

MusclePharm Corp
Form 10-K/A
February 08, 2017

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K/A

(Amendment No. 2)

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

For the Fiscal Year ended December 31, 2013

Commission File Number – 000-53166

MusclePharm Corporation

(Exact name of registrant as specified in its charter)

Nevada 77-0664193
**(State or other jurisdiction of (I.R.S. Employer
incorporation or organization) Identification No.)**

4721 Ironton Street, Building A
Denver, Colorado 80239
(Address of principal executive offices) (Zip code)

(303) 396-6100

(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(g) of the Act:

Title of each class

Common Stock, Par Value \$0.001 Per Share

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.
 Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.
 Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

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Indicate by check mark whether the registrant has submitted electronically and posted on its corporate website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files) Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated file, an accelerated file, a non-accelerated filer, or a smaller reporting company. (Check one):

Large accelerated filer Accelerated filer
Non-accelerated filer Smaller reporting company

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

Aggregate market value of the voting common stock held by non-affiliates of the registrant at June 30, 2013:
\$54,522,921

Number of shares of the registrant's common stock outstanding at March 28, 2014: 10,349,912

DOCUMENTS INCORPORATED BY REFERENCE:

None.

EXPLANATORY NOTE

MusclePharm Corporation (the “Company”) is filing this Amendment No. 2 on Form 10-K/A (this “Amendment”) to its Annual Report on Form 10-K for the year ended December 31, 2013 filed with the United States Securities and Exchange Commission (the “SEC”) on March 31, 2014, as amended on October 31, 2014 (as amended, the “Original Form 10-K”) in connection with the withdrawal of its application for confidential treatment of the redacted portions of Exhibit 10.38 to the Original Form 10-K, for which the Company had previously sought confidential treatment pursuant to Rule 24b-2 of the Securities and Exchange Act of 1934, as amended, and Rule 406 under the Securities Act of 1933, as amended. An unredacted copy of Exhibit 10.38 that includes the previously-redacted information for which the Company has withdrawn its request for confidential treatment is attached hereto as Exhibit 10.38 to this Amendment.

As reported in a Current Report on Form 8-K filed by the Company on January 9, 2017, on December 17, 2016, the Company entered into a Settlement Agreement (the “Settlement Agreement”) with Marine MP, LLC (“Marine MP”), Arnold Schwarzenegger (“Schwarzenegger”), and Fitness Publications, Inc. (“Fitness,” and together with Marine MP and Schwarzenegger, the “AS Parties”), effective January 4, 2017. As previously disclosed, in May 2016, the Company received written notice that the AS Parties were terminating the Endorsement Licensing and Co-Branding Agreement by and among the Company and the AS Parties (the “Endorsement Agreement”), the Company provided written notice to the AS Parties that it was terminating the Endorsement Agreement, and the AS Parties commenced arbitration, alleging that the Company breached the parties’ agreement and misappropriated Schwarzenegger’s likeness. The Company filed its response and counterclaimed for breach of contract and breach of the implied covenant of good faith and fair dealing. Pursuant to the Settlement Agreement, and to resolve and settle all disputes between the parties and release all claims between them, the Company agreed to pay the AS Parties (a) \$1 million, which payment was released to the AS Parties on January 9, 2017, and (b) \$2 million within six months of the effective date of the Settlement Agreement. If the Company fails to make the second payment when due, pursuant to a confession of judgment entered into by the Company, the AS Parties will be entitled to an additional \$1,000,000, for a total additional payment of \$3,000,000 to satisfy the AS Parties’ contract claim, which the AS Parties claim is valued at \$4,000,000. The Company also has agreed that it will not sell any products from its Arnold Schwarzenegger product line, will donate to a charity chosen by Arnold Schwarzenegger any remaining usable product, and otherwise destroy any products currently in inventory. In addition, in connection with the transaction, the 780,000 shares of Company common stock held by Marine MP were sold to a third party yesterday in exchange for an aggregate payment by such third party of \$1,677,000 to the AS Parties.

Additionally, pursuant to Rule 12b-15 under the Securities Exchange Act of 1934, as amended, Item 15 of the Original Form 10-K has been amended to contain currently dated certifications of the Company’s Chief Executive Officer and President and Chief Financial Officer, as required by Section 302 of the Sarbanes-Oxley Act of 2002. All other information contained in the Original Form 10-K remains unchanged.

This Amendment is limited in scope to the items noted above and should be read in conjunction with the Original Form 10-K. This Amendment does not reflect events that have occurred after the filing of the Original Form 10-K, and no revisions are being made to the Company’s financial statements pursuant to this Amendment. Other than the filing of the information identified above, this Amendment does not modify or update the disclosure in the Original Form 10-K in any way.

PART IV**Item 15. Exhibits, Financial Statement Schedules****(a)(3) Exhibits**

| Exhibit No. | Description | Incorporated by Reference | | | Filed Herewith | Furnished Herewith |
|-------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|--------------|---------|-------------------|--------------------|
| | | Form | SEC File No. | Exhibit | | |
| 2.1 | Agreement Concerning the Exchange of Securities by and Among Tone in Twenty and Muscle Pharm, LLC and the Security Holders of Muscle Pharm, LLC, dated February 1, 2010. | 8-K | 000-53166 | 2.1 | February 2, 2010 | |
| 3.1 | Articles of Incorporation of MusclePharm Corporation (successor to Tone in Twenty). | SB-2 | 333-147111 | 3.1 | November 2, 2007 | |
| 3.2 | Bylaws of MusclePharm Corporation (successor to Tone in Twenty). (Amended on March 1, 2010 to change fiscal year end to December 31 – set forth on Form 8-K filed on 03-03-2010.) | SB-2 | 333-147111 | 3.2 | November 2, 2007 | |
| 3.3 | Amendment to the Articles of Incorporation. | SB-2 | 333-147111 | 3.3 | November 2, 2007 | |
| 3.4 | Amendment to the Articles of Incorporation | 8-K | 000-53166 | 3.3 | February 24, 2010 | |
| 3.5 | Certificate of Designation relating to the Series A Convertible Preferred Stock. | 8-K | 000-53166 | 3.4 | February 24, 2010 | |
| 3.6 | Amendment to the Articles of Incorporation. | 10-Q | 000-53166 | 3.1 | May 23, 2011 | |

3.7 Certificate of Designation of Series B
Convertible Preferred Stock. 10-Q 000-53166 3.1 August 16,
2011

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| 3.8 | Certificate of Designation of Series C Convertible Preferred Stock. | 8-K | 000-53166 | 3.1 | November 4, 2011 |
| 3.9 | Amendment to the Articles of Incorporation. | 8-K | 000-53166 | 3.1 | November 23, 2011 |
| 3.10 | Amendment to the Articles of Incorporation. | 8-K | 000-53166 | 3.1 | January 27, 2012 |
| 3.11 | Amendment to the Articles of Incorporation. | 8-K | 000-53166 | 3.1 | March 30, 2012 |
| 3.12 | Certificate of Change. | 8-K | 000-53166 | 3.1 | November 28, 2012 |
| 3.13 | Certificate of Amendment to Articles of Incorporation. | 8-K | 000-53166 | 3.2 | November 28, 2012 |
| 3.14 | Form of Certificate of Designation of Series D Convertible Preferred Stock. | S-1/A | 333-184625 | 3.14 | December 31, 2012 |
| 3.15 | Certificate of Correction. | S-1/A | 333-184625 | 3.15 | December 26, 2012 |
| 4.1 | Specimen of certificate for MusclePharm Corporation Series D Convertible Preferred Stock. | 8-K | 000-53166 | 4.1 | January 28, 2013 |
| 4.2 | Specimen of certificate for MusclePharm Corporation Common Stock. | S-1/A | 333-184625 | 4.4 | December 28, 2012 |
| 4.3 | Form of Promissory Note, dated July 13, 2012, issued by MusclePharm Corporation in favor of TCA Global Credit Master Fund LP. | 8-K | 000-53166 | 4.1 | July 20, 2012 |
| 4.4 | Form of Promissory Note. | 8-K | 000-53166 | 4.2 | December 10, 2012 |

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| 10.1 | Purchasing Agreement with General Nutrition Corporation dated December 16, 2009. | 8-K | 000-53166 | 10.2 | February 24, 2010 |
| 10.2 | Order Approving Stipulation for Settlement of Claim, dated December 8, 2010, between MusclePharm Corporation and Socius CG II, Ltd. | 8-K | 000-53166 | 10.1 | December 9, 2010 |
| 10.3 | Endorsement Agreement, dated July 20, 2011, between MusclePharm Corporation and Michael Vick, individually. | 8-K | 000-53166 | 10.1 | July 22, 2011 |
| 10.4 | Convertible Promissory Note between MusclePharm Corporation and Brad J. Pyatt, dated November 18, 2010. | S-1/A | 333-176771 | 4.2 | September 27, 2011 |
| 10.5 | Convertible Promissory Note between MusclePharm Corporation and Brad J. Pyatt, dated November 23, 2010. | S-1/A | 333-176771 | 4.3 | September 27, 2011 |
| 10.6 | Amended and Restated Employment Agreement, dated November 14, 2011, between MusclePharm Corporation and Brad J. Pyatt. | 10-Q | 000-53166 | 10.6 | November 14, 2011 |
| 10.7 | Amended and Restated Employment Agreement, dated November 14, 2011, between MusclePharm Corporation and Cory J. Gregory. | 10-Q | 000-53166 | 10.7 | November 14, 2011 |
| 10.8 | Employment Agreement, dated September 15, 2011, by and between MusclePharm Corporation and John H. Blucher. | 10-Q | 000-53166 | 10.4 | November 14, 2011 |
| 10.9 | Employment Agreement, dated November 14, 2011, by and between MusclePharm Corporation and Jeremy R. DeLuca. | 10-Q | 000-53166 | 10.5 | November 14, 2011 |
| 10.10 | Securities Purchase Agreement, dated July 10, 2012, between MusclePharm Corporation and Subscribers set forth therein. | 8-K | 000-53166 | 10.1 | July 19, 2012 |
| 10.11 | Consulting Agreement, dated July 12, 2012, between MusclePharm Corporation and Melechdavid, Inc. | 8-K | 000-53166 | 10.2 | July 19, 2012 |
| 10.12 | Consulting Agreement, dated July 12, 2012, between MusclePharm Corporation and GRQ Consultants, Inc. | 8-K | 000-53166 | 10.3 | July 19, 2012 |

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| 10.13 | Form of Committed Equity Facility Agreement, dated July 13, 2012, between MusclePharm Corporation and TCA Global Credit Master Fund LP. | 8-K | 000-53166 | 10.1 | July 20, 2012 |
| 10.14 | Form of Registration Rights Agreement, dated July 13, 2012, between MusclePharm Corporation and TCA Global Credit Master Fund LP. | 8-K | 000-53166 | 10.1 | July 20, 2012 |
| 10.15 | Form of Security Agreement, dated July 13, 2012, between MusclePharm Corporation and TCA Global Credit Master Fund LP. | 8-K | 000-53166 | 10.1 | July 20, 2012 |
| 10.16 | Form of Indemnification Agreement. | 8-K | 000-53166 | 10.1 | August 27, 2012 |
| 10.17 | Amended and Restated Employment Agreement, dated October 18, 2012, between MusclePharm Corporation and Brad J. Pyatt. | 8-K | 000-53166 | 10.1 | October 23, 2012 |
| 10.18 | Employment Agreement, dated October 18, 2012, between MusclePharm Corporation and L. Gary Davis. | 8-K | 000-53166 | 10.2 | October 23, 2012 |
| 10.19 | Amended and Restated Employment Agreement, dated October 18, 2012, between MusclePharm Corporation and John H. Bluher. | 8-K | 000-53166 | 10.3 | October 23, 2012 |
| 10.20 | Amended and Restated Employment Agreement, dated October 18, 2012, between MusclePharm Corporation and Jeremy R. DeLuca. | 8-K | 000-53166 | 10.4 | October 23, 2012 |
| 10.21 | Amended and Restated Employment Agreement, dated October 18, 2012, between MusclePharm Corporation and Cory J. Gregory. | 8-K | 000-53166 | 10.5 | October 23, 2012 |
| 10.22 | Form of Restricted Stock Unit Award. | 8-K | 000-53166 | 10.1 | November 21, 2012 |
| 10.23 | Subscription Agreement dated November 30, 2012 between MusclePharm Corporation and the subscribers listed therein. | 8-K | 000-53166 | 10.1 | December 10, 2012 |
| 10.24 | Form of Escrow Agreement. | POS AM | 333-184625 | 10.24 | January 8, 2013 |
| 10.25 | Form of Subscription Agreement. | 8-K | 000-53166 | 10.1 | January 28, 2013 |

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| 10.26 | Subscription Agreement | 8-K | 000-53166 | 10.1 | March 27, 2013 | |
| 10.27 | Registration Rights Agreement | 8-K | 000-53166 | 10.2 | March 27, 2013 | |
| 10.28 | First Amendment to the Melechdavid Consulting Agreement | 8-K | 000-53166 | 10.1 | April, 5, 2013 | |
| 10.29 | First Amendment to the GRQ Consulting Agreement | 8-K | 000-53166 | 10.2 | April 5, 2013 | |
| 10.30 | Form of Endorsement Licensing and Co-Branding Agreement (1) | 8-K | 000-531666 | 10.1 | August 1, 2013 | |
| 10.31 | Asset Purchase Agreement | 8-K | 000-531666 | 10.1 | November 13, 2013 | |
| 10.32 | Employment Agreement, dated September 30, 2013, between MusclePharm Corporation and Richard Estalella. | 8-K | 000-531666 | 10.1 | October 3, 2013 | |
| 10.33 | Securities Purchase Agreement | 8-K | 000-531666 | 10.1 | August 30, 2013 | |
| 10.34 | Form of Note | 8-K | 000-531666 | 10.2 | August 30, 2013 | |
| 10.35 | Form of Warrant | 8-K | 000-531666 | 10.3 | August 30, 2013 | |
| 10.36 | Security Agreement Letter | 8-K | 000-531666 | 10.4 | August 30, 2013 | |
| 10.37 | Vendor Agreement, dated December 3, 2010, between MuslcePharm Corporation and Bodybuilding.com, LLC. | 10-K | 000-531666 | 10.37 | March 31, 2014 | |
| 10.38x | Endorsement Licensing and Co-Branding Agreement, dated July 26, 2013, by and among MusclePharm Corporation, Marine MP, LLC, and Fitness Publications, Inc. | | | | | X |
| 14.1 | Code of Ethics | 8-K | 000-53166 | 14 | April 23, 2012 | |
| 21 | Subsidiaries of the Registrant | 10-K | 000-531666 | 10.37 | March 31, 2014 | |
| 24.1 | Power of Attorney. | 10-K | 000-531666 | 10.37 | March 31, 2014 | |

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| 31.1 | Certification of the Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. | X |
|------|---------------------------------------------------------------------------------------------------------|---|

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| 31.2 | Certification of the Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. | | | | | | | | X |
| 32.1 | Certification of the Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. | 10-K | 000-531666 | 10.37 | March 31, 2014 | | | | |
| 32.2 | Certification of the Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. | 10-K | 000-531666 | 10.37 | March 31, 2014 | | | | |
| 101.INS | INS XBRL Instance Document. | 10-K | 000-531666 | 10.37 | March 31, 2014 | | | | |
| 101.SCH | SCH XBRL Schema Document. | 10-K | 000-531666 | 10.37 | March 31, 2014 | | | | |
| 101.CAL | CAL XBRL Calculation Linkbase Document. | 10-K | 000-531666 | 10.37 | March 31, 2014 | | | | |
| 101.DEF | DEF XBRL Definition Linkbase Document. | 10-K | 000-531666 | 10.37 | March 31, 2014 | | | | |
| 101.LAB | LAB XBRL Label Linkbase Document. | 10-K | 000-531666 | 10.37 | March 31, 2014 | | | | |
| 101.PRE | PRE XBRL Presentation Linkbase Document. | 10-K | 000-531666 | 10.37 | March 31, 2014 | | | | |

× This exhibit was filed with the Original Form 10-K, and is being re-filed as an exhibit hereto in unredacted form.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this Amendment No. 2 on Form 10-K/A to the Annual Report on Form 10-K of MusclePharm Corporation for the year ended December 31, 2013 to be signed on its behalf by the undersigned, thereunto duly authorized.

MUSCLEPHARM CORPORATION

Registrant

By /s/ Ryan Drexler
Ryan Drexler

Title Chief Executive Officer, President and Chairman of the Board of Directors (Principal Executive Officer)

Date February 8, 2017

Pursuant to the requirements of the Securities Exchange Act of 1934, this Amendment No. 2 on Form 10-K/A to the Annual Report on Form 10-K of MusclePharm Corporation for the year ended December 31, 2013 has been signed below on February 8, 2017, by the following persons on behalf of the Registrant and in the capacities indicated.

| Signature | Title | Date |
|------------------------------------------|------------------------------------------------------------------------------------------------------------|---------------------|
| /s/ Ryan Drexler Ryan Drexler | Chief Executive Officer, President and Chairman of the Board of Directors (Principal Executive Officer) | February 8, 2017 |
| /s/ Peter Lynch Peter Lynch | Chief Financial Officer (Principal Financial Officer, Principal Accounting Officer) | February 8, 2017 |
| /s/ Michael J. Doron Michael J. Doron | Director | February 8, 2017 |
| /s/ William Bush William Bush | Director | February 8, 2017 |