

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

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

May 13, 2008

Date of Report (Date of earliest event reported)

Discovery Laboratories, Inc.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction
of incorporation)

000-26422

(Commission File Number)

94-3171943

(IRS Employer
Identification Number)

**2600 Kelly Road, Suite 100
Warrington, Pennsylvania 18976**
(Address of principal executive offices)

(215) 488-9300

(Registrant's telephone number, including area code)

(Former name or former address, if changed since last report)

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

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

Item 8.01. Other Events.

On May 13, 2008, Discovery Laboratories, Inc. (the “Company”) issued a press release announcing that on April 29, 2008, the U.S. Court of Appeals for the Third Circuit affirmed the dismissal of the Second Consolidated Amended Complaint filed against the Company and two of its executive officers in November 2006. The Second Consolidated Amended Complaint alleged violations of Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act), Rule 10b-5 and Section 20(a) of the Exchange Act in connection with various public statements made by the Company. Since the time for seeking a rehearing of the Third Circuit's decision has passed, the Court's order is final and this matter is now concluded. The press release, dated May 13, 2008, is filed as Exhibit 99.1 to this report and is incorporated herein by reference.

Item Financial Statements and Exhibits.
9.01.

- (d) Exhibits
- 99.1 Press release dated May 13, 2008

Cautionary Note Regarding Forward-looking Statements:

To the extent that statements in this Current Report on Form 8-K are not strictly historical, including statements as to business strategy, outlook, objectives, future milestones, plans, intentions, goals, future financial conditions, future collaboration agreements, the success of the Company's product development or otherwise as to future events, such statements are forward-looking, and are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. The forward-looking statements contained in this Current Report are subject to certain risks and uncertainties that could cause actual results to differ materially from the statements made. Such risks and others are further described in the Company's filings with the Securities and Exchange Commission including the most recent reports on Forms 10-K, 10-Q and 8-K, and any amendments thereto.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Discovery Laboratories, Inc.

By: /s/ Robert J. Capetola
Name: Robert J. Capetola, Ph.D.
Title: President and Chief Executive Officer

Date: May 19, 2008



Securities Class Action Against Discovery Labs is Dismissed

Warrington, PA — May 13, 2008 — Discovery Laboratories, Inc. (Nasdaq: DSCO), a biotechnology company developing its proprietary Surfactant Replacement Therapies (SRT) to address respiratory conditions, announced today that, on April 29, 2008, the U.S. Court of Appeals for the Third Circuit affirmed the dismissal of the Second Consolidated Amended Complaint that was filed against the Company and two of its executive officers in November 2006. The Court's order is now final and this matter is now concluded.

The Second Consolidated Amended Complaint, like the First Consolidated Amended Complaint that was dismissed without prejudice in November 2006, alleged violations of Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act), Rule 10b-5 and Section 20(a) of the Exchange Act in connection with various public statements made by the Company. The United States District Court for the Eastern District of Pennsylvania dismissed the complaint on March 15, 2007. The District Court, in May 2007, also dismissed a related shareholder derivative action brought against the Company and several of its officers and directors. Plaintiffs in that proceeding did not file an appeal and that matter is also finally concluded.

Mary B. Templeton, Esq., Deputy General Counsel of Discovery Labs commented, "Discovery Labs is committed to full and prompt disclosure of all material information about our Company and our efforts to develop our SRT portfolio. Our counsel in this matter, Pepper Hamilton, LP has represented us effectively and both the Third Circuit Court of Appeals and the District Court have recognized the quality of our disclosures and finally dismissed with prejudice this class action."

About Discovery Labs

Discovery Laboratories, Inc. is a biotechnology company developing Surfactant Replacement Therapies (SRT) for respiratory diseases. Surfactants are produced naturally in the lungs and are essential for breathing. Discovery Labs' technology produces a peptide-containing synthetic surfactant that is designed to closely mimic the essential properties of natural human lung surfactant. Discovery Labs believes that, with its proprietary technology, SRT has the potential, for the first time, to advance respiratory medicine and address a variety of respiratory diseases affecting neonatal, pediatric and adult patients.

Discovery Labs' lead product candidate, SURFAXIN[®], is the subject of an Approvable Letter from the FDA for the prevention of Respiratory Distress Syndrome in premature infants. SURFAXIN[®] is also being developed for other neonatal and pediatric indications. AEROSURF[™], Discovery Labs' aerosolized SRT, is being developed to potentially obviate the need for intubation and conventional mechanical ventilation and holds the promise to significantly expand the use of surfactants in respiratory medicine. For more information, please visit our website at www.Discoverylabs.com.

Company Contact:

Lisa Caperelli, Investor Relations
215-488-9413