

SECURITIES AND EXCHANGE COMMISSION

FORM 8-K

Current report filing

Filing Date: **2009-01-26** | Period of Report: **2009-01-20**
SEC Accession No. [0001299933-09-000397](#)

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FILER

LA JOLLA PHARMACEUTICAL CO

CIK: **920465** | IRS No.: **330361285** | State of Incorpor.: **DE** | Fiscal Year End: **1231**
Type: **8-K** | Act: **34** | File No.: **000-24274** | Film No.: **09545039**
SIC: **2836** Biological products, (no diagnostic substances)

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

FORM 8-K

CURRENT REPORT

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

Date of Report (Date of Earliest Event Reported):

January 20, 2009

La Jolla Pharmaceutical Company

(Exact name of registrant as specified in its charter)

Delaware

0-24274

33-0361285

(State or other jurisdiction
of incorporation)

(Commission
File Number)

(I.R.S. Employer
Identification No.)

6455 Nancy Ridge Drive, San Diego,
California

92121

(Address of principal executive offices)

(Zip Code)

Registrant's telephone number, including area code:

(858) 452-6600

Not Applicable

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 1.01 Entry into a Material Definitive Agreement.

On January 20, 2009, La Jolla Pharmaceutical Company (the "Company") entered into an amendment (the "Amendment") to its Amended and Restated Rights Agreement, dated as of December 2, 2008 (the "Rights Plan"), between the Company and American Stock Transfer & Trust Company, LLC, as rights agent (the "Rights Agent"). The Amendment was executed in connection with a Securities Purchase Agreement, dated as of January 4, 2009, (the "Purchase Agreement") entered into between the Company and BioMarin Pharmaceutical Inc. ("BioMarin"). The Amendment amends the definition of "Acquiring Person" to allow BioMarin to acquire, under the Purchase Agreement, shares of Series B-1, B-2 and B-3 Preferred Stock of the Company, as well as the shares of Company common stock issuable upon conversion thereof, without triggering the rights under the Rights Plan. All other terms of the Rights Plan remain unchanged.

A copy of the Amendment is attached hereto as Exhibit 4.1 and is incorporated herein by reference.

Item 3.02 Unregistered Sales of Equity Securities.

On January 20, 2009 and acting pursuant to the Purchase Agreement, the Company issued to BioMarin a total of 339,104 shares of Series B-1 Preferred Stock (the "Preferred Shares"). The Preferred Shares are convertible at BioMarin's election into an aggregate of 10,173,120 shares of the Company's common stock. The offering and sale of the Preferred Shares was made pursuant to Rule 506 of Regulation D promulgated under the Securities Act of 1933, as amended.

Item 3.03 Material Modifications to Rights of Security Holders.

As indicated under Item 1.01, the Company and the Rights Agent have entered into the Amendment. The Amendment modifies certain rights of holders of the Rights issued under the Rights Plan. The description of such modifications contained in Item 1.01 of this Form 8-K is incorporated by reference into this Item 3.03.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits. The following exhibit is filed with this report on Form 8-K:

Exhibit Number 4.1

Description of Exhibit

Amendment No. 1, dated as of January 20, 2009, to Amended and Restated Rights Agreement dated December 2, 2008, by and between La Jolla Pharmaceutical Company and American Stock Transfer & Trust Company, LLC.

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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.

La Jolla Pharmaceutical Company

January 21, 2009

By: *Gail A. Sloan*

Name: Gail A. Sloan

Title: Vice President of Finance and Secretary

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Exhibit Index

Exhibit No.	Description
4.1	Amendment No. 1, dated as of January 20, 2009, to Amended and Restated Rights Agreement dated December 2, 2008, by and between La Jolla Pharmaceutical Company and American Stock Transfer & Trust Company, LLC.

AMENDMENT NO. 1 TO
AMENDED AND RESTATED RIGHTS AGREEMENT

This Amendment No. 1, effective as of January 20, 2009 (the "Amendment"), amends the Amended and Restated Rights Agreement, dated December 2, 2008 (the "Rights Agreement"), by and between La Jolla Pharmaceutical Company, a Delaware corporation (the "Corporation") and American Stock Transfer & Trust Company, LLC, a New York limited liability trust company (the "Rights Agent"). Capitalized terms used herein but not defined herein shall have their defined meanings set forth in the Rights Agreement.

WHEREAS, on January 4, 2009, the Corporation entered into a Securities Purchase Agreement (the "Securities Purchase Agreement") with BioMarin Pharmaceutical, Inc., a Delaware corporation ("BioMarin");

WHEREAS, pursuant to the Securities Purchase Agreement, the Corporation is issuing on the date herewith 339,104 shares of Series B-1 Convertible Preferred Stock, par value \$0.01 and may, as contemplated in the Securities Purchase Agreement, issue to BioMarin up to 226,068 shares of Series B-2 Convertible Preferred Stock, par value \$0.01 and 678,205 shares of Series B-3 Convertible Preferred Stock, par value \$0.01 (the Series B-1, B-2 and B-3 Convertible Preferred Stock being collectively referred to as the "Series B Preferred Stock");

WHEREAS, BioMarin has certain preemptive rights under the Securities Purchase Agreement to purchase Common Stock of the Company and other securities or rights convertible into, or entitling the holder to receive directly or indirectly, additional shares of Common Stock (the "Preemptive Shares"); and

WHEREAS, the Corporation and the Rights Agent are entering into this Amendment to permit BioMarin to acquire the Series B Preferred Stock, any securities issued to BioMarin as a dividend on the Series B Preferred Stock, the Common Stock issuable upon conversion of the Series B Preferred Stock and any Preemptive Shares that may be issued to BioMarin as contemplated under the Securities Purchase Agreement (collectively, the "Partnership Shares") without thereby making BioMarin an Acquiring Person or resulting in a Distribution Date.

NOW, THEREFORE, the parties hereby agree as follows:

1. Section 1(a) is hereby deleted in its entirety and the following is inserted in lieu thereof:

“(a) “Acquiring Person” shall mean any Person (as such term is hereinafter defined) who or which, together with all Affiliates (as such term is hereinafter defined) and Associates (as such term is hereinafter defined) of such Person, shall be the Beneficial Owner (as such term is hereinafter defined) of 15% or more of the _____ shares of Common Stock of the Company then outstanding, but shall not include (i) the Company, (ii) any Subsidiary (as such term is hereinafter defined) of the Company, (iii) any employee benefit plan or compensation arrangement of the Company or any Subsidiary of the Company or (iv) any Person holding shares of Common Stock of the Company organized, appointed or established by the Company or any Subsidiary of the Company for or pursuant to the terms of any such employee benefit plan or compensation arrangement (the Persons described in clauses (i) through (iv) above are referred to herein as “Exempt Persons”); provided, however, that the term “Acquiring Person” shall not include: (A) BioMarin Pharmaceutical Inc. and its Affiliates and Associates (collectively, “BioMarin”), to the extent BioMarin becomes the Beneficial Owner of 15% or more of the shares of Common Stock of the Company then outstanding solely due to BioMarin’s Beneficial Ownership of the Partnership Shares; or (B) any Grandfathered Person, unless such Grandfathered Person becomes the Beneficial Owner of a percentage of the shares of Common Stock of the Company then outstanding equal to or exceeding such Grandfathered Person’s Grandfathered Percentage. For the avoidance of doubt, if BioMarin

becomes or is the Beneficial Owner of 15% or more of the shares of Common Stock of the Company then outstanding (including the Partnership Shares) and at such time BioMarin is deemed to be the Beneficial Owner of any shares of Common Stock of the Company other than the Partnership Shares, then BioMarin shall be deemed an Acquiring Person hereunder.

Notwithstanding the foregoing, no Person shall become an “Acquiring Person” as the result of an acquisition by the Company of Common Stock of the Company which, by reducing the number of shares outstanding, increases the proportionate number of shares Beneficially Owned by such Person to 15% or more (or, in the case of a Grandfathered Person, the Grandfathered Percentage applicable to such Grandfathered Person) of the shares of Common Stock of the Company then outstanding; provided, however, that if a Person shall become the Beneficial Owner of 15% or more (or, in the case of a Grandfathered Person, the Grandfathered Percentage applicable to such Grandfathered Person) of the shares of Common Stock of the Company then outstanding by reason of share purchases by the Company and shall, after such share purchases by the Company, become the Beneficial Owner of any additional shares (other than pursuant to a stock split, stock dividend or similar transaction) of Common Stock of the Company and immediately thereafter be the Beneficial Owner of 15% or more (or, in the case of a Grandfathered Person, the Grandfathered Percentage applicable to such Grandfathered Person) of the shares of Common Stock of the Company then outstanding, then such Person shall be deemed to be an “Acquiring Person.” In addition, notwithstanding the foregoing, and notwithstanding anything to the contrary provided in the Agreement including without limitation in Sections 1(jj), 3(a) or 27, a Person shall not be an “Acquiring Person” if the Board of Directors of the Company determines at any time that a Person who would otherwise be an “Acquiring Person,” has become such without intending to become an “Acquiring Person,” and such Person divests as promptly as practicable (or within such period of time as the Board of Directors of the Company determines is reasonable) a sufficient number of shares of Common Stock of the Company (or, for the avoidance of doubt, with respect to any Derivative Common Shares, terminates the subject derivative transaction or transactions or disposes of the subject derivative security or securities) so that such Person would no longer be an “Acquiring Person,” as defined pursuant to the foregoing provisions of this Section 1(a).”

2. Section 3(a) is hereby deleted in its entirety and the following is inserted in lieu thereof:

“From the date hereof until the earlier of (i) the Close of Business on the tenth calendar day after the Stock Acquisition Date or (ii) the Close of Business on the tenth Business Day (or such later calendar day, if any, as the Board of Directors of the Company may determine in its sole discretion) after the date a tender or exchange offer by any Person, other than an Exempt Person, is first published or sent or given within the meaning of Rule 14d-4(a) of the Exchange Act, or any successor rule, if, upon consummation thereof, such Person could become, or would be, the Beneficial Owner of 15% or more (or, in the case of a Grandfathered Person, the Grandfathered Percentage applicable to such Grandfathered Person) of the shares of Common Stock of the Company then outstanding (including any such date which is after the date of this Agreement and prior to the issuance of the Rights) (the earliest of such dates being herein referred to as the “Distribution Date”), (x) the Rights will be evidenced (subject to the provisions of Section 3(b) hereof) by the certificates for the Common Stock of the Company registered in the names of the holders of the Common Stock of the Company (which certificates for Common Stock of the Company shall be deemed also to be certificates for Rights) and not by separate certificates, and (y) the Rights will be transferable only in connection with the transfer of the underlying shares of Common Stock of the Company. As soon as practicable after the Distribution Date, the Rights Agent will, at the Company’s expense send, by first-class, insured, postage prepaid mail, to each record holder of the Common Stock of the Company as of the Close of Business on the Distribution Date, at the address of such holder shown on the records of the Company, one or more certificates,

