
**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): **November 7, 2018**

RESHAPE LIFESCIENCES INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation)

1-33818

(Commission File Number)

48-1293684

(I.R.S. Employer Identification
Number)

1001 Calle Amanecer

San Clemente, CA

(Address of principal executive offices)

92673

(Zip Code)

(949) 429-6680

(Registrant's telephone number, including area code)

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))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

On November 7, 2018, ReShape Lifesciences Inc. (the “Company”) filed a Certificate of Amendment to its Sixth Amended and Restated Certificate of Incorporation, as amended (the “Certificate”), with the Secretary of State of the State of Delaware to effect a 1-for-140 reverse split of the Company’s outstanding common stock, \$0.01 par value per share (the “Reverse Stock Split”). The Reverse Stock Split became effective after the close of market on November 7, 2018 and will be effective for trading purposes upon the commencement of trading on November 8, 2018, at which point the Company’s common stock will begin trading on a split adjusted basis on the NASDAQ Capital Market. As a result of the Reverse Stock Split, each 140 shares of issued and outstanding common stock and equivalents will be converted into one share of common stock. Any fractional shares of common stock resulting from the Reverse Stock Split will be rounded up to the nearest whole share.

As a result of the reverse stock split, proportional adjustments will be made to the number of shares of common stock issuable upon exercise or conversion, and the per share exercise or conversion price, of the company’s outstanding warrants, stock options and convertible preferred stock, in each case in accordance with their terms.

The Reverse Stock Split does not reduce the number of authorized shares of common stock and preferred stock under the Certificate. Therefore, the effect of the Reverse Stock Split is to increase the number of shares of common stock and preferred stock available for issuance relative to the number of shares issued and outstanding. The Reverse Stock Split will not alter the par value of the common stock or preferred stock or modify any voting rights or other terms of the common stock or any series of preferred stock.

A copy of the Certificate of Amendment to the Certificate is attached as Exhibit 3.1 to this Current Report on Form 8-K and is incorporated herein by reference.

The table below sets forth, for illustrative purposes only, certain effects of the Reverse Stock Split based on the Company’s total outstanding common stock and common stock equivalents (without giving effect to the treatment of fractional shares) as of October 30, 2018.

	Common Stock and Equivalents Outstanding Prior to Reverse Stock Split	Common Stock and Equivalents Outstanding After 1-for- 140 Reverse Stock Split
Common stock outstanding	127,650,735	911,791
Common stock underlying options	603,725	4,312(1)
Common stock reserved for issuance under stock incentive plan	437,880	3,128
Common stock underlying warrants	16,061,051	114,722(2)
Common stock underlying series B convertible preferred stock	5,768,572	40,561(3)
Common stock underlying series C convertible preferred stock	635,920	4,542(4)
Total common stock and equivalents	151,067,051	1,075,489

	<u>Common Stock and Equivalents Outstanding Prior to Reverse Stock Split</u>	<u>Common Stock and Equivalents Outstanding After 1-for- 140 Reverse Stock Split</u>
Common stock available for future issuance	123,932,117	273,920,944

(1) After the Reverse Stock Split, the lowest exercise price of any outstanding stock option is \$492.80 per share. Therefore, therefore all outstanding stock options are underwater as of the date hereof.

(2) After the Reverse Stock Split, warrants to purchase 43,105 shares of our common stock contain a full-ratchet anti-dilution provision and the exercise price of those warrants is currently \$2.80 per share.

(3) After the Reverse Stock Split, the current conversion price of the series B convertible preferred stock is \$2.80 per share. The conversion price of the series B convertible preferred stock is subject to a full-ratchet anti-dilution provision.

(4) In the event of a liquidation, the holders of shares of series C convertible preferred stock are entitled to be paid, before any payments are to be made to the holders of common stock or any other series of preferred stock, an amount per share equal to the greater of (i) \$5,772.4254 per share (on an post-Reverse Stock Split, as-converted-to-common stock basis), plus any dividends declared but unpaid thereon, or (ii) such amount per share as would have been payable had all shares of series C convertible preferred stock been converted to common stock immediately prior to such liquidation.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
3.1	<u>Certificate of Amendment of the ReShape Lifesciences Inc. Sixth Amended and Restated Certificate of Incorporation, as amended (filed herewith)</u>

SIGNATURES

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

RESHAPE LIFESCIENCES INC.

By: /s/ Scott P. Youngstrom
Scott P. Youngstrom
Chief Financial Officer

Dated: November 7, 2018

**CERTIFICATE OF AMENDMENT TO THE
SIXTH AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF RESHAPE LIFESCIENCES INC.**

ReShape Lifesciences Inc. (the "*Corporation*"), a corporation duly organized and existing under the Delaware General Corporation Law (the "*DGCL*"), does hereby certify that:

FIRST: The name of the corporation is ReShape Lifesciences Inc. and the name under which the corporation was originally incorporated is EnteroMedics Inc.

SECOND: The date of filing the original Certificate of Incorporation of this corporation with the Secretary of State of the State of Delaware was July 22, 2004.

THIRD: The amendment to the Corporation's Sixth Amended and Restated Certificate of Incorporation, as amended, set forth below was duly adopted and approved by the Board of Directors effective as of September 17, 2018 and was approved by the stockholders at a special meeting of the Corporation's stockholders, duly called and held on October 30, 2018 upon notice in accordance with Section 222 of the DGCL, at which meeting the necessary number of shares as required by statute were voted in favor of the amendment.

FOURTH. The Sixth Amended and Restated Certificate of Incorporation, as amended, is hereby amended by amending and restating Section 4 of Article IV:

"4. **Reverse Stock Split.** Upon the filing and effectiveness (the "*Effective Time*") pursuant to the Delaware General Corporation Law of this Certificate of Amendment to the Sixth Amended and Restated Certificate of Incorporation, as amended, of the Corporation, each one hundred forty (140) shares of Common Stock, par value \$0.01 (the "*Old Common Stock*"), either issued and outstanding or held by the Corporation in treasury stock immediately prior to the Effective Time shall, automatically and without any action on the part of the respective holders thereof, be combined and converted into one (1) share of Common Stock, par value \$0.01 per share (the "*New Common Stock*"). The Corporation shall, through its transfer agent, provide a book-entry statement reflecting the number of shares of New Common Stock to which the holder is entitled following a reverse stock split to holders of Old Common Stock. From and after the Effective Time, certificates representing shares of Old Common Stock are hereby canceled and shall represent only the right of holders thereof to receive New Common Stock. The Corporation shall not issue fractional shares of New Common Stock. The reverse stock split shall not increase or decrease the amount of stated capital or paid-in surplus of the Corporation, provided that any fractional share that would otherwise be issuable as a result of the reverse stock split shall be rounded up to the nearest whole share of New Common Stock. From and after the Effective Time, the term "New Common Stock" as used in this Article IV shall mean common stock as provided in the Sixth Amended and Restated Certificate of Incorporation, as amended."

FIFTH: Except as herein amended, the Corporation's Sixth Amended and Restated Certificate of Incorporation, as amended, shall remain in full force and effect.

SIXTH: The Effective Time of this Amendment will be November 7, 2018 at 4:01 p.m. Eastern Time.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to be executed by a duly authorized officer on November 7, 2018.

RESHAPE LIFESCIENCES INC.

By: /s/ Scott P. Youngstrom
Name: Scott P. Youngstrom
Title: Chief Financial Officer