

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

FORM S-1
REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

RESHAPE LIFESCIENCES INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

3841
(Primary Standard Industrial
Classification Code Number)

26-1828101
(I.R.S. Employer
Identification Number)

**1001 Calle Amanecer
San Clemente, California 92673
(949) 429-6680**

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Paul F. Hickey
President and Chief Executive Officer
ReShape Lifesciences Inc.
1001 Calle Amanecer
San Clemente, California 92673
(949) 429-6680

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

Brett Hanson
Emily Humbert
Fox Rothschild LLP
33 South Sixth Street, Suite 3600
Minneapolis, Minnesota 55402
(612) 607-7000

Barry I. Grossman
Sarah Williams
Matthew Bernstein
Ellenoff Grossman & Schole LLP
1345 Avenue of the Americas
New York, New York 10105
(212) 370-1300 (telephone number)
(212) 370-7889 (facsimile number)

Approximate date of commencement of proposed sale to the public: As soon as practicable after the effective date of this registration statement.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. **333-269207**

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer
Non-accelerated filer

Accelerated filer
Smaller reporting company
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 7(a)(2)(B) of the Securities Act.

This Registration Statement shall become effective upon filing in accordance with Rule 462(b) under the Securities Act of 1933, as amended.

EXPLANATORY NOTE

This Registration Statement is being filed by ReShape Lifesciences Inc. (the “Company”) pursuant to Rule 462(b) as promulgated under the Securities Act of 1933, as amended, and includes the registration statement facing page, this page, the signature page, an exhibit index and the required opinion and consents solely to register up to an aggregate of \$4,995,026 in additional (i) shares of the Company’s common stock, par value \$0.001 per share (the “common stock”), (ii) pre-funded warrants to purchase shares of the Company’s common stock, (iii) warrants to purchase shares of the Company’s common stock (together with the pre-funded warrants, the “warrants”) and (iv) shares of common stock issuable upon exercise of the warrants. The contents of the Registration Statement on [Form S-1 \(Registration No. 333-269207\)](#), as amended, including the exhibits and powers of attorney included therein (the “Prior Registration Statement”), which was declared effective by the Securities and Exchange Commission on February 3, 2023, are incorporated by reference in this Registration Statement. The additional securities that are being registered for sale are in an amount and at a price that together represent no more than 20% of the maximum aggregate offering price set forth in Exhibit 107 to the Prior Registration Statement. The required opinion and consents are listed on the Exhibit Index attached hereto and filed herewith.

PART II — INFORMATION NOT REQUIRED IN PROSPECTUS

Item 16. Exhibits and Financial Statement Schedules

(a) Exhibits

<u>Exhibit</u>	<u>Description</u>
<u>5.1*</u>	<u>Opinion of Fox Rothschild LLP as to the validity of the securities being registered.</u>
<u>23.1*</u>	<u>Consent of Fox Rothschild LLP relating to opinion as to validity of the securities being registered (included in Exhibit 5.1 hereto).</u>
<u>23.2*</u>	<u>Consent of BDO USA LLP.</u>
<u>24.1</u>	<u>Power of Attorney (included on the signature page to the Prior Registration Statement).</u>
<u>107*</u>	<u>Calculation of Filing Fee Table</u>

* Filed herewith

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Clemente, State of California, on February 3, 2023.

RESHAPE LIFESCIENCES INC.

By: /s/ Paul F. Hickey

Name: Paul F. Hickey

Title: President and Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, as amended, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Capacity</u>	<u>Date</u>
<u>/s/ Paul F. Hickey</u> Paul F. Hickey	President and Chief Executive Officer and Director (Principal Executive Officer)	February 3, 2023
<u>/s/ Thomas Stankovich</u> Thomas Stankovich	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	February 3, 2023
* <u>Dan W. Gladney</u>	Director	February 3, 2023
* <u>Gary D. Blackford</u>	Director	February 3, 2023
* <u>Lori C. McDougal</u>	Director	February 3, 2023
* <u>Arda M. Minocherhomjee, Ph.D.</u>	Director	February 3, 2023

* By Paul F. Hickey as attorney-in-fact

/s/ Paul F. Hickey

Paul F. Hickey



Fox Rothschild LLP

ATTORNEYS AT LAW

City Center
 33 South Sixth Street
 Suite 3600
 Minneapolis, MN 55402
 Tel (612) 607-7000 Fax (612) 607-7100
www.foxrothschild.com

February 3, 2023

ReShape Lifesciences Inc.
 1001 Calle Amanecer
 San Clemente, CA 92673

RE: ReShape Lifesciences Inc. Registration Statement on Form S-1 under Rule 462(b)

Ladies and Gentlemen:

We have acted as counsel to ReShape Lifesciences Inc., a Delaware corporation (the “**Company**”), in connection with its filing with the Securities and Exchange Commission (the “**Commission**”) of a registration statement on Form S-1 (Registration No. 333-269207) (the “**Form S-1 Registration Statement**”), and a registration statement on Form S-1 filed under Rule 462(b) (the “**Rule 462(b) Registration Statement**”, and together with the Form S-1 Registration Statement, the “**Registration Statements**”), relating to the public offering by the Company (the “**Offering**”) of up to 1,529,335 units (the “**Units**”) of the Company, with each Unit consisting of: (i) either one share of the Company’s common stock, par value \$0.001 per share (the “**Common Stock**” and such shares, the “**Shares**”), or one pre-funded warrant to purchase one share of Common Stock at an exercise price equal to \$0.0001 per share of Common Stock (the “**Pre-Funded Warrants**” and the shares of Common Stock issuable upon exercise thereof, the “**Pre-Funded Warrant Shares**”) and (ii) one warrant to purchase one and one-half shares of Common Stock (the “**Common Warrants**” and the 2,294,002 shares of Common Stock issuable upon exercise of the Common Warrants, the “**Common Warrant Shares**”). The Units are to be sold by the Company pursuant to an underwriting agreement (the “**Underwriting Agreement**”) to be entered into by and between the Company and Maxim Group, LLC, as underwriter (the “**Underwriter**”), the form of which has been filed as Exhibit 1.1 to the Form S-1 Registration Statement. As noted in the Form S-1 Registration Statement, for each Pre-Funded Warrant sold, the number of Shares sold will be decreased on a one-for-one basis.

The Units, including the Shares, Common Warrants and Pre-Funded Warrants included in the Units, and the Common Warrant Shares and Pre-Funded Warrants Shares are collectively referred to herein as the “**Securities**.” The term “**Shares**” includes any additional shares of Common Stock, or shares of Common Stock underlying Common Warrants and Pre-Funded Warrants, issued or issuable pursuant to the exercise of the over-allotment option granted to the Underwriter in the Underwriting Agreement in connection with the offering contemplated by the Registration Statements.

A Pennsylvania Limited Liability Partnership

California Colorado Delaware District of Columbia Florida Georgia Illinois Minnesota Nevada
 New Jersey New York North Carolina Pennsylvania South Carolina Texas Virginia Washington



Fox Rothschild LLP

ATTORNEYS AT LAW

February 3, 2023
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This opinion is being furnished in connection with the requirements of Item 601(b)(5) of Regulation S-K under the Securities Act and no opinion is expressed herein as to any matter pertaining to the contents of the Registration Statements other than as expressly stated herein.

In connection with this opinion, we have examined the Company's Restated Certificate of Incorporation and all amendments thereto; the Company's Restated Bylaws, as currently in effect; the Registration Statements and the exhibits thereto; the prospectus contained in the Form S-1 Registration Statement; the form of Underwriting Agreement; the form of Common Warrant; the form of Warrant Agency Agreement; the form of Pre-Funded Warrant; and such other documents, records, certificates, memoranda and instruments as we have deemed necessary as a basis for this opinion. We have also examined the resolutions of the Board of Directors of the Company authorizing the filing of the Registration Statements by the Company and the issuance of the Securities by the Company (the "**Resolutions**").

Based upon, subject to and limited by the foregoing, we are of the opinion that following receipt by the Company of the consideration for the Securities:

1. The Shares will be validly issued, fully paid and non-assessable.
2. The Warrants will constitute the valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, under the laws of the State of New York.
3. The Pre-Funded Warrants will constitute the valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, under the laws of the State of New York.
4. The Common Warrant Shares issuable upon exercise of the Common Warrants and the Pre-Funded Warrant Shares issuable upon exercise of the Pre-Funded Warrants have been duly authorized and, when issued upon exercise of the Common Warrants and the Pre-Funded Warrants upon payment of the applicable exercise price therefor in accordance with the terms thereof, will be validly issued, fully paid and non-assessable

Our opinion herein is expressed solely with respect to the General Corporation Law of the State of Delaware (including the statutory provisions, all applicable provisions of the Delaware Constitution and reported judicial decisions interpreting the foregoing) and, solely for purposes of paragraphs 2 and 3 above, the laws of the State of New York and is based on these laws as in effect on the date hereof. We express no opinion herein as to any other statutes, rules or regulations. We express no opinion herein as to whether the laws of any jurisdiction are applicable to the subject matter hereof. We are not rendering any opinion as to compliance with any federal or other state law, rule or regulation relating to securities, or to the sale or issuance thereof.

This opinion letter has been prepared for your use in connection with the Offering. This opinion is expressed as of the date hereof, and we disclaim any undertaking to advise you of any subsequent changes in the facts stated or assumed herein or of any subsequent changes in applicable law.

We consent to the filing of this opinion letter as an exhibit to the Rule 462(b) Registration Statement and to the reference to this firm under the caption "Legal Matters" in the prospectus contained therein. In giving this consent, we do not hereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission thereunder.

Very truly yours,

/s/ Fox Rothschild LLP

Consent of Independent Registered Public Accounting Firm

ReShape Lifesciences, Inc.
San Clemente, California

We hereby consent to the incorporation by reference in this Registration Statement on Form S-1 of our report dated April 8, 2022, except for the effect of the one-for-fifty reverse stock split discussed in Note 2 and Note 18, as to which the date is January 12, 2023, relating to the consolidated financial statements of ReShape Lifesciences, Inc., which is included in the Registration Statement on Form S-1 (No. 333-269207).

We also consent to the reference to us under the caption “Experts” in such Registration Statement.

/s/ BDO USA LLP
Costa Mesa, California
February 3, 2023

Calculation of Filing Fee Tables

Form S-1
(Form Type)

RESHAPE LIFESCIENCES INC.

(Exact Name of Registrant as Specified in its Charter)

Table 1: Newly Registered Securities

	Security Type	Security Class Title	Fee Calculation Rule	Amount Registered	Proposed Maximum Offering Price Per Unit	Maximum Aggregate Offering Price ⁽¹⁾⁽²⁾	Fee Rate	Amount of Registration Fee
Fees to be paid	Equity	Common stock, par value \$0.001 per share ⁽³⁾	Rule 457(o)			\$1,955,000	\$0.00011020	\$219.85
	Equity	Common warrants ⁽⁵⁾	Other					
	Equity	Common stock, par value \$0.001 per share, underlying common warrants	Rule 457(o)			\$2,932,500	\$0.00011020	\$323.17
	Equity	Pre-funded warrants ⁽⁴⁾	Other					
	Equity	Common stock, par value \$0.001 per share, underlying pre-funded warrants ⁽⁶⁾	Rule 457(o)				\$0.00011020	
	Equity	Common stock, par value \$0.001 per share, underlying underwriter's warrants ⁽⁴⁾⁽⁵⁾	Rule 457(o)			\$107,526	\$0.00011020	\$11.85
	Total Offering Amounts					\$4,995,026		\$554.87
	Total Fees Previously Paid							
	Total Fee Offsets							
	Net Fee Due							\$554.87

(1) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(o) of the Securities Act of 1933, as amended (the "Securities Act").

- (2) The registrant previously registered securities with a proposed maximum aggregate offering price not to exceed \$24,975,131 on a registration statement on Form S-1, as amended (File No. 333-269207), which was declared effective by the Securities and Exchange Commission on February 3, 2023. In accordance with Rule 462(b) under the Securities Act, an additional amount of securities having a proposed maximum aggregate offering price of \$4,995,026 is hereby registered.
 - (3) Pursuant to Rule 416 under the Securities Act, the shares of common stock registered hereby also include an indeterminate number of additional shares of common stock as may from time to time become issuable by reason of stock split, stock dividends, recapitalizations, or other similar transactions.
 - (4) The proposed maximum aggregate offering price of the common stock will be reduced on a dollar-for-dollar basis based on the offering price of any pre-funded warrants issued in the offering, and the proposed maximum aggregate offering price of the pre-funded warrants to be issued in the offering will be reduced on a dollar-for-dollar basis based on the offering price of any common stock issued in the offering. Accordingly, the proposed maximum aggregate offering price of the common stock and pre-funded warrants (including the common stock issuable upon exercise of the pre-funded warrants), if any, is \$9,775,000.
 - (5) No fee pursuant to Rule 457(g) of the Securities Act.
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