36 =====

There is no difference in basic and diluted loss per share related to the three-month and six-month periods ended June 30, 2003 and 2002. The net loss per common share for these periods excludes the number of common shares issuable upon exercise of outstanding stock options and warrants into our common stock since such inclusion would be anti-dilutive.

4. INVENTORY

The components of net inventory are as follows:

	JUNE 30, 2003 (UNAUDITED) -----	DECEMBER 31, 2002 -----
Materials and component parts	\$ 682,497	\$ 760,540
Work in process	--	59,888
Finished goods	270,598	371,490
	-----	-----
	\$ 953,095 =====	\$1,191,918 =====

5. INTANGIBLE ASSETS

The major classes of intangible assets are as follows:

	JUNE 30, 2003 (UNAUDITED) -----		DECEMBER 31, 2002 -----	
	GROSS CARRYING AMOUNT -----	ACCUMULATED AMORTIZATION -----	GROSS CARRYING AMOUNT -----	ACCUMULATED AMORTIZATION -----
Patents and trademarks	\$3,144,900	\$551,960	\$3,129,031	\$
Non-compete agreements	584,516	223,228	584,516	
Acquired technology	237,271	51,873	237,271	
	-----	-----	-----	---
Total	\$3,966,687 =====	\$827,061 =====	\$3,950,818 =====	\$ =====

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The estimated future amortization expenses for the next five fiscal years are as follows:

	ESTIMATED AMORTIZATION EXPENSE -----
For the year ended 12/31/2004	\$415,991
For the year ended 12/31/2005	412,740
For the year ended 12/31/2006	259,368
For the year ended 12/31/2007	229,528
For the year ended 12/31/2008	203,128

6. DEBT FINANCING

During April 2003, we completed a loan agreement with our President and CEO, David Bupp. Under the terms of the agreement, Mr. Bupp advanced us \$250,000. Interest is payable on the note at 8.5%, payable monthly, and repayment of the note is due on June 30, 2004. In consideration for the loan, we issued Mr. Bupp 375,000 warrants to purchase our common stock at an exercise price of \$0.13 per share. The warrants were recorded at their estimated relative fair value of \$32,000 along with a corresponding discount to the face amount of the note. The discount is being amortized into interest expense over the 15-month term of the note.

Also during April 2003, we completed a loan agreement with an outside investor for an additional \$250,000. Under the terms of the agreement, interest is payable on the note at 9.5%, payable monthly, and repayment of the note is due on June 30, 2004. In consideration for the loan, we issued the investor 500,000 warrants to purchase our common stock at an exercise price of \$0.13 per share. Also, the outside investor's note is convertible, at the option of the investor, into our common stock beginning on July 1, 2003. Half of the principal is convertible into common stock at a 15% discount to the 20-day average market price preceding the conversion, but in no case greater than a \$0.20 ceiling conversion price or less than a \$0.10 floor conversion price. The remaining half of the principal is also convertible at a 15% discount to a 20-day average market price preceding the conversion, subject only to the \$0.10 floor conversion price. The warrants were recorded at their estimated relative fair value of \$41,000 along with a corresponding discount to the face amount of the note. In addition, the beneficial conversion feature of the note was recorded at its estimated fair value of \$41,000 along with an additional corresponding discount to the face value of the note. The discounts are being amortized into interest expense over the 15-month term of the note.

7. PRODUCT WARRANTY

We generally warrant our gamma detection products against defects in design, materials, and workmanship generally for a period of one year from the date of sale to the end customer. Our accrual for warranty expenses is adjusted periodically to reflect actual experience. The primary marketing partner of our gamma detection devices, Ethicon Endo-Surgery, Inc. (EES), a Johnson and Johnson company, also reimburses us for a portion of

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warranty expense incurred based on end customer sales they make during a given fiscal year. We generally warrant our blood flow products, with the exception of ultrasound probes, for one year from the date of sale to the end customer.

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The activity in the warranty reserve account for the three-month and six-month periods ended June 30, 2003 and 2002 are as follows:

	THREE MONTHS ENDED JUNE 30,		SIX M J
	2003	2002	2003
Warranty reserve at beginning of period	\$ 65,000	\$ 80,000	\$ 35,000
Provision for warranty claims and changes in reserve for warranties	958	21,949	36,529
Costs charged against the reserve, net	(7,958)	(31,949)	(13,529)
Warranty reserve at end of period	\$ 58,000	\$ 70,000	\$ 58,000

8. STOCK OPTIONS AND RESTRICTED STOCK

During the first six months of 2003, the Board of Directors granted options to employees and certain non-employee directors to purchase 750,000 shares of common stock, exercisable at an average price of \$0.14 per share, vesting over three years. As of June 30, 2003, we have 2.8 million options outstanding under three stock option plans. Of the outstanding options, 1.4 million options have vested as of June 30, 2003, at an average exercise price of \$0.72 per share.

The following table illustrates the effect on net loss and net loss per share if compensation cost for our stock-based compensation plans had been determined based on the fair value at the grant dates for awards under those plans consistent with Statement of Financial Accounting Standards (SFAS) No. 123, Accounting for Stock-Based Compensation:

	THREE MONTHS ENDED JUNE 30,	
	2003	2002
Net loss, as reported	\$ (79,372)	\$ (871,160)
Deduct: Total stock-based employee compensation expense determined under fair value based method for all awards	(42,641)	(73,014)

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Pro forma net loss	\$ (122,013) =====	\$ (944,174) =====
Net loss per common share:		
As reported (basic and diluted)	\$ 0.00	\$ (0.02)
Pro forma (basic and diluted)	\$ 0.00	\$ (0.03)

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	SIX MONTHS ENDED JUNE 30,	
	2003	2002
	-----	-----
Net loss, as reported	\$ (557,940)	\$ (1,716,285)
Add: Total stock-based employee compensation expense included in reported net loss	39,990	--
Deduct: Total stock-based employee compensation expense determined under fair value based method for all awards	(124,973)	(152,222)
	-----	-----
Pro forma net loss	\$ (642,923) =====	\$ (1,868,507) =====
Net loss per common share:		
As reported (basic and diluted)	\$ (0.01)	\$ (0.05)
Pro forma (basic and diluted)	\$ (0.02)	\$ (0.05)

During the first quarter of 2003, we vested 310,000 shares of previously restricted stock related to new or amended employment agreements of three of our officers. We recognized \$40,000 of compensation expense related to this in the first quarter of 2003.

9. SEGMENT AND SUBSIDIARY INFORMATION

We own or have rights to intellectual property involving two primary types of medical device products, including gamma detection instruments currently used primarily in the application of intraoperative lymphatic mapping (ILM), and blood flow measurement devices.

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The information in the following table is derived directly from each segment's internal financial reporting used for corporate management purposes. Selling, general and administrative costs and other income, including amortization, interest and other costs that relate primarily to corporate activity, are not currently allocated to the operating segments for financial reporting purposes.

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(\$ AMOUNTS IN THOUSANDS) THREE MONTHS ENDED JUNE 30, 2003 -----	GAMMA DETECTION -----	BLOOD FLOW -----	UNALLOCATED -----
Net sales:			
United States(1)	\$1,444	\$ --	\$ --
International	3	190	--
License and other revenue	253	--	--
Research and development expenses	134	304	--
Selling, general and administrative expenses	--	--	722
Income (loss) from operations(2)	817	(140)	(722)
Other income	--	--	(34)
THREE MONTHS ENDED JUNE 30, 2002 -----			
Net sales:			
United States(1)	\$ 905	\$ --	\$ --
International	1	--	--
License and other revenue	359	--	--
Research and development expenses	212	485	--
Selling, general and administrative expenses	--	--	725
Income (loss) from operations(2)	347	(485)	(725)
Other income	--	--	13

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(\$ AMOUNTS IN THOUSANDS) SIX MONTHS ENDED JUNE 30, 2003 -----	GAMMA DETECTION -----	BLOOD FLOW -----	UNALLOCATED -----
Net sales:			
United States(1)	\$2,698	\$ --	\$ --
International	4	239	--
License and other revenue	488	--	--
Research and development expenses	270	587	--
Selling, general and administrative expenses	--	--	1,476
Income (loss) from operations(2)	1,379	(421)	(1,476)
Other income	--	--	(40)
SIX MONTHS ENDED JUNE 30, 2002 -----			
Net sales:			
United States(1)	\$1,581	\$ --	\$ --
International	60	--	--
License and other revenue	684	--	--
Research and development expenses	495	742	--
Selling, general and administrative Expenses	--	--	1,575
Income (loss) from operations(2)	630	(742)	(1,575)
Other income	--	--	15

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- (1) All sales to EES are made in the United States. EES distributes the product globally through its international affiliates.
- (2) Income (loss) from operations does not reflect the allocation of selling, general and administrative costs to the operating segments.

10. NEW ACCOUNTING PRONOUNCEMENTS

In June 2001, the Financial Accounting Standards Board (FASB) issued SFAS No. 143, Accounting for Asset Retirement Obligations. SFAS 143 requires us to record the fair value of an asset retirement obligation as a liability in the period in which we incur a legal obligation associated with the retirement of tangible long-lived assets that result from the acquisition, construction, development, and/or normal use of the assets. We are also required to record a corresponding asset that is depreciated over the life of the asset. Subsequent to the initial measurement of the asset retirement obligation, the obligation will be adjusted at the end of each period to reflect the passage of time and changes in the estimated future cash flows underlying the obligation. We adopted SFAS 143 on January 1, 2003. The adoption of SFAS 143 did not have a material effect on our financial statements.

In July 2002, the FASB issued SFAS No. 146, Accounting for Costs Associated with Exit or Disposal Activities. SFAS 146 requires us to disclose information about our exit and disposal activities, the related costs, and changes in those costs in the notes to the interim and annual financial statements that include the period in which an exit or disposal activity is initiated. SFAS 146 requires us to disclose, for each reportable segment, the exit or disposal activity costs incurred in the period and the cumulative amount incurred, net of any changes in the liability, with an explanation of the reasons for the changes. SFAS 146 also requires us to disclose the total amount of costs expected to be incurred in connection with the exit or disposal activity. The new requirements are effective

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prospectively for exit and disposal activities initiated after December 31, 2002. The adoption of SFAS 146 did not have a material impact on our financial statements.

In November 2002, the FASB issued Interpretation No. 45, Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness to Others, an interpretation of FASB Statement Nos. 5, 57 and 107 and a rescission of FASB Interpretation No. 34. This Interpretation elaborates on the disclosures to be made by a guarantor in its interim and annual financial statements about its obligations under guarantees issued. The Interpretation also clarifies that a guarantor is required to recognize, at inception of a guarantee, a liability for the fair value of the obligation undertaken. The initial recognition and measurement provisions of the Interpretation are applicable to guarantees issued or modified after December 31, 2002, and did not have a material effect on our financial statements. The disclosure requirements are effective for financial statements of interim and annual periods ending after December 15, 2002.

In May 2003, the FASB issued SFAS No. 150, Accounting for Certain Financial Instruments with Characteristics of Both Liabilities and Equity. The Statement requires issuers to classify as liabilities (or assets in

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some circumstances) three classes of freestanding financial instruments that embody obligations for the issuer. Generally, the Statement is effective for financial instruments entered into or modified after May 31, 2003 and is otherwise effective at the beginning of the first interim period beginning after June 15, 2003. We adopted the provisions of the Statement on July 1, 2003. The adoption of SFAS No. 150 did not have a material effect on our financial statements.

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

RESULTS OF OPERATIONS

Revenue for the first six months of 2003 increased \$1.1 million or 47% to \$3.4 million from \$2.3 million for the same period in 2002. Major expense categories as a percentage of net sales decreased in the first six months of 2003 as compared to the same period in 2002, due primarily to the increase in net sales coupled with a lower overall cost structure for our gamma business. Research and development expenses, as a percentage of net sales, decreased to 29% during the first six months of 2003 from 75% during the same period in 2002. Selling, general and administrative expenses, as a percentage of net sales, decreased to 50% during the first quarter of 2003 from 96% during the same period in 2002. Controlling our costs remains a high priority for us as we endeavor to return to profitability. We expect these major expense categories, as a percentage of net sales, to continue to decrease for 2003 as compared to 2002; however, this decrease will depend greatly on our success in achieving additional commercial sales of our blood flow products.

Three Months Ended June 30, 2003 and 2002

Net Sales and Margins. Net sales increased \$731,000 or 81% to \$1.6 million during the second quarter of 2003 from \$906,000 during the same period in 2002. Gross margins on net sales increased to 53% of net sales for the second quarter of 2003 compared to 20% of net sales for the same period in 2002. Approximately \$540,000 of the increase in net sales was the result of increased revenue related to our gamma detection products with the remaining \$190,000 generated from our blood flow products. We had no revenues from blood flow products during the same period in 2002. Of the increased revenue from gamma detection products, approximately 55% was due to increased prices realized on our neo2000 control unit and 14mm probes, with approximately 30% due to increased sales volumes of these products. The remaining 15% was due to various changes in other products and product mix. The price at which Neoprobe sells its gamma detection products to EES is based on a percentage of the global average sales price (ASP) received by EES on sales of Neoprobe products to end customers, subject to a minimum floor price. During the second quarter of 2002, we recorded revenue at the floor sales prices per the distribution agreement due to perceived weakness in the global ASP. However, during the second half of 2002 we began to note a strengthening in global ASP. This trend in ASP has continued in 2003 to the point that management believed it was more appropriate to record revenue for the second quarter of 2003 at the estimated 2003 sales price calculated consistently with prior periods per the terms

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of the distribution agreement. The increase in gross margins was primarily due to the higher recorded revenue per gamma detection system combined with lower capitalized internal manufacturing costs due to headcount reductions contributing to lower average costs.

License and Other Revenue. License and other revenue in the second quarters of

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2003 and 2002 included \$200,000 from the pro-rata recognition of license fees related to the distribution agreement with EES and \$53,000 and \$159,000, respectively, from the reimbursement by EES of certain product development costs.

Research and Development Expenses. Research and development expenses decreased \$260,000 or 37% to \$438,000 during the second quarter of 2003 from \$697,000 during the same period in 2002. The decrease was primarily due to lower compensation costs resulting from headcount reductions of gamma product line personnel in the third and fourth quarters of 2002 coupled with decreased use of external design consultants and decreased prototype expenses related to the blood flow product line.

Selling, General and Administrative Expenses. Selling, general and administrative expenses decreased slightly to \$722,000 during the second quarter of 2003 from \$725,000 during the same period in 2002. The decrease was primarily due to lower compensation costs resulting from headcount reductions of gamma product line personnel in the third and fourth quarters of 2002, offset by increased selling, general and administrative expenses incurred in the operation and support of Cardiosonix. Selling, general and administrative expenses in the second quarter of 2002 also included \$24,000 for the transfer of manufacturing of certain components of the neo2000 gamma detection system to a new contract manufacturer.

Other Income (Expenses). Other income (expenses) decreased \$47,000 to expenses of \$34,000 during the second quarter of 2003 from income of \$13,000 during the same period in 2002. Other expenses during the second quarter of 2003 consisted primarily of interest expense related to the bridge financing agreements. Other income during the second quarter of 2002 consisted primarily of interest income. Our interest income decreased because we maintained a lower balance of cash and investments during the second quarter of 2003 as compared to the same period in 2002.

Six Months Ended June 30, 2003 and 2002

Net Sales and Margins. Net sales increased \$1.3 million or 79% to \$2.9 million during the first six months of 2003 from \$1.6 million during the same period in 2002. Gross margins on net sales increased to 45% of net sales for the first six months of 2003 compared to 24% of net sales for the same period in 2002. Approximately \$1.1 million of the increase in net sales was the result of increased revenue related to our gamma detection products with the remaining \$239,000 generated from our blood flow products. We had no revenues from blood flow products during the same period in 2002. Of the increased revenue from gamma detection products, approximately 35% was due to increased prices realized on our neo2000 control unit and 14mm probes, with approximately 50% due to increased sales volumes of these products. The remaining 15% was due to various changes in other products and product mix. The price at which Neoprobe sells its gamma detection products to EES is based on a percentage of the global average sales price (ASP) received by EES on sales of Neoprobe products to end customers, subject to a minimum floor price. During the first half of 2002, we recorded revenue at the floor sales prices per the distribution agreement due to perceived weakness in the global ASP. However, during the second half of 2002, we began to note a strengthening in global ASP. This trend in ASP has continued in 2003 to the point that management believed it was more appropriate to record revenue for the first half of 2003 at the estimated 2003 sales price calculated consistently with prior periods per the terms of the distribution agreement. The increase in gross margins was primarily due to the higher recorded revenue per gamma detection system combined with lower capitalized internal manufacturing costs due to headcount reductions contributing to lower average costs.

License and Other Revenue. License and other revenue in the first six months of 2003 and 2002 included \$400,000 from the pro-rata recognition of license fees

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related to the distribution agreement with EES and \$88,000 and \$284,000, respectively, from the reimbursement by EES of certain product development costs.

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Research and Development Expenses. Research and development expenses decreased \$381,000 or 31% to \$857,000 during the first six months of 2003 from \$1.2 million during the same period in 2002. The decrease was primarily due to lower compensation costs resulting from headcount reductions of gamma product line personnel in the third and fourth quarters of 2002 coupled with decreased use of external design consultants and decreased prototype expenses related to the blood flow product line.

Selling, General and Administrative Expenses. Selling, general and administrative expenses decreased \$100,000 or 6% to \$1.5 million during the first months of 2003 from \$1.6 million during the same period in 2002. The decrease was primarily due to lower compensation costs resulting from headcount reductions of gamma product line personnel in the third and fourth quarters of 2002, offset by increased selling, general and administrative expenses incurred in the operation and support of Cardiosonix. Selling, general and administrative expenses in the first six months of 2003 and 2002 included \$30,000 and \$45,000, respectively; in impairment of intellectual property that we did not believe had ongoing value to the business. Selling, general and administrative expenses in the first six months of 2002 also included \$79,000 for the transfer of manufacturing of certain components of the neo2000 gamma detection system to a new contract manufacturer.

Other Income (Expenses). Other income (expenses) decreased \$55,000 to expenses of \$40,000 during the first six months of 2003 from income of \$15,000 during the same period in 2002. Other expenses during the first six months of 2003 consisted primarily of interest expense related to the bridge financing agreements. Other income during the first six months of 2002 consisted primarily of interest income. Our interest income decreased because we maintained a lower balance of cash and investments during the first six months of 2003 as compared to the same period in 2002.

LIQUIDITY AND CAPITAL RESOURCES

Operating Activities. Cash used in operations decreased \$1.1 million to \$589,000 during the first six months of 2003 from \$1.7 million during the same period in 2002. Working capital decreased \$505,000 to \$634,000 at June 30, 2003 as compared to \$1.1 million at December 31, 2002. The current ratio decreased to 1:1.2 at June 30, 2003 from 1:1.6 at December 31, 2002. The decrease in working capital was primarily related to cash used to fund blood flow development activities offset slightly by net changes in other working capital components.

Cash balances decreased to \$369,000 at June 30, 2003 from \$701,000 at December 31, 2002, primarily due to the requirements of supporting the operations of Cardiosonix, offset by the cash obtained from the bridge financing arrangements and the increased net sales experienced during the first six months of 2003.

Accounts receivable increased to \$1.5 million at June 30, 2003 from \$746,000 at December 31, 2002 due primarily to greater sales in June 2003 than December 2002. We expect receivable levels will continue to fluctuate in 2003 depending on the timing of purchases and payments by EES. However, on average, we expect accounts receivable balances will start to increase commensurate with anticipated increases in sales of blood flow products to our distributors, many of whom are foreign-domiciled entities who typically pay at a slower rate than domestic companies.

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Inventory levels decreased to \$953,000 at June 30, 2003 as compared to \$1.2 million at December 31, 2002, primarily related to decreases in finished goods of gamma detection products due to greater than originally anticipated demand from EES during the second quarter as well as the continued decreases in certain long-lead gamma detection device components that were built up in prior periods to take advantage of quantity price breaks. These decreases were offset by the build-up of inventory related to our blood flow products as we continue market launch preparations. During the remainder of 2003, we will continue to work through our carryover stock of certain long-lead components of gamma detection materials. We expect inventory levels to increase during the remainder of 2003 as the build-up of initial stocking inventory of blood flow products offsets the use of these long-lead components and as we restore our safety stock of gamma detection products to more normal levels.

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We estimate that the additional costs to complete planned development activities, respond to initial customer feedback, and support initial marketing efforts for our blood flow products for the year ended December 31, 2003 could approach \$2.0 million.

Investing Activities. Cash used in investing activities decreased to \$32,000 during the first six months of 2003 from \$2.4 million during the same period in 2002. During February and March 2002, we invested in \$2.5 million of available-for-sale securities. Capital expenditures in the first six months of 2003 and 2002 were split between purchases of production tools and equipment and technology infrastructure. Capital needs for 2003 are now expected to decrease over 2002 as the Company plans to defer the more significant expenditures originally anticipated related to blood flow product development until 2004 following the transfer of primary manufacturing activities for the blood flow products to a contract manufacturer.

Financing Activities. Financing activities provided \$289,000 in cash in the first six months of 2003 versus \$825,000 during the same period in 2002. Payments of notes payable were \$26,000 higher during the first six months of 2003 as compared to the same period in 2002 due to the increased cost of financed insurance.

On November 19, 2001, we entered into a common stock purchase agreement with an investment fund, Fusion Capital Fund II, LLC (Fusion) for the issuance and purchase of our common stock. Under the stock purchase agreement, Fusion committed to purchase up to \$10 million of our common stock over a forty-month period that commenced in May 2002. A registration statement registering for resale up to 5 million shares of our common stock became effective on April 15, 2002. Under the terms of the agreement, we can request daily drawdowns, subject to a daily base amount currently set at \$12,500. The number of shares we are to issue to Fusion in return for that money will be based on the lower of (a) the closing sale price for our common stock on the day of the draw request or (b) the average of the three lowest closing sales prices for our common stock during a twelve day period prior to the draw request. However, no shares may be sold to Fusion at lower than a floor price currently set at \$0.30, but in no case below \$0.20 without Fusion's prior consent. Upon execution of the common stock purchase agreement, we issued 449,438 shares of our common stock to Fusion as a commitment fee. Market conditions (i.e., share price) have effectively prohibited us from drawing funds under the Fusion facility, and in the absence of a change in those conditions, the Fusion facility is unlikely to be drawn on in the foreseeable future.

During April 2003, we completed a bridge loan agreement with our President and

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CEO, David Bupp. Under the terms of the agreement, Mr. Bupp advanced us \$250,000. Interest is payable on the note at 8.5%, payable monthly, and the note is due on June 30, 2004. In consideration for the loan, we issued Mr. Bupp 375,000 warrants to purchase our common stock at an exercise price of \$0.13 per share.

During April 2003, we also completed a bridge loan agreement with an outside investor for an additional \$250,000. Under the terms of the agreement, interest is payable on the note at 9.5%, payable monthly, and the note is due on June 30, 2004. In consideration for the loan, we issued the investor 500,000 warrants to purchase our common stock at an exercise price of \$0.13 per share. The outside investor's note is also convertible, at the option of the investor, into our common stock beginning on July 1, 2003. Half of the principal is convertible into common stock at a 15% discount to the 20-day average market price preceding the conversion, but in no case greater than a \$0.20 ceiling conversion price or less than a \$0.10 floor conversion price. The remaining half of the principal is also convertible at a 15% discount to a 20-day average market price preceding the conversion, subject only to the \$0.10 floor conversion price.

Our future liquidity and capital requirements will depend on a number of factors, including our ability to raise additional capital in a timely manner through additional investment, expanded market acceptance of our current products, our ability to complete the commercialization new products such as our blood flow product line, our ability to monetize our investment in non-core technologies, our ability to obtain milestone or development funds from potential development and distribution partners, regulatory actions by the U.S. FDA and other international regulatory bodies, and intellectual property protection.

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Throughout 2002, we made modifications to our operating plan and cut or delayed planned expenditures as a result of delays in our ability to obtain additional sources of financing. To this point, such changes and cuts have not had a significant impact on our ability to meet the operational milestones we set at the beginning of the year. Despite the bridge loans we completed with Mr. Bupp and the outside investor, we continue to believe we will need to raise at least \$1.0 - \$1.5 million of additional funds to ensure we can complete the development and commercialization of the Cardiosonix product line. To that end, we have engaged the services of an investment banking firm to assist us in obtaining the funds. In exchange for their services, we agreed to pay the firm a monthly retainer of \$10,000, half payable in cash and half payable in common stock, and we have agreed to pay them a percentage of the funds received, if any, as a success fee. We continue to have discussions with potential external financing sources; however, we cannot assure you that additional capital will be available on acceptable terms, if at all. If additional funding is not secured in the near future, we will have to further modify and/or significantly curtail our current strategic and operating plans. We cannot assure you that we will be able to achieve significant product revenues from our current or potential new products. In addition, we cannot assure you that we will achieve profitability again in the future.

CRITICAL ACCOUNTING POLICIES

Revenue Recognition Related to Net Sales. We currently generate revenue primarily from sales of our gamma detection products; however, sales of blood flow products constituted approximately 7% of total revenues for the first half of 2003 and are expected to increase in the future. We generally recognize sales revenue related to sales of our products when the products are shipped and the earnings process has been completed. Our customers have no right to return

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products purchased in the ordinary course of business. However, in cases where product is shipped but the earnings process is not yet completed, revenue is deferred until it has been determined that the earnings process has been completed. We also generate revenue from the service and repair of out-of-warranty products. Fees charged for service and repair on products not covered by an extended service agreement are recognized on completion of the service process when the serviced or repaired product has been returned to the customer. Fees charged for service or repair of products covered by an extended warranty agreement are deferred and recognized into revenue ratably over the life of the extended service agreement. The prices we charge our primary customer, EES, related to sales of products are subject to retroactive annual adjustment based on a fixed percentage of the actual sales prices achieved by EES on sales to end customers made during each fiscal year. To the extent that we can reasonably estimate the end-customer prices received by EES, we record sales to EES based upon these estimates. If we are unable to reasonably estimate end customer sales prices related to certain products sold to EES, we record revenue related to these product sales at the minimum (i.e., floor) price provided for under our distribution agreement with EES. During the first half of 2002, we recorded revenue at the floor sales prices per the distribution agreement due to perceived weakness in the global ASP. However, during the second half of 2002, we began to note a strengthening in global ASP. This trend in ASP has continued in 2003, to the point that management believed it was more appropriate to record revenue for the first half of 2003 at the estimated 2003 sales price calculated consistently with prior periods per the terms of the distribution agreement.

Impairment or Disposal of Long-Lived Assets. We account for long-lived assets in accordance with the provisions of SFAS No. 144. This Statement requires that long-lived assets and certain identifiable intangibles be reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. The recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to future net undiscounted cash flows expected to be generated by the asset. If such assets are considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceeds the fair value of the assets. Assets to be disposed of are reported at the lower of the carrying amount or fair value less costs to sell. As of June 30, 2003, the most significant long-lived assets on our balance sheet relate to assets recorded in connection with the acquisition of Cardiosonix and gamma detection device patents related to ILM. The recoverability of these assets is based on the financial projections and models related to future sales of Cardiosonix' products which have yet to begin and the continuing success of our gamma detection product line. As such, these assets could be subject to significant

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adjustment should the Cardiosonix technology not be successfully commercialized or the sales amounts in our current projections not be realized.

FORWARD-LOOKING STATEMENTS

The Private Securities Litigation Reform Act of 1995 (the Act) provides a safe harbor for forward-looking statements made by or on behalf of our company. From time to time, our representatives and we may make written or verbal forward-looking statements, including statements contained in this report and other company filings with the SEC and in our reports to stockholders. Statements that relate to other than strictly historical facts, such as statements about our plans and strategies, expectations for future financial performance, new and existing products and technologies, and markets for our

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products are forward-looking statements within the meaning of the Act. Generally, the words "believe," "expect," "intend," "estimate," "anticipate," "will" and other similar expressions identify forward-looking statements. The forward-looking statements are and will be based on our then-current views and assumptions regarding future events and operating performance, and speak only as of their dates. Investors are cautioned that such statements involve risks and uncertainties that could cause actual results to differ materially from historical or anticipated results due to many factors including, but not limited to, our limited revenues, accumulated deficit, future capital needs, uncertainty of capital funding, dependence on limited product line and exclusive distributor, uncertainty of market acceptance, competition, limited marketing and manufacturing experience, and other risks detailed in our most recent Annual Report on Form 10-KSB and other SEC filings. We undertake no obligation to publicly update or revise any forward-looking statements.

ITEM 3. CONTROLS AND PROCEDURES

As of the end of the period covered by this report, we carried out an evaluation, under the supervision and with the participation of our principal executive officer and principal financial officer, of the effectiveness of the design and operation of our disclosure controls and procedures. Based on this evaluation, our principal executive officer and principal financial officer concluded that our disclosure controls and procedures are effective to provide reasonable assurance that our disclosure controls and procedures will timely alert them to material information required to be included in our periodic SEC reports. It should be noted that the design of any system of controls is based in part upon certain assumptions about the likelihood of future events, and we cannot assure you that any design will succeed in achieving its stated goals under all potential future conditions, regardless of how remote.

As of the end of the period covered by this report, there has been no change in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Securities Exchange Act of 1934, as amended) during the quarter to which this report relates that has materially affected or is reasonably likely to materially affect, our internal control over financial reporting.

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PART II - OTHER INFORMATION

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

- (a) Neoprobe Corporation held its Annual Meeting of Stockholders on June 12, 2003, for the purpose of electing a director and increasing the authorized number of shares of the Company's stock.
- (b) At the Annual Meeting of Stockholders, the director nominated was elected.
- (c) The following table shows the voting tabulation for each matter voted upon at the Annual Meeting of Stockholders.

ACTION

FOR

Election of Director
J. Frank Whitley, Jr.

28,752,566

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ACTION -----	FOR ---	AGAINST -----
Increase the authorized number of shares of the Company from 55,000,000 to 80,000,000, consisting of 75,000,000 shares of common stock, \$.001 par value, and 5,000,000 shares of preferred stock, \$.001 par value	30,805,974	1,329,060

ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K

(a) EXHIBITS

- 10.1.42 Senior Secured Note Purchase Agreement dated March 26, 2003 between the Company and David C. Bupp.*
- 10.1.43 8.5% Senior Note dated April 2, 2003 between the Company and David C. Bupp.*
- 10.1.44 Convertible Preferred Note Purchase Agreement dated March 26, 2003 between the Company and Donald E. Garlikov.*
- 10.1.45 9.5% Convertible Secured Note dated April 2, 2003 between the Company and Donald E. Garlikov.*
- 10.1.46 Warrant to Purchase Common Stock of Neoprobe Corporation dated April 2, 2003 between the Company and David C. Bupp.*
- 10.1.47 Warrant to Purchase Common Stock of Neoprobe Corporation dated April 2, 2003 between the Company and Donald E. Garlikov.*
- 10.1.48 Security Agreement dated April 2, 2003 between the Company, David C. Bupp and Donald E. Garlikov.*
- 10.1.49 Registration Rights Agreement dated April 2, 2003 between the Company, David C. Bupp and Donald E. Garlikov.*
- 31.1 Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.

- 31.2 Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 32.1 Certification of Chief Executive Officer of Periodic Financial Reports pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350
- 32.2 Certification of Chief Financial Officer of Periodic Financial

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Reports pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350

* Incorporated by reference to Exhibits 99(b) through 99(i) to the Company's Current Report on Form 8-K filed April 2, 2003.

(b) REPORTS ON FORM 8-K

On April 2, 2003, we filed a Current Report on Form 8-K with the Securities and Exchange Commission pursuant to Item 5 reporting \$500,000 in bridge loan financing that we received, including \$250,000 from our President and CEO.

On May 9, 2003, we filed a Current Report on Form 8-K (dated May 8, 2003) with the Securities and Exchange Commission pursuant to Item 12 (under Item 9) in connection with our May 8, 2003, press release announcing our consolidated financial results for the first quarter ended March 31, 2003.

SIGNATURES

In accordance with the requirements of the Exchange Act, the registrant caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

NEOPROBE CORPORATION
(the Company)
Dated: August 14, 2003

By: /s/ DAVID C. BUPP

David C. Bupp
President and Chief Executive Officer
(duly authorized officer; principal executive officer)

By: /s/ BRENT L. LARSON

Brent L. Larson
Vice President, Finance and Chief Financial Officer
(principal financial and accounting officer)

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fluctuations in customer demands;

general economic conditions; and

geopolitical events and regulatory changes.

You are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date of this document.

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All forward-looking statements included herein are expressly qualified in their entirety by the cautionary statements contained or referred to in this section. Except to the extent required by applicable laws and regulations, we undertake no obligation to update these forward-looking statements to reflect events or circumstances after the date of this document or to reflect the occurrence of unanticipated events.

USE OF PROCEEDS

We will not receive any proceeds from the sale of the shares of our common stock by the selling stockholders.

Table of Contents**DESCRIPTION OF TRANSACTIONS****Private Placement of Series B Preferred**

On May 31, 2009, we entered into the Securities Purchase Agreement with Mistral Equity Partners, LP, Mistral Equity Partners QP, LP, MEP Co-Invest LLC (collectively, the Mistral Purchasers) and 1082272 Ontario Inc. Under the Securities Purchase Agreement, the Mistral Purchasers agreed to purchase in a private placement 170,000 shares of our newly created Series B-1 Preferred for an aggregate gross purchase price of \$19,550,000 and 1082272 Ontario Inc. agreed to purchase in a private placement 134,348 shares of our newly created Series B-2 Preferred for an aggregate gross purchase price of \$15,450,020. Effective June 4, 2009, 1082272 Ontario Inc. assigned its rights as a Series B Purchaser to CanBa Investments, LLC, whereby CanBa Investments, LLC acquired all of 1082272 Ontario Inc.'s rights, title, interest and obligations as a Series B Purchaser. The closing of the private placements occurred on June 16, 2009. On June 17, 2009, CanBa Investments, LLC distributed an aggregate of 53,739 shares of its Series B-2 Preferred to Front Street Investment Management Inc., CWCP (Jamba) Inc., Elrom South Developments, Inc., and JRP Citadel Inc., all of which were members of CanBa Investments, LLC. The Series B Preferred are currently convertible into 30,434,800 shares of our common stock at a conversion price of \$1.15 per share. For services rendered to us in connection with the transactions contemplated by the Securities Purchase Agreement, we issued to the Advisor a warrant to purchase 760,870 shares of our common stock. The following summaries are qualified in their entirety by reference to the full text of the Securities Purchase Agreement (filed as Exhibit 10.1 to our 8-K filed on June 3, 2009), the Series B Certificate of Designation (filed as Exhibit 3.1 to our 8-K filed on June 17, 2009) and the Registration Rights Agreement (filed as Exhibit 4.1 to our 8-K filed on June 17, 2009).

Securities Purchase Agreement

The Securities Purchase Agreement contains the following additional material provisions:

Board Representation. The holders of shares of the Series B-1 Preferred, voting as a separate class, will be entitled to elect two members to our Board so long as more than 50% of the number of shares of Series B-1 Preferred originally issued are outstanding. In the event the number of shares of Series B-1 Preferred Stock outstanding is less than 50% of the number of shares originally issued but greater than 25% of the number of shares originally issued, the holders of shares of the Series B-1 Preferred, voting as a separate class, will be entitled to elect only one member to the Board. The ability to elect any members to the Board by the holders of shares of the Series B-1 Preferred will cease once the number of outstanding shares of Series B-1 Preferred is less than 25% of the number of shares of Series B-1 Preferred originally issued. Under the terms of the Securities Purchase Agreement, the Series B Purchasers of the shares of Series B-1 Preferred shall continue to have the right to nominate members for election to the Board in respect of any shares of common stock held thereby upon conversion of any shares of their Series B-1 Preferred, although such nomination rights are subject to similar reductions depending on the percentage of such shares that continue to be held by such purchasers, relative to the number of shares of common stock underlying the shares of Series B-1 Preferred that were issued and sold to such purchasers at the closing of the transactions contemplated by the Securities Purchase Agreement.

The holders of shares of the Series B-2 Preferred, voting as a separate class, will be entitled to elect one member to the Board so long as more than 25% of the number of shares of Series B-2 Preferred originally issued are outstanding. In the event that (i) at the time of our 2010 annual meeting of stockholders, there are more than nine members on the Board and (ii) so long as more than 50% of the number of shares of Series B-2 Preferred originally issued are outstanding, the size of the Board will be increased by one additional Board seat and the holders of shares of the Series B-2 Preferred, voting as a separate class, will be entitled to elect one additional member to the Board to fill the seat. The right to elect any members to the Board by the holders of shares of Series B-2 Preferred will cease once the number of outstanding shares of Series B-2 Preferred is less than 25% of the number of shares of Series B-2 Preferred originally issued. Under the terms of the Securities Purchase Agreement, the Series B Purchasers of the shares of Series B-2 Preferred shall continue to have the right to nominate members for election to the Board in respect of any shares of common stock held thereby upon conversion of any shares of their Series B-2 Preferred, although such nomination rights are subject to similar reductions depending on the percentage of such shares that continue to be held by such purchasers, relative to the number of shares of common stock underlying the shares of Series B-2 Preferred that were issued and sold to such purchasers at the closing of the transactions contemplated by the Securities Purchase Agreement.

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Furthermore, if we fail to declare and pay, in full and in cash, dividends on shares of the Series B Preferred for three consecutive quarters, the size of the Board will be increased by one member and the holders of shares of the Series B Preferred, voting together as a single class, will be entitled to elect one additional member to the Board until such time as the dividends are paid in full and in cash.

Indebtedness. We agreed not to permit our consolidated indebtedness to exceed \$10,000,000 in the aggregate, at any time from and after June 16, 2009, unless consented to in writing by the holders of a majority of the shares of Series B Preferred or the shares of common stock issued upon conversion of shares of the Series B Preferred.

Public Sales. We agreed not to effect any public offering or distribution of any equity securities or register any equity securities (except pursuant to registration on Form S-8 or any successor thereto), in each case until 90 days after the effective date of this registration statement, except as part of this registration.

Future Issuances. We agreed that if we issue and sell any new equity securities after June 16, 2009, subject to certain exceptions, we will give each Series B Purchaser the right to purchase a portion of those new securities so as to permit such Series B Purchaser to maintain its proportional ownership in our stock as long as such Series B Purchaser beneficially owns at least 25% of the shares such Series B Purchaser originally purchased on June 16, 2009.

Monitoring Fee. We agreed to pay to Mistral Capital Management, L.L.C. (the Mistral Manager) a quarterly monitoring fee equal to one-quarter of the product of (x) the number of Board seats whose occupants can be selected by the Mistral Purchasers under the Series B Certificate of Designation or, when applicable, the Securities Purchase Agreement multiplied by (y) an amount equal to \$150,000 less the annual cash compensation payable to the Mistral Manager for the services of the Board representatives appointed by the Mistral Purchasers; *provided, however*, that in no event shall the aggregate lifetime amount paid to the Mistral Manager as a monitoring fee exceed \$3,060,000 in the aggregate.

Affiliate Transactions. We agreed not to enter into or permit any other transaction (including the purchase, sale, lease or exchange of any asset, property or the rendering of any service), directly or indirectly, with or for the benefit of any of our affiliates and our subsidiaries' affiliates, except for the payment of any salaries or other employee compensation to officers of any such affiliates (including reasonable compensation to any director of any such affiliates), unless consented to in writing by the holders of a majority of the shares of Series B Preferred or the shares of common stock issued upon conversion of shares of Series B Preferred.

Standstill Provision. During the Standstill Period (as defined below), each Series B Purchaser agreed that it and its affiliates will not, without the prior written consent of the Board (excluding any directors elected by the holders of shares of the Series B Preferred) (i) otherwise act, alone or in concert with others, to seek, offer or propose (whether publicly or otherwise) to effect control of the management, the Board, or policies of the Company or to seek a waiver of any provision of the Securities Purchase Agreement and (ii) take any action that results in any of them having to file or amend a Schedule 13D indicating an intention, plan or proposal to do any of the foregoing. The foregoing restrictions are subject to certain exceptions for directors elected by the holders of the shares of Series B Preferred and in connection with tender or exchange offers. The Standstill Period means the period beginning June 16, 2009 and ending on the earlier of (a) the first calendar day following the Company's 2011 annual stockholder meeting, (b) June 1, 2011, (c) the date on which a majority of the Board (excluding for these purposes any directors elected by the holders of shares of the Series B Preferred) is no longer comprised of the directors serving as of June 16, 2009 (the Closing Date Directors) or each other member of the Board for whom such other member's nomination for election to the Board is recommended by at least a majority of the Closing Date Directors plus such other members,

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and (d) the date on which there exists Dividend Arrearages in respect of three quarterly dividend payments under the terms of the Series B Certificate of Designation until such time as all accrued quarterly dividend payments required thereunder have been paid in full and in cash.

Voting for the Election of Directors. During the Standstill Period, each Series B Purchaser agreed that it will, and that it will cause each person to whom it has sold 25% or more of the shares of Series B Preferred it purchased on June 16, 2009 (a Series B Permitted Transferee), vote any and all of the shares of Series B Preferred and shares of common stock beneficially owned by it or them, in connection with any election or removal of directors of the Board in (i) the manner recommended by the Board with respect to the election or removal of each director, or (ii) the same proportion as the votes of all stockholders of the Company, other than the Series B Purchasers and their respective affiliates, present in person or by proxy at the meeting with respect to the election or removal of each director. Furthermore, each Series B Purchaser agreed to, and agreed to cause each Series B Permitted Transferee to, cause any and all shares of Series B Preferred acquired thereby on June 16, 2009 and shares of common stock beneficially owned by it or them and entitled to vote there at to be present in person or represented by proxy at every meeting of stockholders so that all such shares shall be counted as present for determining the presence of a quorum at a meeting.

Right of First Refusal on Transfers by Series B Purchasers. During the period ending on June 16, 2011 or, in the event of an earlier bankruptcy or similar proceeding of the Company, either voluntary or involuntary, the date of such earlier event, the Series B Purchasers may not transfer any shares of Series B Preferred acquired by them on June 16, 2009 aggregating to 10% or more of the then outstanding shares of the Company s common stock on an as-converted basis unless the sale thereof is first offered to the Company.

Restriction on Transfers by Series B Purchasers. During the period ending on September 14, 2009, or, in the event of an earlier bankruptcy or similar proceeding of the Company, either voluntary or involuntary, the date of such earlier event, the Series B Purchasers may not transfer any shares of Series B Preferred acquired by them on June 16, 2009 or shares of the Company s common stock issued upon the conversion of such shares of Series B Preferred to any third party, with certain exceptions in the case of transfers to affiliates or transfers in the context of tender or exchange offers. Furthermore, except in the event of a bankruptcy or similar proceeding of the Company, either voluntary or involuntary, the Series B Purchasers agreed not to knowingly transfer any of the shares of Series B Preferred acquired by them on June 16, 2009 to a direct or indirect competitor of the Company, as reasonably determined by a majority of the Board (excluding the vote of any directors elected by the holders of shares of the Series B Preferred).

Series B Preferred Stock

Set forth below are the material terms of the Series B Preferred:

Seniority. The Series B-1 Preferred and the Series B-2 Preferred rank on parity with each other and together rank senior to the common stock and senior to all other existing or future classes or series of preferred stock or other equity securities. The maximum number of shares of Series B-1 Preferred we may issue is 170,000, and the maximum number of shares of Series B-2 Preferred we may issue is 134,348.

Dividends. The holders of shares of Series B Preferred shall be entitled to receive dividends at the rate of 8% per share per annum from the date of issuance of the Series B Preferred; *provided, that*, such rate will be increased to 10% in the event that, and for so long as (x) our common stock is not listed for trading on any of the New York Stock Exchange, the NASDAQ Global Market or the NYSE Amex Equities (formerly the American Stock Exchange) or (y) we fail to declare and pay, in full and in cash, dividends on shares of the Series B Preferred for three consecutive quarters until such time as such dividends are paid in full and in cash. Dividends on shares of the Series B

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Preferred shall be cumulative, shall accrue, whether or not declared and whether or not there are any profits, surplus or other funds or assets of the Company legally available therefor.

Voting. The holders of shares of the Series B Preferred are entitled to vote on all matters on which the holders of shares of common stock are entitled to vote, voting together with the holders of shares of our common stock as a single class. Each share of Series B Preferred is entitled to that number of votes as is equal to the quotient determined by dividing (i) the original issue price of \$115 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) by (ii) the then applicable conversion price (initially \$1.15 per share). Accordingly, each share of Series B Preferred is initially entitled to 100 votes. We are not permitted, without the affirmative vote or written consent of the holders of at least a majority of the shares of Series B Preferred, directly or indirectly, to take any of the following actions or agree to take any of the following actions:

1. authorize, create, issue or increase the authorized or issued amount of any class or series of stock that ranks on parity with or senior to the Series B Preferred;
2. issue to our officers or directors, or any persons or entities affiliated with such officers and directors, any shares of our common stock for consideration less than the conversion price then in effect or any options, warrants or other rights to acquire shares of common stock at an exercise price per share less than the conversion price then in effect other than with respect to shares of common stock issuable upon the exercise of stock options or other securities issued under our stock plans or issued outside our stock plans as compensation;
3. (i) effect any distribution or declare, pay or set aside any dividend with respect to any equity securities ranking junior to or on parity with the Series B Preferred, (ii) set apart money for a sinking or other similar fund, for, the purchase, redemption or other retirement of any equity securities ranking junior to or on parity with the Series B Preferred, or (iii) permit any corporation or other entity directly or indirectly controlled by us to purchase or redeem any equity securities ranking junior to or on parity with the Series B Preferred;
4. amend our Certificate of Incorporation, the Series B Certificate of Designation, or our Bylaws (including by way of merger, consolidation or otherwise) so as to affect adversely any right, preference, privilege or voting power of the Series B Preferred; *provided, however*, that (a) any creation and issuance of shares of junior stock shall not be deemed to adversely affect such rights, preferences, privileges or voting powers; (b) any liquidation, dissolution or winding up of the affairs of the Company, whether voluntary or involuntary, whether by merger, consolidation or otherwise, shall not be deemed to adversely affect such rights, preferences, privileges or voting powers and (c) we shall not be restricted from authorizing an amendment to our Certificate of Incorporation solely for the purpose of effecting a reverse stock split (and for no other purpose) other than a reverse stock split that would constitute, or would reasonably be expected to constitute, a transaction under Rule 13E-3 of the Exchange Act;
5. authorize or effect any stock dividend, forward stock split, combination or other like changes for and with respect to the Series B Preferred; *provided, however*, that we are not restricted by the foregoing from authorizing or effecting a reverse stock split other than a reverse stock split that would constitute, or would reasonably be expected to constitute, a transaction under Rule 13E-3 of the Exchange Act;
6. reclassify our outstanding securities; or
7. enter into any agreement or other arrangement that would, directly or indirectly, preclude us from complying with our redemption obligations or dividend payment obligations pursuant to the Series B Certificate of Designation.

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Liquidation Preference. Upon a liquidation, dissolution or winding up of the affairs of the Company, whether voluntary or involuntary, the holders of shares of the Series B Preferred are entitled to receive a liquidation payment prior to the payment of any amount with respect to shares

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of our common stock. The amount of this preferential liquidation payment per share of the Series B Preferred is the greater of (i) the sum of (A) the liquidation preference per share of the Series B Preferred (which initially is \$115 per share, subject to adjustment, plus any Dividend Arrearage), plus (B) an amount per share of the Series B Preferred equal to accrued but unpaid dividends not previously added to the liquidation preference from and including the immediately preceding dividend payment date up to, but excluding, the date fixed for such liquidation, dissolution or winding up of the Company, whether or not declared, in cash, or (ii) the amount of all cash and other property to be distributed in respect of our common stock the holder of a share of the Series B Preferred would have been entitled to had it converted such share (without regard to any limits on conversion) immediately prior to the date fixed for such liquidation, dissolution or winding up of the Company. Dividends on shares of the Series B Preferred shall be cumulative, shall accrue, whether or not declared and whether or not there are any profits, surplus or other funds or assets of the Company legally available therefor. After payment of the liquidation preference described above, holders of shares of the Series B Preferred are not entitled to any further participation in any distribution of our assets.

Voluntary Conversion. Each share of Series B Preferred Stock is convertible into that number of shares of common stock equal to the quotient determined by dividing \$115 (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) by the then applicable conversion price. The initial conversion price of the Series B Preferred is \$1.15 per share. The holder of a share of Series B Preferred may elect to convert that holder's share at any time. Upon a voluntary conversion by a holder of shares of the Series B Preferred into shares of common stock, we must pay such holder the Dividend Arrearage, if any, in cash, plus an amount equal to any accrued dividends from the immediately preceding dividend payment date to, but excluding, the effective date of voluntary conversion, whether or not declared.

Company's Right to Convert. In addition, after June 16, 2011, we have the right to force conversion of the then outstanding shares of Series B Preferred (into the same number of shares of common stock as determined in connection with a voluntary conversion) if the trading volume of our common stock averages 150,000 shares (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) per trading day (as reported by Bloomberg or such other reporting agency as may be reasonably designated by us and approved by the holders of a majority of the shares of Series B Preferred then outstanding) over the immediately preceding 30 trading days and the daily volume weighted average price per share of our common stock over any 20 of the immediately preceding 30 trading days exceeds the product of (1) 2.5 and (2) the then applicable conversion price. Upon a company conversion of shares of the Series B Preferred into shares of common stock, we must pay the applicable holder the Dividend Arrearage, if any, in cash, plus an amount equal to any accrued dividends from the immediately preceding dividend payment date to, but excluding, the effective date of conversion by us, whether or not declared, with respect to the shares of Series B Preferred that we have elected to convert.

Redemption. On or after June 16, 2016, the holders of at least a majority of the then-outstanding shares of Series B Preferred may require us to redeem all or any portion of the outstanding shares of Series B Preferred. The redemption price per share of the Series B Preferred is equal to the greater of (i) the sum of (A) the liquidation preference per share of the Series B Preferred (which initially is \$115 per share, subject to adjustment, plus all Dividend Arrearages), plus (B) an amount per share of the Series B Preferred equal to accrued but unpaid dividends not previously added to the liquidation preference from and including the immediately preceding dividend payment date up to, but excluding, the date proposed for such redemption, whether or not declared, in cash, or (ii) the amount of all cash and other property to be distributed in respect of our common stock the holder of a share of the Series B Preferred would have been entitled to had it converted such share (without regard to any limits on conversion) immediately prior to the date proposed for redemption.

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Registration Rights Agreement

In connection with the private placement of the shares of Series B Preferred, we entered into the Registration Rights Agreement with the Series B Purchasers and the Advisor on June 16, 2009 pursuant to which we agreed to file a registration statement with the SEC covering the resale of shares of common stock underlying the Series B Preferred and issuable upon exercise of the Advisor Warrant. We were required to file this registration statement by July 16, 2009 (which we have satisfied) (the Required Filing Date). We agreed to (i) use our reasonable best efforts to cause the registration statement to be declared effective (A) within 45 days following the Required Filing Date (the Required Effectiveness Date); *provided that*, if the SEC reviews and has written comments to the registration statement, then the Required Effectiveness Date will be 60 days from the Required Filing Date, or (B) within 5 days following the date the SEC notifies us that it will not review the registration statement or that we may request effectiveness of the registration statement, and (ii) use our reasonable best efforts to keep the registration statement effective until the earlier of (x) the date on which we have delivered an opinion of counsel, reasonably acceptable to the holders of a majority of the securities covered by the registration statement (disregarding those securities held by the Advisor), that each holder of such securities may sell in the open market in a single transaction all such securities without restriction under Rule 144 under the Securities Act, or otherwise under an applicable exemption from the registration requirements of the Securities Act and all other applicable securities or blue sky laws, or (y) the date all of the securities covered by this registration statement have been sold pursuant to this registration statement or Rule 144 of the Securities Act. If we fail to comply with these or certain other provisions under the Registration Rights Agreement, then we will be required to pay liquidated damages equal to one-twentieth of one percent (0.05%) of the aggregate purchase price paid by the Series B Purchasers for the securities held thereby that can be registered on the registration statement for each day the failure continues. The total liquidated damages under this provision are capped at 5.0% of the aggregate purchase price paid by the Series B Purchasers for the securities held thereby that can be registered on the registration statement for each day the failure continues.

In addition, we agreed that after June 16, 2010, in the event a majority of the holders of the registrable securities under the Registration Rights Agreement requested an underwritten offering, that certain holders of registrable securities under the Registration Rights Agreement could distribute their registrable securities by means of an underwritten offering as long as the gross proceeds of such offering were at least \$10 million.

We have also agreed to provide certain holders of registrable securities under the Registration Rights Agreement with unlimited piggy-back rights with respect to offerings by us, subject to customary carve-backs in an underwritten offering.

SELLING STOCKHOLDERS

This prospectus relates to the resale from time to time of up to 31,195,670 shares of our common stock (plus an indeterminate number of shares of our common stock that may be issued upon stock splits, stock dividends or similar transactions in accordance with Rule 416 of the Securities Act) by the selling stockholders, comprising:

up to 17,000,000 shares of common stock issuable upon conversion of shares of the Series B-1 Preferred;

up to 13,434,800 shares of common stock issuable upon conversion of shares of the Series B-2 Preferred; and

up to 760,870 shares of common stock issuable upon exercise of the Advisor Warrant (the Warrant Shares).

The following table, based upon information currently known by us, sets forth as of July 14, 2009: (i) the number of shares held of record or beneficially by the selling stockholders as of such date (as determined below) and (ii) the number of shares that may be offered under this prospectus by each selling stockholder. Beneficial ownership includes shares of common stock plus any securities held by the holder exercisable for or convertible into shares of common stock within 60 days after July 14, 2009, in accordance with Rule 13d-3(d)(1) under the

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Exchange Act. The inclusion of any shares in this table does not constitute an admission of beneficial ownership for the selling stockholder named below.

Except as described above under **Risk Factors** and **Description of Transactions** **Private Placement of Series B Preferred**, and with respect to the services provided to us by the Advisor, none of the selling stockholders has held any position or office, or has otherwise had a material relationship, with us or any of our subsidiaries within the past three years other than as a result of the ownership of our shares or other securities. Unless otherwise indicated below, to our knowledge, all persons named in the table have sole voting and investment power with respect to their shares of common stock, except to the extent authority is shared by their spouses under applicable law.

Name of Selling Stockholder	Common Stock			Percentage of
	Common Stock Beneficially Owned Prior to the Offering(1)	Common Stock Offered Pursuant to this Prospectus(2)	Common Stock Owned Upon Completion of this Offering(3)	Common Stock Owned Upon Completion of this Offering(4)
Mistral Equity Partners, LP(5)	11,852,400	11,852,400	0	0
Mistral Equity Partners QP, LP(6)	4,270,200	4,270,200	0	0
MEP Co-Invest, LLC(7)	877,400	877,400	0	0
CanBa Investments, LLC(8)	8,060,900	8,060,900	0	0
Front Street Investment Management Inc.(9)	2,330,300	2,330,300	0	0
CWCP (Jamba) Inc.(10)	652,200	652,200	0	0
Elrom South Developments, Inc.(11)	652,200	652,200	0	0
JRP Citadel Inc.(12)	1,739,200	1,739,200	0	0
North Point Advisors, LLC(13)	760,870	760,870	0	0

- (1) Includes, to the extent applicable, (i) the Series B Preferred, (ii) the Warrant Shares, (iii) shares issuable upon exercise or conversion of any other securities that are exercisable or convertible within 60 days of July 14, 2009 and (iv) any outstanding shares of common stock held.
- (2) Each entry in this column represents (i) for the holders of the Series B-1 Preferred or Series B-2 Preferred, the sum of such selling stockholder's Common Stock issuable upon conversion of their Series B-1 Preferred or Series B-2 Preferred and (ii) for the Advisor, the Warrant Shares.
- (3) We do not know when or in what amounts a selling stockholder may offer shares for sale. The selling stockholders may not sell any or all of the shares offered by this prospectus. Because the selling stockholders may offer all or some of the shares pursuant to this offering, and because there are currently no agreements, arrangements or understandings with respect to the sale of any of the shares, we cannot estimate the number of the shares that will be held by the selling stockholders after completion of the offering. However, for purposes of this table, we have assumed that, after completion of the offering, none of the shares covered by this prospectus will be held by the selling stockholders.
- (4) Percentage ownership is based on 52,690,728 shares of common stock outstanding as of July 14, 2009, plus securities deemed to be outstanding with respect to individual stockholders pursuant to Rule 13d-3(d)(1) under the Exchange Act.
- (5) Represents 118,524 shares of Series B-1 Preferred as converted into 11,852,400 shares of common stock at an initial conversion rate of 100 shares of common stock for each share for Series B-1 Preferred. The sole general partner of Mistral Equity Partners, LP is Mistral Equity GP, LLC (the **Mistral GP**). Voting

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and investment power over securities held by Mistral Equity Partners, LP is held by the Mistral GP, which in turn, may be deemed to beneficially own the 118,524 shares of Series B-1 Preferred held by Mistral Equity Partners, LP. Andrew R. Heyer is the chief executive officer, sole managing member and a managing director of the Mistral GP. Mr. Heyer may be deemed to beneficially own 118,524 shares of Series B-1 Preferred held by Mistral Equity Partners, LP, 42,702 shares of Series B-1 Preferred held by Mistral Equity Partners QP, LP and 8,774 shares of Series B-1 Preferred held by MEP Co-Invest, LLC. Mr. Heyer was elected by the holders of shares of the Series B-1 Preferred to serve on our Board on June 16, 2009. The address of Mistral Equity Partners, LP is 650 Fifth Avenue, 31st Floor, New York, NY, 10019.

- (6) Represents 42,702 shares of Series B-1 Preferred as converted into 4,270,200 shares of common stock at an initial conversion rate of 100 shares of common stock for each share for Series B-1 Preferred. The sole general partner of Mistral Equity Partners QP, LP is the Mistral GP. Voting and investment power over securities held by Mistral Equity Partners QP, LP is held by the Mistral GP, which in turn, may be deemed to beneficially own the 42,702 shares of Series B-1 Preferred held by Mistral Equity Partners QP, LP. Andrew R. Heyer is the chief executive officer, sole managing member and a managing director of the Mistral GP. Mr. Heyer may be deemed to beneficially own 42,702 shares of Series B-1 Preferred held by Mistral Equity Partners QP, LP, 118,524 shares of Series B-1 Preferred held by Mistral Equity Partners, LP and 8,774 shares of Series B-1 Preferred held by MEP Co-Invest, LLC. Mr. Heyer was elected by the holders of shares of the Series B-1 Preferred to serve on our Board on June 16, 2009. The address of Mistral Equity Partners QP, LP is 650 Fifth Avenue, 31st Floor, New York, NY, 10019.
- (7) Represents 8,774 shares of Series B-1 Preferred as converted into 877,400 shares of common stock at an initial conversion rate of 100 shares of common stock for each share for Series B-1 Preferred. The sole managing member of MEP Co-Invest, LLC is Andrew R. Heyer. Voting and investment power over securities held by MEP Co-Invest, LLC is held by Mr. Heyer. Mr. Heyer may be deemed to beneficially own 8,774 shares of Series B-1 Preferred held by MEP Co-Invest, LLC, 118,524 shares of Series B-1 Preferred held by Mistral Equity Partners, LP and 42,702 shares of Series B-1 Preferred held by Mistral Equity Partners QP, LP. Mr. Heyer was elected by the holders of shares of the Series B-1 Preferred to serve on our Board on June 16, 2009. The address of MEP Co-Invest, LLC is 650 Fifth Avenue, 31st Floor, New York, NY, 10019.
- (8) Represents 80,609 shares of Series B-2 Preferred as converted into 8,060,900 shares of common stock at an initial conversion rate of 100 shares of common stock for each share for Series B-2 Preferred. The directors of CanBa Investments, LLC are Samuel Serruya and Jacques Serruya. Voting and investment power over securities held by CanBa Investments, LLC is held by a majority of its board. Each of its directors disclaims beneficial ownership of the securities held by CanBa Investments, LLC. The address for CanBa Investments, LLC is 210 Shields Court, Markham, Ontario, Canada L3R 8V2.
- (9) Represents 23,303 shares of Series B-2 Preferred as converted into 2,330,300 shares of common stock at an initial conversion rate of 100 shares of common stock for each share for Series B-2 Preferred. Front Street Investment Management Inc. is an investment company and portfolio manager registered in the Province of Ontario, Canada. The directors of Front Street Investment Management Inc. are Gary P. Selke, Frank L. Mersch and Normand G. Lamarche (who together own 90.75% of the firm). The address for Front Street Investment Management Inc. is 33 Yonge St., Suite 600, Toronto, Ontario, Canada M5E 1G4.
- (10) Represents 6,522 shares of Series B-2 Preferred as converted into 652,200 shares of common stock at an initial conversion rate of 100 shares of common stock for each share for Series B-2 Preferred. The sole director of CWCP (Jamba) Inc. is Sander Shalinsky. Voting and investment power over securities held by CWCP (Jamba) Inc. is held by its board. The address for CWCP (Jamba) Inc. is 488 Huron Street, Toronto, Ontario, Canada M5R 2R3.
- (11) Represents 6,522 shares of Series B-2 Preferred as converted into 652,200 shares of common stock at an initial conversion rate of 100 shares of common stock for each share for Series B-2 Preferred. The directors of Elrom South Developments, Inc. are Alexander Gerald Muzzo and Marc A. Muzzo. Voting and investment power over securities held by Elrom South Developments, Inc. is held by its board. The address for Elrom South Developments, Inc. is 50 Confederation Parkway, Concord, Ontario, Canada L4K 4T8.

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- (12) Represents 17,392 shares of Series B-2 Preferred as converted into 1,739,200 shares of common stock at an initial conversion rate of 100 shares of common stock for each share for Series B-2 Preferred. The chairman and sole director of JRP Citadel Inc. is Joe Pulla. Voting and investment power of securities held by JRP Citadel is held by either Joe Pulla or Moody Talaat, who is the President of JRP Citadel Inc. Joe Pulla can be deemed to beneficially own 10,435 of the 17,392 shares of the Series B-2 Preferred held by JRP Citadel Inc. The address for JRP Citadel Inc. is 555 Steeprook Drive, Toronto, Ontario, Canada M3J 2Z6.
- (13) Represents the Warrant Shares issuable upon exercise of the Advisor Warrant. The managing member of North Point Advisors, LLC is David M. Jacquin. Voting and investment power over securities held by North Point Advisors, LLC is held by David M. Jacquin. Mr. Jacquin disclaims beneficial ownership of the securities held by North Point Advisors, LLC. The address of North Point Advisors, LLC is 580 California Street, Suite 2000, San Francisco, CA, 94104.

PLAN OF DISTRIBUTION

The selling stockholders may, from time to time, sell any or all of their shares of common stock on any stock exchange, market or trading facility on which the shares are traded or in private transactions. These sales may be at fixed or negotiated prices. The selling stockholders may use any one or more of the following methods when selling such shares:

ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;

block trades in which the broker-dealer will attempt to sell the shares as agent but may position and resell a portion of the block as principal to facilitate the transaction;

purchases by a broker-dealer as principal and resale by the broker-dealer for its account;

an exchange distribution in accordance with the rules of the applicable exchange;

privately negotiated transactions;

short sales;

through the writing or settlement of options or other hedging transactions, whether through an options exchange or otherwise;

broker-dealers may agree with the selling stockholders to sell a specified number of such shares at a stipulated price per share;

one or more underwritten offerings on a firm commitment or best efforts basis;

a combination of any such methods of sale; and

any other method permitted pursuant to applicable law.

The selling stockholders may also sell such shares under Rule 144 under the Securities Act, if available, rather than under this prospectus.

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Broker-dealers engaged by the selling stockholders may arrange for other broker-dealers to participate in sales. Broker-dealers may receive commissions or discounts from the selling stockholders (or, if any broker-dealer acts as agent for the purchaser of shares, from the purchaser) in amounts to be negotiated, which commissions or discounts may be less than or in excess of those customary in the types of transactions involved. Any profits on the resale of shares of common stock by a broker-dealer acting as principal might be deemed to be underwriting

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discounts or commissions under the Securities Act. Discounts, concessions, commissions and similar selling expenses, if any, attributable to the sale of shares will be borne by a selling stockholder.

The selling stockholders may from time to time pledge or grant a security interest in some or all of the shares of common stock owned by them and, if they default in the performance of their secured obligations, the pledgees or secured parties may offer and sell the shares of common stock from time to time under this prospectus after we have filed a supplement to this prospectus under Rule 424(b)(3) or other applicable provision of the Securities Act supplementing or amending the list of selling stockholders to include the pledgee, transferee or other successors in interest as selling stockholders under this prospectus.

The selling stockholders also may transfer the shares of common stock in other circumstances, in which case the transferees, pledgees or other successors in interest will be the selling beneficial owners for purposes of this prospectus and may sell the shares of common stock from time to time under this prospectus after we have filed a supplement to this prospectus under Rule 424(b)(3) or other applicable provision of the Securities Act supplementing or amending the list of selling stockholders to include the pledgee, transferee or other successors in interest as selling stockholders under this prospectus.

Any broker-dealers or agents that are involved in selling the shares of common stock may be deemed to be underwriters within the meaning of the Securities Act in connection with such sales. In such event, any commissions received by such broker-dealers or agents and any profit on the resale of the shares of common stock purchased by them may be deemed to be underwriting commissions or discounts under the Securities Act.

We are required to pay all fees and expenses incident to the registration of the shares of common stock. We have agreed to indemnify the selling stockholders (as well as persons, including broker-dealers or agents deemed to be underwriters within the meaning of the Securities Act) against certain losses, claims, damages and liabilities, including liabilities under the Securities Act, in accordance with a registration rights agreement, or the selling stockholders will be entitled to contribution.

The selling stockholders have advised us that they have not entered into any agreements, understandings or arrangements with any underwriters or broker-dealers regarding the sale of their shares of common stock, nor is there an underwriter or coordinating broker acting in connection with a proposed sale of shares of common stock by any selling stockholder. If we are notified by any selling stockholder that any material arrangement has been entered into with any underwriters or broker-dealers for the sale of shares of common stock, if required, we will file a supplement to this prospectus.

LEGAL MATTERS

The validity of the common stock offered in this prospectus will be passed upon for us by DLA Piper LLP (US).

EXPERTS

The consolidated financial statements of Jamba, Inc. as of and for the year ended December 30, 2008, and management's assessment of the effectiveness of internal control over financial reporting as of December 30, 2008, have been incorporated by reference herein and in the registration statement in reliance upon the reports of KPMG LLP, independent registered public accounting firm, incorporated by reference herein, and upon the authority of said firm as experts in auditing and accounting.

The consolidated financial statements of Jamba, Inc. and subsidiary as of January 1, 2008 and for the fiscal years ended January 1, 2008 and January 9, 2007, incorporated in this prospectus by reference from Jamba, Inc.'s Annual Report on Form 10-K for the fiscal year ended December 30, 2008, have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their report (which report expresses an unqualified opinion and includes an explanatory paragraph relating to the adoption of a new accounting standard), which is incorporated herein by reference. Such financial statements have been so incorporated in reliance upon the report of such firm given upon their authority as experts in accounting and auditing.

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The consolidated financial statements of Jamba Juice Company and subsidiary as of November 28, 2006, and for the period from June 28, 2006 to November 28, 2006, and for the fiscal year ended June 27, 2006, incorporated in this prospectus by reference from Jamba, Inc.'s Annual Report on Form 10-K for the fiscal year ended December 30, 2008, have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their report (which report expresses an unqualified opinion and includes an explanatory paragraph relating to the adoption of a new accounting standard), which is incorporated herein by reference. Such financial statements have been so incorporated in reliance upon the report of such firm given upon their authority as experts in accounting and auditing.

WHERE YOU CAN FIND ADDITIONAL INFORMATION

We have filed a registration statement on Form S-3 under the Securities Act with the SEC to register the securities offered by this prospectus. This prospectus, which constitutes a part of the registration statement, does not contain all of the information set forth in the registration statement or the exhibits and schedules which are a part of the registration statement. For further information with respect to us and our securities, please refer to the registration statement and the exhibits and schedules filed with it. You may read and copy any document which we file with the SEC at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. You may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. We file annual, quarterly and current reports, proxy statements, and other information with the SEC and these reports, proxy statements, and other information can be inspected on the Internet site maintained by the SEC at <http://www.sec.gov>.

We are also subject to the information and periodic reporting requirements of the Exchange Act. We file annual, quarterly and current reports, proxy statements, and other information with the SEC to comply with the Exchange Act.

INFORMATION INCORPORATED BY REFERENCE

The SEC allows us to incorporate by reference the information we file with it, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be part of this prospectus and information we file later with the SEC will automatically update and supersede this information. We incorporate by reference the documents listed below and any future filings made with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act. The documents we are incorporating by reference as of their respective dates of filing are as follows:

Our Annual Report on Form 10-K for the year ended December 30, 2008 filed with the SEC on March 16, 2009.

Our Quarterly Report on Form 10-Q for the period ended April 21, 2009 filed with the SEC on May 28, 2009.

Our Current Report on Form 8-K filed with the SEC on March 16, 2009.

Our Current Report on Form 8-K/A filed with the SEC on March 17, 2009.

Our Current Report on Form 8-K filed with the SEC on May 1, 2009.

Our Current Report on Form 8-K filed with the SEC on May 13, 2009.

Our Current Report on Form 8-K filed with the SEC on May 28, 2009.

Our Current Report on Form 8-K filed with the SEC on June 3, 2009.

Our Current Report on Form 8-K filed with the SEC on June 17, 2009.

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The description of the Company's common stock contained in our registration statement on Form 8-A (File No. 001-32552), including amendments or reports filed for the purpose of updating such description.

All documents we file with the SEC pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of this prospectus but before the termination of the offering by this prospectus shall be deemed to be incorporated herein by reference and to be a part hereof from the date of the filing of those documents. In addition, we also incorporate by reference all filings we make with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of the filing of this registration statement and prior to the effectiveness of this registration statement.

Any statement contained in a document incorporated by reference herein shall be deemed to be modified or superseded for all purposes to the extent that a statement contained in this prospectus, or in any other subsequently filed document which is also incorporated or deemed to be incorporated by reference, modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this prospectus.

You may request, orally or in writing, a copy of these documents, which will be provided to you at no cost, by contacting:

Investor Relations

Jamba, Inc.

6475 Christie Avenue, Suite 150

Emeryville, CA 94608

Telephone: (510) 596-0100

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JAMBA, INC.

UP TO 31,195,670 SHARES OF COMMON STOCK

PROSPECTUS

July , 2009

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PART II

INFORMATION NOT REQUIRED IN PROSPECTUS**Item 14. Other Expenses of Issuance and Distribution.**

The following table itemizes the fees and expenses incurred or expected to be incurred by the registrant in connection with the issuance and distribution of the securities being registered, other than underwriting discounts and commissions. All amounts are estimates, except the SEC registration fee. Estimated expenses only include information that is known at the time of filing this registration statement and are subject to future contingencies, including additional expenses for future offerings.

Item	Amount
Securities and Exchange Commission registration fee	\$ 1,862.57
Legal fees and expenses	\$ 25,000.00*
Accounting fees and expenses	\$ 24,000.00*
Printing fees and expenses	\$ 5,000.00*
Miscellaneous fees and expenses	\$ 1,600.00*
Total	\$ 57,462.57*

* Estimated

Item 15. Indemnification of Directors and Officers.

Section 102 of the Delaware General Corporation Law, as amended (DGCL), allows a corporation to eliminate the personal liability of directors of a corporation to the corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director, except where the director breached his duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of Delaware corporate law or obtained an improper personal benefit.

Section 145 of the DGCL provides, among other things, that the company may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding (other than an action by or in the right of the company) by reason of the fact that the person is or was a director, officer, agent or employee of the company or is or was serving at the company's request as a director, officer, agent or employee of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorneys' fees, judgment, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding. The power to indemnify applies (a) if such person is successful on the merits or otherwise in defense of any action, suit or proceeding, or (b) if such person acted in good faith and in a manner he reasonably believed to be in the best interest, or not opposed to the best interest, of the company, and with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The power to indemnify applies to actions brought by or in the right of the company as well, but only to the extent of defense expenses (including attorneys' fees but excluding amounts paid in settlement) actually and reasonably incurred and not to any satisfaction of judgment or settlement of the claim itself, and with the further limitation that in such actions no indemnification shall be made in the event of any adjudication of negligence or misconduct in the performance of his duties to the company, unless the court believes that in light of all the circumstances indemnification should apply.

Section 174 of the DGCL provides, among other things, that a director, who willfully or negligently approves of an unlawful payment of dividends or an unlawful stock purchase or redemption, may be held liable for such actions. A director who was either absent when the unlawful actions were approved or dissented at the time may avoid liability by causing his or her dissent to such actions be entered in the books containing the minutes of the meetings of the board of directors at the time such action occurred or immediately after such absent director receives notice of the unlawful acts.

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Article Eight of our Amended and Restated Certificate of Incorporation, as amended to date, provides that a director of the Company shall not be personally liable to the Company or its stockholders for monetary damages for breach of fiduciary duty as a director, to the fullest extent permitted by the DGCL.

The indemnification provision contained in the Company's Amended and Restated Certificate of Incorporation is not exclusive of any other rights to which a person may be entitled by law, agreement, vote of stockholders or disinterested directors or otherwise. In addition, the Company maintains insurance on behalf of its directors and executive directors or officers insuring them against any liability asserted against them in their capacities as directors or officers or arising out of such status. The foregoing descriptions are only general summaries.

Item 16. Exhibits.

The Exhibits listed on the Exhibit Index of this Registration Statement are filed herewith or are incorporated herein by reference to other filings.

Item 17. Undertakings.

The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

- (i) To include any prospectus required by Section 10(a)(3) of the Securities Act;
- (ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in the volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement; and
- (iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

provided, however, that paragraphs (i), (ii) and (iii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the SEC by the registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

(2) That, for the purposes of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at the time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

The registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act that is

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incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the indemnification provisions described herein, or otherwise, the registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

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Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Emeryville, State of California, on the 15th day of July, 2009.

/s/ JAMES D. WHITE
James D. White
Chief Executive Officer and President

POWER OF ATTORNEY

We the undersigned officers and directors of Jamba, Inc., hereby severally constitute and appoint James D. White and Karen L. Luey, and each of them singly (with full power to each of them to act alone), our true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution in each of them for him and in his name, place and stead, and in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement (or any other Registration Statement for the same offering that is to be effective upon filing pursuant to Rule 462(b) under the Securities Act of 1933), and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite or necessary to be done in and about the premises, as full to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them or their or his substitute or substitutes may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Name	Title	Date
/s/ JAMES D. WHITE James D. White	Chief Executive Officer, President and Director (Principal Executive Officer)	July 15, 2009
/s/ KAREN L. LUEY Karen L. Luey	Senior Vice President and Chief Financial Officer (Principal Financial Officer)	July 15, 2009
/s/ STEVEN R. BERRARD Steven R. Berrard	Chairman of the Board and Director	July 15, 2009
/s/ THOMAS C. BYRNE Thomas C. Byrne	Director	July 15, 2009
/s/ RICHARD L. FEDERICO Richard L. Federico	Director	July 15, 2009
/s/ ROBERT C. KAGLE Robert C. Kagle	Director	July 15, 2009
/s/ LESLEY HOWE	Director	July 15, 2009

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Lesley Howe

/s/ BRIAN SWETTE

Director

July 15, 2009

Brian Swette

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Name	Title	Date
<i>/s/</i> RAMÓN MARTIN-BUSUTIL	Director	July 15, 2009
Ramón Martín-Busutil		
<i>/s/</i> ANDREW R. HEYER	Director	July 15, 2009
Andrew R. Heyer		
<i>/s/</i> BETH L. BRONNER	Director	July 15, 2009
Beth L. Bronner		
<i>/s/</i> MICHAEL SERRUYA	Director	July 15, 2009
Michael Serruya		

Table of Contents**EXHIBIT INDEX**

The following documents are filed as exhibits to this registration statement, including those exhibits incorporated herein by reference to a prior filing under the Securities Act or the Exchange Act:

Exhibit Number	Description	Form	File No.	Exhibit	Filing Date	Filed Herewith
3.1	Amended and Restated Certificate of Incorporation of the Company.	8-K	001-32552	3.1	December 5, 2006	
3.2	Certificate of Amendment to Amended and Restated Certificate of Incorporation of the Company.	8-K	001-32552	3.2	December 5, 2006	
3.3	Amended and Restated Bylaws of the Company.	8-K	001-32552	3.3	March 21, 2007	
3.4	Certificate of Designation, Preferences and Rights of the Terms of the Series A Preferred Stock.	8-K	001-32552	3.1	October 9, 2008	
3.5	Certificate of Designation of Series B-1 Convertible Preferred Stock and Series B-2 Convertible Preferred Stock.	8-K	001-32552	3.1	June 17, 2009	
4.1	Rights Agreement, effective as of October 8, 2008, between Jamba, Inc. and Continental Stock Transfer & Trust Company as Rights Agent.	8-K	001-32552	4.1	October 9, 2008	
4.2	Amendment No. 1 to the Rights Agreement dated June 16, 2009 between Jamba, Inc. and Continental Stock Transfer & Trust Company as Rights Agent.	8-K	001-32552	4.3	June 17, 2009	
4.3	Securities Purchase Agreement dated May 31, 2009 between Jamba, Inc. and the purchasers identified therein.	8-K	001-32552	10.1	June 3, 2009	
4.4	Registration Rights Agreement dated June 16, 2009 between Jamba, Inc., the Investors and North Point Advisors, LLC.	8-K	001-32552	4.1	June 17, 2009	
5.1	Opinion of DLA Piper LLP (US) regarding legality of the shares of common stock being registered.					X
23.1	Consent of Independent Registered Public Accounting Firm - KPMG LLP.					X
23.2	Consent of Independent Registered Public Accounting Firm - Deloitte & Touche LLP.					X
23.3	Consent of Independent Registered Public Accounting Firm - Deloitte & Touche LLP.					X
23.4	Consent of DLA Piper LLP (US) (included in Exhibit 5.1 to this Registration Statement on Form S-3).					X
24.1	Power of Attorney (included on signature page).					X