

AVI BIOPHARMA INC
Form SC 13D/A
October 09, 2009

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

SCHEDULE 13D/A

Under the Securities Exchange Act of 1934

(Amendment No. 2)

AVI BioPharma, Inc.

(Name of Issuer)

Common Stock

(Title of Class of Securities)

002346104

(CUSIP Number)

Eric M. Sippel
Eastbourne Capital Management, L.L.C.
1101 Fifth Avenue, Suite 370
San Rafael, CA 94901

(Name, Address and Telephone Number of Person
Authorized to Receive Notices and Communications)

October 1, 2009

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(Date of Event Which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of sections 240.13d-1(e), 240.13d-1(f) or 140.13d-1(g), check the following box. []

Note: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See section 240.13d-7 for other parties to whom copies are to be sent.

* The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter the disclosures provided in a prior cover page.

The information required in the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.

SEC 1746 (11-02)

CUSIP No. 002346104

1. Names of Reporting Persons. I.R.S. Identification Nos. of above persons (entities only).

Eastbourne Capital Management, L.L.C.

2. Check the Appropriate Box if a Member of a Group (See Instructions)

(a) x
 (b) _____

3. SEC Use Only

4. Source of Funds (See Instructions) AF

5. Check if Disclosure of Legal Proceedings Is Required Pursuant to Items 2(d) or 2(e) _____

6. Citizenship or Place of Organization Delaware

| | | | |
|--------------|-------|--------------------------|------------|
| Number of | 7. | Sole Voting | |
| Shares | Power | | 0 |
| Beneficially | 8. | Shared Voting | |
| Owned by | Power | | 14,224,138 |
| Each | 9. | Sole Dispositive | |
| Reporting | Power | | 0 |
| Person With | 10. | Shared Dispositive Power | |
| | | | 14,224,138 |

11. Aggregate Amount Beneficially Owned by Each Reporting Person 14,224,138

12. Check if the Aggregate Amount in Row (11) Excludes Certain Shares (See Instructions)_____

13. Percent of Class Represented by Amount in Row (11) 12.14%

14. Type of Reporting Person (See Instructions) IA, OO

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CUSIP No. 002346104

1. Names of Reporting Persons. I.R.S. Identification Nos. of above persons (entities only).

Richard Jon Barry

2. Check the Appropriate Box if a Member of a Group (See Instructions)

(a) x

(b) _____

3. SEC Use Only

4. Source of Funds (See Instructions)

AF

5. Check if Disclosure of Legal Proceedings Is Required Pursuant to Items 2(d) or 2(e) _____

6. Citizenship or Place of Organization

U.S.A.

| | | | |
|--------------|-------|--------------------------|------------|
| Number of | 7. | Sole Voting | |
| Shares | Power | | 0 |
| Beneficially | 8. | Shared Voting | |
| Owned by | Power | | 14,224,138 |
| Each | 9. | Sole Dispositive | |
| Reporting | Power | | 0 |
| Person With | 10. | Shared Dispositive Power | |
| | | | 14,224,138 |

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11. Aggregate Amount Beneficially Owned by Each Reporting Person 14,224,138

12. Check if the Aggregate Amount in Row (11) Excludes Certain Shares (See Instructions) _____

13. Percent of Class Represented by Amount in Row (11) 12.14%

14. Type of Reporting Person (See Instructions) HC, IN

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CUSIP No. 002346104

1. Names of Reporting Persons. I.R.S. Identification Nos. of above persons (entities only).

Black Bear Offshore Master Fund, L.P.

2. Check the Appropriate Box if a Member of a Group (See Instructions)

(a) x

(b) _____

3. SEC Use Only

4. Source of Funds (See Instructions)

WC

5. Check if Disclosure of Legal Proceedings Is Required Pursuant to Items 2(d) or 2(e) _____

6. Citizenship or Place of Organization

Cayman Islands

| | | | |
|--------------|-------|--------------------------|-----------|
| Number of | 7. | Sole Voting | |
| Shares | Power | | 0 |
| Beneficially | 8. | Shared Voting | |
| Owned by | Power | | 3,954,658 |
| Each | 9. | Sole Dispositive | |
| Reporting | Power | | 0 |
| Person With | 10. | Shared Dispositive Power | |
| | | | 3,954,658 |

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11. Aggregate Amount Beneficially Owned by Each Reporting Person 3,954,658
12. Check if the Aggregate Amount in Row (11) Excludes Certain Shares (See Instructions) _____
13. Percent of Class Represented by Amount in Row (11) 3.53%
14. Type of Reporting Person (See Instructions) PN

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CUSIP No. 002346104

1. Names of Reporting Persons. I.R.S. Identification Nos. of above persons (entities only).

Black Bear Fund I, L.P.

2. Check the Appropriate Box if a Member of a Group (See Instructions)

(a) x

(b) _____

3. SEC Use Only

4. Source of Funds (See Instructions)

WC

5. Check if Disclosure of Legal Proceedings Is Required Pursuant to Items 2(d) or 2(e) _____

6. Citizenship or Place of Organization

California

| | | | |
|--------------|-------|--------------------------|-----------|
| Number of | 7. | Sole Voting | |
| Shares | Power | | 0 |
| Beneficially | 8. | Shared Voting | |
| Owned by | Power | | 5,663,032 |
| Each | 9. | Sole Dispositive | |
| Reporting | Power | | 0 |
| Person With | 10. | Shared Dispositive Power | |
| | | 5,663,032 | |

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11. Aggregate Amount Beneficially Owned by Each Reporting Person 5,663,032

12. Check if the Aggregate Amount in Row (11) Excludes Certain Shares (See Instructions)_____

13. Percent of Class Represented by Amount in Row (11) 5.02%

14. Type of Reporting Person (See Instructions) PN

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CUSIP No. 002346104

1. Names of Reporting Persons. I.R.S. Identification Nos. of above persons (entities only).

Black Bear Fund II, L.L.C.

2. Check the Appropriate Box if a Member of a Group (See Instructions)

(a) x

(b) _____

3. SEC Use Only

4. Source of Funds (See Instructions)

WC

5. Check if Disclosure of Legal Proceedings Is Required Pursuant to Items 2(d) or 2(e) _____

6. Citizenship or Place of Organization

California

| | | | |
|--------------|-------|--------------------------|-----------|
| Number of | 7. | Sole Voting | |
| Shares | Power | | 0 |
| Beneficially | 8. | Shared Voting | |
| Owned by | Power | | 4,606,448 |
| Each | 9. | Sole Dispositive | |
| Reporting | Power | | 0 |
| Person With | 10. | Shared Dispositive Power | |
| | | | 4,606,448 |

11. Aggregate Amount Beneficially Owned by Each Reporting Person 4,606,448
12. Check if the Aggregate Amount in Row (11) Excludes Certain Shares (See Instructions)_____
13. Percent of Class Represented by Amount in Row (11) 4.10%
14. Type of Reporting Person (See Instructions) OO

CUSIP No. 002346104

Item 1. Security and Issuer

This Amendment No. 2 (this “Amendment”) amends and supplements the Schedule 13D filed on February 9, 2009, as previously amended (the “Schedule 13D”), by Eastbourne Capital Management, L.L.C. (“Eastbourne”), Richard Jon Barry (“Barry”), Black Bear Fund I, L.P. (“Fund I”), Black Bear Fund II, L.L.C. (“Fund II”) and Black Bear Offshore Master Fund, L.P. (the “Offshore Fund,” together with Eastbourne, Barry, Fund I and Fund II, the “Filers”), relating to shares of Common Stock (the “Stock”) of AVI BioPharma, Inc. (the “Issuer”). The shares of Stock reported hereon includes shares of Stock issuable on the exercise of the Warrants (as defined below), which are exercisable less than sixty days after the date hereof. The principal executive office of the Issuer is located at One SW Columbia Street, Suite 1105, Portland, OR 97258 . All capitalized terms used in this Amendment and not otherwise defined herein have the meanings ascribed to such terms in the Schedule 13D.

Items 3, 4 and 5 of the Schedule 13D are hereby amended and supplemented to add the following:

Item 3. Source and Amount of Funds or Other Consideration

The source and amount of funds used in purchasing the Stock were as follows:

| Purchaser | Source of Funds | Amount |
|-----------|-----------------|----------------|
| Fund I | Working Capital | \$2,910,912.34 |
| Fund II | Working Capital | \$6,427,215.52 |

Item 4. Purpose of Transaction

On October 1, 2009, the Offshore Fund, Fund I and Fund II effected a rebalancing trade whereby Fund I purchased 887,577 shares and 974,845 warrants from the Offshore Fund for cash consideration of \$1,526,632.44 and \$1,384,279.90, respectively, and Fund II purchased 2,030,965 shares and 2,066,166 warrants from the Offshore Fund for cash consideration of \$3,493,259.80 and \$2,933,955.72, respectively.

Item 5. Interest in Securities of the Issuer

(a), (b) and (d) the Filer’s beneficial ownership of Stock on the date of this report is reflected on each Filer’s cover page. Eastbourne is an investment adviser with the power to invest in, vote and dispose of the Stock on behalf of its clients, including Fund I, Fund II and the Offshore Fund, and is deemed to share beneficial ownership of and voting and dispositive power with respect to the shares of Stock beneficially owned by its clients. Its clients have the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, the Stock. Except for Fund I, no client individually holds more than 5% of the outstanding Stock. By virtue of its control of Fund I, Fund II and the Offshore Fund, Eastbourne is deemed to share beneficial ownership of (and voting and dispositive power with respect to) the shares of Stock beneficially owned by each of Fund I, Fund II and the Offshore Fund. Mr. Barry is the controlling owner and managing member of Eastbourne. By virtue of his control of Eastbourne, Mr. Barry is deemed to share beneficial ownership of (and voting and dispositive power with respect to) the shares of Stock beneficially owned by Eastbourne.

(c) On October 1, 2009, the Offshore Fund, Fund I and Fund II effected a rebalancing trade whereby Fund I purchased 887,577 shares and 974,845 warrants from the Offshore Fund for cash consideration of \$1,526,632.44 and \$1,384,279.90, respectively, and Fund II purchased 2,030,965 shares and 2,066,166 warrants from the Offshore Fund for cash consideration of \$3,493,259.80 and \$2,933,955.72, respectively.

CUSIP No. 002346104

SIGNATURES

After reasonable inquiry and to the best of my knowledge, I certify that the information set forth in this statement is true, complete and correct.

Dated: October 9, 2009

EASTBOURNE CAPITAL MANAGEMENT,
L.L.C.

By: Eric M. Sippel, Chief Operating Officer

BLACK BEAR FUND I, L.P.

By: Eastbourne Capital Management, L.L.C.,
its general partner

By: Eric M. Sippel, Chief Operating Officer

BLACK BEAR FUND II, L.L.C.

By: Eastbourne Capital Management, L.L.C.,
its Managing Member

By: Eric M. Sippel, Chief Operating Officer

BLACK BEAR OFFSHORE MASTER FUND, L.P.

By: Eastbourne Capital Management, L.L.C.,
its general partner

By: Eric M. Sippel, Chief Operating Officer

Richard Jon Barry

CUSIP No. 002346104

EXHIBIT A

AGREEMENT REGARDING JOINT FILING
OF STATEMENT ON SCHEDULE 13D OR 13G

The undersigned agree to file jointly with the Securities and Exchange Commission (the "SEC") any and all statements on Schedule 13D or Schedule 13G (and any amendments or supplements thereto) required under section 13(d) of the Securities Exchange Act of 1934, as amended, in connection with purchases by the undersigned of the common stock of AVI BioPharma, Inc. For that purpose, the undersigned hereby constitute and appoint Eastbourne Capital Management, L.L.C., a Delaware limited liability company, as their true and lawful agent and attorney-in-fact, with full power and authority for and on behalf of the undersigned to prepare or cause to be prepared, sign, file with the SEC and furnish to any other person all certificates, instruments, agreements and documents necessary to comply with section 13(d) and section 16(a) of the Securities Exchange Act of 1934, as amended, in connection with said purchases, and to do and perform every act necessary and proper to be done incident to the exercise of the foregoing power, as fully as the undersigned might or could do if personally present.

Dated: October 9, 2009

EASTBOURNE CAPITAL MANAGEMENT,
L.L.C.

By: Eric M. Sippel, Chief Operating Officer

BLACK BEAR FUND II, L.L.C.

By: Eastbourne Capital Management, L.L.C.,
its Managing Member

By: Eric M. Sippel, Chief Operating Officer

BLACK BEAR FUND I, L.P.

By: Eastbourne Capital Management, L.L.C.,
its general partner

By: Eric M. Sippel, Chief Operating Officer

BLACK BEAR OFFSHORE MASTER FUND, L.P.

By: Eastbourne Capital Management, L.L.C.,
its general partner

By: Eric M. Sippel, Chief Operating Officer

Richard Jon Barry

