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

Form 10-K

(Mark one)

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the fiscal year ended December 31, 2023
or
☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the transition period from to
Commission file number: 1-37897

RESHAPE LIFESCIENCES INC.

(Exact name of registrant as specified in its charter)

Delaware	**26-1828101**
(State or other jurisdiction of incorporation or organization)	(IRS Employer Identification No.)

18 Technology Dr. Suite 110, Irvine, California 92618
(Address of principal executive offices, including zip code)
(949) 429-6680
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class	Trading Symbol	Name of Each Exchange on which Registered
Common stock, $0.001 par value per share	RSLS	The Nasdaq Capital Market

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

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 ☐ Accelerated filer ☐
Non-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 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. ☐

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements. ☐

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b). ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

At June 30, 2023, the last business day of the registrant's most recently completed second fiscal quarter, the aggregate market value of the registrant's common stock held by non-affiliates of the registrant, based upon the closing price of a share of the registrant's common stock as reported by the Nasdaq on that date was $5,074,445.

As of March 26, 2024, 23,457,090 shares of the registrant's Common Stock were outstanding.

Documents Incorporated by Reference

None.

FORWARD-LOOKING STATEMENTS AND ASSOCIATED RISKS

All statements in this Form 10-K that do not directly and exclusively relate to historical facts constitute "forward-looking statements" and include statements related to our ability to successfully remediate the material weaknesses in our internal control over financial reporting disclosed in this Form 10-K in the manner currently anticipated. These statements represent current expectations and beliefs, and no assurance can be given that the results described in such statements will be achieved. Such statements are subject to numerous assumptions, risks, uncertainties and other factors that could cause actual results to differ materially from those described in such statements, many of which are outside of our control. No assurance can be given that any expectation, belief, goal or plan set forth in any forward-looking statement can or will be achieved, and readers are cautioned not to place undue reliance on such statements which speak only as of the date they are made. We do not undertake any obligation to update or release any revisions to any forward-looking statement or to report any events or circumstances after the date of this Form 10-K or to reflect the occurrence of unanticipated events.

You should carefully consider these and other relevant factors, including those risk factors in Item 1A, "Risk Factors" of this Form 10-K and any other information included or incorporated by reference in this report, and information which may be contained in the Company's other filings with the SEC, when reviewing any forward-looking statement. Investors should understand it is impossible to predict or identify all such factors or risks. As such, you should not consider either foregoing lists, or the risks identified in the Company's SEC filings, to be a complete discussion of all potential risks or uncertainties associated with an investment in the Company.

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PART I.

ITEM 1. BUSINESS

Our Company

ReShape Lifesciences Inc. is a worldwide premier weight-loss solutions company, offering an integrated portfolio of proven products and services that manage and treat obesity and metabolic disease throughout the care continuum.

Our current portfolio includes the FDA-approved and reimbursed Lap-Band® system, which provides minimally invasive, long-term treatment of obesity and is a safer surgical alternative to more invasive and extreme surgical stapling procedures such as the gastric bypass or sleeve gastrectomy.

1**ReShape's Pillars for Growth**

In August of 2022, Paul F. Hickey joined ReShape as President and Chief Executive Officer. Under this new leadership, the Company has pivoted its business strategy with the intent of helping to ensure growth and profitability. The Company has executed the following three growth strategies, or pillars for growth:

- **Growth Pillar I: Executing disciplined, metrics-driven business operations.**

In executing the first growth pillar, the Company is focused on revenue growth and profitability, by the end of 2024. This estimated timeline could be compressed or extended depending on many factors, including revenue growth from new product introductions, or strategic investments not yet foreseen.

This first growth pillar remains, in the Company's opinion, paramount for ReShape to deliver shareholder value and, ultimately, profitability. Starting shortly after Mr. Hickey's appointment, ReShape has made several operational changes to help ensure future performance and return on investment by prioritizing investments supporting revenue growth.

The Company is prioritizing investments, including marketing automation to support scalable lead acquisition, segmented consumer-centric messaging via an updated website for improved patient engagement, and a frictionless booking system with qualified providers. This is expected to dramatically increase Lap-Band procedures and ultimately

revenue. Additionally, the Company has a 2024 cost reduction plan, which is expected to result in reduction of operating expense by approximately 55.4% from 2023, excluding one-time costs. The company has also taken steps to right-size the organization in several areas to ensure sustainability and scalability.

- **Growth Pillar II: Expanding the product portfolio and future product pipeline.**

ReShape's second growth pillar is intended to further differentiate the Company as a leading provider of innovative products and services to meet unmet customer needs. ReShape is committed to drive and scale its new product development and commercialization capacity, providing a cadence of new product introductions and revenue growth. The growth can either be through organic internal Research and Development efforts, or through strategic partnerships, mergers, or acquisitions. Key growth drivers within second growth pillar include:

Lap-Band 2.0 FLEX System - New product revenues for the Lap-Band 2.0 FLEX system ("Lab-Band 2.0"), for which the Company received FDA approval during December 2023 and completed the first successful surgeries in early 2024. Similar to the current Lap-Band, the Lap-Band 2.0 is adjustable, postoperatively, to increase or decrease the opening of the band to optimize an individual's eating habits and comfort, thereby improving therapy effectiveness. At the same time, a new feature of the Lap-Band 2.0 is a band reservoir technology that serves as a relief valve. Pieces of food that are too large to pass through the narrowed passage, created by the current band, can pass through because the new feature allows the band to relax momentarily and then return to its resting diameter. This could potentially allow for increased Lap-Band constriction and resultant satiety, while helping to minimize discomfort from swallowing large pieces of food, which may otherwise require emergency in-office patient band adjustments. Based on customer feedback, Lap-Band 2.0 will allow us to engage new surgeons and reengage many of those who have used the Lap-Band, historically.

ReShape Obalon Balloon - The ReShape Obalon® Balloon system is the first and only swallowable, gas filled, FDA-approved balloon system. In 2023 the Company established an OEM partnership with Biorad Medisys ("Biorad"), based in India that will support the successful relaunch and commercialization of the balloon system. We anticipate having access to the Obalon Balloon system later in 2024 for the distribution in the U.S. and other regions globally. In addition, the strategic partnership with Biorad contemplates potential manufacturing transfer of other products to further improve ReShape's overall gross margin.

DBSN Device - ReShape remains committed to furthering our proprietary Diabetes Bloc-Stim Neuromodulation (DBSN™) technology that can potentially reduce the dependence on medications by those with type 2 diabetes. The DBSN™ device is a technology under development as a new treatment for type 2 diabetes mellitus. The device is expected to use bioelectronics to manage blood glucose in the treatment of diabetes and individualized 24/7 glucose control. Preclinical evidence on the DBSN device was presented at multiple conferences. The DBSN technology development has received nondilutive NIH grant support.

- **Growth Pillar III: Ensuring that our portfolio spans the weight loss care continuum and is evidence based.**

ReShape's third growth pillar represents the Company's commitment to collaborate with healthcare professionals worldwide and further develop evidence supporting ReShape's portfolio of treatment options. Aligned with goal of pillar three, in early 2023, ReShape established their first-ever global Scientific Advisory Board (SAB) to provide needed expertise and feedback on initiatives related to the Company's growth pillars. The SAB is fully engaged in helping validate company strategies to collect and publish data on both our Lap-Band 2.0 and data on Lap-Band patients who are also using GLP-1s as a combination therapy. Combination therapies comprising GLP-1s and other gastric surgeries, including the Lap-Band, are being prescribed today, to help those who have plateaued with their weight loss.

Our Product Portfolio

Lap-Band System

The Lap-Band System is designed to provide minimally invasive long-term treatment of severe obesity and is an alternative to more invasive surgical stapling procedures such as the gastric bypass or sleeve gastrectomy. Unlike other invasive anatomy altering procedures, the Lap-Band System is adjustable post-operatively via a saline-filled silicone band that is laparoscopically placed around the upper part of the stomach through small laparoscopic incisions, creating a small pouch at the top of the stomach, which slows the passage of food and creates a sensation of fullness. The

procedure can normally be performed as an outpatient procedure and patients can go home the day of the procedure without the need for an overnight hospital stay.

Lap-Band 2.0 System

The Lap-Band 2.0, like the original Lap-Band System, is designed to provide minimally invasive long-term treatment of severe obesity and is an alternative to more invasive surgical stapling procedures such as the gastric bypass or sleeve gastrectomy. Unlike more invasive and anatomy altering surgeries, the Lap-Band 2.0 is adjustable postoperatively to increase or decrease the pressure to the band in order to optimize an individual's comfort and therapy effectiveness. The Lap-Band 2.0 system includes a reservoir technology designed to minimize postoperative in-office patient band adjustments, thereby potentially improving an individual's tolerance for the Lap-Band 2.0.

ReShape Calibration Tubes

The ReShape Calibration tubes are multifunctional devices compared to reusable bougies and disposable gastric tubes. The Calibration tubes are designed to fit the lesser curvature of the stomach more easily and quickly reach the pylorus. In August of 2022, we announced FDA clearance of three new sizes – 32, 36, and 40 French – all designed to simplify bariatric procedures such as laparoscopic sleeve gastrectomy, gastric bypass, and adjustable gastric banding. During the first quarter of 2023, we fully released this product and continue to ramp up production.

ReShape Obalon Balloon System

The FDA PMA approved Obalon Balloon System, is not currently manufactured and distributed for commercial sales, consists of a swallowable capsule that contains an inflatable balloon attached to a microcatheter; the Obalon Navigation System console, has FDA PMA supplemental approval, is a combination of hardware and software used to dynamically track and display the location of the balloon during placement; the Obalon Touch Inflation Dispenser, which is a semi-automated, hand-held inflation device used to inflate the balloon once it is placed; and a disposable canister filled with our proprietary mixture of gas.

DBSN Device

The DBSN device, that is not currently available for commercial sales, is a technology under development as a new treatment for type 2 diabetes mellitus (T2DM). It combines ReShape Lifesciences' proprietary Vagus Nerve Block (vBloc) technology platform in combination with Vagus nerve stimulation. This new dual Vagus nerve neuromodulation device selectively modulates vagal blocking and stimulation to the liver and pancreas to manage blood glucose. Our DBSN device is expected to use bioelectronics to manage blood glucose in treatment of diabetes and individualized 24/7 glucose control. The goal is to reduce costs of treatment and complications that arise from poorly controlled blood glucose and non-compliance to T2DM medication.

Our Strategic Focus

Develop and Commercialize a Differentiated Portfolio of Products/Therapies

ReShape Lifesciences Inc. is the premier physician-led weight-loss and metabolic health-solutions company, offering an integrated portfolio of proven products and services that manage and treat obesity and metabolic disease. An overarching strategy for our Company is to develop and commercialize products, programs and services portfolio that is differentiated from our competition by offering transformative technologies that consists of a selection of patient-friendly, non-anatomy changing, lifestyle enhancing products, programs and services that provide alternatives to more invasive bariatric surgeries, and help patients achieve healthy and durable weight loss. Current offerings include the Lap-Band System and accessories, and recently approved Lap-Band 2.0. The FDA approved Obalon Balloon System, which has been off the market since March 2020 and was acquired in connection with the Obalon merger in June of 2021, has not yet been re-introduced to the marketplace. We believe that we are well positioned for the existing market and can serve more of the overweight and obese population with our solutions and thereby help expand the addressable market for obesity.

Drive the Adoption of Our Portfolio through Obesity Therapy Experts and Patient Ambassadors

Our clinical development strategy is to collaborate closely with regulatory bodies, healthcare providers, obesity therapy lifestyle experts and others involved in the obesity management process, patients and their advocates and

scientific experts. We have established relationships with physicians, obesity therapy experts, patient advocates, media experts and other market drivers we believe will provide important support towards promoting patient awareness and gaining widespread adoption of the Lap-Band, its accessories, Lap-Band 2.0 and the possible re-introduction of the Obalon Balloon System.

Expand and Protect Our Intellectual Property Position

We believe that our issued patents and our patent applications encompass a broad platform of therapies focused on obesity, diabetes, hypertension and other gastrointestinal disorders. We intend to continue to pursue further intellectual property protection through U.S. and foreign patent applications.

On March 9, 2023, we filed a patent infringement complaint against Allurion Technologies, Inc. in the U.S. District Court for the District of Delaware. The complaint alleged that Allurion is infringing at least two claims of our U.S. Patent No. 10,463,520, which is related to our intellectual property portfolio, by making the Allurion Gastric Balloon system in the U.S. for exportation and/or sales from the U.S and/or for potential sales in the U.S. relating to Allurion's application to the FDA to sell the Allurion Gastric Balloon in the U.S. The complaint sought, among other relief, damages for Allurion's alleged infringement of the '520 patent, in an amount not less than a reasonable royalty. On May 31, 2023, we filed a voluntary dismissal, without prejudice, of the complaint, which reserves our right to assert the claim against Allurion. Since that time, in October 2023, we have been issued another patent, U.S. Patent No. 11,779,482, which arises out of the same family as the '520 patent, and also applies to the Allurion Gastric Balloon system. We are also pursuing a third patent out of the same family, which we expect to be issued soon. This matter is in its early stages and we are unable to predict its outcome at this time. However, we intend to continue to vigorously protect and enforce our intellectual property rights.

Our Market

The Obesity and Metabolic Disease Epidemic

Obesity is a disease that has been increasing at an alarming rate with significant medical repercussions and associated economic costs. The World Health Organization ("WHO") currently estimates that more than 2.5 billion adults, approximately 30% of the global population, are considered overweight or obese. This number has a projected increase to 50% by 2030. The global economic impact of obesity is approximately $2.0 trillion, or approximately 2.8% of global GDP. Healthcare costs for severely or morbidly obese adults are 81% higher than for healthy weight adults and obesity is responsible for 5% of deaths worldwide. We believe our products and programs and product candidates could address a $1.64 billion per year and growing global surgical device market. The Bariatric Surgical Device market is projected to be a $2.8 billion worldwide market ($1.8 billion in the U.S.) by 2025, the Virtual Healthcare Delivery market is projected to be $95 billion worldwide by 2026, and the Global Weight Loss and Obesity Management market is expected to rise to an estimated value of $300 billion with a compound annual growth rate of 6.7% from 2019 to 2026.

We believe that this epidemic will continue to grow worldwide given dietary trends in developed nations that favor highly processed sugars, larger meals and fattier foods, as well as increasingly sedentary lifestyles. Despite the growing obesity rate, increasing public interest in the obesity epidemic and significant medical repercussions and economic costs associated with obesity, there continues to be a significant unmet need for effective treatments.

The United States Market

Obesity has been identified by the U.S. Surgeon General as the fastest growing cause of disease and death in the United States. Currently, it is estimated that approximately 160 million American adults are overweight or obese, 74 million American adults are overweight, 78 million American adults are obese or severely obese, and 24 million American adults are morbidly obese. It is estimated that if obesity rates stay consistent, 51% of the U.S. population will be obese by 2030. According to data from the U.S. Department of Health and Human Services, almost 80% of adults with a BMI above 30 have comorbidity, and almost 40% have two or more of these comorbidities. According to The Obesity Society and the CDC, obesity is associated with many significant weight-related comorbidities including Type 2 diabetes, high blood-pressure, sleep apnea, certain cancers, high cholesterol, coronary artery disease, osteoarthritis and stroke. According to the American Cancer Society, 572,000 Americans die of cancer each year, over one-third of which are linked to excess body weight, poor nutrition and/or physical inactivity. Over 75% of hypertension cases are directly

linked to obesity, and more than 90% of the approximately 28 million U.S. adults with Type 2 diabetes are overweight or have obesity.

Currently, medical costs associated with obesity in the U.S. are estimated to be up to $210.0 billion per year and nearly 21% of medical costs in the U.S. can be attributed to obesity. Approximately $1.5 billion was spent in 2015 alone in the U.S. on approximately 200,000 bariatric surgical procedures to treat obesity. By 2025, it is estimated that up to $3.8 billion will be spent in the U.S. on approximately 800,000 bariatric surgical procedures to treat obesity. Researchers estimate that if obesity trends continue, obesity-related medical costs could rise by another $44-$66 billion each year in the U.S. by 2030. The medical costs paid by third-party payers for people who are obese were $2,741 per year, or 42% higher than those of people who are normal weight and the average cost to employers is $6,627 to $8,067 per year per obese employee (BMI of 35 to 40 and higher).

Current Treatment Options and Their Limitations

We believe existing bariatric surgery and endoscopic procedural options for the treatment of obesity have seen limited adoption to date, with approximately 1% of the obese population qualifying for treatment actually seeking treatment, due to patient concerns and potential side effects including permanently altered anatomy and morbidity. The recent adoption surge of GLP-1 agonists for weight loss and related big-pharma marketing efforts have significantly increased the number of overweight and obese individuals who are seeking medically managed weight loss.

The principal treatment alternatives available today for obesity include:

- **Behavioral modification.** Behavioral modification, which includes diet and exercise, is an important component in the treatment of obesity; however, most obese patients find it difficult to achieve and maintain significant weight loss with a regimen of diet and exercise alone.
- **Pharmaceutical therapy.** Pharmaceutical therapies often represent a first option in the treatment of obese patients but carry significant safety risks and may present troublesome side effects and compliance issues.
- **Bariatric Surgery and Endoscopic Procedures.** In more severe cases of obesity, patients may pursue more aggressive surgical treatment options such as sleeve gastrectomy and gastric bypass. These procedures promote weight loss by surgically restricting the stomach's capacity and outlet size. While largely effective, these procedures generally result in major lifestyle changes, including dietary restrictions and food intolerances, and they may present substantial side effects and carry short- and long-term safety and side effect risks that have limited their adoption.

Given the limitations of behavioral modification, the inaccessibility, side-effects, and durability of pharmaceutical therapy, and the invasive and irreversible nature of other bariatric surgical approaches, we believe that there is a substantial need for the less invasive, adjustable, and reversable Lab-Band.

Our Competition

The market for obesity treatments is competitive, subject to technological change and significantly affected by new product development. Our primary competition in the obesity treatment market is currently from bariatric laparoscopic and endoscopic procedures, and the recently introduced GLP-1 pharmaceuticals.

Our Lap-Band System competes, and we expect that our Obalon Balloon System may compete, with surgical and endoscopic obesity procedures, including gastric bypass, gastric balloons, sleeve gastrectomy and the endoscopic sleeve. These current surgical procedures are performed in less than 1% of all eligible obese patients today. Outside of the Obalon Balloon System which we recently acquired, other current manufacturers of gastric balloon and suturing products that are approved in the United States include Boston Scientific (ORBERA Intragastric Balloon System and OverStitch Endoscopic Suturing System) and Spatz Medical.

In June 2016, Aspire Bariatrics, Inc. received FDA approval for the Aspire Assist® System, an endoscopic alternative to weight loss surgery for people with moderate to severe obesity. Due to the financial impact of the COVID-19 pandemic, Aspire Bariatrics shut down operations and withdrew its product from the market in April 2022. We are also aware that GI Dynamics, Inc. has received approvals in various international countries to sell its EndoBarrier Gastrointestinal Liner.

We also compete against the manufacturers of pharmaceuticals that are directed at treating obesity and the 99% of obese patients eligible for surgery that are not willing to pursue a surgical option. We are aware of a number of drugs that are approved for long-term treatment of obesity in the United States: Orlistat, marketed by Roche as Xenical and GlaxoSmithKline as Alli, Belviq marketed by Arena Pharmaceuticals, Inc., Qsymia, marketed by VIVUS, Inc.,Contrave, marketed by Orexigen Therapeutics, Inc. Wogovy/Ozempic marketed by Novo Nordisk. While considered a competitive therapy, we expect that the marketing of these pharmaceuticals will increase awareness and help normalize obesity treatment. Further, we some surgeons will use pharmaceuticals to coincide with a Lap-Band placement.

In addition to competition from surgical obesity procedures, we compete with several private early-stage companies developing neurostimulation devices for application to the gastric region and related nerves for the treatment of obesity. Further, we know of two intragastric balloon companies in the U.S., Spatz Medical, which received FDA approval of the Spatz3 Adjustable Balloon in October of 2021, and Allurion Technology's Elipse Balloon, which is in either clinical trials or working toward clinical trials in the U.S. These companies may prove to be significant competitors, particularly through collaborative arrangements with large and established companies. They also compete with us in recruiting and retaining qualified scientific and management personnel, establishing clinical trial sites and subject registration for clinical trials, as well as in acquiring technologies and technology licenses complementary to our programs or advantageous to our business.

We believe that the principal competitive factors in our market include:

- acceptance by healthcare professionals, patients and payers;
- published rates of safety and efficacy;
- reliability and high-quality performance;
- effectiveness at controlling and/or resolving comorbidities such as diabetes and hypertension;
- invasiveness and the inherent reversibility of the procedure or device;
- cost and average selling price of products and relative rates of reimbursement;
- effective marketing, training, education, sales and distribution;
- regulatory and reimbursement expertise;
- technological leadership and superiority;
- speed of product innovation and time to market.

Many of our competitors are larger than we are, and they may enjoy several competitive advantages over us, including:

- stronger name recognition;
- existing relations with healthcare professionals, customers and third-party payers;
- established distribution networks;
- significant experience in research and development, manufacturing, preclinical testing, clinical trials, obtaining regulatory approvals, obtaining reimbursement and marketing approved products; and
- greater financial and human resources.

As a result, we cannot assure you that we will be able to compete effectively against these companies or their products.

Market Opportunity

Given the limitations of behavioral modification, pharmaceutical therapy and traditional bariatric surgical approaches, we believe there is a substantial need for patient-friendly, safer, effective and durable solutions that:

- provide proven, long-term weight loss;
- preserve normal anatomy;
- are adjustable in an office setting for individual patient needs and long term efficacy;
- are "non-punitive" in that they support continued ingestion and digestion of foods and micronutrients such as vitamins and minerals found in a typical, healthy diet while allowing the user to modify his or her eating behavior appropriately without inducing punitive physical restrictions that physically force a limitation of food intake;
- diminish undesirable side-effects;

- facilitate outpatient surgical procedures;
- minimize the risks of re-operations, malnutrition and mortality;
- reduce the natural hunger drive of patients; and
- are reversible, if necessary or desired, while preserving anatomy.

Our Intellectual Property

In order to remain competitive, we must develop and maintain protection of the proprietary aspects of our technologies. We rely on a combination of patents, trademarks, trade secret laws and confidentiality and invention assignment agreements to protect our intellectual property rights. Our patent applications may not result in issued patents and our patents may not be sufficiently broad to protect our technology. Any patents issued to us may be challenged by third parties as being invalid or unenforceable, or third parties may independently develop similar or competing technology that does not infringe our patents. The laws of certain foreign countries do not protect our intellectual property rights to the same extent as do the laws of the United States.

Lap-Band

As of December 31, 2023, we had approximately 50 total patents, 28 U.S. and 22 foreign, related to our Lap-Band System. The international patents and patent applications are in regions including Germany, France, Spain, the United Kingdom, Mexico, Canada, Italy, the Netherlands, Portugal, Ireland, Belgium, Poland, Australia, and South Korea. The issued patents expire between the years 2023 and 2031.

We also have 48 total U.S. and international trademarks for the Lap-Band brand name.

ReShape Vest

As of December 31, 2023, we had four granted U.S. patents and four granted foreign patents in China, Israel, Canada and Australia related to our ReShape Vest. The patents expire between the years 2028 and 2038.

We also have U.S. and international trademark applications for the ReShape Vest brand name.

Obalon

As of December 31, 2023, we had 46 granted U.S. patents and 5 granted foreign patents related to our Obalon portfolio. The patents expire between the years 2028 and 2031.

DBSN Device

As of December 31, 2023, we had 9 U.S. patents issued and 45 foreign patents issued. In addition, we have filed a trademark application for Bloc-Stim Neuromodulation. The USPTO Examiner is reviewing the application and provided the Company with a disclaimer being required for “Neuromodulation”, as this a standard requirement for words that are in the standard vernacular.

Sales and Distribution

We market directly to patients but sell the Lap-Band program to select qualified surgical centers throughout the U.S. and internationally having patients that would like to treat obesity and its comorbidities. The centers then perform the Lap-Band procedure and are most-commonly reimbursed by leading insurance providers in the U.S. and government health services in many areas outside the U.S. Alternatively, surgical centers can offer the Lap-Band as a cash-pay procedure. Our sales representatives are supported by field-based experts who provide training, technical support, and other support services at various medical centers. Our sales representatives help implement consumer marketing programs and provide surgical centers and certified surgeons with educational patient materials.

In August of 2022, we shifted away from national advertising campaign initiatives and focusing on digital marketing channels including search engine ads and social media channels. This shift in marketing is 100% aligned with the Company’s focus on expanding Lap-Band use while ensuring a sustainable (profitable) business. The shift to a more

targeted and regionalized marketing program allows us to better support interested potential Lap-Band patients while also reducing the overall costs for lead generation programs. This strategy also aligns with our key surgeon Lap-Band programs across the U.S.; surgeons who participate in local co-op marketing and educational initiatives in their communities.

During 2023, our international sales efforts were through a combination of agent and distributor sales channels, with a focus on top Lap-Band customers in Australia, the Middle East, Canada and select countries in Europe.

Our Manufacturers and Suppliers

To date, all of the materials and components for our products, as well as any related outside services, are procured from qualified suppliers and contract manufacturers in accordance with our proprietary specifications. All of our key manufacturers and suppliers have experience working with commercial implantable device systems, are ISO certified and are regularly audited by various regulatory agencies including the FDA. Our key manufacturers and suppliers have a demonstrated record of compliance with international regulatory requirements. In July 2021 we announced that we had completed our Lap-Band manufacturing transition from Apollo Endosurgery, Inc. to a Massachusetts-based contract manufacturer.

Given that we rely on third-party manufacturers and suppliers to produce our products, our ability to increase production going forward will depend upon the experience, certification levels and large-scale production capabilities of our suppliers and manufacturers. Qualified suppliers and contract manufacturers have been and will continue to be selected to supply products on a commercial scale according to our proprietary specifications. Our FDA approval process requires us to name and obtain approval for the suppliers of key components of the Lap-Band System.

Many of our parts are custom designed and require custom tooling and, as a result, we may not be able to quickly qualify and establish additional or replacement suppliers for the components of our products. Any new approvals of vendors required by the FDA or other regulatory agencies in other international markets for our products as a result of the need to qualify or obtain alternate vendors for any of our components would delay our ability to sell and market our products and could have a material adverse effect on our business.

We believe that our current manufacturing and supply arrangements will be adequate to continue our ongoing commercial sales and our ongoing and planned clinical trials. In order to produce our products in the quantities we anticipate to meet future market demand, we will need our manufacturers and suppliers to increase, or scale up, manufacturing production and supply arrangements by a significant factor over the current level of production. There are technical challenges to scaling up manufacturing capacity and developing commercial-scale manufacturing facilities that may require the investment of substantial additional funds by our manufacturers and suppliers and hiring and retaining additional management and technical personnel who have the necessary experience. If our manufacturers or suppliers are unable to do so, we may not be able to meet the requirements to expand the launch of the product in the United States or launch the product internationally or to meet future demand, if at all. We may also represent only a small portion of our suppliers' or manufacturers' business and if they become capacity constrained, they may choose to allocate their available resources to other customers that represent a larger portion of their business. If we are unable to obtain a sufficient supply of our product, our revenue, business and financial prospects would be adversely affected.

Government Regulations

Our products and operations are subject to extensive and rigorous regulation by the FDA and other federal, state and local authorities, as well as foreign regulatory authorities. The FDA regulates, among other things, the research, development, testing, design, manufacturing, approval, labeling, storage, recordkeeping, advertising, promotion and marketing, distribution, post approval monitoring and reporting and import and export of medical devices in the United States to assure the safety and effectiveness of medical products for their intended use. The Federal Trade Commission also regulates the advertising of our products in the United States. Further, we are subject to laws directed at preventing fraud and abuse, which subject our sales and marketing, training and other practices to government scrutiny.

Regulatory system for medical devices in the United States

Unless an exemption applies, each new or significantly modified medical device we seek to commercially distribute in the United States will require either a premarket notification to the FDA requesting permission for

commercial distribution under Section 510(k) of the Federal Food, Drug and Cosmetic Act, or FFDCA, also referred to as a 510(k) clearance, or approval from the FDA of a premarket approval ("PMA") application. Both the 510(k) clearance and PMA approval processes can be resource intensive, expensive, and lengthy, and require payment of significant user fees, unless an exemption is available.

Device Classification

Under the FFDCA, medical devices are classified into one of three classes—Class I, Class II or Class III—depending on the degree of risk associated with each medical device and the extent of control needed to provide reasonable assurances with respect to safety and effectiveness.

Class I includes devices with the lowest risk to the patient and are those for which safety and effectiveness can be reasonably assured by adherence to a set of FDA regulations, referred to as the General Controls for Medical Devices, which require compliance with the applicable portions of the Quality System Regulations, or QSR, facility registration and product listing, reporting of adverse events and malfunctions, and appropriate, truthful and non-misleading labeling and promotional materials. Some Class I devices, also called Class I reserved devices, also require premarket clearance by the FDA through the 510(k) premarket notification process described below. Most Class I products are exempt from the premarket notification requirements.

Class II devices are those that are subject to the General Controls, and special controls as deemed necessary by the FDA to ensure the safety and effectiveness of the device. These special controls can include performance standards, patient registries, FDA guidance documents and post-market surveillance. Most Class II devices are subject to premarket review and clearance by the FDA. Premarket review and clearance by the FDA for Class II devices is accomplished through the 510(k) premarket notification process.

Class III devices include devices deemed by the FDA to pose the greatest risk such as life-supporting or life-sustaining devices, or implantable devices, in addition to those deemed novel and not substantially equivalent following the 510(k) process. The safety and effectiveness of Class III devices cannot be reasonably assured solely by the General Controls and Special Controls described above. Therefore, these devices are subject to the PMA application process, which is generally more costly and time consuming than the 510(k) process. Through the PMA application process, the applicant must submit data and information demonstrating reasonable assurance of the safety and effectiveness of the device for its intended use to the FDA's satisfaction. Accordingly, a PMA application typically includes, but is not limited to, extensive technical information regarding device design and development, pre-clinical and clinical trial data, manufacturing information, labeling and financial disclosure information for the clinical investigators in device studies. The PMA application must provide valid scientific evidence that demonstrates to the FDA's satisfaction a reasonable assurance of the safety and effectiveness of the device for its intended use.

The Investigational Device Process

In the United States, absent certain limited exceptions, human clinical trials intended to support medical device clearance or approval require an IDE application. Some types of studies considered to present "non-significant risk" are deemed to have an approved IDE once certain requirements are addressed, and IRB approval is obtained. If the device presents a "significant risk" to human health, as defined by the FDA, the sponsor must submit an IDE application to the FDA and obtain IDE approval prior to commencing the human clinical trials. The IDE application must be supported by appropriate data, such as animal and laboratory testing results, showing that it is safe to test the device in humans and that the testing protocol is scientifically sound. The IDE application must be approved in advance by the FDA for a specified number of subjects. Generally, clinical trials for a significant risk device may begin once the IDE application is approved by the FDA and the study protocol and informed consent are approved by appropriate institutional review boards at the clinical trial sites. There can be no assurance that submission of an IDE will result in the ability to commence clinical trials, and although the FDA's approval of an IDE allows clinical testing to go forward for a specified number of subjects, it does not bind the FDA to accept the results of the trial as sufficient to prove the product's safety and efficacy, even if the trial meets its intended success criteria.

All clinical trials must be conducted in accordance with the FDA's IDE regulations that govern investigational device labeling, prohibit promotion and specify an array of recordkeeping, reporting and monitoring responsibilities of study sponsors and study investigators. Clinical trials must further comply with the FDA's good clinical practice regulations for institutional review board approval and for informed consent and other human subject protections.

Required records and reports are subject to inspection by the FDA. The results of clinical testing may be unfavorable, or, even if the intended safety and efficacy success criteria are achieved, may not be considered sufficient for the FDA to grant marketing approval or clearance of a product.

The 510(k) Clearance Process

Under the 510(k) process, the manufacturer must submit to the FDA a premarket notification, demonstrating that the device is "substantially equivalent," as defined in the statute, to a legally marketed predicate device.

A predicate device is a legally marketed device that is not subject to premarket approval, i.e., a device that was legally marketed prior to May 28, 1976 (pre-amendments device) and for which a PMA is not required, a device that has been reclassified from Class III to Class II or I, or a device that was previously found substantially equivalent through the 510(k) process. To be "substantially equivalent," the proposed device must have the same intended use as the predicate device, and either have the same technological characteristics as the predicate device or have different technological characteristics and not raise different questions of safety or effectiveness than the predicate device. Clinical data is sometimes required to support substantial equivalence.

After a 510(k) premarket notification is submitted, the FDA determines whether to accept it for substantive review. If it lacks necessary information for substantive review, the FDA will refuse to accept the 510(k) notification. If it is accepted for filing, the FDA begins a substantive review. By statute, the FDA is required to complete its review of a 510(k) notification within 90 days of receiving the 510(k) notification. As a practical matter, clearance often takes longer, and clearance is never assured. Although many 510(k) premarket notifications are cleared without clinical data, the FDA may require further information, including clinical data, to make a determination regarding substantial equivalence, which may significantly prolong the review process. If the FDA agrees that the device is substantially equivalent, it will grant clearance to commercially market the device.

If the FDA determines that the device is not "substantially equivalent" to a predicate device, or if the device is automatically classified into Class III, the device sponsor must then fulfill the much more rigorous premarketing requirements of the PMA approval process, or seek reclassification of the device through the *de novo* process. A manufacturer can also submit a petition for direct *de novo* review if the manufacturer is unable to identify an appropriate predicate device and the new device or new use of the device presents a moderate or low risk.

After a device receives 510(k) clearance, any modification that could significantly affect its safety or effectiveness, or that would constitute a new or major change in its intended use, will require a new 510(k) clearance or, depending on the modification, could require a PMA application or *de novo* classification. The FDA requires each manufacturer to determine whether the proposed change requires submission of a 510(k) or a PMA in the first instance, but the FDA can review any such decision and disagree with a manufacturer's determination. Many minor modifications are accomplished by a letter-to-file in which the manufacture documents the change in an internal letter-to-file. The letter-to-file is in lieu of submitting a new 510(k) to obtain clearance for such change. The FDA can always review these letters to file in an inspection. If the FDA disagrees with a manufacturer's determination regarding whether a new premarket submission is required for the modification of an existing device, the FDA can require the manufacturer to cease marketing and/or recall the modified device until 510(k) clearance or approval of a PMA application is obtained. In addition, in these circumstances, the FDA can impose significant regulatory fines or penalties for failure to submit the requisite PMA application(s).

The PMA Approval Process

Following receipt of a PMA application, the FDA conducts an administrative review to determine whether the application is sufficiently complete to permit a substantive review. If it is not, the agency will refuse to file the PMA. If it is, the FDA will accept the application for filing and begin the review. The FDA, by statute and by regulation, has 180 days to review a filed PMA application, although the review of an application more often occurs over a significantly longer period. During this review period, the FDA may request additional information or clarification of information already provided, and the FDA may issue a major deficiency letter to the applicant, requesting the applicant's response to deficiencies communicated by the FDA. The FDA considers a PMA or PMA supplement to have been voluntarily withdrawn if an applicant fails to respond to an FDA request for information (*e.g.*, major deficiency letter) within a total of 360 days. Before approving or denying a PMA, an FDA advisory committee may review the PMA at a public meeting and provide the FDA with the committee's recommendation on whether the FDA should approve the submission,

approve it with specific conditions, or not approve it. The FDA is not bound by the recommendations of an advisory committee, but it considers such recommendations carefully when making decisions.

Prior to approval of a PMA, the FDA may conduct inspections of the clinical trial data and clinical trial sites, as well as inspections of the manufacturing facility and processes. Overall, the FDA review of a PMA application generally takes between one and three years, but may take significantly longer. The FDA can delay, limit or deny approval of a PMA application for many reasons, including:

- device may not be shown safe or effective to the FDA's satisfaction;
- data from pre-clinical studies and/or clinical trials may be found unreliable or insufficient to support approval;
- the manufacturing process or facilities may not meet applicable requirements; and
- changes in FDA approval policies or adoption of new regulations may require additional data.

If the FDA evaluation of a PMA is favorable, the FDA will issue either an approval letter, or an approvable letter, the latter of which usually contains several conditions that must be met in order to secure final approval of the PMA. When and if those conditions have been fulfilled to the satisfaction of the FDA, the agency will issue a PMA approval letter authorizing commercial marketing of the device, subject to the conditions of approval and the limitations established in the approval letter. If the FDA's evaluation of a PMA application or manufacturing facilities is not favorable, the FDA will deny approval of the PMA or issue a not approvable letter. The FDA also may determine that additional tests or clinical trials are necessary, in which case the PMA approval may be delayed for several months or years while the trials are conducted and data is submitted in an amendment to the PMA, or the PMA is withdrawn and resubmitted when the data are available. The PMA process can be expensive, uncertain and lengthy and several devices for which the FDA approval has been sought by other companies have never been approved by the FDA for marketing.

New PMA applications or PMA supplements are required for modification to the manufacturing process, equipment or facility, quality control procedures, sterilization, packaging, expiration date, labeling, device specifications, ingredients, materials or design of a device that has been approved through the PMA process. PMA supplements often require submission of the same type of information as an initial PMA application, except that the supplement is limited to information needed to support any changes from the device covered by the approved PMA application and may or may not require as extensive technical or clinical data or the convening of an advisory panel, depending on the nature of the proposed change.

In approving a PMA application, as a condition of approval, the FDA may also require some form of post-approval study or post-market surveillance, whereby the applicant conducts a follow-up study or follows certain patient groups for several years and makes periodic reports to the FDA on the clinical status of those patients when necessary to protect the public health or to provide additional or longer-term safety and effectiveness data for the device. The FDA may also require post-market surveillance for certain devices cleared under a 510(k) notification, such as implants or life-supporting or life-sustaining devices used outside a device user facility. The FDA may also approve a PMA application with other post-approval conditions intended to ensure the safety and effectiveness of the device, such as, among other things, restrictions on labeling, promotion, sale, distribution and use. Our vBloc, Lap-Band System and Intragastric balloons, including the Obalon Balloon System, Obalon Navigation System and Dispenser are considered Class III medical devices. In order to support a PMA application, the FDA required the Company to conduct rigorous and expensive trials, one of which was a double-blinded, randomized, sham-controlled study. We will be required to file new PMA applications or PMA supplement applications for modifications to our PMA-approved Lap-Band System, Obalon Balloon System and Obalon Navigation System and Dispenser or any of their respective components, including modifications to our manufacturing processes, device labeling and device design, based on the findings of post-approval studies.

Pervasive and Continuing FDA Regulation

After the FDA permits a device to enter commercial distribution, numerous regulatory requirements continue to apply. These include:

- The FDA's QSR, which requires manufacturers, including third party manufacturers, to follow stringent design, testing, production, control, supplier/contractor selection, complaint handling, documentation and other quality assurance procedures during all aspects of the manufacturing process;
- labeling regulations, unique device identification requirements and FDA prohibitions against the promotion of products for uncleared, unapproved or off label uses;

- advertising and promotion requirements;
- restrictions on sale, distribution or use of a device;
- PMA annual reporting requirements;
- PMA approval of product modifications;
- PMA approval of product
- Medical device reporting, or MDR, regulations, which require that manufacturers report to the FDA if their device may have caused or contributed to a death or serious injury or malfunctioned in a way that would likely cause or contribute to a death or serious injury if the malfunction were to recur;
- medical device correction and removal reporting regulations, which require that manufacturers report to the FDA field corrections and product recalls or removals if undertaken to reduce a risk to health posed by the device or to remedy a violation of the FDCA that may present a risk to health;
- recall requirements, including a mandatory recall if there is a reasonable probability that the device would cause serious adverse health consequences or death;
- an order of repair, replacement or refund;
- device tracking requirements; and
- post-market surveillance regulations, which apply when necessary to protect the public health or to provide additional safety and effectiveness data for the device.

Since February 2017, the FDA has issued three separate letters to healthcare providers warning of serious adverse events, including deaths, which are specific to liquid-filled intragastric balloons. We are aware of the filing of additional reports of serious adverse events, including deaths, associated with liquid-filled balloons since the issuance of the FDA letters to healthcare providers. While the advisory letters were specific to liquid-filled intragastric balloons and not the Obalon gas-filled balloons, these letters could create negative perceptions of the entire gastric balloon category which may cause negative consequences for us including requiring additional warnings, precautions and/or contraindications in the labeling than originally required, delaying or denying approval of our future products, or possible review or withdrawal of our current approval. Since Obalon Therapeutics began selling in United States in January 2017—before the merger – Obalon Therapeutics has reported adverse events relating to patient injuries associated with use of the Obalon balloon in the FDA's MAUDE database.

The FDA has broad post-market and regulatory enforcement powers. Medical device manufacturers are subject to unannounced inspections by the FDA and other state, local and foreign regulatory authorities to assess compliance with the QSR and other applicable regulations, and these inspections may include the manufacturing facilities of any suppliers.

Failure to comply with applicable regulatory requirements can result in enforcement action by the FDA, which may include any of the following sanctions:

- warning letters, fines, injunctions, consent decrees and civil penalties;
- unanticipated expenditures, repair, replacement, refunds, recall or seizure of our products;
- operating restrictions, partial suspension or total shutdown of production;
- the FDA's refusal of our requests for 510(k) clearance or premarket approval of new products, new intended uses or modifications to existing products;
- FDA's refusal to issue certificates to foreign governments needed to export products for sale in other countries;
- withdrawing 510(k) clearance or premarket approvals that have already been granted; and
- criminal prosecution.

Regulatory System for Medical Devices in Europe

The European Union ("EU") consists of member states residing in the European Union and has a coordinated system for the authorization of medical devices. As of May 26, 2021, the European Union has adopted Regulation (EU) 2017/745 of the European Parliament and of the Council of 5 April 2017 on medical devices, amending Directive 2001/83/EC, Regulation (EC) No 178/2002 and Regulation (EC) No 1223/2009. The Medical Device Regulation 2017/745, or EU MDR repeals Directive 93/42/EEC, which concerns medical devices, and Directive 90/385/EEC, which concerns active implantable medical devices, as of 26 May 2021. The EU allows a transition period from Directive 93/42/EEC and Directive 90/385/EEC to Regulation (EU) 2017/745, that will end 26 May 2024.

Article 120(3) of the Medical Device Regulation (EU) 2017/745 (MDR), last amended by Regulation (EU) 2023/607, states that devices which continue to comply with the AIMDD or MDD may be placed on the market or put into service until 31 December 2027 for Class IIb implantable (Lap-Band and Obalon Balloon System), or 31 December 2028 for Class IIa devices (ReShape Calibration Tubes, provided the conditions set out in Article 120(3c) MDR are fulfilled. In addition, the "Sell Off" periods have been removed. (Regulation (EU) 2023/607)

These devices are called 'legacy devices' and in line with MDCG Guidance Document 2021-253, 'legacy devices' should be understood as devices, which, in accordance with the MDR's transitional provisions, are placed on the market after the MDR's date of application (i.e. 26 May 2021) if certain conditions are fulfilled. Those devices can be:

- devices which are class I devices under Directive 93/42/EEC (MDD), for which an EC declaration of conformity was drawn up prior to 26 May 2021 and for which the conformity assessment procedure under the MDR requires the involvement of a notified body;
- devices covered by a valid EC certificate issued in accordance with Directive 90/385/EEC (AIMDD) or the MDD prior to 26 May 2021

The conditions are set out in Article 120(3c) MDR and include, among others, that legacy devices must continue to comply with the AIMDD/MDD, as applicable, and that there are no significant changes in the design or intended purpose of the device. Therefore, it is important for manufacturers and notified bodies to have a clear understanding as to what changes to design or intended purpose would be considered 'significant'. It is essential for legacy devices that their certificates remain valid following changes that are not significant with regard to design or intended purpose and that the required appropriate surveillance is carried out.

The EU MDR aims to ensure the smooth functioning of the internal market as regards medical devices, taking as a base a high level of protection of health for patients and users, and considering the small- and medium-sized enterprises that are active in this sector. At the same time, this Regulation sets high standards of quality and safety for medical devices in order to meet common safety concerns as regards such products. Both objectives are being pursued simultaneously and are inseparably linked whilst one not being secondary to the other. As regards Article 114 of the Treaty on the Functioning of the European Union (TFEU), this Regulation harmonises the rules for the placing on the market and putting into service of medical devices and their accessories on the Union market thus allowing them to benefit from the principle of free movement of goods. As regards Article 168(4)(c) TFEU, this Regulation sets high standards of quality and safety for medical devices by ensuring, among other things, that data generated in clinical investigations are reliable and robust and that the safety of the subjects participating in a clinical investigation is protected.

The system of regulating medical devices operates by way of a certification for each medical device. Each certificated device is marked with CE mark which shows that the device has a Certificat de Conformité. There are national bodies known as Competent Authorities in each member state which oversee the implementation of the EUMDR within their jurisdiction. The means for achieving the requirements for CE mark varies according to the nature of the device. Devices are classified in accordance with their perceived risks, similarly to the U.S. system. The class of a product determines the requirements to be fulfilled before CE mark can be placed on a product, known as a conformity assessment. Conformity assessments for our products have carried out as required by the MDD. Each member state can appoint Notified Bodies within its jurisdiction. If a Notified Body of one member state has issued a Certificat de Conformité, the device can be sold throughout the European Union without further conformance tests being required in other member states.

Per MDD 93/42/EEC on Medical Devices, Annex II excluding Section 4, the Lap-Band System is considered a Class IIb device and few of the system's components are considered Class IIa devices. The vBloc, was never commercialized in the EU. The Obalon Balloon System, when delivered with a cellulose-based capsule was considered a Class IIb product under MDD. Prior to the merger, Obalon Therapeutics' management believed the Obalon Navigation System and the Obalon Touch Inflation Dispenser are Class I products not requiring Notified Body approval.

ReShape Lifesciences has engaged with its European Notified Body—British Standards Institute (BSI) to transition our products under EU MDR. The Lap-Band and ReShape Calibration Tubes Technical Documentations (TDs) are currently under EU MDR conformity assessment by BSI.

Regulatory frameworks for medical devices in certain countries in Asia Pacific and the Middle East

Australia

ReShape Lifesciences is the legal manufacturer of the Lap-Band System and accessories under the Australian Register of Therapeutic Goods (ARTG), in Australia.

Middle East

Unlike Europe, while the Gulf Cooperation Council, or GCC, jurisdictions often work together to purchase certain medical products in a coordinated fashion for government hospitals, there is not a coordinated system for the authorization of medical devices. Most GCC jurisdictions require that the official registered distributor of a product be wholly owned by nationals of that particular GCC jurisdiction.

ReShape distributes the Lap-Band System and accessories in the Middle East through a distributor. Product is shipped to the Kingdom of Saudi Arabia (KSA) and the United Arab Emirates (UAE).

Obalon Therapeutics ceased distribution of the Obalon System, the Obalon Navigation System and the Obalon Touch Inflation Dispenser in the Middle East prior to the June 16, 2021, merger.

Kingdom of Saudi Arabia, or KSA

The most pertinent regulation is the Interim Regulation for Medical Devices, issued by the Saudi Food & Drug Authority, or SFDA, Board of Directors' Decree number 1-8-1429 dated approximately December 27, 2008, and the implementing regulations of the same. The SFDA is an independent regulatory body that is responsible for the authorization of medical devices, and current guidelines are generally based on pre-existing approval in one of the five founding member nations of the Global Harmonization Task Force, or GHTF, which are Australia, Canada, United States, European Union and Japan. There are no overt requirements for the provision of safety and effectiveness data in the form of clinical trials or other studies, but these would likely come as a part of the approvals described above that are used as a basis to support approval within the KSA. The SFDA reserves its rights to require its own independent clinical trials as it deems necessary or appropriate. Regulatory authorization is required for all medical devices, regardless of device class. A potential exception to this requirement is for medical devices that were designed and constructed by local health care facility and staff for internal use. Similar to the United States, the SFDA requires post market surveillance to ensure safety and quality. This program is meant to be conducted by the Authorized Representative. With respect to the use of medical devices, it is the responsibility of the health care institution to inform the manufacturer and the SFDA of any adverse events associated with this use.

The SFDA has approved the Medical Device Market Authorization, or MDMA application and the listing of ReShape Lifesciences as the legal manufacturer of the Lap-Band System and accessories in KSA.

United Arab Emirates, or UAE

The most pertinent regulation is UAE Federal Law No. 4 of 1983 for the Pharmaceutical Profession and Institutions and to Medical Device Regulations. There are many similarities between the SFDA and the Registration and Drug Control Department that is run out of the Ministry of Health & Prevention of the UAE. Applications for registration of medical devices in the UAE are done with the UAE Ministry of Health Registration & Drug Control Department and must include data on effectiveness in addition to safety (a nod to the requirements of the FDA). The UAE body has its own device classification system that is most closely related to that used by the European Union, defined as class 1, low risk; class 2, medium risk but nonimplantable; class 3, medium risk but implantable; and class 4, high risk.

Brexit

The UK Medicines & Healthcare Products Regulatory Agency, or MHRA is responsible for regulating medical devices in Great Britain. The MHRA plans changes to the UK's Medical Devices Regulations 2002 as part of a broader transition away from European Union legal and regulatory systems.

In addition, the Trade Deal between the UK and the EU generally provides for cooperation and exchange of information between the parties in the areas of product safety and compliance, including market surveillance, enforcement activities and measures, standardization related activities, exchanges of officials, and coordinated product recalls. As such, processes for compliance and reporting should reflect requirements from regulatory authorities.

CE Marks issued by EU-recognized notified bodies will continue to be valid in for medical devices placed on the Great Britain market – England, Scotland, and Wales until December 31, 2024. Until that date, MHRA accepts the CE Marking and requires registering active implantable medical devices, Class III medical devices, Class IIb implantable medical devices and IVD List A devices by May 1, 2021. After December 31, 2024, the UK Conformity Assessment (UKCA) marking will be mandatory. In Northern Island, CE Marking issued by EU-recognized notified bodies will continue to be valid until current CE cert under Medical Device Directive (MDD) expires, after which date, CE marking needs to be approved under EU Medical Device Regulation (EU MDR). ReShape Lifesciences is compliant with the registration requirements and is registered in England, Scotland, Wales, and Northern Ireland. Additionally, the EU no longer recognizes conformity assessment activities performed by UK notified bodies for medical devices placed on the market since January 1, 2021. Notified bodies must be located in a European Union member state, or territory where there is a mutual recognition agreement, or MRA; there is currently no such MRA. The new legislation may create an extra hurdle for manufacturers and thereby limit the availability and/or increase prices of our medical devices in the UK.

The UK government published Statutory Instruments 2023 No. 627, The Medical Devices (Amendment) (Great Britain) Regulations 2023 on June 9, 2023, to extend the deadlines for placing CE Marked devices on the GB market. The date CE Marked devices can be placed on the Great Britain market has been extended to December 31, 2027. After this date the UKCA Mark will be required.

The UK government proposed to adopt the draft Post-Market Surveillance Requirements Statutory Instrument (PMS SI) in December 2023 and to enforce in June 2024. Supplementary guidance will also be published.

Our Products

The ReShape Lifesciences' Lap-Band System, the Obalon Balloon System, Obalon Navigation system and Obalon Touch Inflation Dispenser, and their respective components are medical devices that required a PMA submission form and approval by the FDA for commercial use in the United States. ReShape Lifesciences' vBloc neuromodulation system, which was approved by the FDA for treating obesity is no longer commercialized.

FDA approved the Lap-Band System in 2001. The Lap-Band System was approved for use in the U.S. for patients with a BMI greater than or equal to 40 or a BMI greater than or equal to 30 with one or more obesity-related comorbidity conditions.

The Lap-Band System was CE marked in 1997. The method of assessing conformity with applicable regulatory requirements varies depending on the class of the device, but for our Lap-Band System, the method involved a combination issuance of declaration of conformity by the manufacturer of the safety and performance of the device, and a third-party assessment by a Notified Body of the design of the device and of our quality system. A Notified Body is a private commercial entity that is designated by the national government of a member state as being competent to make independent judgments about whether a product complies with applicable regulatory requirements. The assessment included, among other things, a clinical evaluation of the conformity of the device with applicable regulatory requirements. We use BSI as the Notified Body for our CE marking approval process.

The Lap-Band 2.0 FLEX system received approval in December 2023. We had our first successful surgeries with this system in early 2024.

Continued compliance with CE marking requirements is enforced through periodic facility inspections by the Notified Body, which may be unannounced. Because we rely on contract manufacturing sites and service providers, these additional sites may also be subject to these Notified Body unannounced inspections.

The Obalon Balloon System was approved in January 2017 and the Obalon Navigation system and Obalon Touch Inflation Dispenser were approved on December 20, 2018. All of the above-listed devices were approved with post-approval conditions intended to ensure the safety and effectiveness of these devices. ReShape Lifesciences assumed and complies with all post market requirements for the Lap-Band System, the Obalon Navigation system, and Obalon Touch Inflation Dispenser.

Obalon Balloon System

Obalon Balloon favorable safety profile, In the pivotal SMART trial, only one of 336 (0.3%) patients that received the Obalon balloon experienced a serious adverse device event (SADE) and in data presented at the American Society for Metabolic and Bariatric Surgery Meeting from the first year of commercial experience, only two of 1,343 (0.14%) patients that received our Obalon balloon experienced a SADE. Historically, the reported rate of SADEs reported to Obalon in commercial use is consistent with that experienced in the pivotal SMART trial or the data from their first year of commercial experience.

In addition, data published and presented from Obalon's commercial registry demonstrates greater weight loss in the commercial setting as compared to the pivotal clinical study used to support FDA approval. In May 2019, Obalon updated data from their commercial registry to include 1,411 total patients from 143 treatment sites in the United States. In this data set, for those patients receiving three balloons and at least 20 weeks of therapy, the average weight loss was 21.7 pounds, resulting in a 10.2% reduction in total body weight. Of note, 50.7% of patients lost 10% or more total body weight and 77.9% lost 5% or more total body weight.

Obalon Balloon improved patient tolerability and comfort. The Obalon balloon is inflated with a proprietary mix of gas. This creates a light, buoyant balloon that floats at the top of the stomach instead of sinking to the bottom of the stomach like a traditional liquid-filled intragastric balloon. Further, the Obalon Balloon System consists of three separate 250cc balloons placed individually over a three-month period to progressively add volume. We believe these design elements have the potential to improve patient comfort and tolerability of our Obalon balloon.

Obalon Balloon progressive weight loss with durable results. In the pivotal SMART trial, patients in the Obalon treatment group lost, on average, approximately twice as much body weight as patients in the sham-control group. In addition, patients in the Obalon treatment group showed, on average, progressive weight loss over the balloon treatment period, which we believe is attributable to the individual placement of three separate Obalon balloons over the treatment period. Subsequent data analysis at 12 months also showed that, on average, 89.5% of the weight loss was maintained six months after balloon removal. In May 2019, Obalon analyzed data from their commercial registry on 1,411 total patients from 143 treatment sites in the United States. In this data set, for those patients receiving three balloons and at least 20 weeks of therapy, the average weight loss was 21.7 pounds, resulting in a 10.2% reduction in total body weight.

Obalon Balloon simple and convenient placement. The Obalon balloon is placed without anesthesia or an endoscopy through a swallowable capsule that dissolves in the stomach and releases the balloon. These unique features allow patients the flexibility to receive the Obalon balloon discreetly in an outpatient setting. Placement typically occurs in less than fifteen minutes and can be scheduled in the morning before work, during a lunch break or in the evening. Treated patients can return promptly to their normal daily activities. The balloons are removed endoscopically under light, conscious sedation six months after the first balloon placement. Recently approved new products, the Obalon Navigation System and Obalon Touch Inflation Dispenser, are designed to further improve ease of use and convenience of placement.

Privacy and Security Laws

Medical device companies may be subject to U.S. federal and state and foreign health information privacy, security and data breach notification laws, which may govern the collection, use, disclosure and protection of health-related and other personal information. In the United States, the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH"), and all regulations promulgated thereunder, collectively HIPAA, imposes privacy, security and breach reporting

obligations with respect to individually identifiable health information upon ‘‘covered entities’’ (health plans, health care clearinghouses and certain health care providers), and their respective business associates, individuals or entities that create, receive, maintain or transmit protected health information in connection with providing a service for or on behalf of a covered entity. Although we are not a covered entity, we may provide certain services that require the use or disclosure of PHI on behalf of physicians who are covered entities, and we therefore may be considered to be business associates under HIPAA. HIPAA imposes specified requirements relating to the privacy, security and transmission of individually identifiable health information. HIPAA mandates the reporting of certain breaches of health information to HHS, affected individuals and if the breach is large enough, the media. Entities that are found to be in violation of HIPAA as the result of a breach of unsecured protected health information or PHI, a complaint about privacy practices or an audit by HHS, may be subject to significant civil, criminal and administrative fines and penalties and/or additional reporting and oversight obligations if required to enter into a resolution agreement and corrective action plan with HHS to settle allegations of HIPAA non-compliance. HITECH also increased the civil and criminal penalties that may be imposed against covered entities, business associates and possibly other persons, and gave state attorneys general new authority to file civil actions for damages or injunctions in federal courts to enforce the federal HIPAA laws and seek attorney’s fees and costs associated with pursuing federal civil actions.

Even when HIPAA does not apply, according to the Federal Trade Commission or the FTC, failing to take appropriate steps to keep consumers’ personal information secure constitutes unfair acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C § 45(a). The FTC expects a company’s data security measures to be reasonable and appropriate in light of the sensitivity and volume of consumer information it holds, the size and complexity of its business, and the cost of available tools to improve security and reduce vulnerabilities. Individually identifiable health information is considered sensitive data that merits stronger safeguards. The FTC’s guidance for appropriately securing consumers’ personal information is similar to what is required by the HIPAA security regulations.

In addition, certain state, and non-U.S. laws, such as the European Union General Data Protection Regulation, or GDPR, govern the privacy and security of health information in certain circumstances, some of which are more stringent than HIPAA and many of which differ from each other in significant ways and may not have the same effect, thus complicating compliance efforts. Further, ‘‘business associates,’’ defined as independent contractors or agents of covered entities that create, receive, maintain or transmit protected health information in connection with providing a service for or on behalf of a covered entity, are also subject to certain HIPAA privacy and security standards. Failure to comply with these laws, where applicable, can result in the imposition of significant civil and/or criminal penalties and private litigation. For example, California enacted legislation, the California Consumer Privacy Act or CCPA, which went into effect January 1, 2020. The CCPA, among other things, creates new data privacy obligations for covered companies and provides new privacy rights to California residents, including the right to opt out of certain disclosures of their information. The CCPA also creates a private right of action with statutory damages for certain data breaches, thereby potentially increasing risks associated with a data breach. Although the law includes limited exceptions, including for PHI maintained by a covered entity or business associate, it may regulate or impact our expected processing of personal information depending on the context. In Europe, the GDPR went into effect in May 2018 and introduces strict requirements for processing the personal data of European Union data subjects. Companies that must comply with the GDPR face increased compliance obligations and risk, including more robust regulatory enforcement of data protection requirements and potential fines for noncompliance of up to €20 million or 4% of the annual global revenues of the noncompliant company, whichever is greater. Moreover, the United Kingdom leaving the EU could also lead to further legislative and regulatory changes. It remains unclear how the United Kingdom data protection laws or regulations will develop in the medium to longer term and how data transfer to the United Kingdom from the EU will be regulated, especially following the United Kingdom’s departure from the EU on January 31, 2020 without a deal. However, the United Kingdom has transposed the GDPR into domestic law with the Data Protection Act 2018, which remains in force following the United Kingdom’s departure from the EU.

Anti-Kickback Statutes

The federal Anti-Kickback Statute prohibits persons from (among other things) knowingly and willfully soliciting, offering, receiving or providing remuneration, directly or indirectly, in exchange for or to induce the referral

of an individual, or the recommending, furnishing, or arranging for a good or service, for which payment may be made under a federal healthcare program such as Medicare or Medicaid.

Courts have interpreted the Anti-Kickback Statute quite broadly, holding that the statute will be violated if even one purpose of a payment – though not its sole or primary purpose – is to induce an act prohibited by the statute with a willful intent to act improperly. The statute prohibits many arrangements and practices that are otherwise lawful in businesses outside of the healthcare industry. Prosecutors may infer intent from the surrounding circumstances and, because courts have interpreted the statute to be violated if even one purpose of a payment is to induce the purchase of items or services paid for by federal healthcare programs, prosecutors have broad discretion in choosing arrangements to prosecute under the statute. There are statutory exceptions and regulatory "safe harbors" available to protect certain appropriately structured arrangements that otherwise would implicate the Anti-Kickback Statute. Those who structure their business arrangements to satisfy all of the criteria of a safe harbor are protected from liability under the statute.

Penalties for violation of the Anti-Kickback Statute are severe and may include, in addition to the fines and jail time described above, penalties imposed under the Civil Monetary Penalties Law, or the CMP Law, including exclusion from participation in Federal healthcare programs, civil monetary penalties for each improper act, and damages of up to three times the amount of remuneration at issue (regardless of whether some of the remuneration was for a lawful purpose). Because we do not anticipate that the Obalon Balloon System will be reimbursed by any federal healthcare program, we do not believe that we will be subject to the federal Anti-Kickback Statute.

Many states have adopted laws similar to the Anti-Kickback Statute, however, and some of these state prohibitions apply to arrangements involving healthcare items or services reimbursed by any source, and not only by Medicare, Medicaid or another federal healthcare program. These state laws do not always have the same exceptions or safe harbors of the federal Anti-Kickback Statute. The business may be subject to some of these laws.

Government officials have focused recent enforcement efforts on the marketing of healthcare services and products, among other activities, and have brought cases against companies, and certain individual sales, marketing and executive personnel, for allegedly offering unlawful inducements to potential or existing customers in an attempt to procure their business.

False Claims Laws

The federal False Claims Act imposes liability on any individual or entity that, among other things, knowingly presents, or causes to be presented, a false or fraudulent claim for payment by a federal healthcare program. The *qui tam* or "whistleblower" provisions of the False Claims Act allow a private individual to bring actions on behalf of the federal government alleging that the defendant has violated the False Claims Act and to share in any monetary recovery. In recent years, the number of lawsuits brought against healthcare industry participants by private individuals has increased dramatically.

When an entity is determined to have violated the False Claims Act, it may be required to pay up to three times the actual damages sustained by the government, plus civil penalties for each separate instance of false claim. As part of any settlement, the government may ask the entity to enter into a corporate integrity agreement, which imposes certain compliance, certification and reporting obligations. There are many potential bases for liability under the False Claims Act. Liability arises, primarily, when an entity knowingly submits, or causes another to submit, a false claim for reimbursement to the federal government. The federal government has used the False Claims Act to assert liability on the basis of inadequate care, kickbacks and other improper referrals, and the provision of inaccurate reimbursement coding advice, in addition to the more predictable allegations as to misrepresentations with respect to the services rendered. In addition, companies have been sued under the False Claims Act in connection with the off-label promotion of products.

Various states have also enacted false claims laws that are analogous to the federal False Claims Act. Many of these state laws apply to claims submitted to any third-party payor and are not limited to claims submitted to a federal healthcare program.

Transparency Laws

The federal Physician Payment Sunshine Act, or the Sunshine Act, which was enacted as part of the Patient Protection and Affordable Care Act, or the PPACA, generally requires certain manufacturers of a drug, device, biologic or other medical supply that is covered by Medicare, Medicaid or the Children's Health Insurance Program and applicable group purchasing organizations to report on an annual basis: (i) certain payments and other transfers of value given to physicians (defined to include doctors, dentists, optometrists, podiatrists and chiropractors), certain other health care professionals beginning in 2022, and teaching hospitals and (ii) any ownership or investment interest that physicians, or their immediate family members, have in their company. The payments required to be reported include the cost of meals provided to a physician, travel reimbursements and other transfers of value, including those provided as part of contracted services such as speaker programs, advisory boards, consultation services and clinical trial services. Under the statute, the federal government makes reported information available to the public. Failure to comply with the reporting requirements can result in significant civil monetary penalties, with additional penalties for the knowing failure to report. Additionally, there are criminal penalties if an entity intentionally makes false statements in the reports.

There has been a recent trend of separate state regulation of payments and transfers of value by manufacturers of medical devices to healthcare professionals and entities, however, and some state transparency laws apply more broadly than does the federal Sunshine Act. Our business may be subject to some of these state laws.

State Corporate Practice of Medicine, Fee-Splitting Prohibitions, and Licensure Requirements

Other regulatory oversight includes, but is not limited to, the corporate practice of medicine, fee-splitting prohibitions, and licensure and scope of practice limitations for physicians and other healthcare professionals. Some states have enacted laws and regulations limiting the extent to which physicians and certain other healthcare professionals may be employed by non-physicians or general business corporations, and the scope and provisions of corporate practice of medicines laws and regulations vary by state. These laws are intended to prevent interference in the medical decision-making process by anyone who is not a licensed physician. Violations may result in civil or criminal penalties. In addition, various state laws also generally prohibit the sharing or splitting professional fees with lay entities or persons. The specific restrictions with respect to enforcement of the corporate practice of medicine and fee-splitting laws varies from state to state. Violations of these laws could require us to restructure our operations and arrangements and may result in penalties or other adverse action.

Moreover, each state defines the scope of practice of physicians and other healthcare professionals through legislation and through their respective licensing boards, and we will need to comply with laws related to the physician supervision of services and scope of practice requirements. Activities that qualify as professional misconduct under state law may subject our personnel to sanctions or may even result in loss of their license and could, possibly, subject us to sanctions as well. Some state boards of medicine impose reciprocal discipline, that is, if a physician is disciplined for having committed professional misconduct in one state where he or she is licensed, another state where he or she is also licensed may impose the same discipline even though the conduct occurred in another state.

Foreign Corrupt Practices Act

The Foreign Corrupt Practices Act, or FCPA, prohibits U.S. businesses and their representatives from offering to pay, paying, promising to pay or authorizing the payment of money or anything of value to a foreign official in order to influence any act or decision of the foreign official in his or her official capacity or to secure any other improper advantage in order to obtain or retain business. The FCPA also obligates companies whose securities are listed in the United States to comply with accounting provisions requiring us to maintain books and records, which in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the corporation, including international subsidiaries, if any, and to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances regarding the reliability of financial reporting and the preparation of financial statements. The scope of the FCPA includes interactions with certain healthcare professionals in many countries.

International Laws

In Europe, and throughout the world, other countries have enacted anti-bribery laws and/or regulations similar to the FCPA. Violations of any of these anti-bribery laws, or allegations of such violations, could have a negative impact on our business, results of operations and reputation.

There are also international privacy laws that impose restrictions on the access, use, and disclosure of health information. All of these laws may impact our business. Our failure to comply with these privacy laws or significant changes in the laws restricting our ability to obtain required patient information could significantly impact our business and our future business plans.

U.S. Healthcare Reform

Changes in healthcare policy could increase our costs and subject us to additional regulatory requirements that may interrupt commercialization of our products. By way of example, ACA substantially changed the way healthcare is financed by both governmental and private insurers, and significantly impacted the medical device industry.

There will continue to be proposals by legislators at both the federal and state levels, regulators and third-party payors to reduce costs while expanding individual healthcare benefits. Certain of these changes could impose additional limitations on the prices we will be able to charge and/or patients' willingness to pay for our products. While in general it is too early to predict what effect, if any, ACA and its implementation, or any future healthcare reform legislation or policies will have on our business, current and future healthcare reform legislation and policies could have a material adverse effect on our business and financial condition.

Employees

As of December 31, 2023, we had 31 employees, all of which 29 were full-time and 2 were part-time. All of these employees are located in the U.S.

From time to time we also employ independent contractors, consultants and temporary employees to support our operations. None of our employees are subject to collective bargaining agreements. We have never experienced a work stoppage and believe that our relations with our employees are good.

Our Corporate Information

We were incorporated under the laws of Delaware on January 2, 2008. On June 15, 2021, we completed a merger with ReShape Lifesciences Inc. Pursuant to the Merger Agreement, a wholly owned subsidiary of Obalon with and into ReShape, with ReShape surviving the merger as a wholly owned subsidiary of Obalon. As a result of the merger, Obalon, the parent company, was renamed "ReShape Lifesciences Inc." and ReShape was renamed ReShape Weightloss Inc. ReShape Lifesciences shares of common stock trade on the Nasdaq under the symbol RSLS.

We file reports and other information with the Securities and Exchange Commission ("SEC") including annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and proxy or information statements. Those reports and statements as well as all amendments to those documents filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (1) are available at the SEC's Public Reference Room at 100 F Street, N.E., Washington, DC 20549, (2) may be obtained by sending an electronic message to the SEC at publicinfo@sec.gov or by sending a fax to the SEC at 1-202-777-1027, (3) are available at the SEC's internet site (http://www.sec.gov), which contains reports, proxy and information statements and other information regarding issuers that file electronically with the SEC and (4) are available free of charge through our website as soon as reasonably practicable after electronic filing with, or furnishing to, the SEC.

Our principal executive offices are located at 18 Technology Dr, Suite 110, Irvine, California 92618, and our telephone number is (949) 429-6680. Our website addresses are *www.reshapelifesciences.com* and *lapband.com*. The information on, or that may be accessed through, our website is not incorporated by reference into this Annual Report on Form 10-K and should not be considered a part of this Annual Report on Form 10-K.

ITEM 1A. RISK FACTORS

SUMMARY OF RISK FACTORS

The following is a summary of the principal risks and uncertainties that could materially adversely affect our business, results of operations, financial condition, cash flows, prospects and/or the price of our outstanding securities, and make an investment in our securities speculative or risky. You should read this summary together with the more detailed description of each risk factor contained below.

Risks Related to Our Business and Industry

- If we are unable to either substantially improve our operating results or obtain additional financing, we may be unable to continue as a going concern.
- Our current business strategy includes identifying strategic merger and acquisition alternatives. Merger and acquisition transactions are risky and may harm our business, reputation, operating results and financial condition.
- We have recently undertaken a cost reduction plan and reorganization, and may do so again in the future. The assumptions underlying these activities may prove to be inaccurate, or we may fail to achieve the expected benefits therefrom.
- We may be unable to attract and retain management and other personnel we need to succeed.
- The shares of series C convertible preferred stock issued in connection with our acquisition of ReShape Medical have certain rights and preferences senior to our common stock, including a liquidation preference that is senior to our common stock.
- We cannot assure you that we will ever generate substantial revenue or be profitable.
- Previously, we recorded a non-cash indefinite-lived and definite-lived intangible assets impairment loss, which significantly impacted our results of operations.
- We incur significant costs as a result of operating as a public company, and our management is required to devote substantial time to compliance initiatives.
- We have identified material weaknesses in our internal control over financial reporting and any failure to maintain effective internal control over financial reporting, may have a material and adverse effect on our business, operating results, financial condition and prospects.
- General economic and political conditions could have a material adverse effect on our business.
- We hold our deposit within the U.S. banking system and may incur a loss of our uninsured deposits if there a closure or other event with our bank.
- We face significant uncertainty in the industry due to government healthcare reform.
- Public health crises, such as COVID-19 pandemic, have had, and could in the future have a negative effect on our business.
- We are subject, directly or indirectly, to United States federal and state healthcare fraud and abuse and false claims laws and regulations. Prosecutions under such laws have increased in recent years and we may become subject to such litigation. If we are unable to, or have not fully complied with such laws, we could face substantial penalties.
- Failure to protect our information technology information technology infrastructure against cyber-based attacks, network security breaches, service interruptions or data corruption could materially disrupt our operations and adversely affect our business.
- We operate in a highly competitive industry that is subject to rapid change. If our competitors are able to develop and market products that are safer or more effective than our products, our commercial opportunities will be reduced or eliminated.
- We face external competition from other technologies such as GLP-1's and alternative medical procedures and we may not be able to compete effectively.
- Our ability to use net operating losses ("NOL") carryforwards may be limited.
- Adverse developments affecting the financial services industry could adversely affect our current and projected business operations and our financial condition and results of operations.

Risks Associated with Development and Commercialization of the LAP-BAND System, Lap-Band 2.0 System, Obalon Balloon System, DBSN Device

- Our efforts to increase revenue from our Lap-Band System, Lap-Band 2.0 System, Obalon Balloon System, and commercialize our DBSN device and expanded line of bariatric surgical accessories, including ReShape Calibration Tubes, may not succeed or may encounter delays which could significantly harm our ability to generate revenue.
- We may not be able to obtain required regulatory approvals for our DBSN device in a cost-effective manner or at all, which could adversely affect our business and operating results.
- We depend on clinical investigators and clinical sites to enroll patients in our clinical trials, and on other third parties to manage the trials and to perform related data collection and analysis, and, as a result, we may face costs and delays that are outside of our control**.**
- Modifications to the Lap-Band System and Lap-Band 2.0 may require additional approval from regulatory authorities, which may not be obtained or may delay our commercialization efforts.
- If we or our suppliers fail to comply with ongoing regulatory requirements, or if we experience unanticipated product problems, our Lap-Band system could be subject to restrictions or withdrawal from the market.
- We face the risk of product liability claims that could be expensive, divert management's attention and harm our reputation and business. We may not be able to obtain adequate product liability insurance.

Risks Related to Intellectual Property

- If we are unable to obtain or maintain intellectual property rights relating to our technology and neuroblocking therapy, the commercial value of our technology and any future products will be adversely affected, and our competitive position will be harmed.
- We may lose important patent rights if we do not timely pay required patent fees or annuities.
- Many of our competitors have significant resources and incentives to apply for and obtain intellectual property rights that could limit or prevent our ability to commercialize our current or future products in the United States or abroad.
- If we are unable to protect the confidentiality of our proprietary information and know-how, the value of our technology and products could be adversely affected.
- Intellectual property litigation is a common tactic in the medical device industry to gain competitive advantage. If we become subject to a lawsuit, we may be required to expend significant financial and other resources and our management's attention may be diverted from our business.
- We may in the future become involved in lawsuits, to protect or enforce our intellectual property, which can be expensive and time consuming and could result in the diversion of significant resources.

Risks Relating to Ownership of Our Common Stock

- The trading price of our common stock has been volatile and is likely to be volatile in the future.
- Sales of a substantial number of shares of our common stock in the public market by existing stockholders, or the perception that they may occur, could cause our stock price to decline.
- We have a significant number of outstanding warrants, which may cause significant dilution to our stockholders, have a material adverse impact on the market price of our common stock and make it more difficult for us to raise funds through future equity offerings.
- If we fail to meet all applicable Nasdaq Capital Market requirements, Nasdaq could delist our common stock, which could adversely affect the market liquidity of our common stock and the market price of our common stock could decrease.
- There are risks associated with effecting the Reverse Stock Split, if approved by the Board.
- You may experience future dilution as a result of future equity offerings.
- Our organizational documents and Delaware law make a takeover of our company more difficult, which may prevent certain changes in control and limit the market price of our common stock.
- We have not paid dividends in the past and do not expect to pay dividends in the future, and any return on investment may be limited to the value of our common stock.

RISK FACTORS

Risks Related to Our Business and Industry

If we are unable to either substantially improve our operating results or obtain additional financing, we may be unable to continue as a going concern.

We currently do not generate revenue sufficient to offset operating costs and anticipate such shortfalls to continue, partially due to the introduction of GLP-1 pharmaceuticals and the unpredictability of COVID-19, which has resulted and may continue to result in a slow-down of elective surgeries and restrictions in some locations, and supply chain disruptions. As of December 31, 2023, we had net working capital of approximately $6.5 million, primarily due to cash and cash equivalents and restricted cash of $4.6 million. Additionally, our anticipated expansion of our product portfolio and future products may not come to fruition. Our principal source of liquidity as of December 31, 2023 consisted of approximately $4.6 million of cash and cash equivalents and restricted cash and $1.7 million of accounts receivable. Based on our available cash resources, we may not have sufficient cash on hand to fund our current operations for more than 12 months from the date of filing this Form 10-K. This condition raises substantial doubt about our ability to continue as a going concern.

Our current business strategy includes identifying strategic merger and acquisition alternatives. Merger and acquisition transactions are risky and may harm our business, reputation, operating results and financial condition.

We have completed acquisitions and business combinations in the past and may complete merger and acquisition transactions in the future. In December 2023, we announced that we engaged Maxim Group LLC to act as our exclusive financial advisor to identify potential strategic merger and acquisition partnership alternatives. We do not have a defined timeline for such a transaction and cannot provide any assurance whether or when any transaction will be announced or consummated. Our ability to complete merger and acquisition transactions will depend, in part, on the availability of suitable candidates at acceptable prices, terms, and conditions; our ability to compete effectively for merger and acquisition candidates; and the availability of capital and personnel to complete such transactions. Merger and acquisition transactions may involve a number of risks, the occurrence of which could adversely affect our business, reputation, operating results and financial condition, including:

- diversion of management's attention;
- disruption to our existing operations and plans;
- inability to effectively manage our expanded operations;
- difficulties or delays in integrating and assimilating information and financial systems, operations, manufacturing processes and products of an acquired business or other business venture or in realizing projected efficiencies, growth prospects, cost savings, and synergies;
- inability to successfully integrate or develop a distribution channel for acquired product lines;
- potential loss of key employees, customers, agents, distributors, or sales representatives of the acquired businesses or adverse effects on existing business relationships with suppliers, customers, agents, distributors, and sales representatives;
- reallocation of amounts of capital from other operating initiatives;
- violation of confidentiality, intellectual property and non-compete obligations or agreements by employees of an acquired business or lack of or inadequate formal intellectual property protection mechanisms in place at an acquired business;
- inaccurate assessment of additional post-acquisition investments, undisclosed, contingent or other liabilities or problems, unanticipated costs associated with an acquisition, and an inability to recover or manage such liabilities and costs;
- incorrect estimates made in the accounting for acquisitions and incurrence of non-recurring charges; and
- write-off of significant amounts of goodwill or other assets as a result of deterioration in the performance of an acquired business or product line, adverse market conditions, changes in the competitive landscape, changes in laws or regulations that restrict activities of an acquired business or product line, or as a result of a variety of other circumstances.

We have recently undertaken a cost reduction plan and reorganization, and may do so again in the future. The assumptions underlying these activities may prove to be inaccurate, or we may fail to achieve the expected benefits therefrom.

In light of recent macroeconomic conditions and the impact of GLP-1 prescriptions for weight loss treatment, we announced a 2024 cost reduction plan and reorganization to promote the long-term sustainability and scalability of the Company. As part of this plan, we have significantly reduced our workforce. This reduction in force, and any other future reductions, and the attrition that may occur following them, result in the loss of institutional knowledge and expertise and the reallocation and combination of certain roles and responsibilities across the organization, all of which could adversely affect our operations. These actions and other additional measures we might take to reduce costs could strain our workforce, divert management attention, yield attrition beyond our intended reduction in force, reduce employee morale, cause us to delay, limit, reduce or eliminate certain development plans or otherwise interfere with our ability to operate and grow our business effectively, each of which could have an adverse impact on our business, operating results and financial condition. We may not complete the current or any cost reduction plan and reorganization on the anticipated timetable, and even if successfully completed, we may not achieve the anticipated cost savings, operating efficiencies or other benefits of such activities.

We may be unable to attract and retain management and other personnel we need to succeed.

Our success depends on the services of our senior management and other key employees. The loss of the services of one or more of our officers or key employees could hinder our sales and marketing efforts, or delay or prevent the commercialization of our Lap-Band System, Lap-Band 2.0, the Obalon Balloon System, and the development of our DBSN device. Our continued growth will require hiring a number of qualified clinical, scientific, commercial and administrative personnel. Accordingly, recruiting and retaining such personnel in the future will be critical to our success. There is intense competition from other companies and research and academic institutions for qualified personnel in the areas of our activities. If we fail to identify, attract, retain and motivate these highly skilled personnel, we may be unable to continue our development and commercialization activities.

The shares of series C convertible preferred stock issued in connection with our acquisition of ReShape Medical have certain rights and preferences senior to our common stock, including a liquidation preference that is senior to our common stock.

There are currently 95,388 shares of our series C convertible preferred stock outstanding, which are convertible into a total of 10 shares of our common stock. We originally issued the shares of our series C convertible preferred stock in connection with our acquisition of ReShape Medical. The series C convertible preferred stock has a liquidation preference of $274.88 per share, or approximately $26.2 million in the aggregate. In general, the series C convertible preferred stock is entitled to receive dividends (on an as-if-converted-to-common stock basis) actually paid on shares of common stock when, as and if such dividends are paid on shares of common stock. No other dividends will be paid on shares of series C convertible preferred stock. Except in connection with the election of directors and limited protective provisions, the series C convertible preferred stock generally does not have voting rights. However, as long as any shares of series C convertible preferred stock remain outstanding, we cannot, without the affirmative vote of holders of a majority of the then-outstanding shares of series C convertible preferred stock, (a) alter or change adversely the powers, preferences or rights given to the series C convertible preferred stock (including by the designation, authorization, or issuance of any shares of preferred stock that purports to have equal rights with, or be senior in rights or preferences to, the series C convertible preferred stock), (b) alter or amend the series C convertible preferred stock certificate of designation, (c) amend our certificate of incorporation or other charter documents in any manner that adversely affects any rights of the holders of series C convertible preferred stock, (d) increase the number of authorized shares of series C convertible preferred stock, (e) except for stock dividends or distributions for which adjustments are to be made pursuant to the Series C Certificate of Designation, pay dividends on any shares of capital stock of the Company, or (f) enter into any agreement with respect to any of the foregoing.

We cannot assure you that we will ever generate substantial revenue or be profitable.

The success of our business will depend on our ability to generate increased sales and control costs, as well as our ability to obtain additional regulatory approvals needed to market new versions of our Lap-Band System, Obalon Balloon System, or regulatory approvals needed to market our DBSN device and any other products we may develop in the future, all of which we may be unable to do. If we are unable to successfully market our Lap-Band System for its

indicated use, successfully re-introduce the Obalon Balloon System, or develop and commercialize the DBSN device, we may never become profitable and may have to cease operations as a result.

Previously, we recorded a non-cash indefinite-lived intangible and definite-lived assets impairment loss, which significantly impacted our results of operations, and we may be exposed to additional impairment losses that could be material.

We conduct our annual indefinite-lived intangible assets impairment analysis during the fourth quarter of each year or when circumstances suggest that an indicator for impairment may be present. Previously, we performed a qualitative impairment analysis of the in-process research and development ("IPR&D"). Due to delays in the clinical trials experienced, we revised its expectations of when revenues would commence for the ReShape Vest, thus reducing the projected near-term future net cash flows related to the ReShape Vest. During the quarter ended September 30, 2022, we stopped the clinical trials for the ReShape Vest and closed out the previous trials that occurred, as significant additional clinical work and cost would be required to achieve regulatory approval for the ReShape Vest. In addition, due to continued market decline and projected cash flows the company recorded an impairment of the developed technology related to the Lap-Band and Obalon Balloon System and our tradenames. As such, we determined the carrying value of the long-lived assets were impaired and recognized a non-cash impairment charge of approximately $0.8 million on the condensed consolidated balance sheet as of December 31, 2023. In the future, we may have additional impairments requiring us to record an impairment loss related to our remaining finite-lived intangible assets, which could also have a material adverse effect on our results of operations.

We incur significant costs as a result of operating as a public company, and our management is required to devote substantial time to compliance initiatives.

As a public company, we incur significant legal, accounting and other expenses. In addition, the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"), as well as rules subsequently implemented by the SEC have imposed various requirements on public companies, including establishment and maintenance of effective disclosure and financial controls and changes in corporate governance practices. Our management and other personnel devote a substantial amount of time to these compliance initiatives. Moreover, these rules and regulations result in increased legal and financial compliance costs and will make some activities more time-consuming and costly.

The Sarbanes-Oxley Act requires, among other things, that we maintain effective internal controls for financial reporting and disclosure. In particular, we are required to perform system and process evaluation and testing of our internal controls over financial reporting to allow management to report on the effectiveness of our internal controls over financial reporting, as required by Section 404 of the Sarbanes-Oxley Act. Our testing may reveal deficiencies in our internal controls over financial reporting that are deemed to be material weaknesses. We have incurred and continue to expect to incur significant expense and devote substantial management effort toward ensuring compliance with Section 404. Moreover, if we do not comply with the requirements of Section 404, or if we identify deficiencies in our internal controls that are deemed to be material weaknesses, the market price of our stock could decline and we could be subject to sanctions or investigations by the SEC or other regulatory authorities, which would entail expenditure of additional financial and management resources.

For example, our management assessed the effectiveness of our internal control over financial reporting as of December 31, 2023, and determined that our internal control over financial reporting was not effective at a reasonable assurance level due to material weaknesses in our internal control over financial reporting. We had insufficient internal resources with appropriate accounting and finance knowledge and expertise to design, implement, document and operate effective internal controls around our financial reporting process. We are currently implementing our remediation plan to address the material weaknesses identified above. Such measures include: designing and implementing controls to formalize roles and review responsibilities to align with our team's skills and experience and designing and implementing formalized controls; and designing and implementing formal processes, policies and procedures supporting our financial close process.

We have identified material weaknesses in our internal control over financial reporting and any failure to maintain effective internal control over financial reporting, may have a material and adverse effect on our business, operating results, financial condition and prospects.

Our management assessed the effectiveness of our internal control over financial reporting as of December 31, 2023, and determined that our internal control over financial reporting was not effective at a reasonable assurance level due to material weaknesses in our internal control over financial reporting. We had insufficient internal resources with appropriate accounting and finance knowledge and expertise to design, implement, document and operate effective internal controls around our financial reporting process. We are currently implementing our remediation plan to address the material weaknesses identified above. Such measures include: designing and implementing controls to formalize roles and review responsibilities to align with our team's skills and experience and designing and implementing formalized controls; and designing and implementing formal processes, policies and procedures supporting our financial close process.

General economic and political conditions could have a material adverse effect on our business.

External factors can affect our financial condition. Such external factors include general domestic and global economic conditions, such as interest rates, tax law including tax rate changes, and factors affecting global economic stability, and the political environment regarding healthcare in general. We cannot predict to what extent the global economic conditions may negatively impact our business. For example, negative conditions in the credit and capital markets could impair our ability to access the financial markets for working capital and could negatively impact our ability to borrow.

We face significant uncertainty in the industry due to government healthcare reform.

In the United States, there have been and continue to be a number of legislative initiatives to contain healthcare costs. The Patient Protection and Affordable Care Act, as amended, (the "Affordable Care Act") as well as any future healthcare reform legislation, may have a significant impact on our business. The impact of the Affordable Care Act on the health care industry is extensive and includes, among other things, the federal government assuming a larger role in the health care system, expanding healthcare coverage of United States citizens and mandating basic healthcare benefits.

Congress regularly considers legislation to replace or repeal elements or all of the Affordable Care Act. At this time, it is not clear whether the Affordable Care Act will be repealed in whole or in part, and, if it is repealed, whether it will be replaced in whole or in part by another plan and what impact those changes will have on coverage and reimbursement for healthcare items and services covered by plans that were authorized by the Affordable Care Act. We expect that additional state and federal healthcare reform measures will be adopted in the future, any of which could limit the amounts that federal and state governments will pay for healthcare products and services, and also indirectly affect the amounts that private payers are willing to pay. In addition, any healthcare reforms enacted in the future may, like the Affordable Care Act, be phased in over a number of years but, if enacted, could reduce our revenue, increase our costs, or require us to revise the ways in which we conduct business or put us at risk for loss of business. In addition, our results of operations, financial position and cash flows could be materially adversely affected by changes under the Affordable Care Act and changes under any federal or state legislation adopted in the future.

Public health crises, such as the COVID-19 pandemic, have had, and could in the future have, a negative effect on our business.

Pandemics or disease outbreaks, such as the COVID-19 pandemic, have created and may continue to create significant volatility, uncertainty and economic disruption in the markets we sell our products into and operate in and may negatively impact business and healthcare activity globally. In response to the COVID-19 pandemic, governments around the world have imposed measures designed to reduce the transmission of COVID-19. In particular, elective procedures, such as the Lap-Band procedure, were delayed or cancelled, there was a significant reduction in physician office visits, and hospitals postponed or canceled purchases as well as limited or eliminated services. While elective procedures have increased from the reduced levels during the height of the COVID-19 pandemic, the reduction in elective procedures has had, and we believe may continue to have, a negative impact on the sales of our products. The extent to which fear of exposure to or actual effects of COVID-19, new variants, disease outbreak, epidemic or a similar

widespread health concern impacts our business will depend on future developments, which are highly uncertain and cannot be predicted with confidence.

We are subject, directly or indirectly, to United States federal and state healthcare fraud and abuse and false claims laws and regulations. Prosecutions under such laws have increased in recent years and we may become subject to such litigation. If we are unable to, or have not fully complied with such laws, we could face substantial penalties.

Our operations are directly, or indirectly through customers, subject to various state and federal fraud and abuse laws, including, without limitation, the federal Anti-Kickback Statute and federal False Claims Act. These laws may impact, among other things, our sales, marketing and education programs.

The federal Anti-Kickback Statute prohibits persons from knowingly and willfully soliciting, offering, receiving or providing remuneration, directly or indirectly, in exchange for or to induce either the referral of an individual, or the furnishing or arranging for a good or service, for which payment may be made under a federal healthcare program such as the Medicare and Medicaid programs. Several courts have interpreted the statute's intent requirement to mean that if any one purpose of an arrangement involving remuneration is to induce referrals of federal healthcare covered business, the statute has been violated. The Anti-Kickback Statute is broad and, despite a series of narrow safe harbors, prohibits many arrangements and practices that are lawful in businesses outside of the healthcare industry. Penalties for violations of the federal Anti-Kickback Statute include criminal penalties and civil sanctions such as fines, imprisonment and possible exclusion from Medicare, Medicaid and other federal healthcare programs. Many states have also adopted laws similar to the federal Anti-Kickback Statute, some of which apply to the referral of patients for healthcare items or services reimbursed by any source, not only the Medicare and Medicaid programs.

The federal False Claims Act prohibits persons from knowingly filing, or causing to be filed, a false claim to, or the knowing use of false statements to obtain payment from the federal government. Suits filed under the False Claims Act, known as "qui tam" actions, can be brought by any individual on behalf of the government and such individuals, commonly known as "whistleblowers," may share in any amounts paid by the entity to the government in fines or settlement. The frequency of filing qui tam actions has increased significantly in recent years, causing greater numbers of medical device, pharmaceutical and healthcare companies to have to defend a False Claim Act action. When an entity is determined to have violated the federal False Claims Act, it may be required to pay up to three times the actual damages sustained by the government, plus civil penalties for each separate false claim. Various states have also enacted laws modeled after the federal False Claims Act.

We are unable to predict whether we could be subject to actions under any of these laws, or the impact of such actions. If we are found to be in violation of any of the laws described above or other applicable state and federal fraud and abuse laws, we may be subject to penalties, including civil and criminal penalties, damages, fines, exclusion from government healthcare reimbursement programs and the curtailment or restructuring of our operations.

Failure to protect our information technology infrastructure against cyber-based attacks, network security breaches, service interruptions or data corruption could materially disrupt our operations and adversely affect our business.

The operation of our business depends on our information technology systems. We rely on our information technology systems to, among other things, effectively manage sales and marketing data, accounting and financial functions, inventory management, product development tasks, clinical data, customer service and technical support functions. Our information technology systems are vulnerable to damage or interruption from earthquakes, fires, floods and other natural disasters, terrorist attacks, power losses, computer system or data network failures, security breaches, data corruption, and cyber-based attacks. Cyber-based attacks can include computer viruses, computer denial-of-service attacks, phishing attacks, worms, and other malicious software programs or other attacks, covert introduction of malware to computers and networks, impersonation of authorized users, and efforts to discover and exploit any design flaws, bugs, security vulnerabilities, or security weaknesses, as well as intentional or unintentional acts by employees or other insiders with access privileges, intentional acts of vandalism by third parties and sabotage. In addition, federal, state, and international laws and regulations, such as the General Data Protection Regulation adopted by the European Union and EEA countries can expose us to enforcement actions and investigations by regulatory authorities, and potentially result in regulatory penalties and significant legal liability, if our information technology security efforts fail. In addition, a

variety of our software systems are cloud-based data management applications, hosted by third-party service providers whose security and information technology systems are subject to similar risks.

We operate in a highly competitive industry that is subject to rapid change. If our competitors are able to develop and market products that are safer or more effective than our products, our commercial opportunities will be reduced or eliminated.

The health care industry is highly competitive, subject to rapid change and significantly affected by new product introductions and other market activities of industry participants. The obesity treatment market in which we operate has grown significantly in recent years and is expected to continue to expand as technology continues to evolve and awareness of the need to treat the obesity epidemic grows. Although we are not aware of any competitors in the neuroblocking market, we face potential competition from pharmaceutical and surgical obesity treatments. Many of our competitors in the obesity treatment field have significantly greater financial resources and expertise in research and development, manufacturing, preclinical testing, clinical trials, obtaining regulatory approvals and marketing approved products than we do. Smaller or early-stage companies may also prove to be significant competitors, particularly if they pursue competing solutions through collaborative arrangements with large and established companies, such as Allergan, Boston Scientific, LivaNova PLC, Johnson & Johnson, Medtronic or St. Jude Medical. Our competitors may develop and patent processes or products earlier than us, obtain regulatory approvals for competing products more rapidly than we are able to and develop more effective, safer and less expensive products or technologies that would render our products non-competitive or obsolete.

We face external competition from other technologies such as GLP-1's, and alternative medical procedures and we may not be able to compete effectively.

Companies that may not be deemed competitors in the bariatric surgery space may develop technologies, products or services that may impact the use of our products. For example, certain therapeutic treatments, such as drugs used to treat weight loss such as GLS-1's, may enhance patient health. If we do not introduce new products and enhancements in a timely manner, there may be a decrease in the use of certain of our products, in which case our operating results could suffer.

Our ability to use net operating losses ("NOL") carryforwards may be limited.

Our ability to use our federal and state NOL carryforwards to offset potential future taxable income is dependent upon our generation of future taxable income before the expiration dates of the NOL carryforwards, and we cannot predict with certainty when, or whether we will generate sufficient taxable income to use all of our NOL carryforwards. As of December 31, 2023, ReShape had U.S. federal net operating loss carryforwards of $218.9 million. Of the total U.S. federal net operating loss carryforwards at December 31, 2023. Losses generated beginning in 2018 will carryover indefinitely. ReShape had state net operating loss carryforwards of $348.7 million at December 31, 2023, and had foreign net operating loss carryforwards of $0.2 million at December 31, 2023. Net operating loss carryforwards of ReShape are subject to review and possible adjustment by the taxing authorities. With certain exceptions (e.g. the net operating loss carryforwards), ReShape is no longer subject to U.S. federal, state or local examinations by tax authorities for years prior to 2016. There are no tax examinations currently in progress.

ReShape's ability to utilize its net operating loss carryforwards, tax credits, and built-in items of deduction, including capitalized start-up costs and research and development costs, has been, and may continue to be substantially limited due to ownership changes. These ownership changes limit the amount of net operating loss carryforwards, credits and built-in items of deduction that can be utilized annually to offset future taxable income. In general, an ownership change, as defined in IRC Section 382, results from a transaction or series of transactions over a three-year period resulting in an ownership change of more than 50% of the outstanding stock of a company by certain stockholders or public groups. Due to the valuation allowance against deferred tax assets at December 31, 2023, the net effect of any further limitation will have no impact on results of operations.

Adverse developments affecting the financial services industry could adversely affect our current and projected business operations and our financial condition and results of operations.

Substantially all of our cash and cash equivalents were held in accounts with Silicon Valley Bank (SVB) at the time it was closed by state regulators, and the Federal Deposit Insurance Corporation (FDIC) was appointed receiver for

SVB, on March 10, 2023. The FDIC created a successor bridge bank for SVB and all deposits of SVB were transferred to the bridge bank under a systemic risk exception approved by the United States Department of the Treasury, the Federal Reserve and the FDIC. If financial institutions in which we hold funds for working capital and operating expenses were to fail, we cannot provide any assurances that such governmental agencies would take action to protect our uninsured deposits in a similar manner.

We subsequently moved and hold a portion of our cash and cash equivalents in accounts with Bank of America. The balance held in these accounts exceeds the FDIC standard deposit insurance limit of $250,000. If a financial institution in which we hold such funds fails or is subject to significant adverse conditions in the financial or credit markets, we could be subject to a risk of loss of all or a portion of such uninsured funds or be subject to a delay in accessing all or a portion of such uninsured funds. Any such loss or lack of access to these funds could adversely impact our short-term liquidity and ability to meet our operating expense obligations.

In addition, widespread investor concerns regarding the U.S. or international financial systems could result in less favorable commercial financing terms, including higher interest rates or costs and tighter financial and operating covenants, or systemic limitations on access to credit and liquidity sources, thereby making it more difficult for us to acquire financing on acceptable terms or at all. Any decline in available funding or access to our cash and liquidity resources could, among other risks, adversely impact our ability to meet our operating expenses, financial obligations or fulfill our other obligations, result in breaches of our financial and/or contractual obligations or result in violations of federal or state wage and hour laws. Any of these impacts, or any other impacts resulting from the factors described above or other related or similar factors not described above, could have material adverse impacts on our liquidity and our current and/or projected business operations and financial condition and results of operations.

In addition, a vendor on which we are reliant could be adversely affected by any of the liquidity or other risks that are described above as factors that could result in material adverse impacts on us, including but not limited to delayed access or loss of access to uninsured deposits or loss of the ability to draw on existing credit facilities involving a troubled or failed financial institution. Any critical vendor bankruptcy or insolvency, or any breach or default by a critical vendor, or the loss of any significant vendor relationships, may have a material adverse impact on our business.

Risks Associated with Development and Commercialization of the Lap-Band System, Lap-Band 2.0 System, Obalon Balloon System, and the DBSN Device

Our efforts to increase revenue from our Lap-Band System, Lap-Band 2.0 System, and commercialize our DBSN device and expanded line of bariatric surgical accessories, including ReShape Calibration Tubes, may not succeed or may encounter delays which could significantly harm our ability to generate revenue.

Our ability to generate revenue will depend upon the sales of our Lap-Band System, expanded line of bariatric surgical accessories and successful commercialization of our DBSN device (if approved for sale). Our efforts to commercialize these products may not succeed for a number of reasons, including:

- we may not be able to obtain the regulatory approvals required for our DBSN device;
- we may not be able to produce the Obalon Balloon System cost-effectively;
- if we are able to produce the Obalon Balloon System, we may not be able to re-introduce the system into the marketplace;
- our products may not be accepted in the marketplace by physicians, patients and third-party payers;
- the price of our products, associated costs of the surgical procedure and treatment and the availability of sufficient third-party reimbursement for the system implantation and follow-up procedures;
- appropriate reimbursement and/or coding options may not exist to enable billing for the system implantation and follow-up procedures for our DBSN device;
- coverage policies for bariatric surgeries and procedures, including Lap-Band and balloons may be restricted in the future;
- we may not be able to sell our products at a price that allows us to meet the revenue targets necessary to generate enough revenue for profitability;
- the frequency and severity of any side effects of our products;
- physicians and potential patients may not be aware of the perceived effectiveness and sustainability of the results of our products;

- we, or the investigators of our products, may not be able to have information on the outcome of the trials published in medical journals;
- the availability and perceived advantages and disadvantages of alternative treatments, including pharmaceutical treatments;
- any rapid technological change may make our products obsolete;
- we may not be able to have our products manufactured in commercial quantities or at an acceptable cost;
- we may not have adequate financial or other resources to complete the development and commercialization of our products or to develop sales and marketing capabilities for our products; and
- we may be sued for infringement of intellectual property rights and could be enjoined from manufacturing or selling our products.

Besides requiring physician adoption, market acceptance of our products will depend on successfully communicating the benefits of our products to three additional constituencies involved in deciding whether to treat a particular patient using our products: (1) the potential patients themselves; (2) institutions such as hospitals, where the procedure would be performed and opinion leaders in these institutions; and (3) third-party payers, such as private healthcare insurers and governmental payers, such as Medicare and Medicaid in the United States, which would ultimately bear most of the costs of the various providers and equipment involved in our Lap-Band System, Obalon Balloon System, and DBSN device (if approved for sale). Marketing to each of these constituencies requires a different marketing approach, and we must convince each of these groups of the efficacy and utility of our products to be successful.

During the year ended December 31, 2023 and 2022, there was minimal revenue for ReShapeCare and ReShape Marketplace. There was no revenue or gross profit recorded for the DBSN device for the year ended December 31, 2023 and 2022 as this product is still in the research stage of development. There was also no revenue recorded for the Obalon line.

If our products, or any other therapy or products that we may develop for other gastrointestinal diseases and disorders that we may develop, do not achieve an adequate level of acceptance by the relevant constituencies, we may not generate significant product revenue and may not become profitable. This estimated timeline could be compressed or extended depending on many factors, including revenue growth from new product introductions, strategic investments not yet foreseen, and other risks and uncertainties due to the general business, economic, regulatory, market and financial conditions. Therefore, the plans cannot be deemed probable of being implemented. As a result, the Company's plans do not alleviate substantial doubt about our ability to continue as a going concern.

We may not be able to obtain required regulatory approvals for our DBSN device in a cost-effective manner or at all, which could adversely affect our business and operating results.

The production and marketing of our DBSN device, and our ongoing research and development, preclinical testing and future potential clinical trial activities are subject to extensive regulation and review by numerous governmental authorities both in the United States and abroad. U.S. and foreign regulations applicable to medical devices are wide-ranging and govern, among other things, the development, testing, marketing and premarket review of new medical devices, in addition to regulating manufacturing practices, reporting, advertising, exporting, labeling and record keeping procedures. We are required to obtain regulatory approval before we can market our DBSN device in the United States and certain foreign countries. The regulatory process will require significant time, effort and expenditures to bring products to market, and it is possible that our DBSN device will not be approved for sale. Even if regulatory approval of our DBSN device is granted, it may not be granted within the timeframe that we expect, which could have an adverse effect on our operating results and financial condition. Even after our DBSN device is approved by the FDA, we may have ongoing responsibilities under FDA regulations, non-compliance of which could result in the subsequent withdrawal of such approvals, or such approvals could be withdrawn due to the occurrence of unforeseen problems following initial approval. We also are subject to medical device reporting regulations that require us to report to the FDA if any of our products causes or contributes to a death or serious injury or if a malfunction were it to occur might cause or contribute to a death or serious injury. Any failure to obtain regulatory approvals on a timely basis or the subsequent withdrawal of such approvals could prevent us from successfully marketing our products, which could adversely affect our business and operating results.

We depend on clinical investigators and clinical sites to enroll patients in our clinical trials, and on other third parties to manage the trials and to perform related data collection and analysis, and, as a result, we may face costs and delays that are outside of our control.

While we currently do not have any active clinical trials enrolling patients, we may in the future need to rely on clinical investigators and clinical sites to enroll patients in our clinical trials and other third parties to manage the trials and to perform related data collection and analysis. However, we may not be able to control the amount and timing of resources that clinical sites may devote to our clinical trials. If these clinical investigators and clinical sites fail to enroll a sufficient number of patients in our clinical trials, ensure compliance by patients with clinical protocols or comply with regulatory requirements, we will be unable to complete these trials, which could prevent us from obtaining or maintaining regulatory approvals for our product. Our agreements with clinical investigators and clinical trial sites for clinical testing place substantial responsibilities on these parties and, if these parties fail to perform as expected, our trials could be delayed or terminated. If these clinical investigators, clinical sites or other third parties do not carry out their contractual duties or obligations or fail to meet expected deadlines, or if the quality or accuracy of the clinical data they obtain is compromised due to their failure to adhere to our clinical protocols, regulatory requirements or for other reasons, our clinical trials may be extended, delayed or terminated, or the clinical data may be rejected by the FDA, adversely affecting our ability to successfully commercialize our product.

Modifications to the Lap-Band and Lap-Band 2.0 system may require additional approval from regulatory authorities, which may not be obtained or may delay our commercialization efforts.

The FDA and our European Notified Body require medical device companies to initially make and document a determination of whether or not a modification requires a new approval, supplement or clearance; however, some of these regulatory authorities can review a company's decision. Any modifications to an approved device that could significantly affect its safety or efficacy, or that would constitute a major change in its intended use could require additional clinical studies and separate regulatory applications. Product changes or revisions will require all the regulatory steps and associated risks discussed above possibly including testing, regulatory filings and clinical studies. We may not be able to obtain approval of supplemental regulatory approvals for product modifications, new indications for our product or new products. Delays in obtaining future clearances would adversely affect our ability to introduce new or enhanced products in a timely manner, which in turn would harm our commercialization efforts and future growth.

If we or our suppliers fail to comply with ongoing regulatory requirements, or if we experience unanticipated product problems, our Lap-Band system could be subject to restrictions or withdrawal from the market.

Any product for which we obtain marketing approval, along with the manufacturing processes, post-approval clinical data and promotional activities for such product, will be subject to continual review and periodic inspections by our European Notified Body and the FDA and other regulatory bodies. In particular we and our manufacturers and suppliers are required to comply with ISO requirements, Good Manufacturing Practices, which for medical devices is called the Quality System Regulation ("QSR"), and other regulations which cover the methods and documentation of the design, testing, production, control, quality assurance, labeling, packaging, storage and shipping of any product for which we obtain marketing approval. The FDA enforces the QSR through inspections, which may be unannounced, and the CE system enforces its certification through inspections and audits as well. Our quality system has received certification of compliance to the requirements of ISO 13485:2016 and will have to continue to successfully complete such inspections to maintain regulatory approvals for sales outside of the United States. Failure by us or one of our manufacturers or suppliers to comply with statutes and regulations administered by the FDA, CE authorities and other regulatory bodies, or failure to adequately respond to any observations, could result in enforcement actions against us or our manufacturers or suppliers, including, restrictions on our product or manufacturing processes, withdrawal of the product from the market, voluntary or mandatory recall, fines, suspension of regulatory approvals, product seizures, injunctions or the imposition of civil or criminal penalties.

If any of these actions were to occur it would harm our reputation and cause our product sales to suffer. Furthermore, our key component suppliers may not currently be or may not continue to be in compliance with applicable regulatory requirements. If the FDA or any other regulatory body finds their compliance status to be unsatisfactory, our commercialization efforts could be delayed, which would harm our business and our results of operations.

Additionally, if the FDA determines that our promotional materials, training or other activities constitute promotion of an unapproved use, we could be subject to significant liability, the FDA could request that we cease, correct or modify our training or promotional materials or subject us to regulatory enforcement actions. It is also possible that other federal, state or foreign enforcement authorities might take action if they consider our training or other promotional materials to constitute promotion of an unapproved use, which could result in significant fines or penalties under other statutory authorities, such as laws prohibiting false claims for reimbursement.

We are subject to medical device reporting regulations that require us to report to the FDA, Competent Authorities or other governmental authorities in other countries if our products cause or contribute to a death or serious injury or malfunction in a way that would be reasonably likely to contribute to death or serious injury if the malfunction were to recur. The FDA and similar governmental authorities in other countries have the authority to require the recall of our products in the event of material deficiencies or defects in design or manufacturing. A government mandated, or voluntary, recall by us could occur as a result of component failures, manufacturing errors or design defects, including defects in labeling. Any recall would divert managerial and financial resources and could harm our reputation with customers. There can be no assurance that there will not be product recalls in the future or that such recalls would not have a material adverse effect on our business. Once the product is approved and implanted in a large number of patients, infrequently occurring adverse events may appear that were not observed in the clinical trials. This could cause health authorities in countries where the product is available to take regulatory action, including marketing suspension and recall.

For example, on January 18, 2023, we received a letter from the FDA requesting additional information regarding Medical Device Reports submitted in 2021 related adverse events associated with a Lap-Band device and pregnancy. The FDA's letter indicates a concern for an increased risk for Lap-Band complications in pregnant patients and requests that we provide, among other information, any actions planned or implemented which might reduce the likelihood of such events, which we are in the process of responding to. We believe there is robust peer-reviewed published data that supports our belief that concerns raised by the FDA are anomalies and rare occurrences. For example, a June 2022 consensus statement on laparoscopic adjustable gastric band (LAGB) management, which includes the Lap-Band, by the ASMBS found that (i) a tailored approach to LAGB management during pregnancy allows patients and providers to monitor weight gain, nutritional adequacy, and fetal growth for a healthy pregnancy outcome and (ii) evidence supports LAGB placement as safe and well tolerated during pregnancy with close LAGB monitoring. While improbable, if there are additional, or more serious, adverse events for pregnant Lap-Band patients, or if the FDA issues a warning regarding, or restricts the use of, the Lap-Band with pregnant patients, or patients who may become pregnant, our business could be harmed. One of the goals of our direct-to-consumer marketing campaign is to help people understand that the Lap-Band offers unique benefits for a variety of obese patients, including patients who may become pregnant. If there is a perception that the Lap-Band is not safe for pregnant patients, it could harm our reputation and cause our Lap-Band sales to suffer.

We face the risk of product liability claims that could be expensive, divert management's attention and harm our reputation and business. We may not be able to obtain adequate product liability insurance.

Our business exposes us to a risk of product liability claims that is inherent in the testing, manufacturing and marketing of medical devices. The medical device industry has historically been subject to extensive litigation over product liability claims. We have previously reported adverse events associated with the Lap-Band system, including as related to pregnant patients, and may be subject to product liability claims if our products cause, or appear to have caused, an injury. Claims may be made by consumers, healthcare providers, third-party strategic collaborators or others selling our products.

We have product liability insurance, which covers the use of our products in our clinical trials and any commercial sales, in an amount we believe is appropriate. Our current product liability insurance may not continue to be available to us on acceptable terms, if at all, and, if available, the coverage may not be adequate to protect us against any future product liability claims. If we are unable to obtain insurance at an acceptable cost and on acceptable terms for an adequate coverage amount, or otherwise to protect against potential product liability claims, we could be exposed to significant liabilities, which may harm our business. A product liability claim, recall or other claim with respect to uninsured liabilities or for amounts in excess of insured liabilities could have a material adverse effect on our business, financial condition and results of operations. These liabilities could prevent or interfere with our product commercialization efforts. Defending a suit, regardless of merit, could be costly, could divert management attention and

might result in adverse publicity, which could result in the withdrawal of, or inability to recruit, clinical trial volunteers or result in reduced acceptance of our products in the market.

We may be subject to product liability claims even if it appears that the claimed injury is due to the actions of others. For example, we rely on the expertise of surgeons and other associated medical personnel to perform the medical procedure to implant and remove our products and to perform the related therapy. If these medical personnel are not properly trained or are negligent, the therapeutic effect of our products may be diminished or the patient may suffer critical injury, which may subject us to liability. In addition, an injury that is caused by the negligence of one of our suppliers in supplying us with a defective component that injures a patient could be the basis for a claim against us. A product liability claim, regardless of its merit or eventual outcome, could result in decreased demand for our products; injury to our reputation; diversion of management's attention; withdrawal of clinical trial participants; significant costs of related litigation; substantial monetary awards to patients; product recalls or market withdrawals; loss of revenue; and the inability to commercialize our products under development.

Risks Related to Intellectual Property

If we are unable to obtain or maintain intellectual property rights relating to our technology and neuroblocking therapy, the commercial value of our technology and any future products will be adversely affected and our competitive position will be harmed.

Our commercial success depends in part on our ability to obtain protection in the United States and other countries for our Lap-Band System, Obalon Balloon System, and DBSN device by establishing and maintaining intellectual property rights relating to or incorporated into our technology and products. We own numerous U.S. and foreign patents and have numerous patent applications pending, most of which pertain to treating gastrointestinal disorders and the treatment of obesity. We have also received or applied for additional patents outside the United States. Our pending and future patent applications may not issue as patents or, if issued, may not issue in a form that will provide us any competitive advantage. We expect to incur substantial costs in obtaining patents and, if necessary, defending our proprietary rights. The patent positions of medical device companies, including ours, can be highly uncertain and involve complex and evolving legal and factual questions. We do not know whether we will obtain the patent protection we seek, or that the protection we do obtain will be found valid and enforceable if challenged. If we fail to obtain adequate protection of our intellectual property, or if any protection we obtain is reduced or eliminated, others could use our intellectual property without compensating us, resulting in harm to our business. We may also determine that it is in our best interests to voluntarily challenge a third-party's products or patents in litigation or administrative proceedings, including patent interferences, re-examinations or under more recently promulgated Inter Partes Review proceedings, depending on when the patent application was filed. In the event that we seek to enforce any of our owned or exclusively licensed patents against an infringing party, it is likely that the party defending the claim will seek to invalidate the patents we assert, which, if successful could result in the loss of the entire patent or the relevant portion of our patent, which would not be limited to any particular party. Any litigation to enforce or defend our patent rights, even if we were to prevail, could be costly and time-consuming and could divert the attention of our management and key personnel from our business operations. Even if we were to prevail in any litigation, we cannot assure you that we can obtain an injunction that prevents our competitors from practicing our patented technology. Our competitors may independently develop similar or alternative technologies or products without infringing any of our patent or other intellectual property rights, or may design around our proprietary technologies.

We cannot assure you that we will obtain any patent protection that we seek, that any protection we do obtain will be found valid and enforceable if challenged or that it will confer any significant commercial advantage. U.S. patents and patent applications may also be subject to interference proceedings and U.S. patents may be subject to re-examination proceedings in the U.S. Patent and Trademark Office ("USPTO"), or under more recently promulgated Inter Partes Review proceedings, depending on when the patent application was filed, and foreign patents may be subject to opposition or comparable proceedings in the corresponding foreign patent offices, which proceedings could result in either loss of the patent or denial of the patent application, or loss or reduction in the scope of one or more of the claims of, the patent or patent application. In addition, such interference, re-examination and opposition proceedings may be costly. Moreover, the U.S. patent laws have recently changed with the adoption of the America Invents Act ("AIA"), possibly making it easier to challenge patents. Some of our technology was, and continues to be, developed in conjunction with third parties, and thus there is a risk that such third parties may claim rights in our intellectual property. Thus, any patents that we own or license from others may provide limited or no protection against competitors. Our pending patent applications, those we may file in the future, or those we may license from third parties, may not result in

patents being issued. If issued, they may not provide us with proprietary protection or competitive advantages against competitors with similar technology.

We may lose important patents or patent rights if we do not timely pay required patent fees or annuities.

We have, from time to time, experienced delays in the payment of required patent fees or annuities. Non-payment or delay in payment of patent fees or annuities, whether intentional or unintentional, may result in loss of patents or patent rights important to our business. Many countries, including certain countries in Europe, have compulsory licensing laws under which a patent owner may be compelled to grant licenses to third parties. In addition, many countries limit the enforceability of patents against third parties, including government agencies or government contractors. In these countries, the patent owner may have limited remedies, which could materially diminish the value of the patent. In addition, the laws of some foreign countries do not protect intellectual property rights to the same extent as do the laws of the United States, particularly in the field of medical products and procedures.

Many of our competitors have significant resources and incentives to apply for and obtain intellectual property rights that could limit or prevent our ability to commercialize our current or future products in the United States or abroad.

Many of our competitors who have significant resources and have made substantial investments in competing technologies may seek to apply for and obtain patents that will prevent, limit or interfere with our ability to make, use or sell our products either in the U.S. or in international markets. Our current or future U.S. or foreign patents may be challenged, circumvented by competitors or others or may be found to be invalid, unenforceable or insufficient. In most cases in the United States patent applications are published 18 months after filing the application, or corresponding applications are published in other countries, and since publication of discoveries in the scientific or patent literature often lags behind actual discoveries, we cannot be certain that we were the first to make the inventions covered by each of our pending patent applications, or that we were the first to file patent applications for such inventions.

If we are unable to protect the confidentiality of our proprietary information and know-how, the value of our technology and products could be adversely affected.

In addition to patented technology, we rely on our unpatented proprietary technology, trade secrets, processes and know-how. We generally seek to protect this information by confidentiality agreements with our employees, consultants, scientific advisors and third parties. These agreements may be breached, and we may not have adequate remedies for any such breach. In addition, our trade secrets may otherwise become known or be independently developed by competitors. To the extent that our employees, consultants or contractors use intellectual property owned by others in their work for us, disputes may arise as to the rights in related or resulting know-how and inventions.

Intellectual property litigation is a common tactic in the medical device industry to gain competitive advantage. If we become subject to a lawsuit, we may be required to expend significant financial and other resources and our management's attention may be diverted from our business.

There has been a history of frequent and extensive litigation regarding patent and other intellectual property rights in the medical device industry, and companies in the medical device industry have employed intellectual property litigation to gain a competitive advantage. Accordingly, we may become subject to patent infringement claims or litigation in a court of law, or interference proceedings declared by the USPTO to determine the priority of inventions or an opposition to a patent grant in a foreign jurisdiction. We may also become subject to claims or litigation seeking payment of royalties based on sales of our product in connection with licensing or similar joint development arrangements with third parties or in connection with claims of patent infringement.

The defense and prosecution of intellectual property suits, USPTO interference proceedings, reexamination proceedings, or under more recently promulgated Inter Partes Review proceedings, depending on when the patent application was filed, or opposition proceedings and related legal and administrative proceedings, are both costly and time consuming and could result in substantial uncertainty to us. Litigation or regulatory proceedings may also be necessary to enforce patent or other intellectual property rights of ours or to determine the scope and validity of other parties' proprietary rights. Any litigation, opposition or interference proceedings, with or without merit, may result in substantial expense to us, cause significant strain on our financial resources, divert the attention of our technical and management personnel and harm our reputation. We may not have the financial resources to defend our patents from infringement or claims of invalidity. An adverse determination in any litigation could subject us to significant liabilities

to third parties, require us to seek licenses from or pay royalties to third parties or prevent us from manufacturing, selling or using our proposed products, any of which could have a material adverse effect on our business and prospects.

Our Lap-Band System, Obalon Balloon System or DBSN device may infringe or be claimed to infringe patents that we do not own or license, including patents that may issue in the future based on patent applications of which we are currently aware, as well as applications of which we are unaware. For example, we are aware of other companies that are investigating neurostimulation, including neuroblocking, and of patents and published patent applications held by companies in those fields. While we believe that none of such patents and patent applications are applicable to our products and technologies under development, third parties who own or control these patents and patent applications in the United States and abroad could bring claims against us that would cause us to incur substantial expenses and, if such claims are successfully asserted against us, they could cause us to pay substantial damages, could result in an injunction preventing us from selling, manufacturing or using our proposed products and would divert management's attention. Because patent applications in many countries such as the United States are maintained under conditions of confidentiality and can take many years to issue, there may be applications now pending of which we are unaware, and which may later result in issued patents that our products infringe. If a patent infringement suit were brought against us, we could be forced to stop our ongoing or planned clinical trials, or delay or abandon commercialization of the product that is subject of the suit.

As a result of patent infringement claims, or to avoid potential claims, we may choose or be required to seek a license from a third-party and be required to pay license fees or royalties, or both. A license may not be available at all or on commercially reasonable terms, and we may not be able to redesign our products to avoid infringement. Modification of our products or development of new products could require us to conduct additional clinical trials and to revise our filings with the FDA and other regulatory bodies, which would be time-consuming and expensive. Even if we were able to obtain a license, the rights may be nonexclusive, which could result in our competitors gaining access to the same intellectual property. Ultimately, we could be forced to cease some aspect of our business operations if, as a result of actual or threatened patent infringement claims, we are unable to enter into licenses on acceptable terms. This could harm our business significantly.

We may in the future become involved in lawsuits, to protect or enforce our intellectual property, which can be expensive and time consuming and could result in the diversion of significant resources.

Adverse proceedings such as litigation or challenges to the validity of our patents can be expensive, time consuming and may divert the efforts of our technical and managerial personnel, which could in turn harm our business, whether or not we receive a determination favorable to us. In addition, in an infringement or other adverse proceeding, a court may decide that the patent we seek to enforce is invalid or unenforceable, or may refuse to stop the other party from using the technology at issue on the grounds that the patent in question does not cover the technology in question. An adverse result in any litigation or proceeding could place one or more of our patents at risk of being invalidated, interpreted narrowly or found unenforceable. Some of our competitors may be able to devote significantly more resources to intellectual property litigation, and may have significantly broader patent portfolios to assert against us, if we assert our rights against them.

Risks Relating to Ownership of Our Common Stock

The trading price of our common stock has been volatile and is likely to be volatile in the future.

The trading price of our common stock has been highly volatile. The market price for our common stock will be affected by a number of factors, including:

- the denial or delay of regulatory clearances or approvals of our product or receipt of regulatory approval of competing products;
- our ability to accomplish clinical, regulatory and other product development milestones and to do so in accordance with the timing estimates we have publicly announced;
- changes in policies affecting third-party coverage and reimbursement in the United States and other countries;
- changes in government regulations and standards affecting the medical device industry and our product;
- ability of our products to achieve market success;
- the performance of third-party contract manufacturers and component suppliers;
- our ability to develop sales and marketing capabilities;

- actual or anticipated variations in our results of operations or those of our competitors;
- announcements of new products, technological innovations or product advancements by us or our competitors;
- developments with respect to patents and other intellectual property rights;
- sales of common stock or other securities by us or our stockholders in the future;
- additions or departures of key scientific or management personnel;
- disputes or other developments relating to proprietary rights, including patents, litigation matters and our ability to obtain patent protection for our technologies;
- the trading volume of our common stock;
- changes in earnings estimates or recommendations by securities analysts, failure to obtain or maintain analyst coverage of our common stock or our failure to achieve analyst earnings estimates;
- public statements by analysts or clinicians regarding their perceptions of our clinical results or the effectiveness of our products;
- decreases in market valuations of medical device companies; and
- general market conditions and other factors unrelated to our operating performance or the operating performance of our competitors.

The stock prices of many companies in the medical device industry have experienced wide fluctuations that have often been unrelated to the operating performance of these companies. Following periods of volatility in the market price of a company's securities, securities class action litigation often has been initiated against a company. If class action litigation is initiated against us, we may incur substantial costs and our management's attention may be diverted from our operations, which could significantly harm our business.

Sales of a substantial number of shares of our common stock in the public market by existing stockholders, or the perception that they may occur, could cause our stock price to decline.

Sales of substantial amounts of our common stock by us or by our stockholders, announcements of the proposed sales of substantial amounts of our common stock or the perception that substantial sales may be made, could cause the market price of our common stock to decline. We may issue additional shares of our common stock in follow-on offerings to raise additional capital, upon the exercise of options or warrants, or in connection with acquisitions or corporate alliances. We also plan to issue additional shares to our employees, directors or consultants in connection with their services to us. All of the currently outstanding shares of our common stock are freely tradable under federal and state securities laws, except for shares held by our directors, officers and certain greater than five percent stockholders, which may be subject to holding period, volume and other limitations under Rule 144. Due to these factors, sales of a substantial number of shares of our common stock in the public market could occur at any time and could reduce the market price of our common stock.

We have a significant number of outstanding warrants, which may cause significant dilution to our stockholders, have a material adverse impact on the market price of our common stock and make it more difficult for us to raise funds through future equity offerings.

As of December 31, 2023, we had outstanding 23,457,047 shares of common stock. In addition, we had outstanding warrants to acquire 15,385,892 shares of common stock. The issuance of shares of common stock upon the exercise of warrants would dilute the percentage ownership interest of all stockholders, might dilute the book value per share of our common stock and would increase the number of our publicly traded shares, which could depress the market price of our common stock.

In addition to the dilutive effects described above, the perceived risk of dilution as a result of the significant number of outstanding warrants may cause our common stockholders to be more inclined to sell their shares, which would contribute to a downward movement in the price of our common stock. Moreover, the perceived risk of dilution and the resulting downward pressure on our common stock price could encourage investors to engage in short sales of our common stock, which could further contribute to price declines in our common stock. The fact that our stockholders and warrant holders can sell substantial amounts of our common stock in the public market, whether or not sales have occurred or are occurring, could make it more difficult for us to raise additional funds through the sale of equity or equity-related securities in the future at a time and price that we deem reasonable or appropriate, or at all.

If we fail to meet all applicable Nasdaq Capital Market requirements, Nasdaq could delist our common stock, which could adversely affect the market liquidity of our common stock and the market price of our common stock could decrease.

Nasdaq monitors our ongoing compliance with its minimum listing requirements and if we fail to meet those requirements and cannot cure such failure in the prescribed period of time, our common stock could be subject to delisting from the Nasdaq market. In the event that our common stock is delisted from the Nasdaq Capital Market and is not eligible for quotation or listing on another market or exchange, trading of our common stock could be conducted only in the over-the-counter market or on an electronic bulletin board established for unlisted securities such as the Pink Sheets or the OTC Bulletin Board. In such event, it could become more difficult to dispose of, or obtain accurate price quotations for, our common stock, and there would likely also be a reduction in our coverage by securities analysts and the news media, which could cause the price of our common stock to decline further. Also, it may be difficult for us to raise additional capital if we are not listed on a major exchange.

For example, on October 10, 2023, we received a written notice from The Nasdaq Stock Market indicating that we were not in compliance with the $1.00 minimum bid price requirement set forth in Nasdaq Listing Rule 5550(a)(2) for continued listing on The Nasdaq Capital Market. The notice provided that we have until April 7, 2024 to regain compliance. In order to regain compliance with the bid price requirement. On February 23, 2024, the stockholders of the Company authorized for the Board of Directors, in its discretion but no later than February 23, 2025, to declare a reverse stock split at a ratio in the range of 1-for-10 to 1-for-60, such ratio to be determined by the Board ("Reverse Stock Split").

There are risks associated with effecting the Reverse Stock Split, if approved by the Board.

Although we expect that the Reverse Stock Split will result in an increase in the market price of our common stock, we cannot assure you that the Reverse Stock Split, if effected, will increase the market price of our common stock in proportion to the reduction in the number of shares of our common stock outstanding or result in a permanent increase in the market price. The effect that the Reverse Stock Split may have upon the market price of our common stock cannot be predicted with any certainty, and the history of similar reverse stock splits for companies in similar circumstances to ours is varied. The market price of our common stock is dependent on many factors, including our business and financial performance, general market conditions, prospects for future growth and other factors detailed from time to time in the reports we file with the SEC. Accordingly, the total market capitalization of our common stock after the proposed Reverse Stock Split may be lower than the total market capitalization before the proposed Reverse Stock Split and, in the future, the market price of our common stock following the Reverse Stock Split may not exceed or remain higher than the market price prior to the proposed Reverse Stock Split.

The Reverse Stock Split may result in some stockholders owning "odd lots" of less than 100 shares of common stock on a post-split basis. These odd lots may be more difficult to sell, or require greater transaction costs per share to sell, than shares in "round lots" of even multiples of 100 shares.

Although the Reverse Stock Split will not, by itself, have any immediate dilutive effect on stockholders, the proportion of shares owned by stockholders relative to the number of shares authorized for issuance will decrease because the number of authorized shares of common stock would remain unchanged. As a result, additional authorized shares of common stock would become available for issuance at such times and for such purposes as the Board may deem advisable without further action by stockholders, except as required by applicable law or stock exchange rules. To the extent that additional authorized shares of common stock are issued in the future, such shares could be dilutive to existing stockholders of the Company by decreasing such stockholders' percentage of equity ownership in the Company. See "-Potential Anti-Takeover Effect" below for more information on potential anti-takeover effects of the Reverse Stock Split.

Although our Board believes that the decrease in the number of shares of common stock outstanding as a consequence of the Reverse Stock Split and the anticipated increase in the market price of common stock could encourage interest in our common stock and possibly promote greater liquidity for stockholders, such liquidity could also be adversely affected by the reduced number of shares outstanding after the Reverse Stock Split.

You may experience future dilution as a result of future equity offerings.

In order to raise additional capital for general corporate purposes, in the future we may offer additional shares of our common stock or other securities convertible into or exchangeable for our common stock at prices that may be lower than the current price per share of our common stock. In addition, investors purchasing shares or other securities in the future could have rights superior to existing stockholders. The price per share at which we sell additional shares of our common stock, or securities convertible or exchangeable into common stock, in future transactions may be higher or lower than the price per share paid by investors in prior offerings.

Our organizational documents and Delaware law make a takeover of our company more difficult, which may prevent certain changes in control and limit the market price of our common stock.

Our certificate of incorporation and bylaws and Section 203 of the Delaware General Corporation Law contain provisions that may have the effect of deterring or delaying attempts by our stockholders to remove or replace management, engage in proxy contests and effect changes in control. These provisions include:

- the ability of our board of directors to create and issue preferred stock without stockholder approval, which could be used to implement anti-takeover devices;
- the authority for our board of directors to issue without stockholder approval up to the number of shares of common stock authorized in our certificate of incorporation, that, if issued, would dilute the ownership of our stockholders;
- the advance notice requirement for director nominations or for proposals that can be acted upon at stockholder meetings;
- a classified and staggered board of directors, which may make it more difficult for a person who acquires control of a majority of our outstanding voting stock to replace all or a majority of our directors;
- the prohibition on actions by written consent of our stockholders;
- the limitation on who may call a special meeting of stockholders;
- the prohibition on stockholders accumulating their votes for the election of directors; and
- the ability of stockholders to amend our bylaws only upon receiving a majority of the votes entitled to be cast by holders of all outstanding shares then entitled to vote generally in the election of directors, voting together as a single class.

In addition, as a Delaware corporation, we are subject to Delaware law, including Section 203 of the Delaware General Corporation Law. In general, Section 203 prohibits a Delaware corporation from engaging in any business combination with any interested stockholder for a period of three years following the date that the stockholder became an interested stockholder unless certain specific requirements are met as set forth in Section 203. These provisions, alone or together, could have the effect of deterring or delaying changes in incumbent management, proxy contests or changes in control.

These provisions also could discourage proxy contests and make it more difficult for you and other stockholders to elect directors and take other corporate actions. The existence of these provisions could limit the price that investors might be willing to pay in the future for shares of our common stock. Some provisions in our certificate of incorporation and bylaws may deter third parties from acquiring us, which may limit the market price of our common stock.

We have not paid dividends in the past and do not expect to pay dividends in the future, and any return on investment may be limited to the value of our common stock.

We have never paid dividends on our common stock and do not anticipate paying dividends on our common stock in the foreseeable future. The payment of dividends on our common stock will depend on our earnings, financial condition and other business and economic factors affecting us at such time as our board of directors may consider relevant. If we do not pay dividends, our common stock may be less valuable because a return on your investment will only occur if our stock price appreciates.

ITEM 1B. UNRESOLVED STAFF COMMENTS

Not applicable.

ITEM 1C. CYBERSECURITY

Risk Management and Strategy

Our Information and Technology service providers manages the Company's security program, which is focused on assessing, identifying, and managing cyber risk and information security threats. We evaluate cybersecurity on an ongoing basis, and it is a risk monitored through our overall enterprise risk management program, including by the executive leadership and board of directors, described below under *"Governance."*

To proactively manage cybersecurity risk in our organization, our management team has instituted a security policy that is available to all employees.

To proactively identify, mitigate, and prepare for potential cybersecurity incidents, we maintain both a business continuity plan and cyber incident response plan. We recognize that we are exposed to cybersecurity threats associated with our use of third-party service providers. To minimize the risk and vulnerabilities to our own systems stemming from such use, our Information Technology providers identifies and addresses known cybersecurity risks on a continuous basis. In addition, we stive to minimize cybersecurity risks when we first select or renew a vendor by including cybersecurity risk as part of our overall vendor evaluation and due diligence process.

Governance

Our Board of Directors and our Audit Committee oversee our enterprise-wide risk management, including with respect to cybersecurity. Our Chief Executive Officer or Chief Financial Officer presents information on our enterprise-wide risks to the Board of Directors at each of its regularly scheduled meetings.

ITEM 2. PROPERTIES

We lease approximately 5,038 square feet of office/warehouse space in Irvine, California under an operating lease that expires May 1, 2026.

ITEM 3. LEGAL PROCEEDINGS

The Company is not currently a party to any material litigation and the Company is not aware of any pending or threatened litigation against it that could have a material adverse effect on the Company's business, operating results or financial condition. The medical device industry in which the Company operates is characterized by frequent claims and litigation, including claims regarding patent and other intellectual property rights as well as improper hiring practices. As a result, the Company may be involved in various legal proceedings from time to time.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

PART II.

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Market Information

Our common stock trades on the Nasdaq under the symbol "RSLS".

Number of Stockholders

As of March 26, 2024, there were approximately 34 holders of record of our common stock.

Securities Authorized for Issuance Under Equity Compensation Plans

The information required by this Item regarding equity compensation plans is incorporated by reference to the information set forth in Part III, Item 12 of this Annual Report on Form 10-K.

Unregistered Sales of Equity Securities

None, except as previously disclosed.

Uses of Proceeds from Sale of Registered Securities

None.

Dividend Policy

We have never paid cash dividends on our common stock. The board of directors presently intends to retain all earnings for use in our business and does not anticipate paying cash dividends in the foreseeable future. We do not have a dividend reinvestment plan or a direct stock purchase plan.

Issuer Purchases of Equity Securities

None.

ITEM 6. [RESERVED]

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Except for the historical information contained herein, the matters discussed in this "Management's Discussion and Analysis of Financial Condition and Results of Operations," and elsewhere in this Form 10-K are forward-looking statements that involve risks and uncertainties. The factors listed in Item 1A "Risk Factors," as well as any cautionary language in this Form 10-K, provide examples of risks, uncertainties and events that may cause our actual results to differ materially from those projected. Except as may be required by law, we undertake no obligation to update any forward-looking statement to reflect events after the date of this report.

Overview

We are the premier global weight-loss solutions company, offering an integrated portfolio of proven products and services that manage and treat obesity and associated metabolic disease. Our primary operations are in the following geographical areas: United States, Australia and certain European and Middle Eastern countries. Our current portfolio includes the Lap-Band Adjustable Gastric Banding System, the Obalon Balloon System, and the Diabetes Bloc-Stim Neuromodulation device, a technology under development as a new treatment for type 2 diabetes mellitus. There has been no revenue recorded for the Obalon Balloon System, or the Diabetes Bloc-Stim Neuromodulation as these products are still in the development stage.

Recent Developments

In February 2024, the Company announced the first surgeries utilizing the Lap-Band 2.0 FLEX mark, not only a seminal moment in the Company's launch of this enhanced product, but also a leap forward in improving the Lap-Band.

Financial Overview

Results of Operations

The following table sets forth certain data from our operating results from the years ended December 31, 2023 and 2022, expressed as percentages of net revenue (in thousands):

	Year Ended December 31,			
	2023		2022	
Revenue	$ 8,678	100.0 %	$ 11,240	100.0 %
Cost of revenue	3,130	36.1 %	4,438	39.5 %
Gross profit	5,548	63.9 %	6,802	60.5 %
Operating expenses:				
Sales and marketing	7,548	87.0 %	14,093	125.4 %
General and administrative	10,324	119.0 %	17,250	153.5 %
Research and development	2,315	26.7 %	2,537	22.6 %
Impairment of long-lived assets	777	9.0 %	18,744	166.8 %
(Gain) loss on disposal of assets, net	(33)	(0.4)%	529	4.7 %
Total operating expenses	20,931	241.3 %	53,153	473.0 %
Operating loss	(15,383)	(177.4)%	(46,351)	(412.5)%
Other expense (income), net:				
Interest (income) expense, net	(26)	(0.3)%	113	1.0 %
Gain on changes in fair value of liability warrants	(3,878)	(44.7)%	—	— %
(Gain) loss on foreign currency exchange, net	(22)	(0.3)%	141	1.3 %
Other	(122)	(1.4)%	(11)	(0.1)%
Loss before income tax provision	(11,335)	(130.7)%	(46,594)	(414.7)%
Income tax expense (benefit)	52	0.6 %	(380)	(3.4)%
Net loss	$ (11,387)	(131.2)%	$ (46,214)	(411.2)%

Non-GAAP Disclosures

In addition to the financial information prepared in conformity with GAAP, we provide certain historical non-GAAP financial information. Management believes that these non-GAAP financial measures assist investors in making comparisons of period-to-period operating results and that, in some respects, these non-GAAP financial measures are more indicative of the Company's ongoing core operating performance than their GAAP equivalents.

Management believes that the presentation of this non-GAAP financial information provides investors with greater transparency and facilitates comparison of operating results across a broad spectrum of companies with varying capital structures, compensation strategies, derivative instruments, and amortization methods, which provides a more complete understanding of our financial performance, competitive position, and prospects for the future. However, the non-GAAP financial measures presented in this Form 10-K have certain limitations in that they do not reflect all of the costs associated with the operations of our business as determined in accordance with GAAP. Therefore, investors should consider non-GAAP financial measures in addition to, and not as a substitute for, or as superior to, measures of financial performance prepared in accordance with GAAP. Further, the non-GAAP financial measures presented by the Company may be different from similarly named non-GAAP financial measures used by other companies.

Adjusted EBITDA

Management uses Adjusted EBITDA in its evaluation of the Company's core results of operations and trends between fiscal periods and believes that these measures are important components of its internal performance measurement process. Adjusted EBITDA is defined as net loss before interest, taxes, depreciation and amortization, stock-based compensation, and other one-time costs. Therefore, investors should consider non-GAAP financial measures in addition to, and not as a substitute for, or as superior to, measures of financial performance prepared in accordance with GAAP. Further, the non-GAAP financial measures presented by the Company may be different from similarly named non-GAAP financial measures used by other companies.

The following table contains a reconciliation of GAAP net loss to non-GAAP net loss attributable to common stockholders for the years ended December 31, 2023 and 2022 (in thousands).

	Year Ended December 31,	
	2023	2022
GAAP net loss	$ (11,387)	$ (46,214)
Adjustments:		
Interest (income) expense, net	(26)	113
Income tax expense (benefit)	52	(380)
Depreciation and amortization	154	2,153
Stock-based compensation expense	767	2,087
Impairment of long-lived assets	777	18,744
(Gain) loss on disposal of assets, net	(33)	529
Gain on changes in fair value of liability warrants	(3,878)	—
Adjusted EBITDA	$ (13,574)	$ (22,968)

Comparison of Results of Operations

Revenue. The following table summarizes our net revenue by geographic location based on the location of customers for the years ended December 31, 2023 and 2022, as well as the percentage by location of total revenue and the amount of change and percentage of change (dollars in thousands):

	Year Ended December 31,				Amount	Percentage
	2023		2022		Change	Change
United States	$ 7,134	82.2 %	$ 9,230	82.2 %	$ (2,096)	(22.7)%
Australia	526	6.1 %	688	6.1 %	(162)	(23.5)%
Europe	956	11.0 %	1,252	11.1 %	(296)	(23.6)%
Rest of world	62	0.7 %	70	0.6 %	(8)	(11.4)%
Total revenue	$ 8,678	100.0 %	$ 11,240	100.0 %	$ (2,562)	(22.8)%

Revenue totaled $8.7 million for the year ended December 31, 2023, which represents a contraction of 22.8%, or $2.6 million compared to the same period in 2022. The primary reason for the decrease is due to the introduction of GLP-1 pharmaceuticals within the US. This is also evidenced by a decrease of Lap-Band unit sales of approximately 26.8%.

Cost of Revenue and Gross Profit: The following table summarizes our cost of goods sold and gross profit for the years ended December 31, 2023 and 2022, as well as percentage of total revenue and the amount of change and percentage of change (dollars in thousands):

	Year Ended December 31,				Amount	Percentage
	2023		2022		Change	Change
Revenue	$ 8,678	100.0 %	$ 11,240	100.0 %	$ (2,562)	(22.8)%
Cost of revenue	3,130	36.1 %	4,438	39.5 %	(1,308)	(29.5)%
Gross profit	$ 5,548	63.9 %	$ 6,802	60.5 %	$ (1,254)	(18.4)%

Gross profit. Gross profit for the year ended December 31, 2023, was $5.5 million, compared to $6.8 million for the year ended December 31, 2022, a decrease of $1.3 million or 18.4%. Gross profit as a percentage of revenue for the year ended December 31, 2023, was 63.9% compared to 60.5% for the same period in 2022. The increase in gross profit margin is primarily due to the Company allocating resources that were previously primarily focused on inventory to other projects and allocated a larger percentage of these costs to operating expenses in 2023.

Operating Expenses: The following table summarizes our operating expenses for the years ended December 31, 2023 and 2022, as well as the percentage of total revenue, and the amount of changes and percentage of change (dollars in thousands):

	Year Ended December 31,				Amount	Percentage
	2023		2022		Change	Change
Sales and marketing	$ 7,548	87.0 %	$ 14,093	125.4 %	$ (6,545)	(46.4)%
General and administrative	10,324	119.0 %	17,250	153.5 %	(6,926)	(40.2)%
Research and development	2,315	26.7 %	2,537	22.6 %	(222)	(8.8)%
Impairment of long-lived assets	777	9.0 %	18,744	166.8 %	(17,967)	(95.9)%
(Gain) loss on disposal of assets, net	(33)	(0.4)%	529.0	4.7 %	(562)	(106.2)%
Total operating expenses	$ 20,931	241.3 %	$ 53,153	472.9 %	$ (32,222)	(60.6)%

Sales and Marketing Expense. Sales and marketing expenses for the year ended December 31, 2023, decreased by $6.6 million, or 46.8%, to approximately $7.5 million, compared to $14.1 million for the same period in 2022. The decrease is primarily due to a decrease of $5.2 million in advertising and marketing expenses, including consulting and professional marketing services, as the Company has reevaluated its marketing approach and has moved to a targeted digital marketing campaign, resulting in a significant reduction of costs. We also had reductions in payroll expenditures, including commissions, travel and stock-based compensation of $1.2 million, due to changes in sales personnel and lower sales.

General and Administrative Expense. General and administrative expenses for the year ended December 31, 2023, decreased by approximately $7.0 million, or 40.2%, to approximately $10.3 million, compared to $17.3 million for the same period in 2022. The decrease is primarily due to a reduction in legal related expenses due to the Company recording $2.6 million in litigation losses during the year ended December 31, 2022. In addition, the Company had a reduction in payroll related expenses including stock-based compensation expense of $2.8 million, due to changes within personnel. We had a decrease in intangible asset amortization of $1.8 million, as we impaired our finite intangible assets during the fourth quarter of 2022. We also had a decrease in rent and insurance of $0.7 million due to the lease of our former Carlsbad, CA location expiring. We also had a decrease of $0.3 million related to non-income taxes. This was offset by an increase in audit and professional services of approximately $1.2 million, primarily due to the offerings we completed during 2023.

Research and Development Expense. Research and development expenses for the year ended December 31, 2023, decreased by $0.2 million, or 8.8%, to $2.3 million, compared to $2.5 million for the same period in 2022. The decrease is primarily due to a decrease of $0.1 million in payroll expenses, as the Company's revenue declined, the Company allocated personnel's time to other research and development projects to utilize the employees and a reduction of depreciation expense of $0.1 million as the Company impaired its fixed assets during 2023.

Impairment of Long-Lived Assets. Impairment of long-lived assets decreased by approximately $18.0 million for the year ended December 31, 2023, compared to the same period in the prior year. During the year ended December 31, 2023, the Company impaired approximately $0.8 million, consisting of fixed assets and intangible assets. During the year ended December 31, 2022, the Company recorded an impairment charge of $7.4 million of in-process IPR&D and trademarks related to the ReShape Vest due to the Company no longer continuing with clinical trials. In addition, due to a reduction in our market capitalization at year end the Company impaired the developed technology and trademarks for both the Lap-Band and Obalon Balloon of $8.9 million and $2.4 million, respectively, due to reduced projected near-term future net cash flows related to the Lap-Band and no near-term revenue for the Obalon Balloon.

(Gain) loss on disposal of assets, net. During 2023, the Company had a gain of approximately $33 thousand related to the sale of fully depreciated assets. During the year ended December 31, 2022, the Company disposed of $0.5 million, primarily of assets that were acquired from the merger with Obalon.

Liquidity and Capital Resources

We have financed our operations to date principally through the sale of equity securities and debt financings. During the years ended December 31, 2023 and 2022, we received proceeds of $17.6 million and $3.1 million, respectively, from securities sales and exercises of warrants by an institutional investor. As of December 31, 2023, we had $4.5 million of cash and cash equivalents, and $100 thousand of restricted cash.

The following table summarizes our change in cash and cash equivalents (in thousands):

	Year Ended December 31,	
	2023	2022
Net cash used in operating activities	$ (16,960)	$ (21,902)
Net cash used in investing activates	(10)	(92)
Net cash provided by financing activities	17,574	3,130
Effect of exchange rate changes	—	4
Net change in cash and cash equivalents and restricted cash	$ 604	$ (18,860)

Net Cash Used in Operating Activities

Net cash used in operating activities was $17.0 million and $21.9 million for the years ended December 31, 2023 and 2022, respectively. For the year ended December 31, 2023, net cash used in operating activities was primarily the result of our net loss of $11.4 million, partially offset by non-cash adjustments of loss on impairment of long-lived asset of $0.8 million, stock-based compensation expense of $0.8 million, provision for bad debt expense of $0.4 million, provision for excess and obsolete inventory of $0.3 million, depreciation expense of $0.1 million, offset by non-cash reductions of expense non-cash gains recognized related to changes in fair value of liability warrants of 3.9 million. This was offset by a positive impact to accounts receivable of $0.1 million and a negative impact to cash from inventory of $0.5 million, prepaid expenses of $0.2 million and accounts payable and accrued liabilities of $3.5 million and a decrease in warranty liabilities of $0.2 million.

Net cash used in operating activities was $21.9 million and $15.4 million for the years ended December 31, 2022 and 2021, respectively. For the year ended December 31, 2022, net cash used in operating activities was primarily the result of our net loss of $46.2 million, partially offset by non-cash adjustments of loss on impairment of intangible assets of $18.7 million, stock-based compensation expense of $2.1 million, amortization of intangible assets of $1.8 million, loss on disposal of assets of $0.5 million, provision for excess and obsolete inventory of $0.6 million, depreciation expense of $0.3 million, offset by non-cash reductions of expense for deferred taxes of $0.4 million. We show a negative

cash impact to inventory of $1.2 million and warranty liability of $0.4 million. This was offset by a positive impact to accounts receivable of $0.7 million, prepaid expenses of $1.1 million and accounts payable and accrued liabilities of $0.5 million.

Net Cash Used in Investing Activities

Net cash used in investing activities for the year ended December 31, 2023, was insignificant as the Company was focused on preserving cash.

Net cash used in investing activities for the year ended December 31, 2022, was $0.1 million, primarily related to tooling equipment.

Net Cash Provided by Financing

Net cash provided by financing activities was $17.6 million for the year ended December 31, 2023, as the Company completed multiple public offerings with proceeds of approximately $13.5 million and $4.1 million of warrants exercised during 2023.

Net cash provided by financing activities was $3.1 million for the year ended December 31, 2022, primarily due to proceeds of $2.5 million received from the exercises of warrants from an institutional investor and $0.6 million of securities sold to an institutional investor.

Operating Capital and Capital Expenditure Requirements

The Company's anticipated operations include plans to (i) grow sales and operations of the Company with the Lap-Band product line both domestically and internationally as well as to obtain cost savings synergies, (ii) introduce to the market Lap-Band 2.0 FLEX, (iii) continue development of the Diabetes Bloc-Stim Neuromodulation ("DBSN") device, (vi) identifying strategic merger and acquisition alternatives, (v) seek opportunities to find strategic partners to leverage our intellectual property portfolio and custom development services to provide third-party sales and licensing opportunities, and (vi) explore and capitalize on synergistic opportunities to expand our portfolio and offer future minimally invasive treatments and therapies in the obesity continuum of care. The Company believes that it has the flexibility to manage the growth of its expenditures and operations depending on the amount of available cash flows, which could include reducing expenditures for marketing, and product development activities. If managements' plans don't develop, and the Company doesn't get additional cash raises, at the current burn rate, management expects to run out of cash during the third quarter of 2024.

Because of the numerous risks and uncertainties associated with the development of medical devices, such as our DBSN, we are unable to estimate the exact amounts of capital outlays and operating expenditures necessary to complete the development of the DBNS or other additional products and successfully deliver a commercial product to the market. Our future capital requirements will depend on many factors, including, but not limited to, the following:

- the cost and timing of establishing sales, marketing and distribution capabilities;
- the cost of establishing clinical and commercial supplies of our DBNS, and any products that we may develop;
- the rate of market acceptance of our DBNS, and any other product candidates;
- the cost of filing and prosecuting patent applications and defending and enforcing our patent and other intellectual property rights;
- the cost of defending, in litigation or otherwise, any claims that we infringe third-party patent or other intellectual property rights;
- the effect of competing products and market developments;

- the cost of explanting clinical devices;
- the terms and timing of any collaborative, licensing or other arrangements that we may establish;
- any revenue generated by sales of our Lap-Band, Obalon Balloon System, DBNS or our future products;
- the scope, rate of progress, results and cost of our clinical trials and other research and development activities;
- the cost and timing of obtaining any further required regulatory approvals; and
- the extent to which we invest in products and technologies, although we currently have no commitments or agreements relating to any of these types of transactions.

Critical Accounting Policies and Significant Judgments and Estimates

Our management's discussion and analysis of our financial condition and results of operations are based on our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of these financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements as well as the reported expenses during the reporting periods. We evaluate our estimates and judgments on an ongoing basis. Actual results may differ materially from these estimates under different assumptions or conditions.

While our significant accounting policies are more fully described in Note 2 to our consolidated financial statements included in Item 8 of this Annual Report on Form 10-K, we believe that the following accounting policies and estimates are most critical to a full understanding and evaluation of our reported financial results.

Intangible Assets and Long-Lived Assets

We acquire intangible assets in connection with business combinations and asset purchases. The acquired intangible assets are recorded at fair value, which is determined based on a discounted cash flow analysis. The determination of fair value requires significant estimates, including, but not limited to, the amount and timing of projected future cash flows, the discount rate used to discount those cash flows, the assessment of the asset's life cycle, including the timing and expected costs to complete in-process projects, and the consideration of legal, technical, regulatory, economic, and competitive risks.

Developed technology acquired in business combinations is reviewed for impairment annually, or whenever an event occurs, or circumstances change that would indicate the carrying amount may be impaired. Additionally, management reviews the carrying amounts of other intangible and long-lived assets whenever events or circumstances indicate that the carrying amounts of an asset may not be recoverable. The impairment reviews require significant estimates about fair value, including estimation of future cash flows, selection of an appropriate discount rate, and estimates of long-term growth rates.

Stock-based Compensation

We measure and recognize compensation expenses for all stock-based awards based on estimated fair values. Stock-based awards consist of stock options and restricted stock units. The fair value of each option award is estimated on the date of grant using a Black-Scholes option valuation model. The Black-Scholes models require various highly judgmental assumptions, including stock price volatility, risk-free interest rate, and expected option term. Stock-based compensation expense is recorded net of estimated forfeitures.

Income Taxes

Income taxes are accounted for under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carry-forwards. Deferred

tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date. A valuation allowance for deferred income tax assets is recorded when it is more likely than not that some portion or all of the deferred income tax assets will not be realized. The Company's policy is to classify interest and penalties related to income taxes as income tax expense in the consolidated statements of operations.

Accounts Receivable Reserve

The Company provides reserves against accounts receivable for estimated losses that may result from a customer's inability to pay based on customer-specific analysis and general matters such as current assessments of past due balances, economic conditions and forecasts, and historical credit loss activity. Amounts determined to be uncollectible are charged or written-off against the reserve. Additionally, under the current expected credit loss model, we utilize historical loss rates based on number of days past due, adjusted to reflect current economic conditions and forecasts of future economic conditions.

Inventory Reserve

The Company establishes inventory reserves for obsolescence based upon specific identification of expired or unusable units with a corresponding provision included in cost of revenue.

Fair Value of Warrants

We analyze warrants to determine if the warrant instrument should be treated as a liability or equity. Based on the outcome of this analysis, we measure the fair value of the instrument using a Black-Scholes valuation model, bifurcated Black-Scholes valuation model or a Monte Carlo valuation model. Each of these models require various highly judgmental assumptions, including stock price volatility, risk-free interest rate, and expected term.

Recent Accounting Pronouncements

See Note 2 to the Consolidated Financial Statements, for a discussion of new accounting standards that have been adopted and those not yet adopted.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Not applicable.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

Index to Financial Statements

Report of Independent Registered Public Accounting Firm

To the Stockholders and the Board of Directors of ReShape Lifesciences Inc.

Opinion on the Financial Statements
We have audited the accompanying consolidated balance sheets of ReShape Lifesciences Inc. and its subsidiaries (the Company) as of December 31, 2023 and 2022, the related consolidated statements of operations, comprehensive loss, stockholders' equity and cash flows for the years then ended, and the related notes to the consolidated financial statements (collectively, the financial statements). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2023 and 2022, and the results of its operations and its cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States of America.

Substantial Doubt About the Company's Ability to Continue as a Going Concern
The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 3 to the financial statements, the Company has suffered recurring losses from operations and negative cash flows. The Company currently does not generate revenue sufficient to offset operating costs and anticipates such shortfalls to continue. This raises substantial doubt about the Company's ability to continue as a going concern. Management's plans in regard to these matters also are described in Note 3. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

Basis for Opinion
These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

Critical Audit Matters
The critical audit matters communicated below are matters arising from the current period audit of the financial statements that were communicated or required to be communicated to the audit committee and that: (1) relate to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the financial statements, taken as a whole, and we are not, by communicating the critical audit matters below, providing separate opinions on the critical audit matters or on the accounts or disclosures to which they relate.

Going Concern
As described in Note 3 to the consolidated financial statements, the Company disclosed certain adverse conditions that raises substantial doubt about the Company's ability to continue as a going concern for a period of at least one year from the date of issuance of the consolidated financial statements. The Company further disclosed certain plans identified by management, which involve the use of significant judgment, planned to mitigate the conditions that raise substantial doubt about the Company's ability to continue as a going concern.

We identified the Company's assessment of its liquidity and management's plans to continue as a going concern as a critical audit matter because of the significant assumptions management made in determining the reasonableness of management's cash flow forecast for a period of one year from the date of issuance of the consolidated financial statements. Auditing management's assumptions involved a high degree of auditor judgment and an increase in audit effort.

Our audit procedures related to the Company's liquidity and management's plans included the following, among others:

- We obtained management's going concern assessment and evaluated the reasonableness of the likelihood that management could implement its plans and how the implementation of those plans impacted the identified adverse conditions.
- We evaluated the reasonableness of management's cash flow forecast by performing the following procedures, among others:
    - We compared management's projected cash flows to subsequent event activity.
    - We evaluated the reasonableness of forecasted revenues and gross profits assumptions by comparing to internal communications to the board of directors, to historical results and to recent trends.
    - We evaluated the reasonableness of the forecasted nature, amount and timing of operating expenditure reductions and trends over recent history.
- We evaluated the adequacy of the disclosures included in the financial statements regarding management's plan.

/s/ RSM US LLP

We have served as the Company's auditor since 2022.

Irvine, California
April 1, 2024

RESHAPE LIFESCIENCES INC.

Consolidated Balance Sheets
(in thousands, except share and per share amounts)

	December 31, 2023	December 31, 2022
ASSETS		
Current assets:		
Cash and cash equivalents	$ 4,459	$ 3,855
Restricted cash	100	100
Accounts and other receivables (net of allowance for doubtful accounts of $804 and $410 respectively)	1,659	2,180
Inventory	3,741	3,611
Prepaid expenses and other current assets	337	165
Total current assets	10,296	9,911
Property and equipment, net	60	698
Operating lease right-of-use assets	250	171
Deferred tax asset, net	28	56
Other intangible assets, net	—	260
Other assets	29	46
Total assets	$ 10,663	$ 11,142
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 1,689	$ 1,926
Accrued and other liabilities	1,814	5,040
Warranty liability, current	163	344
Operating lease liabilities, current	111	171
Total current liabilities	3,777	7,481
Operating lease liabilities, noncurrent	151	—
Common stock warrant liability	72	—
Total liabilities	4,000	7,481
Commitments and contingencies (Note 14)		
Stockholders' equity:		
Preferred stock, 10,000,000 shares authorized:		
Series C convertible preferred stock, $0.001 par value; 95,388 shares issued and outstanding at December 31, 2023 and December 31, 2022	—	—
Common stock, $0.001 par value; 300,000,000 shares authorized at December 31, 2023 and December 31, 2022; 23,457,047 and 519,219 shares issued and outstanding at December 31, 2023 and December 31, 2022, respectively	23	1
Additional paid-in capital	642,302	627,935
Accumulated deficit	(635,574)	(624,187)
Accumulated other comprehensive loss	(88)	(88)
Total stockholders' equity	6,663	3,661
Total liabilities and stockholders' equity	$ 10,663	$ 11,142

See accompanying notes to consolidated financial statements.

RESHAPE LIFESCIENCES INC.

Consolidated Statements of Operations
(in thousands, except share and per share amounts)

	Year Ended December 31,	
	2023	2022
Revenue	$ 8,678	$ 11,240
Cost of revenue	3,130	4,438
Gross profit	5,548	6,802
Operating expenses:		
Sales and marketing	7,548	14,093
General and administrative	10,324	17,250
Research and development	2,315	2,537
Impairment of long-lived assets	777	18,744
(Gain) loss on disposal of assets, net	(33)	529
Total operating expenses	20,931	53,153
Operating loss	(15,383)	(46,351)
Other expense (income), net:		
Interest (income) expense, net	(26)	113
Gain on changes in fair value of liability warrants	(3,878)	—
(Gain) loss on foreign currency exchange, net	(22)	141
Other	(122)	(11)
Loss before income tax provision	(11,335)	(46,594)
Income tax expense (benefit)	52	(380)
Net loss	$ (11,387)	$ (46,214)
Net loss per share - basic and diluted:		
Net loss per share - basic and diluted	(1.91)	(108.90)
Shares used to compute basic and diluted net loss per share	5,956,549	424,390

See accompanying notes to consolidated financial statements.

RESHAPE LIFESCIENCES INC.

Consolidated Statements of Comprehensive Loss
(in thousands)

	Year Ended December 31,	
	2023	2022
Net loss	$ (11,387)	$ (46,214)
Foreign currency translation adjustments	—	4
Other comprehensive income, net of tax	—	4
Comprehensive loss	$ (11,387)	$ (46,210)

See accompanying notes to consolidated financial statements.

RESHAPE LIFESCIENCES INC.

Consolidated Statements of Stockholders' Equity
(in thousands, except share amounts)

	Series C Convertible Preferred Stock		Series D Mirroring Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive Income (Loss)	Total Stockholders' Equity
	Shares	Amount	Shares	Amount	Shares	Amount				
Balance December 31, 2021 (As Restated)	95,388	$ —	—	$ —	356,641	$ —	$ 622,399	$ (577,973)	$ (92)	$ 44,334
Net loss	—	—	—	—	—	—	—	(46,214)	—	(46,214)
Other comprehensive income, net of tax	—	—	—	—	—	—	—	—	4	4
Series D Mirroring preferred stock issued	—	—	2,500	—	—	—	—	—	—	—
Series D Mirroring preferred stock canceled	—	—	(2,500)	—	—	—	—	—	—	—
Stock-based compensation expense, net	—	—	—	—	—	—	2,087	—	—	2,087
Cancellation of common stock	—	—	—	—	(20,045)	—	—	—	—	—
Common stock purchased	—	—	—	—	47,851	—	639	—	—	639
Issuance of stock from RSUs	—	—	—	—	21,362	—	—	—	—	—
Issuance of stock for bonuses	—	—	—	—	28,769	—	318	—	—	318
Institutional exercise of warrants	—	—	—	—	84,641	1	2,492	—	—	2,493
Balance December 31, 2022	95,388	$ —	—	$ —	519,219	$ 1	$ 627,935	$ (624,187)	$ (88)	$ 3,661
Net loss	—	—	—	—	—	—	—	(11,387)	—	(11,387)
Other comprehensive income, net of tax	—	—	—	—	—	—	—	—	—	—
Issuance of common stock pursuant to reverse stock split	—	—	—	—	18,399	—	—	—	—	—
Stock-based compensation expense, net	—	—	—	—	—	—	766	—	—	766
Common stock purchased	—	—	—	—	3,246,395	3	10,137	—	—	10,140
Equity issuance costs	—	—	—	—	—	—	(653)			(653)
Issuance of stock from RSUs	—	—			2,546	—	—	—	—	—
Institutional exercise of warrants	—	—	—	—	19,670,488	19	4,117	—	—	4,136
Balance December 31, 2023	95,388	$ —	—	$ —	23,457,047	$ 23	$ 642,302	$ (635,574)	$ (88)	$ 6,663

See accompanying notes to consolidated financial statements.

RESHAPE LIFESCIENCES INC.

Consolidated Statements of Cash Flows
(in thousands)

	Year Ended December 31,	
	2023	2022
Cash flows from operating activities:		
Net loss	$ (11,387)	$ (46,214)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation expense	121	330
Amortization of intangible assets	33	1,823
Impairment of long-lived assets	777	18,744
(Gain) loss on disposal of assets, net	(33)	529
Stock-based compensation	766	2,087
Bad debt expense	395	(43)
Provision for inventory excess and obsolescence	335	579
Deferred income tax	28	(423)
Gain on changes in fair value of liability warrants	(3,878)	—
Other noncash items	17	(23)
Change in operating assets and liabilities:		
Accounts and other receivables	125	678
Inventory	(465)	(1,187)
Prepaid expenses and other current assets	(172)	1,141
Accounts payable and accrued liabilities	(3,457)	448
Warranty liability	(182)	(371)
Other	17	—
Net cash used in operating activities	(16,960)	(21,902)
Cash flows from investing activities:		
Capital expenditures	(43)	(131)
Proceeds from sale of capital assets	33	39
Cash used in investing activities:	(10)	(92)
Cash flows from financing activities:		
Proceeds from sale and issuance of securities, net	13,438	639
Proceeds from warrants exercised	4,136	2,491
Net cash provided by financing activities	17,574	3,130
Effect of currency exchange rate changes on cash and cash equivalents	—	4
Net change in cash, cash equivalents and restricted cash	604	(18,860)
Cash, cash equivalents and restricted cash at beginning of period	3,955	22,815
Cash, cash equivalents and restricted cash at end of period	$ 4,559	$ 3,955
Supplemental disclosure:		
Cash paid for income taxes	$ 10	$ 5
Cash paid for interest	—	—
Noncash investing and financing activities:		
Capital expenditures accruals	$ —	$ 6

See accompanying notes to consolidated financial statements.

ReShape Lifesciences Inc.

Notes to Consolidated Financial Statements

(1) Description of the Business and Risks and Uncertainties

Description of Business

We were incorporated under the laws of Delaware on January 2, 2008. On June 15, 2021, we completed a merger with ReShape Lifesciences Inc. Pursuant to the Merger Agreement, a wholly owned subsidiary of Obalon merged with and into ReShape, with ReShape surviving the merger as a wholly owned subsidiary of Obalon. As a result of the merger, Obalon, the parent company, was renamed "ReShape Lifesciences Inc." and ReShape was named ReShape Weightloss Inc. ReShape Lifesciences' shares of common stock trade on the Nasdaq under the symbol RSLS.

ReShape Medical (formerly ReShape Lifesciences Inc.) was incorporated in the state of Minnesota in December 2002 and reincorporated in the state of Delaware in July 2004. In 2017, the Company changed its name from EnteroMedics Inc. to ReShape Lifesciences Inc.

The Company is headquartered in Irvine, California. The Company is a developer of minimally invasive medical devices that advance bariatric surgery to treat obesity and metabolic diseases. The Company's current portfolio consists of the Lap-Band® Adjustable Gastric Banding System, the Obalon Balloon System, the first and only swallowable gas filled balloon system, and the Diabetes Bloc-Stim Neuromodulation, a technology under development as a new treatment for type 2 diabetes mellitus. The Company sells the Lap-Band worldwide and is managed in the following geographical regions: United States, Australia, Europe and the rest of world. Refer to Note 11 for additional information about operating segments.

Risks and Uncertainties

The Company continues to devote significant resources to developing its product technology, commercialization activities and raising capital. These activities are subject to significant risks and uncertainties, including the ability to obtain additional financing, and there can be no assurance that the Company will be successful in obtaining additional financing on favorable terms, or at all. If adequate funds are not available, the Company may have to further reduce its cost structure until financing is obtained and/or delay development, or commercialization of products, or license to third parties the rights to commercialize products, or technologies that the Company would otherwise seek to commercialize. Refer to Note 3 for additional information about the Company's liquidity, going concern and management's plans.

The medical device industry is characterized by frequent and extensive litigation and administrative proceedings over patent and other intellectual property rights. Whether a product infringes a patent involves complex legal and factual issues, the determination of which is often difficult to predict, and the outcome may be uncertain until the court has entered final judgment and all appeals are exhausted. The Company's competitors may assert that its products or the use of the Company's products are covered by U.S. or foreign patents held by them. Refer to Note 14 for additional information about contingencies and litigation matters.

(2) Summary of Significant Accounting Policies

Basis of Presentation

The Company has prepared the accompanying consolidated financial statements in conformity with accounting principles generally accepted in the United States of America ("GAAP").

Reverse Stock Splits

On December 23, 2022, at the commencement of trading, the Company effected a 1-for-50 reverse stock split. Accordingly, all share and per share amounts for the periods presented in the accompanying consolidated financial

statements and notes thereto have been adjusted retroactively, where applicable, to reflect the reverse stock split. No fractional shares were issued in connection with the reverse stock split.

Principles of Consolidation

The accompanying consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries. All intercompany transactions and accounts have been eliminated in consolidation.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from those estimates.

Cash and Cash Equivalents

The Company considers highly liquid investments generally with maturities of 90 days or less when purchased to be cash equivalents. Cash equivalents are stated at cost, which approximates market value. The Company's cash equivalents are primarily in money market funds and certificates of deposit. The Company deposits its cash and cash equivalents in high-quality credit institutions.

Restricted Cash

Restricted cash represents $100 thousands at both December 31, 2023 and 2022, related to a collateral money market account maintained by the Company as collateral in connection with corporate credit cards with Silicon Valley Bank.

The following table provides a reconciliation of cash, cash equivalents and restricted cash reported in the consolidated balance sheets to the same total reported in the consolidated statements of cash flows (in thousands):

	December 31, 2023	December 31, 2022
Cash and cash equivalents	$ 4,459	$ 3,855
Restricted cash	100	100
Total cash, cash equivalents, and restricted cash in the consolidated statement of cash flows	$ 4,559	$ 3,955

Accounts Receivable

The majority of the Company's accounts receivable arise from direct product sales and sales of products under consignment arrangements, and have payment terms that generally require payment within 30 to 90 days. The Company provides reserves against accounts receivable for estimated losses that may result from a customer's inability to pay based on customer-specific analysis and general matters such as current assessments of past due balances, economic conditions and forecasts, and historical credit loss activity. Amounts determined to be uncollectible are charged or written-off against the reserve. Additionally, under the current expected credit loss model, we utilize historical loss rates based on number of days past due, adjusted to reflect current economic conditions and forecasts of future economic conditions.

Inventory

The Company accounts for inventory at the lower of cost or net realizable value, where net realizable value is based on market prices less costs to sell. The Company establishes inventory reserves for obsolescence based upon specific identification of expired or unusable units with a corresponding provision included in cost of revenue. The allowance for excess and slow-moving inventory was $1.0 million at both December 31, 2023 and 2022.

Property and Equipment, Net

Property and equipment are stated at cost less accumulated depreciation and amortization. Depreciation of property and equipment is computed using the straight-line method over their estimated useful lives of five to seven years for furniture and equipment and three to five years for computer hardware and software. Leasehold improvements are amortized on a straight-line basis over the lesser of their useful life or the term of the lease. Upon retirement or sale, the cost and related accumulated depreciation or amortization are removed from the Consolidated Balance Sheets and the resulting gain or loss is reflected in the Consolidated Statements of Operations. Repairs and maintenance are expensed as incurred.

Goodwill and Other Long-Lived Assets

Goodwill represents the excess of the cost of an acquired business over the fair value of the identifiable tangible and intangible assets acquired and liabilities assumed in a business combination.

Indefinite-lived intangible assets relate to in-process research and development ("IPR&D") acquired in business combinations. The estimated fair values of IPR&D projects acquired in a business combination which have not reached technological feasibility are capitalized and accounted for as indefinite-lived intangible assets until completion or abandonment of the projects. In accordance with guidance within FASB ASC 350 “Intangibles - Goodwill and Other,” goodwill and identifiable intangible assets with indefinite lives are not subject to amortization but must be evaluated for impairment.

Finite-lived intangible assets primarily consist of developed technology and trademarks/tradenames and were being amortized on a straight-line basis over their estimated useful lives. During 2023, the Company fully impaired the finite-lived intangible assets, see Note 6 and Note 7, for further details.

We evaluate long-lived assets, including finite-lived intangible assets, for impairment by comparison of the carrying amounts to future net undiscounted cash flows expected to be generated by such assets when events or changes in circumstances indicate the carrying amount of an asset group may not be recoverable. Should an impairment exist, the impairment loss would be measured based on the excess carrying value of the asset over the asset’s fair value or estimates of future discounted cash flows. The Company recorded an impairment to developed technology and IPR&D intangible assets for both the years ended December 31, 2023 and 2022, for further details see Note 6 and Note 7.

Income Taxes

Income taxes are accounted for under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carry-forwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date. A valuation allowance for deferred income tax assets is recorded when it is more likely than not that some portion or all of the deferred income tax assets will not be realized. The Company’s policy is to classify interest and penalties related to income taxes as income tax expense in the consolidated statements of operations.

Foreign Currency

When the local currency of the Company's foreign subsidiaries is the functional currency, all assets and liabilities are translated into United States dollars at the rate of exchange in effect at the balance sheet date. Income and expense items are translated at the weighted-average exchange rate prevailing during the period. The effects of foreign currency translation adjustments for these subsidiaries are deferred and reported in stockholders’ equity as a component of Accumulated Other Comprehensive Loss. The effects of foreign currency transactions denominated in a currency other than an entity's functional currency are included in Gain on foreign currency exchange in the Consolidated Statements of Operations. The Company does not hedge foreign currency translation risk in the net assets and income it reports from these sources.

Revenue Recognition

The Company recognizes revenue when it satisfies a performance obligation by transferring control of the promised goods or services to its customers, in an amount that reflects the consideration the Company expects to be entitled to in exchange for those goods or services. Product sales consist of a single performance obligation that the Company satisfies at a point in time. The Company recognizes product revenue when the following events have occurred: (a) the Company has transferred physical possession of the products, (b) the Company has a present right to payment, (c) the customer has legal title to the products, and (d) the customer bears significant risks and rewards of ownership of the products.

For the Company's Lap-Band product, these criteria are met under the agreements with most customers upon product shipment. This includes sales to distributors, who sell the products to their customers, take title to the products and assume all risks of ownership at the time of shipment. Distributors are obligated to pay within specified terms regardless of when, if ever, they sell the products.

Taxes collected from customers and remitted to governmental authorities are accounted for on a net basis. Accordingly, such amounts are excluded from revenues. Amounts billed to customers related to shipping and handling are included in revenues. Shipping and handling costs related to revenue producing activities are included in cost of sales.

Variable Consideration

The Company records revenue from customers in an amount that reflects the transaction price it expects to be entitled to after transferring control of the goods. Customers and distributors of the Lap-Band product generally have the right to return or exchange products purchased for up to thirty days from the date of product shipment contingent upon a 10% restocking fee. Any such return or exchange of Lap-Band products will be recorded as a reduction of revenue in the period incurred.

Certain Lap-Band customers may receive volume rebates or discounts. Discounts are treated as a reduction in sales price and therefore corresponding revenue at the point of sale. Any volume rebates offered would be estimated and reserved as a reduction in revenue.

Warranty

The Company generally provides warranties against defects in materials and workmanship, and provides replacements at no charge to the customer, as long as the customer has notified the Company within 30 days of delivery and returns such products in accordance with the Company's instructions. As they are considered assurance-type warranties, the Company does not account for them as separate performance obligations. Warranty reserve requirements are based on a specific assessment of the products sold with warranties where a customer asserts a claim for warranty or a product defect.

For the vBloc product line, the Company has a 5-year warranty on all implantable parts. vBloc sales began in 2015 and ended in 2018, so this warranty period went through 2023.

Cost of Goods Sold

The Company expenses to cost of goods sold, direct and indirect inventory costs as sold. Additionally, the Company expenses to costs of goods sold, various indirect costs such as warehousing finished goods, shipping costs of sales to customers, non-production salaries and consulting costs relating to inventory, and portions of salaries that are not allocatable to operating expenses.

Advertising Cost

Advertising costs are expensed as incurred and totaled $2.2 million and $6.8 million for the years ended December 31, 2023 and 2022, respectively.

Stock-Based Compensation

The Company applies ASC 718 Compensation — Stock Compensation and accordingly records compensation expense for stock options over the vesting or service period using the fair value on the date of grant, as calculated by the Company using the Black-Scholes model. The Company's stock-based compensation plans are more fully described in Note 12.

Net Loss Per Share

Basic net loss per share is computed by dividing net loss by the weighted-average number of common shares outstanding during the period, including the pre-funded warrants, see Note 10, that were reclassified from warrant liability to equity as a result of the reverse stock split. Diluted net loss per share is based on the weighted-average common shares outstanding during the period plus dilutive potential common shares calculated using the treasury stock method. Such potentially dilutive shares are excluded when the effect would be to reduce a net loss per share. For purposes of basic and diluted per share computations, loss from continuing operations and net loss are reduced by the down round adjustments for convertible preferred stock and warrants.

The following table sets forth the potential shares of common stock that are not included in the calculation of diluted net loss per share because to do so would be anti-dilutive as of the end of each period presented:

	December 31,	
	2023	2022
Stock options	12,497	21,416
Unvested restricted stock units	1,417	4,530
Convertible preferred stock	10	10
Warrants	15,598,392	193,476

Concentration of Credit Risk, Interest Rate Risk and Foreign Currency Exchange Rate

Financial instruments that potentially subject the Company to significant concentrations of credit risk consist primarily of cash and cash equivalents, restricted cash and trade accounts receivable. Cash and cash equivalents are primarily deposited in demand and money market accounts. At times, such deposits may be in excess of insured limits. Investments in money market funds are not considered to be bank deposits and are not insured or guaranteed by the federal deposit insurance company or other government agency. These money market funds seek to preserve the value of the investment at $1.00 per share; however, it is possible to lose money investing in these funds. The Company has not experienced any losses on its deposits of cash and cash equivalents. To minimize the risk associated with trade accounts receivable, management maintains relationships with the Company's customers that allow management to monitor current changes in business operations so the Company can respond as needed.

Substantially all of the Company's revenue is denominated in U.S. dollars. Only a small portion of revenue and expenses are denominated in foreign currencies, principally the Australian dollar and Euro for 2023 and 2022. The Company has not entered into any hedging contracts. Future fluctuations in the value of the U.S. dollar may affect the price competitiveness of the Company's products outside the U.S.

Fair Value of Financial Instruments

Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date (referred to as an "exit price"). Fair value of an asset or liability considers assumptions that market participants would use in pricing the asset or liability, including consideration of non-performance risk.

Assets and liabilities are categorized into a three-level fair value hierarchy based on valuation inputs used to determine fair value.

Level 1 inputs are quoted prices in active markets for identical assets or liabilities.

Level 2 inputs are observable, either directly or indirectly.

Level 3 inputs are unobservable due to little or no corroborating market data.

The carrying amounts of the Company's financial instruments, including cash equivalents, accounts receivable, accounts payable and certain accrued and other liabilities approximate fair value due to their short-term maturities. Refer to Note 7 regarding the impairment of developed technology and IPR&D and Note 10 regarding fair value measurements and inputs of warrants.

Recent Accounting Pronouncements

New accounting standards adopted by the Company in 2023 are discussed below or in the related notes, where appropriate.

In June 2016, the FASB issued ASU 2016-13, Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments, which is intended to provide financial statement users with more useful information about expected credit losses on financial assets held by a reporting entity at each reporting date. In May 2019, the FASB issued ASU No. 2019-05, which amended the new standard by providing targeted transition relief. The new guidance replaces the existing incurred loss impairment methodology with a methodology that requires consideration of a broader range of reasonable and supportable forward-looking information to estimate all expected credit losses. In November 2019, the FASB issued 2019-11, which amended the new standard by providing additional clarification. This guidance is effective for the fiscal years and interim periods within those years beginning after December 15, 2022. This guidance became effective on January 1, 2023 and did not have a material impact to the consolidated financial statements.

New accounting standards not yet adopted are discussed below.

In December 2023, the FASB issued ASU 2023-09, Income Taxes (Topic 740): Improvements to Income Tax Disclosures, which requires entities to provide additional information in the rate reconciliation and additional disaggregated disclosures about income taxes paid. This guidance requires public entities to disclose in their rate reconciliation table additional categories of information about federal, state, and foreign income taxes and to provide more details about the reconciling items in some categories if the items meet a quantitative threshold. The guidance is effective for annual periods beginning after December 15, 2024. The Company does not expect the adoption of this guidance to impact its financial statements, but the guidance will impact its income tax disclosures.

In November 2023, the FASB issued ASU 2023-07, Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosures. The amendments require disclosure of significant segment expenses and other segment items and requires entities to provide in interim periods all disclosures about a reportable segment's profit or loss and assets that are currently required annually. The amendment also requires disclosure of the title and position of the chief operating decision maker ("CODM") and an explanation of how the CODM uses the reported measure(s) of segment profit or loss in assessing segment performance and deciding how to allocate resources. This guidance is effective for fiscal years beginning after December 15, 2023, and interim periods within fiscal years beginning after December 15, 2024. Retrospective application is required, and early adoption is permitted. The Company is currently evaluating the impact the guidance will have on its consolidated financial statements.

(3) Liquidity and Management's Plans

The Company currently does not generate revenue sufficient to offset operating costs and anticipates such shortfalls to continue, primarily due to the introduction of GLP-1 pharmaceuticals, which has taken a significant market share of the medical treatments for obesity. As of December 31, 2023, the Company had net working capital of approximately $6.5 million, primarily due to cash and cash equivalents and restricted cash of $4.6 million. The Company's principal source of liquidity as of December 31, 2023, consisted of approximately $4.5 million of cash and cash equivalents, and $1.7 million of accounts receivable. The Company completed multiple public offerings during 2023, which the Company raised over $17.6 million in cash and cash equivalents after deducting underwriting expenses, commissions and offering expenses. Based on our available cash resources, we may not have sufficient cash on hand to fund our current operations for more than 12 months from the date of filing this Form 10-K. This condition raises substantial doubt about our ability to continue as a going concern.

The Company's anticipated operations include plans to (i) grow sales and operations of the Company with the Lap-Band product line both domestically and internationally as well as to obtain cost savings synergies, (ii) introduce to the market Lap-Band 2.0 FLEX, (iii) continue development of the Diabetes Bloc-Stim Neuromodulation ("DBSN") device, (vi) identifying strategic merger and acquisition alternatives, (v) seek opportunities to find strategic partners to leverage our intellectual property portfolio and custom development services to provide third-party sales and licensing opportunities, and (vi) explore and capitalize on synergistic opportunities to expand our portfolio and offer future minimally invasive treatments and therapies in the obesity continuum of care. The Company believes that it has the flexibility to manage the growth of its expenditures and operations depending on the amount of available cash flows, which could include reducing expenditures for marketing, and product development activities. If managements' plans don't develop, and the Company doesn't get additional cash raises, at the current burn rate, management expects to run out of cash during the third quarter of 2024.

The Company has incurred significant net losses and negative cash flows from operations since inception, and as a result has an accumulated deficit of approximately $635.6 million. The Company also expects to incur a net loss and negative cash flows from operations for 2024.

The Company will be required to raise additional capital, however, there can be no assurance as to whether additional financing will be available on terms acceptable to the Company, if at all. If sufficient funds on acceptable terms are not available when needed, it would have a negative impact on the Company's financial condition and could force the Company to delay, limit, reduce, or terminate product development or future commercialization efforts or grant rights to develop and market product candidates or testing products that the Company would otherwise plan to develop.

Therefore, the plans cannot be deemed probable of being implemented. As a result, the Company's plans do not alleviate substantial doubt about our ability to continue as a going concern.

The accompanying financial statements have been prepared on a going concern basis, which contemplates the realization of assets and satisfaction of liabilities in the ordinary course of business. The financial statements do not include any adjustments relating to the recoverability and classification of recorded asset amounts or the amounts and classification of liabilities that might result from the outcome of the uncertainties described above.

COVID-19 and Supply Chain Disruptions Risk and Uncertainties

The impact of the COVID-19 outbreak has subsided substantially in the U.S. but continues to result in reduced activity levels outside of the U.S., such as continued restrictions on travel and business operations and advising or requiring individuals to limit or forego their time outside of their homes or places of business.

In response to the global supply chain instability and inflationary cost increases, we continue to take action to minimize, as much as possible, any potential adverse impacts by working closely with our suppliers to closely monitor the availability of raw materials, lead times, and freight carrier availability.

We continuously monitor domestic and global economic conditions, potential outbreaks in viruses that may impact the medical field, and introduction of alternative procedures, pharmaceuticals and weight loss trends that may impact our business. With this information, we develop new models and approaches to achieve the best outcomes.

(4) Supplemental Balance Sheet Information

Inventory

	December 31, 2023	December 31, 2022
Raw materials	$ 1,020	$ 832
Sub-assemblies	1,379	864
Finished goods	1,342	1,915
Total inventory	$ 3,741	$ 3,611

Prepaid expenses and other current assets:

	December 31, 2023	December 31, 2022
Prepaid insurance	$ 110	$ 78
Patents	13	—
Prepaid advertising and marketing	41	3
Taxes	47	—
Other current assets	126	84
Total prepaid expenses and other current assets	$ 337	$ 165

Accrued and other liabilities:

	December 31, 2023	December 31, 2022
Payroll and benefits	$ 701	$ 1,829
Accrued legal settlements	200	1,775
Customer deposits	639	510
Taxes	61	119
Accrued professional	155	316
Other liabilities	58	491
Total accrued and other liabilities	$ 1,814	$ 5,040

(5) Property and Equipment

Property and equipment consist of the following:

	December 31, 2023	December 31, 2022
Machinery and equipment	$ 61	$ 582
Furniture and equipment	5	27
Computer hardware and software	78	136
Tooling and molds	6	199
Leasehold improvements	—	19
Construction in progress	—	66
	150	1,029
Less accumulated depreciation and amortization	(90)	(331)
Property and equipment, net	$ 60	$ 698

Depreciation expense for the years ended December 31, 2023 and 2022, was approximately $121 thousand and $330 thousand, respectively.

During the year ended December 31, 2023 the Company determined the carrying value of the property plant and equipment had been impaired due to the current financial condition of the Company and recognized a non-cash impairment charge of $0.5 million. The fair value was determined by estimating the amount the Company could receive if they were to sell the assets.

(6) Intangible Assets

During the year ended December 31, 2023 the Company determined the carrying value of the developed technology and trademarks/tradenames had been impaired due to the financial condition of the Company and recognized a non-cash impairment charge of $0.2 million, which fully impaired the intangible assets.

The consolidated intangible assets at December 31, 2022 consist of the following:

	December 31, 2022			
	Weighted Average Useful Life (years)	Gross Carrying Amount	Accumulated Amortization	Net Book Value
Finite-lived intangible assets:				
Developed technology	10.0	$ 5,989	$ (5,805)	$ 184
Trademarks/Tradenames	10.0	462	(386)	76
Total		$ 6,451	$ (6,191)	$ 260

The gross amount and accumulated impairment loss of indefinite-lived intangible assets are as follows (in thousands):

	December 31,	
	2023	2022
Indefinite-lived intangible assets		
Gross amount	$ —	$ 20,721
Accumulated impairment loss	—	(20,721)
Total Indefinite-lived intangible assets	$ —	$ —

Amortization expense for the years ended December 31, 2023 and 2022, was approximately $33 thousand and $1.8 million, respectively.

The Company had impaired all of its remaining intangible assets during 2023, therefore there is no future projection of amortization expense at December 31, 2023.

(7) Impairment of Intangible Assets and Goodwill

During the year ended December 31, 2023, the Company determined a triggering event occurred due to the decline in the Company's market capitalization, and as such, the Company performed an impairment analysis of the long-lived assets. It was determined that the carrying value of the developed technology and trademarks/tradenames had been fully impaired and recognized a non-cash impairment charge of $0.2 million on the consolidated statement of operations for the year ended December 31, 2023 and a consolidated balance sheet value as of December 31, 2023, of zero.

As of December 31, 2022, the Company determined a triggering event occurred due to the decline in the Company's market capitalization, and as such, the Company performed an impairment analysis of the long-lived assets. It was determined the developed technology related to the Obalon Balloon was fully impaired, as the Company has not been able to start up production or find a partner to manufacture the Obalon Balloon system. Based on this the Company has no current projections for revenues related to the Obalon Balloon and has fully impaired the asset of approximately $2.4 million. Additionally, due to the continuance of COVID-19, the Company has revised the near-term projected

revenues related to the Lap-Band asset group and has recognized an impairment charge to both the developed technology and tradenames of approximately $8.4 million and $0.5 million, respectively. The fair value of the Lap-Band developed technology was estimated using an income approach using Level 3 assumptions which included discounting projected future net cash flows to their present value, with a discount rate of 17.9%.

The Company also determined a triggering event occurred, as the Company elected to stop the clinical trials for the ReShape Vest and was closing out the previous trial that occurred, as significant additional clinical work and cost would be required to achieve regulatory approval. Additionally, the Company currently does not plan to pursue the development of the ReShape Vest. As such, the Company determined the carrying value of the IPR&D asset and related trademarks were impaired and recognized non-cash impairment charge of approximately $6.9 million and $0.5 million, respectively, on the consolidated balance sheet as of December 31, 2022, which reduced the value of these assets to zero.

(8) Leases

The Company had a noncancelable operating lease for office and warehouse space in San Clemente, which expired June 30, 2023. The Company also had an operating lease and warehouse space in Carlsbad, California, which expired June 30, 2022. On March 13, 2023, the Company entered into a lease for approximately 5,038 square feet of office and warehouse space at 18 Technology Drive, Suite 110, Irvine, California 92618 and relocated our principal executive offices from our former San Clemente, California location to the Irvine, California location. The Irvine, California lease has a term of 36 months commencing on May 1, 2023.

The Company does not have any short-term leases or financing lease arrangements and the effects of any lease modifications have not been material. Lease and non-lease components are accounted for separately.

The Company determines the lease term as the noncancelable period of the lease, and may include options to extend or terminated the lease when reasonably certain that the Company will exercise that option. Leases with a term of 12 months or less are not recognized on the balance sheet. The Company uses its incremental borrowing rate based on the information available at lease commencement in determining the present value of unpaid lease payments. Right-of-use assets also include any lease payments made at or before lease commencement and any initial direct costs incurred, and exclude any lease incentives received.

Operating lease costs for the years ended December 31, 2023 and 2022, were $0.3 million and $0.7 million, respectively. Variable lease costs were not material.

Supplemental information related to operating leases is as follows:

Balance Sheet information	**December 31, 2023**	**December 31, 2022**
Operating lease ROU assets	$ 250	$ 171
Operating lease liabilities, current portion	$ 111	$ 171
Operating lease liabilities, long-term portion	151	—
Total operating lease liabilities	$ 262	$ 171

Cash flow information for the twelve months ended December 31,	**2023**	**2022**
Cash paid for amounts included in the measurement of operating leases liabilities	$ 228	$ 560

Maturities of operating lease liabilities at December 31, 2023

were as follows:

2024	111
2025	115
2026	59
Total lease payments	285
Less: imputed interest	23
Total lease liabilities	$ 262
Weighted-average remaining lease term at end of period (in years)	2.4
Weighted-average discount rate at end of period	6.9 %

(9) Equity

The Company may issue preferred stock, common stock, or both, in connection with underwritten public offerings, registered direct offerings, private placements or business acquisitions. Such issuances of equity typically include the issuance or sale of warrants to purchase common stock. Certain issuances of convertible preferred stock and warrants may contain anti-dilutive features apart from customary adjustments for splits and reverse splits of common stock (collectively, "down round features"). When a series of convertible preferred stock contains this non-standard down round feature, the Company is required to adjust the conversion price in the event of future stock sales at a lower unit price. When warrants issued in connection with an equity transaction contain, or are amended to contain, this non-standard down round feature, the Company is required to adjust the exercise price upon the issuance of any shares of common stock or securities convertible into shares of common stock below the then-existing exercise price and evaluate and account for the value attributable to the reduced warrant exercise price. In the event down round adjustments are triggered, the values attributable to the adjustment to the convertible preferred stock conversion price and warrant exercise price are recorded as an increase to additional paid-in capital and increase to accumulated deficit.

All series of the Company's convertible preferred stock are classified in stockholders' equity, including those with the down round feature, when applicable to the equity transaction.

Warrants to purchase common stock are classified in stockholders' equity, including those issued with the down round feature, as they are both indexed to the Company's own stock and meet the scope exception in ASC 815 "Derivatives and Hedging."

The Company had the following equity transactions during the years ended December 31, 2023 and 2022:

November 2023 Exercise of Warrants for Common Stock

On November 21, 2023, the Company entered into a warrant exercise agreement with an existing accredited investor to exercise certain outstanding warrants to purchase up to an aggregate of 5,382,500 shares of the Company's common stock (the "Existing Warrants"). In consideration for the immediate exercise of the Existing Warrants for cash, the exercising holders received new unregistered warrants to purchase up to an aggregate of 10,765,000 shares (equal to 200% of the shares of common stock issued in connection with the Exercise) of the Company's common stock (the "New Warrants") in a private placement. In connection with the Exercise, the Company also agreed to reduce the exercise price of the Existing Warrants from $0.2503 to $0.23 and to reduce the exercise price of the remaining unexercised warrants from either $0.33 or $0.2503 to $0.23 per share, which is equal to the most recent closing price of the Company's common stock on The Nasdaq Capital Market prior to the execution of the warrant exercise agreement.

The New Warrants will become exercisable six months after issuance at an exercise price of $0.23 per share and have a term of exercise equal to five and one-half years. The Existing Warrants and the New Warrants each include a beneficial ownership limitation that prevents the investor from owning more than 9.99%, with respect to the Existing Warrants, and 4.99%, with respect to the New Warrants, of the Company's outstanding common stock at any time.

The gross proceeds to the Company from the Exercise was approximately $1.2 million, prior to deducting warrant inducement agent fees and estimated offering expenses. The Company intends to use the remainder of the net proceeds for commercial growth, working capital and general corporate purposes.

Maxim Group LLC ("Maxim") acted as the exclusive warrant inducement agent and financial advisor to the Company for the Exercise. The Company agreed to pay Maxim an aggregate cash fee equal to 6.5% of the gross proceeds received by the Company from the Exercise.

October 2023 Securities Offering

On October 3, 2023, the Company completed a Securities Purchase Agreement with certain investors pursuant to which the Company agreed to issue and sell to the investors (i) 1,770,000 shares of the Company's common stock, par value $0.001 per share (the "Common Stock"), (ii) warrants to purchase up to 13,650,000 shares of Common Stock at an initial exercise price of $0.33 per share (the "Common Warrants") and (iii) pre-funded warrants to purchase 7,330,000 shares of Common Stock at an exercise price of $0.001 per share. The securities were sold as part of units at a price of $0.33 per unit or, with respect to the units including pre-funded warrants, $0.329 per unit. In connection with the offering, the Company also agreed that certain existing warrants to purchase up to an aggregate of 965,351 shares of Common Stock at an exercise price of $3.07 per share and warrants to purchase up to an aggregate of 382,500 shares of Common Stock at an exercise price of $8.00 per share that were previously issued to one of the investors, were amended effective upon the closing of the Offering so that the amended warrants have an exercise price of $0.33 per share. The net proceeds from the offering were approximately $2.8 million, after deducting the placement agent fees and before deducting offering expenses.

April 2023 Securities Offering

On April 20, 2023, the Company entered into a Securities Purchase Agreement with a certain institutional investor, pursuant to which the Company agreed to issue and sell to the Investor in a registered direct offering (i) 291,395 shares of the Company's common stock, par value $0.001 per share, and (ii) pre-funded warrants to purchase an aggregate of 509,300 shares of Common Stock. Each share of common stock was sold at a price of $3.07 per share and each Pre-funded Warrant was sold at an offering price of $3.069 per share underlying such Pre-funded Warrants, for aggregate gross proceeds of approximately $2.5 million before deducting the placement agent's fees and the offering expenses. The Company has been using the net proceeds of this offering to continue implementation of its growth strategies, for working capital and general corporate purposes. In addition, under the Purchase Agreement, the Company also agreed to issue and sell to the Investor in a concurrent private placement warrants to purchase an aggregate of 800,695 shares of common stock.

In connection with the Offering, the Company also agreed that certain existing warrants to purchase up to an aggregate of 164,656 shares of Common Stock that were issued to the Investor, at an exercise price of $15.00 per share, were amended effective upon the closing of the Offering so that the amended warrants have an exercise price of $3.07. The Company's exclusive placement agent in connection with the Offering, Maxim Group LLC, received a cash fee equal to 7.0% of the gross proceeds received by the Company from the sale of the securities in Offering, as well as reimbursement for certain expenses, and warrants to purchase up to 40,035 shares of Common Stock, which is equal to 5.0% of the aggregate amount of shares of Common Stock issued in the Offering, at an exercise price of $3.38 per share.

February Public Offering of Common Stock and Warrants

On February 8, 2023, the Company closed a public offering of 1,275,000 units, with each consisting of one share of its common stock, or one pre-funded warrant to purchase one share of its common stock, and one warrant to purchase one and one-half shares of its common stock. Each unit was sold at public offering price of $8.00. The warrants in the units are immediately exercisable at a price of $8.00 per share and expire five years from the date of issuance. Alternatively, each warrant can be exercised pursuant to the "alternative cashless exercise" provision, to which the holders would receive an aggregate number of shares of common stock equal the product of (x) the aggregate number of shares of common stock that would be issuable upon a cash exercise and (y) 0.50. For purposes of clarity, one common warrant to purchase one and one-half shares would be exercisable for 0.75 shares under this alternative cashless exercise provision. The shares of common stock (or pre-funded warrants in lieu thereof) and accompanying warrants were only purchasable together in this offering but were issued separately and immediately separable upon issuance. As of

December 31, 2023, warrants to purchase 1,674,376 shares of common stock have been exercised under the alternative cashless exercise for a total of 835,313 shares of common stock.

Gross proceeds, before deducting underwriting discounts and commissions and estimated offering expenses, are approximately $10.2 million. The Company has been using the net proceeds of this offering to continue implementation of its growth strategies, for working capital and general corporate purposes.

The Company also granted the underwriters an option to purchase an additional 191,250 shares of common stock and/or additional warrants to purchase up to 286,875 shares of common stock, to cover over-allotments, of which Maxim Group LLC exercised its option to purchase additional warrants to purchase 286,875 shares of common stock.

November 2022 Sale of Common Stock

On November 8, 2022, the Company entered into a securities purchase agreement with an existing accredited investor, to issue and sell 47,851 shares of common stock, 2,500 shares of Series D Mirroring Preferred stock for $0.001 per share, which automatically terminated subsequent to the shareholder meeting on December 14, 2022, and prefunded warrants to purchase an aggregate of 9,841 shares of common stock. Each share of common stock was sold at a price of $13.00 per share, and each pre-funded warrant was sold at an offering price of $12.95 per share underlying such pre-funded warrants, for aggregate gross proceeds of $750,000 before deducting the placement agent's fees and offering expenses. Under the purchase agreement, the Company also agreed to issue and sell to the investor in a concurrent private placement warrants to purchase an aggregate of 57,693 shares of common stock. The Company intends to use the remainder of the net proceeds for commercial growth, working capital and general corporate purposes.

In connection with the offering, the Company also entered into a warrant amendment agreement with the investor. Under the warrant amendment agreement, the Company agreed to amend certain existing warrants to purchase up to 106,963 shares of common stock that were previously issued to the investor, with an exercise price of $33.33 per share and expiration dates of June 2026 and December 2029, in consideration of their purchase of securities in the offering as follows: (i) lower the exercise price of the existing warrants to $15.00 per share, (ii) provide the existing warrants as amended, will not be exercisable until six months following the closing date of the offering, and (iii) extend the expiration date of the existing warrants with an expiration date of June 2026 by five and one-half years following the close of the offering.

June 2022 Exercises of Warrants for Common Stock

On June 16, 2022, the Company entered into a warrant exercise agreement with an existing accredited investor to exercise certain outstanding warrants to purchase up to an aggregate of 74,773 shares of common stock. In consideration for the immediate exercise of the existing warrants for cash, the exercising holders received new unregistered warrants to purchase up to an aggregate of 74,773 shares (equal to 100% of the shares of common shares exercised) of the Company's common stock (the "New Warrants") in a private placement pursuant to Section (4)(2) of the Securities Act. In connection with the exercise, the Company also agreed to reduce the exercise price of the existing warrants and 32,190 remaining unexercised warrants from $300.00 to $33.33 per share, which is equal to the most recent closing price of the Company's common stock on the Nasdaq prior to the execution of the warrant exercise agreement. For further details see Note 10 below.

The gross proceeds to the Company from the exercise was approximately $2.5 million, prior to deducting warrant inducement agent fees and estimated offering expenses. The Company intends to use the remainder of the net proceeds for commercial growth, working capital and general corporate purposes.

Common Stock Issued Related to Stock Awards and Options

Restricted Stock Units

The Company issued restricted stock units ("RSUs") to certain members of the management and Board of Directors. During the year ended December 31, 2023, the Company issued 2,546 shares of common stock subject to the vesting of the awards.

During the year ended December 31, 2022, the Company issued 50,131 shares of common stock subject to the vesting of the awards, of which 28,769 shares of common stock were related to bonus in-leu of cash. For further details see Note 12.

Exercise of Stock Options

There were no exercises of stock options during the years ended December 31, 2023 and 2022.

Series C Convertible Preferred Stock

The Series C convertible stock has a liquidation preference of $274.88 per share. Holders of the Series C convertible preferred stock have the right to convert their shares into shares of common stock instead of receiving the liquidation preference. The Series C convertible preferred stock is entitled to dividends on an as-if-converted-to-common stock basis if such dividends are paid on shares of common stock. In general, the holders of the Series C convertible preferred stock do not have voting rights, except in connection with director elections.

(10) Warrants

The Company's grants of warrants to purchase common stock are primarily in connection with equity and debt financings. See Note 9 for additional information about equity financings and the related issuance of warrants. Warrant activity was as follows:

	Shares	
Balance December 31, 2021	139,047	
Issued	145,192	(1)
Exercised	(84,614)	(2)
Cancelled	(6,149)	
Balance December 31, 2022	193,476	
Issued	35,912,718	(3)
Exercised	(20,507,676)	(4)
Cancelled	(126)	
Balance December 31, 2023	15,598,392	

(1) Warrants issued in 2022 includes: 74,773 reload warrants, 57,693 common stock purchase warrants, 2,885 representative's warrants, and 9,841 pre-funded warrants.
(2) Warrants exercised in 2022 includes: 74,773 reload warrants at an exercise price of $33.33 per share, and 9,841 pre-funded warrants at an exercise price of $0.05 per share.
(3) Warrants issued in 2023 includes: 27,415,070 common stock purchase warrants, of which 2,199,375 are classifies as liability warrants, 7,929,300 pre-funded warrants, and 568,348 representative's warrants.
(4) Warrants exercised in 2023 includes: 10,904,000 common stock purchase warrants at an exercise price range of $0.33 per share and $0.23 per share, 1,674,376 common stock purchase warrants (liability warrants) exercised with the alternative cash less option, 7,929,300 pre-funded warrants at an exercise price range of $0.001 and $0.0001 per share.

Warrant Assumptions – 2023 Warrants Issued

The following table provides the assumptions used to calculate the fair value of the new warrants issued during 2023, using a Black-Scholes model:

	Warrants	Strike Price	Volatility	Expected Term	Risk Free Rate
Pre-funded warrants - February 2023	90,000	$ 0.0001	96.5 %	5.0	3.78 %
Representative's warrants - February 2023	73,313	$ 8.80	96.5 %	5.0	3.79 %
Common stock warrants - April 2023	800,695	$ 3.07	88.4 %	5.5	3.56 %
Pre-funded warrants - April 2023	509,300	$ 0.0001	88.4 %	5.5	3.56 %
Representative's warrants - April 2023	40,035	$ 3.38	96.3 %	5.0	3.57 %
Common stock warrants - October 2023	13,650,000	$ 0.33	89.1 %	5.0	4.74 %
Pre-funded warrants - October 2023	7,330,000	$ 0.001	89.1 %	5.0	4.74 %
Representative's warrants - October 2023	455,000	$ 0.363	89.2 %	5.0	4.74 %

The following table provides the assumptions used to calculate the fair value of the new warrants issued during 2023, using a Monte Carlo model:

	Warrants	Strike Price	Volatility	Expected Term	Risk Free Rate
Common stock warrants - November 2023	10,765,000	$ 0.23	86.9 %	5.5	4.40 %

The following table provides the assumptions used in the bifurcated Black-Scholes option pricing model for the common stock purchase warrants classified as a liability:

	Cash Exercise	Cashless Exercise
Stock Price	$ 5.905	$ 5.905
Exercise Price	$ 16.00	$ 0.00
Term (years)	5.00	5.00
Volatility	96.50%	96.50%
Risk Free Rate	3.784%	3.784%
Dividend Yield	0%	0%

The following table presents the changes in the fair value of the liability warrants:

	Common Stock Purchase Warrants
Fair value as of February 8, 2023 (issuance date)	$ 10,363
Fair value of liability warrants in excess of proceeds, at issuance	(164)
Exercises of liability warrants	(6,249)
Gain on changes in fair value of liability warrants	(3,878)
Fair value as of December 31, 2023	$ 72

Warrant Assumptions – 2022 Warrants Issued

The following table provides the assumptions used to calculate the fair value of the Series G warrants issued during 2022, using a Black-Scholes model:

	Warrants	Strike Price	Volatility	Expected Term	Risk Free Rate
Reload warrants - June 2022	74,773	$ 33.33	64.8 %	7.5	3.32 %
Reload warrants - November 2022	57,693	$ 15.00	84.3 %	5.5	4.21 %
Representative's warrants	2,885	$ 15.00	84.3 %	5.0	4.23 %
Pre-funded warrants	9,841	$ 0.05	84.3 %	5.5	4.21 %

(11) Revenue Disaggregation and Operating Segments

The following table presents the Company's revenue disaggregated by geography:

	Year Ended December 31,	
	2023	2022
United States	$ 7,134	$ 9,230
Australia	526	688
Europe	956	1,252
Rest of world	62	70
Total revenue	$ 8,678	$ 11,240

Operating Segments

The Company conducts operations worldwide and is managed in the following geographical regions: United States, Australia, Europe and Rest of World (primarily in the Middle East). All regions sell the Lap-Band product line, which consisted of nearly all our revenue and gross profit for the years ended December 31, 2023 and 2022. During the second half of 2020 the Company launched ReShapeCare, which had minimal revenue for the years ended December 31, 2023 and 2022. During the fourth quarter of 2023, the Company placed the continued development of ReShapeCare on hold indefinitely. There was no revenue or gross profit recorded for the DBSN device in 2023 or 2022 because this product is still in the development stage. During June 2021, the Company merged with Obalon, which had no revenues for the years ended December 31, 2023 and 2022.

The Company has one operating segment based on the financial information provided to the Chief Operating Decision Maker (the Chief Executive Officer, or "CODM"). The Company's CODM evaluates segment performance based on revenue and gross profit at the consolidated level. The CODM does review revenue based on domestic and international. As such, the Company believes reporting revenue based on territory is useful to the user of the financial statements.

(12) Stock-based Compensation

The ReShape Lifesciences Inc. 2022 Equity Incentive Plan (the "Plan") became effective December 14, 2022, and provides for the grant of stock options or other stock-based awards to employees, officers, non-employee directors and outside consultants of the Company. The maximum number of shares of common stock that will be available for issuance under this Plan was originally 105,000 shares; provided however, that the aggregate number of shares that may be issued under all awards under the Plan will automatically increase on an annual basis on the first day of each year beginning in 2024 such that the aggregate number of shares that may be issued under all awards under this Plan equals 15% of the total number of shares of Common Stock, on a converted basis, on the last day of the immediately preceding fiscal year. Under the 2003 Stock Incentive Plan, as amended in 2018 (the "Prior Plan"), as of January 1, 2023, there were 110,798 shares available.

The Plan is administered by the committee, which determines the types of awards to be granted, including the number of shares subject to the awards, the exercise price and the vesting schedule. Options granted under the Plan expire no later than ten years from the date of grant. The exercise price of each option may not be less than 100% of the fair market value of the common stock at the date of grant, except if an incentive stock option is granted to a Plan participant possessing more than 10% of the Company's common stock, as defined by the Plan, the exercise price may not be less than 110% of the fair value of the common stock at the date of grant. Employee stock options generally vest over four years.

Stock Options

A summary of the status of the Company's stock options are as follows:

	Shares	Weighted Average Exercise Price Per Share	Weighted Average Remaining Contractual Life (years)	Aggregate Intrinsic Value (in thousands)
Outstanding at December 31, 2021	17,702	$ 398.57		$ —
Options granted	11,201	59.00		
Options exercised	—	—		
Options cancelled	(7,487)	139.16		
Outstanding at December 31, 2022	21,416	311.65		$ —
Options granted	—	—		
Options exercised	—	—		
Options cancelled	(6,198)	149.34		
Outstanding at December 31, 2023	15,218	377.75	6.4	$ —
Exercisable at December 31, 2023	12,366	445.51	6.0	—
Vested and expected to vest at December 31, 2023	15,891	377.75	6.4	—

As of December 31, 2023, stock options under the Plan that were outstanding, exercisable and vested, and expected to vest, had no intrinsic value. The unrecognized share-based expense at December 31, 2023 was $0.1 million and will be recognized over a weighted average period of 1.8 years.

Stock option awards outstanding under the Company's incentive plans have been granted at exercise prices that are equal to the market value of its common stock on the date of grant. Such options generally vest over a period of four years and expire at ten years after the grant date. The Company recognizes compensation expense ratably over the vesting period. The Company uses a Black-Scholes option-pricing model to estimate the fair value of stock options granted, which requires the input of both subjective and objective assumptions as follows:

Expected Term – The estimate of expected term is based on the historical exercise behavior of grantees, as well as the contractual life of the options granted.

Expected Volatility – The expected volatility factor is based on the volatility of the Company's common stock.

Risk-free Interest Rate – The risk-free interest rate is determined using the implied yield for a traded zero-coupon U.S. Treasury bond with a term equal to the expected term of the stock options.

Expected Dividend Yield – The expected dividend yield is based on the Company's historical practice of paying dividends on its common stock.

The Company did not issue any stock options during the year ended December 31, 2023. The Company's weighted average assumptions used to estimate fair value of stock options granted during the year ended December 31, 2022 were as follows:

Risk-free interest rate	2.67%
Expected term (in years)	6.25
Expected dividend yield	0%
Expected volatility	80.40%

Restricted Stock Units

A summary of the status of the Company's unvested RSUs are as follows:

	Shares	Weighted Average Grant Date Fair Value
Unvested RSUs at December 31, 2021	34,226	$ 218.00
Granted	32,777	16.92
Vested [1]	(50,131)	97.44
Cancelled/Forfeited	(12,342)	(189.88)
Unvested RSUs at December 31, 2022	4,530	174.15
Granted	—	—
Vested [1]	(3,113)	194.81
Cancelled/Forfeited	—	—
Non-vested RSUs at December 31, 2023	1,417	128.56

(1) At December 31, 2023 and 2022, there were 113 and 278 shares of common stock, respectively, related to RSU awards that have vested and the shares were not released to the participants subsequently. Additionally, during the year ended December 31, 2023 due to a decline in our stock price 454 shares of common stock were not issued in order to cover employee taxes.

The fair value of each RSU is the closing price on the Nasdaq of the Company's common stock on the date of grant. Upon vesting, a portion of the RSU award may be withheld to satisfy the statutory income tax withholding obligation. The remaining RSUs will be settled in shares of the Company's common stock after the vesting period. The unrecognized compensation cost related to RSUs at December 31, 2023 was $0.6 million and is expected to be recognized over a period of 1.2 years.

Compensation expense related to stock options was recognized as follows:

	Year Ended December 31,	
	2023	2022
Sales and marketing	$ 107	$ 280
General and administrative	451	1,494
Research and development	209	313
Total stock-based compensation expense	$ 767	$ 2,087

(13) Income Taxes

Income tax expense (benefit) consists of the following:

	Year ended December 31,	
	2023	2022
Deferred:		
Federal	$ —	$ (293)
State	—	(76)
Foreign	28	(54)
Deferred income tax benefit	28	(423)
Current:		
Federal	—	30
State	7	9
Foreign	17	4
Total income tax expense (benefit), net	$ 52	$ (380)

A reconciliation of the U.S. federal statutory income tax rate to the Company's effective income tax rate is as follows:

	Year ended December 31,	
	2023	2022
Income tax benefit at U.S. federal statutory rate	21.0 %	21.0 %
State income tax benefit, net of federal benefit	5.9 %	3.8 %
Stock warrant valuation	9.7 %	— %
Other permanent differences	(2.2)%	(1.9)%
Change in state tax rate	4.3 %	0.3 %
Foreign rate differential	2.7 %	(0.2)%
Net operating loss true up	(6.3)%	— %
Other adjustments	(0.8)%	2.8 %
Change in valuation allowance	(34.8)%	(25.0)%
Effective income tax rate	(0.5)%	0.8 %

A reconciliation of the beginning and ending amount of uncertain tax positions are as follows:

	2023	2022
Uncertain gross tax positions, January 1	$ 1,052	$ 1,052
Current year tax positions	—	—
Increase in prior year tax positions	—	—
Settlements	—	—
Lapse of statute of limitations	—	—
Uncertain gross tax positions, December 31	$ 1,052	$ 1,052

The components of deferred tax assets and liabilities are as follows:

	December 31,	
	2023	2022
Deferred tax assets:		
Start-up costs	$ 1,096	$ 1,137
Capitalized research and development costs	170	272
Reserves and accruals	751	1,157
Property and equipment	56	—
Intangible assets	4,420	4,597
Research and development credit	2,492	2,492
Lease liability	70	43
Net operating loss carryforwards	67,930	63,424
State and local taxes	2	2
Total gross deferred tax assets	76,987	73,124
Valuation allowance	(76,895)	(72,945)
Deferred tax assets, net of valuation allowance	92	179
Property and equipment	—	(80)
Intangible assets	—	—
Operating lease right-of-use assets	(64)	(43)
Total gross deferred tax liabilities	(64)	(123)
Deferred income taxes, net	$ 28	$ 56

In assessing the realization of deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during periods in which those temporary differences become deductible. Based on the level of historical losses and projections of losses in future periods, the Company provided a valuation allowance at both December 31, 2023 and 2022. The remaining net deferred tax asset at December 31, 2023 is the remaining balance of the Netherlands net operating loss. A valuation allowance is not applicable to this entity, as they historically produce income and utilize their net operating loss carryforward. In 2022, the indefinite-lived intangible

asset became fully impaired. The Company has a policy that NOL's are shown gross with valuation allowances with respect to IRC 382 limitations.

As of December 31, 2023 and 2022, the Company had U.S. federal net operating loss carryforwards of $218.9 million and $207.9 million, respectively. Of the total U.S. federal net operating loss carryforwards at December 31, 2023. Losses generated beginning in 2018 will carryover indefinitely. The Company had state net operating loss carryforwards of $348.7 million and $329.1 million at December 31, 2023 and 2022, respectively and had foreign net operating loss carryforwards of $0.2 million at both December 31, 2023 and 2022. Net operating loss carryforwards of the Company are subject to review and possible adjustment by the taxing authorities. With certain exceptions (e.g. the net operating loss carryforwards), the Company is no longer subject to U.S. federal, state or local examinations by tax authorities for years prior to 2016. There are no tax examinations currently in progress.

The Company's ability to utilize its net operating loss carryforwards, tax credits, and built-in items of deduction, including capitalized start-up costs and research and development costs, has been, and may continue to be substantially limited due to ownership changes. These ownership changes limit the amount of net operating loss carryforwards, credits and built-in items of deduction that can be utilized annually to offset future taxable income. In general, an ownership change, as defined in IRC Section 382, results from a transaction or series of transactions over a three-year period resulting in an ownership change of more than 50% of the outstanding stock of a company by certain stockholders or public groups. Due to the valuation allowance against deferred tax assets at December 31, 2023, the net effect of any further limitation will have no impact on results of operations.

The Company is in the process of completing an IRC Section 382 analysis for the year ended December 31, 2023. The Company believes it experienced an ownership change during 2023 that will result in further limitations on the utilization of its net operating losses. The 2023 ownership change is expected to result in further net operating losses to expire unused. The Company reflected the estimated impact of the 2023 ownership change in the deferred tax table and gross net operating loss carryforwards within this footnote.

The Company has adopted accounting standards which prescribe a recognition threshold and measurement attribute for the financial statement recognition and measurement of uncertain tax positions taken or expected to be taken in a company's income tax return, and also provides guidance on derecognition, classification, interest and penalties, accounting in interim periods, disclosure, and transition. The Company had no amounts of unrecognized tax benefits that, if recognized, would affect its effective income tax rate for the years ended December 31, 2023 and 2022. The Company's policy is to classify interest and penalties related to income tax expense as tax expense. As of December 31, 2023, the Company had no amount accrued for the payment of interest and penalties related to unrecognized tax benefits.

The Inflation Reduction Act (IRA) was enacted on August 16, 2022 and includes a new corporate alternative minimum tax based on book income, an excise tax on stock buybacks, and other items such as tax incentives for energy and climate initiatives. There is no impact to the Company at this time, however this may change depending on each year's differing facts and activities. The Company will continue to monitor this over time.

(14) Commitments and Contingencies

Employee Arrangements and Other Compensation

Certain members of management are entitled to severance benefits payable upon termination following a change in control, which would approximate $0.8 million at December 31, 2023. The Company also has agreements with certain employees to pay bonuses based on targeted performance criteria. As of December 31, 2023 and 2022, approximately $15 thousand and $0.3 million, respectively, was accrued for performance bonuses, which is included in accrued liabilities in the consolidated balance sheets.

Purchase Commitments

The Company generally purchases its products and accessories from a limited group of third-party suppliers through purchase orders. The Company had $0.9 million of inventory open purchase orders as of December 31, 2023, for orders being issued to supplies for which the Company has not received the goods or services and which are expected

to be fulfilled within one year. These purchase commitments were made to secure better pricing and to ensure the Company will have the necessary inventory to meet anticipated near term demand. Although open purchase orders are considered enforceable and legally binding, the Company may be able to cancel, reschedule, or adjust requirements prior to supplier fulfillment.

Litigation

On August 6, 2021, Cowen and Company, LLC filed a complaint against ReShape, as successor in interest to Obalon Therapeutics, in the Supreme Court of the State of New York based on an alleged breach of contract arising out of Cowen's prior engagement as Obalon's financial advisor. The complaint alleges that Cowen is entitled to be paid a $1.35 million fee in connection with ReShape's merger with Obalon under the terms of Cowen's engagement agreement with Obalon. The complaint also sought reimbursement of Cowen's attorneys' fees and interest in connection with its claim. On May 11, 2023, the Supreme Court of the State of New York issued the final judgement in favor of Cowen & Company in the amount of $1.35 million, plus interest at the statutory rate of 9% per annum from June 16, 2021 until judgement is paid in full, and reimbursement of $675,000 of Cowen's attorneys' fees, with $275,000 to be paid upfront, $200,000 paid after six months and $200,000 paid after 12 months. As of December 31 2023, the Company has paid the $1.35 million judgement, including related interest, and first $275,000 installment of Cowen's attorneys' fees. At December 31, 2023, $200 thousand of attorneys' fees were included as accrued expenses.

The Company is not aware of any pending or threatened litigation against it that could have a material adverse effect on the Company's business, operating results or financial condition, other than what was disclosed above. The medical device industry in which the Company operates is characterized by frequent claims and litigation, including claims regarding patent and other intellectual property rights as well as improper hiring practices. As a result the Company may be involved in various legal proceedings from time to time.

Product Liability Claims

The Company is exposed to product liability claims that are inherent in the testing, production, marketing and sale of medical devices. Management believes any losses that may occur from these matters are adequately covered by insurance, and the ultimate outcome of these matters will not have a material effect on the Company's financial position or results of operations. The Company is not currently a party to any product liability litigation and is not aware of any pending or threatened product liability litigation that could have a material adverse effect on the Company's business, operating results or financial condition.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

ITEM 9A. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Rule 13a-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), defines the term "disclosure controls and procedures" as those controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and that such information is accumulated and communicated to the company's management, including its principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure. Our internal control system was designed to provide reasonable assurance to our management and board of directors regarding the preparation and fair presentation of published financial statements. All internal control systems, no matter how well designed, have inherent limitations. Therefore, even those systems determined to be effective can provide only reasonable assurance with respect to financial statement preparation and presentation. An internal control material weakness is a significant deficiency, or aggregation of deficiencies, that does not reduce to a relatively low level the risk that material misstatements in financial statements will be prevented or detected on a timely basis by employees in the normal course of their work. An internal control significant deficiency, or aggregation of deficiencies, is one that could result in a misstatement of the financial statements that is more than inconsequential. In making its assessment of internal control over financial reporting management used the criteria issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in Internal Control - Integrated Framework (2013). Our management assessed the effectiveness of our internal control over financial reporting as of December 31, 2023, and determined that our internal control over financial reporting was not effective at a reasonable assurance level due to the following material weakness in our internal control over financial reporting:

Control Environment: The Company has insufficient internal resources with appropriate accounting and finance knowledge and expertise to design, implement, document and operate effective internal controls over the financial reporting process. As a result, there was a lack of management review over several areas of the consolidated financial statements, including errors which were individually assessed as significant deficiencies that, when aggregated, resulted in a material weakness related to: 1) insufficient review of obsolete and scrap inventory; 2) insufficient reviews of accounts payable; and 3) inappropriate application of accounting standards related to functional currency. In addition to these identified errors, there were other areas of the consolidated financial statements that were impacted by certain deficiencies. During the prior year there were deficiencies identified that have not yet been remediated including misstatements of inaccurate reporting of earnings per share due to formula errors over the weighted average share calculation spreadsheet and errors to the stock-based compensation expense. The root cause of all of the deficiencies identified above was related to insufficient internal resources with appropriate accounting and finance knowledge, which aggregated into this material weakness.

Journal Entry Access and Review: The Company did not have effective processes to ensure that all journal entries were properly approved prior to being posted to the general ledger. Furthermore, a segregation of duties conflict is present as the Sr. Accounting Manager has the ability to both prepare and post journal entries to the general ledger. As a result, it was concluded that there is material weakness in the design and operating effectiveness of internal controls over access and reviews of journal entries.

Information Technology ("IT") Access Change and IT Security: A segregation of duties conflict is present as access, change management and other IT security risks to the Company's information technology systems are not monitored or reviewed on a timely basis. This material weakness resulted from the aggregation of various control deficiencies.

Financial Reporting:

Inventory Capitalization – The Company's controls were not designed effectively as the Company did not have a process in place to evaluate the amount of inventory, cost of goods sold, general and administrative expenses, and research and development expenses.

Income Taxes – The Company did not design and maintain effective management review controls at a sufficient level of precision over the accounting for income taxes. Management's controls surrounding the evaluation of income tax provision and related disclosures were not operating effectively as the disclosure was not updated to reflect the appropriate tax amortization related to the accrued settlement account. While this did not have an impact on the financial statements due to the full valuation allowance recorded on the deferred tax assets, this did have an impact on the presentation of the prior year footnote disclosure. Additionally, there were errors identified within the tax provision during the prior year related to cost of goods sold for the Company's foreign entities. This material weakness resulted in certain material corrections to the financial statements including the establishment of a FIN 48 liability, the tax benefit related to impairment charges recorded for the IPR&D in the prior year, the overstatement of the deferred tax asset and valuation allowance related to depreciable assets in the prior year, a return to provision adjustment in 2022 related to Obalon net operating losses generated in 2021 as a result of inaccurate stock compensation recorded within the tax provision and a difference in pretax book income that was unaccounted for in the disclosure.

The following financial reporting material weakness was identified during the prior year that has not yet been remediated.

Purchase Accounting – The Company did not design and maintain effective management review controls at a sufficient level of precision over the accounting for transactions related to the prepaid D&O insurance policy purchased in connection with the merger transaction in June 2021. This material weakness resulted in certain material corrections to the financial statements and in the restatement of the consolidated financial statements.

We are currently implementing our remediation plan to address the material weaknesses identified above. Such measures include:

- Designing and implementing controls to formalize roles and review responsibilities to align with our team's skills and experience and designing and implementing formalized controls.
- Designing and implementing formal processes, policies and procedures supporting our financial close process.
- Design a formal review of a monthly journal entry report to ensure journal entries are appropriately approved within a timely manner.

Management's Report on Internal Control Over Financial Reporting

The Company's management, including the Chief Executive Officer and Chief Financial Officer, is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Rule 13a-15(f) under the Exchange Act. Under the supervision and with the participation of the Company's management, including the Chief Executive Officer and Chief Financial Officer, the Company conducted an evaluation of the effectiveness of its internal control over financial reporting based on the framework in *Internal Control–Integrated Framework (2013)* issued by the Committee of sponsoring Organizations of the Treadway Commission (COSO). Based on that evaluation, the Company's management concluded that its internal control over financial reporting was not effective as of December 31, 2023.

Changes in Internal Control Over Financial Reporting

No changes in our internal control over financial reporting occurred during our most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

We believe that a control system, no matter how well designed and operated, cannot provide absolute assurance that the objectives of the control system are met, and no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within any company have been detected.

ITEM 9B. OTHER INFORMATION

Rule 10b5-1 Plan and Non-Rule 10b5-1 Trading Arrangement Adoptions, Terminations, and Modifications

During the three months ended December 31, 2023, none of our directors or "officers" (as defined in Rule 16a-1(f) under the Exchange Act) adopted or terminated a "Rule 10b5-1 trading arrangement" or "non-Rule 10b5-1 trading arrangement," as each term is defined in Item 408(a) of SEC Regulation S-K.

ITEM 9C. DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS

Not applicable.

PART III.

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

Executive Officers

The following table sets forth information regarding our executive officers, including their ages, as of December 31, 2023:

Name	Age	Position
Paul Hickey	59	President and Chief Executive Officer, Director
Thomas Stankovich	63	Chief Financial Officer

Paul Hickey has served as our President and Chief Executive Officer and as one of our directors since August 15, 2022. Mr. Hickey was previously the President and Chief Executive Officer of Altimate Medical Holdings, Inc., which designs and manufactures rehabilitation medical equipment including its EasyStand brand, from February 2020 to August 2022. Previously, from 2018 to 2020, he served as the President and Chief Executive Officer of Vertebral Technologies, Inc., a medical device company focused on implantable spinal devices. Prior to that, from 2016 to 2017, Mr. Hickey was Senior Vice President of Marketing and Reimbursement for EnteroMedics (now ReShape Lifesciences). Earlier in his career, he consulted for a variety of commercialized medical device companies and held positions of increasing responsibility at Zimmer Biomet. For the past four years, Mr. Hickey has served on the Board of Directors at Excelen Center for Bone and Joint Research and Education. Mr. Hickey earned a Bachelor's degree from the University of Michigan and a Master's from Washington University in Saint Louis.

Areas of Relevant Experience: Mr. Hickey's significant experience leading medical device companies, including in his position as President and Chief Executive Officer of our company, makes him well-suited to serve as a member of the Board of Directors.

Thomas Stankovich has served as our Chief Financial Officer since October 2019. Mr. Stankovich has over 25 years of executive leadership experience as the CFO for multiple public and private healthcare companies. Prior to joining us, Mr. Stankovich spent the past nine years as the Global Senior Vice President and CFO of MP Biomedicals, a life sciences and molecular biology-diagnostics company. At MP Biomedicals he was responsible for financial planning and reporting, operations and strategy development along with the acquisition and integration of two international companies. Prior to MP Biomedicals, Mr. Stankovich served as CFO at Response Genetics where he successfully led the company through their initial public offering. Additionally, he served as CFO for Cobalis Corporation and Ribapharm, where he also led the company through their initial public offering, which at the time became the second largest ever IPO in the biotechnology sector. Mr. Stankovich also held CFO positions at ICN International which later changed names to Valeant Pharmaceuticals.

Board of Directors

CLASS I DIRECTORS — Continuing in office until the 2026 Annual Meeting

Dan Gladney, age 71, has served as one of our directors since November 2015, as Chairman of our Board of Directors since October 2016 and as Executive Chair since July 2022. Mr. Gladney served as our President and Chief Executive Officer from November 2015 until March 2019. Prior to joining us, Mr. Gladney served as Chairman and Chief Executive Officer of Lanx, Inc., a medical device company focused on developing and commercializing innovative devices for spinal surgery. Prior to his time at Lanx, Inc., Mr. Gladney was a Healthcare Operating Partner at Norwest Equity Partners (NEP) from 2008 until 2010, where he was responsible for strategic planning, business growth and corporate governance for NEP portfolio companies and executing new investment opportunities for the firm. Prior to joining NEP, Mr. Gladney served as President and Chief Executive Officer of several medical device companies including Heart Leaflet Technologies and ACIST Medical Systems, both of which were acquired by The Bracco Group. He also served as Chairman, Chief Executive Officer and President of Compex Technologies, a publicly traded orthopedic and health and wellness electro therapy company, from 2002 until 2006. Mr. Gladney currently serves on the board of directors of Aria CV, Inc. and has been a member of a number of other private and public company boards. After the sale of Lanx, he acted as a private investor and small business consultant.

Areas of Relevant Experience: Mr. Gladney's significant experience leading medical device companies, as well as his position as former President and Chief Executive Officer of ReShape Lifesciences and his experience with commercialization of medical device companies makes him well-suited to serve as a member of the Board of Directors.

Lori McDougal, age 62, has served as one of our directors since July 2015. Ms. McDougal has served in an executive capacity in the healthcare industry for more than eighteen years. She served as an Executive Vice President at Optum, Inc., a part of UnitedHealth Group, Inc., from 2013 until 2014. Prior to her time at Optum, she served as Chief Executive Officer of UnitedHealth Group's subsidiary UnitedHealth Military & Veterans Services, LLC from 2008 until 2013, and previously served as the Chief Operating Officer of UnitedHealth Military & Veterans Services from 2007 until 2008. Before joining UnitedHealth Military & Veterans Services, she served as a Vice President of UnitedHealthcare Medicare & Retirement starting in 2002. Additionally, she served as President of UnitedHealth International from 1998 until 2002 and Vice President of OptumInsight from 1996 to 1998.

Areas of Relevant Experience: Ms. McDougal's significant executive leadership experience and her experience working with private and government insurers, both domestic and foreign, make her well-suited to serve as a member of the Board of Directors.

CLASS II DIRECTORS — Continuing in office until the 2024 Annual Meeting

Gary Blackford, age 66, has served as one of our directors since August 2016. From 2002 until February 2015, Mr. Blackford was the Chairman of the Board and Chief Executive Officer of Universal Hospital Services, Inc. (NYSE: UHS), a leading nationwide provider of medical technology outsourcing and services to the health care industry. Mr. Blackford was the Chief Executive Officer of Curative Health Services, Inc., a specialty pharmacy and health services company, from 2001 to 2002. He was also the Chief Executive Officer of ShopforSchool, Inc., an online retailer, from 1999 to 2001. Mr. Blackford has also been a director of Avanos Medical, Inc. (NYSE: AVNS) since 2014 (and Chairman since 2020), Children's Hospitals and Clinics of Minnesota since 2017 (and Chairman since 2020), and Lifespace Communities, Inc., a not-for-profit organization, since February 2022. He was a director of Wright Medical Group, N.V. (NASDAQ: WMGI) from 2008 to 2020 and PipelineRX, Inc. from 2016 to 2020.

Areas of Relevant Experience: Mr. Blackford's executive leadership and director experience in health care services, health benefits, medical devices, medical equipment and medical technology makes him well- suited to serve as a member of the Board of Directors.

Arda Minocherhomjee, age 70, has served as one of our directors since August 2018. Mr. Minocherhomjee is a Managing Partner of Chicago Growth Partners, which he founded in 2004. Previously, Dr. Minocherhomjee was a Managing Director at William Blair Capital Partners and, as head of the firm's Healthcare Research Group, covered multiple sectors, including drugs/drug delivery, medical devices and selected healthcare services. Mr. Minocherhomjee received a M.S. (Pharmacology) from the University of Toronto and a Ph.D. and a MBA from the University of British Columbia.

Areas of Relevant Experience: Mr. Minocherhomjee's significant experience in financial research and analysis, including financing activities, with a focus in the healthcare and medical device sectors, makes him well-suited to serve as a member of the Board of Directors.

CLASS III DIRECTOR — Continuing in Office until the 2025 Annual Meeting

Mr. Hickey is a Class III director with a term continuing until the 2025 annual meeting of stockholders.

Delinquent Section 16(a) Reports

Section 16(a) of the Exchange Act requires our directors and officers and all persons who beneficially own more than 10% of the outstanding shares of our common stock to file with the SEC initial reports of ownership and reports of changes in ownership of our common stock. Based solely on a review of Section 16 reports filed electronically with the SEC and written representations from certain reporting persons, we believe that all forms required to be filed by such persons under Section 16(a) were filed on a timely basis, with the exception of the following:

- Paul Hickey, our President and Chief Executive Officer, made one late Form 3 filing on August 26, 2022.
- Thomas Stankovich, our Chief Financial Officer, made nine late Form 4 filings related to one transaction on each of January 4, 2022, April 1, 2022, May 5, 2022, June 1, 2022, July 1, 2022, August 5, 2022, and September 6, 2022, two transactions on November 4, 2022, and four transactions on November 17, 2022.

Audit Committee

The Audit Committee is responsible for assisting the Board in monitoring the quality and integrity of our consolidated financial statements, our internal controls, our compliance with legal and regulatory requirements and the qualifications, performance and independence of our independent auditor. The Audit Committee has sole authority to retain and terminate the independent auditor and is directly responsible for the compensation and oversight of the work of the independent auditor. The Audit Committee reviews and discusses with management and the independent auditor the annual audited and quarterly consolidated financial statements (including the disclosures under "Management's Discussion and Analysis of Financial Condition and Results of Operations" included in this prospectus), reviews the integrity of the financial reporting processes, both internal and external, reviews the qualifications, performance and independence of the independent auditor, oversees the Company's compliance with legal and regulatory requirements with respect to financial matters, and prepares the Audit Committee Report included in the proxy statement in accordance with the rules and regulations of the SEC. All of the Audit Committee members meet the existing independence and experience requirements of the Nasdaq Stock Market and the SEC. Our Board of Directors has determined that each of Lori McDougal and Arda Minocherhomjee is a financial expert under the rules of the SEC. The Audit Committee held five meetings in 2023. During each of the meetings, the Audit Committee met in private session with our independent auditor and alone in executive session without members of management present.

Director Nomination Process

During the fourth quarter of 2023, we made no material changes to the procedures by which stockholders may recommend nominees to the Board.

Code of Business Conduct and Ethics

We have adopted a code of business conduct and ethics, which applies to all directors and employees, including executive officers, including, without limitation, our principal executive officer, principal financial officer, principal accounting officer and persons performing similar functions. A copy of this code of business conduct and ethics is available on our website at www.reshapelifesciences.com (under "Investors," "Corporate Governance") and we intend to satisfy the disclosure requirement under Item 5.05 of Form 8-K regarding any waivers from or amendments to any provision of the code of business conduct and ethics by disclosing such information on the same website.

In addition, we intend to promptly disclose (1) the nature of any amendment to our code of business conduct and ethics that applies to our principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions and (2) the nature of any waiver, including an implicit waiver, from a provision of our code of business conduct and ethics that is granted to one of these specified officers, the name of such person who is granted the waiver and the date of the waiver on our website in the future.

ITEM 11. EXECUTIVE COMPENSATION

The information required by this Item is hereby incorporated by reference to the sections of our Proxy Statement entitled "Director Compensation," "Executive Compensation,"

Executive Compensation

Summary Compensation Table

The following table sets forth information regarding compensation earned by our named executive officers during our fiscal years ended December 31, 2023 and 2022.

Summary Compensation Table

Name and Principal Position	Year	Salary ($)	Bonus ($)	Stock Awards ($)	Non-equity Incentive Plan Compensation ($)	All Other Compensation ($)	Total ($)
Paul F. Hickey(1)	2023	373,083	133,333	—	—	—	506,416
President and Chief Executive Officer	2022	133,078	25,000				158,078
Thomas Stankovich	2023	282,121	25,000	—	—	—	307,121
Chief Financial Officer	2022	330,000	77,338(2)	—	—	148,500(3)	555,838

(1) Mr. Hickey joined the Company on August 15, 2022. His $25,000 bonus was a sign-on bonus under his employment agreement.

(2) Consists of the payout under the Company's Management Incentive Plan for 2021 which was paid out as a stock bonus in November 2022.

(3) Consists of a one-time cash bonus awarded to Mr. Stankovich under a retention bonus agreement pursuant to which the Company agreed to pay Mr. Stankovich 100% of his target 2022 cash bonus, regardless of actual performance, if Mr. Stankovich remained employed by the Company until at least December 31, 2022.

Employment Agreement with Thomas Stankovich

On October 29, 2019, we entered into an employment agreement with Mr. Stankovich, our Chief Financial Officer. The agreement has an initial term of one year and automatically renews for successive one year terms unless either party delivers written notice 90 days prior to the expiration of the current term or unless it is earlier terminated. Pursuant to the agreement, Mr. Stankovich is entitled to a base salary of $300,000, or a higher annual rate if approved by the Board of Directors, and to cash and equity awards pursuant to our incentive compensation plan, contingent on Mr. Stankovich meeting certain annual objectives determined by the Compensation Committee. The agreement establishes that Mr. Stankovich is eligible for an annual incentive compensation of up to 30% of his base salary for that year. Mr. Stankovich's employment agreement also provides for the receipt of certain benefits upon the occurrence of particular termination events or a change in control. This employment agreement was amended effective December 1, 2023,

whereas Mr. Stankovich and the Company mutually agreed to reduce his role to a fractional CFO, working part time on standard activities and addition for special projects as needed for an hourly rate of $125.

Employment Offer Letter and Employment Agreement with Paul Hickey

On July 25, 2022, we entered into an employment offer letter with Mr. Hickey, our President and Chief Executive Officer, pursuant to which Mr. Hickey will receive an annual base salary of $400,000 and a potential annual bonus of up to 50% of his annual base salary, which bonus for the 2022 calendar year will be prorated based on the portion of the year he is actually employed. Additionally, the offer letter provided that Mr. Hickey would be granted a stock option under the Company's equity incentive plan to purchase a number of shares of the Company's common stock equal to 4% of the Company's outstanding common stock, on a fully-diluted basis, as of the date of the offer letter. The options will have a 10-year term and a per share exercise price equal to the closing market price of the Company's common stock on the grant date. The options will vest with respect to 25% of the shares of common stock purchasable thereunder on the one-year anniversary of the grant date and monthly thereafter for 36 months, conditioned upon Mr. Hickey's continued employment with the Company from the grant date until the respective vesting date. As soon as reasonably practicable following the first offering of common stock or securities convertible into common stock for purposes of financing the Company after Mr. Hickey's start date, Mr. Hickey will be granted an additional stock option or other equity award in an amount that maintains his fully diluted ownership percentage at 4%. The offer letter contains severance provisions which provide that in the event Mr. Hickey's employment is terminated by the Company without cause or Mr. Hickey resigns for good reason, he will be entitled to receive a severance payment equal to 12 months base salary payable as salary continuation payments. To be eligible to receive these payments, Mr. Hickey will be required to execute and not revoke a release of claims. On November 1, 2022, we entered into an employment agreement with Mr. Hickey that memorialized the terms of his employment offer letter.

Management Incentive Plan

Our Management Incentive Plan is designed to provide executive officers with annual incentive compensation based on the achievement of certain pre-established performance objectives. By utilizing a combination of objective and subjective performance factors critical to our success, this program incentivizes our executive officers to achieve results that benefit them and the Company.

At the beginning of each year, the Compensation Committee approves, subject to review by the Board of Directors, new corporate objectives for the Management Incentive Plan. The objectives are established and measured on an annual basis to better align personal objectives with the direction and objectives of the Company. When these objectives are established and approved, each objective, and, if applicable, the subparts to each objective, is weighted and assigned a percentage value relative to the corporate objectives taken as a whole. At that time, the Compensation Committee also establishes the maximum bonus amount for each of our executive officers, based on a set percentage of each executive officer's base salary, that the corporate objectives are worth. The Compensation Committee may modify or re-weight the objectives during the course of the fiscal year, if necessary, to reflect changes in our business plan.

Long-Term Incentives

Our 2022 Equity Incentive Plan, allows us the opportunity to grant stock options, restricted stock and other equity-based awards. In general, we view equity awards as incentives for future performance and not as compensation for past accomplishments. We also believe that equity awards reward continued employment by an executive officer, with an associated benefit to us of employee continuity and retention. The exercise price of stock options awarded by the Compensation Committee has been and will continue to be the closing sales price of our common stock on the date of grant.

The Compensation Committee and the Board of Directors do not grant equity awards according to a prescribed formula or target, although they review equity data from comparable companies to inform their decisions. In determining the number of equity awards granted to executive officers, individual responsibilities and experience, as well as contributions and achievements are considered, and, in appropriate circumstances, the Compensation Committee considers the recommendations of the Chief Executive Officer. The objectives utilized to assess individual contributions and achievements vary depending on the individual executive, but relate generally to strategic factors such as clinical and regulatory progress, commercialization, research and development, continued establishment of intellectual property

and implementation of appropriate financing strategies. While the Chief Executive Officer may provide recommendations to the Compensation Committee regarding the number of equity awards granted to other executive officers from time to time, he does not make a recommendation as to his equity awards.

Outstanding Equity Awards at Fiscal Year-End

The following table summarizes the outstanding equity award holdings held by our named executive officers at December 31, 2023.

	Stock Awards	
Name	**Number of shares or units of stock that have not vested (#)(1)**	**Market value of shares or units of stock that have not vested ($)(2)**
Paul Hickey	—	—
Thomas Stankovich	357	88

(1) Consists of unvested restricted stock units that were granted in July 2021.
(2) Based upon the closing price of our common stock on December 29, 2023 (the last business day of fiscal 2022) of $0.25.

Director Compensation [Open to get updated amounts]

Compensation for our directors is designed to result in compensation that is competitive with that provided by comparably-sized, publicly-traded, medical device companies. For 2023 (i) each non-employee director received an annual retainer of $35,000 for serving on the Board, (ii) each non-employee director who served on the Audit Committee, the Compensation Committee or the Nominating and Governance Committee, other than the chairperson of each of the committees, received an additional annual retainer of $8,000, $5,000 and $4,500, respectively, (iii) each of the chairpersons of the Audit Committee, the Compensation Committee and the Nominating and Governance Committee received an additional annual retainer of $17,500, $10,000 and $9,000, respectively, and (iv) our Lead Director received a $15,000 annual retainer in that role.

We reimburse all of our non-employee directors for reasonable travel and other expenses incurred in attending Board and committee meetings. Directors who also serve as employees of the Company receive no additional compensation for serving as a director. Mr. Hickey is the only director who is also an employee of the Company.

In July 2022, the Board appointed Dan Gladney, who was previously the Chair of the Board of Directors, as Executive Chair. In his role as Executive Chair, Mr. Gladney will take a more active role supporting Mr. Hickey and the Company on strategic matters. Mr. Gladney's annual cash compensation for his service as the Executive Chair will be $90,000, which will replace his compensation as Chair of the Board, and is in addition to the $35,000 annual retainer paid to all Board members. Therefore Mr. Gladney's total annual cash compensation for his service on the Board and as Executive Chair will be $125,000, excluding any amounts paid for his current service on the Nominating and Governance Committee or any other committee of the Board to which he may be appointed.

The following table shows the compensation of the non-employee members of our Board during fiscal year 2023:

Director Compensation in 2023

Name[1]	Fees Earned or Paid in Cash ($)[2]
Dan Gladney	129,500
Gary Blackford	77,000
Lori McDougal	57,500
Arda Minocherhomjee	52,500

(1) Paul Hickey, our current President and Chief Executive Officer, and Bart Bandy, who served as President and Chief Executive Officer and a director of the Company until July 2022, are not included in this table because they were employees of the Company during 2022 and thus received no compensation for their services as a director. The compensation that Mr. Hickey and Mr. Bandy received as an employee of the Company is shown in the "Summary Compensation Table."

(2) The amounts in this column include the annual Board of Director and committee retainer amounts for 2022 described above under the heading "Director Compensation."

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

Security Ownership of Certain Beneficial Owners and Management

The following table shows the beneficial ownership of our common stock by each person or group who beneficially owned 5% or more of our common stock, each of our directors, each of the executive officers named in the Summary Compensation Table in this proxy statement and our directors and executive officers as a group, as of December 31, 2023. Percentage ownership calculations for beneficial ownership are based on 23,457,047 shares outstanding as of December 31, 2023. However, for purposes of computing the percentage of outstanding shares of common stock held by each person or group of persons named above, any shares which that person or persons has or have the right to acquire within 60 days following December 31, 2023 is deemed to be outstanding for that person's calculation, but is not deemed to be outstanding for the purpose of computing the percentage ownership of any other person. The information regarding the beneficial owners of more than 5% of our common stock is based upon information supplied to us by our directors, officers and principal stockholders or on Schedules 13D or 13G filed with the Securities and Exchange Commission ("SEC"). Unless otherwise noted, the directors and executive officers listed in the table have sole voting and investment power with respect to the shares of common stock owned by them and their address is c/o ReShape Lifesciences Inc., 18 Technology Dr., Suite 110, Irvine, California 92618.

Title of Class	Name and Address of Beneficial Owner	Amount and Nature of Beneficial Ownership	Percent of Class
Common Stock	**Directors and Executive Officers**		
	Paul Hickey	—	*
	Thomas Stankovich(1)	23,384	*
	Dan Gladney	840	*
	Gary Blackford	—	*
	Arda Minocherhomjee	—	*
	Lori McDougal	—	*
	All directors and executive officers as a group (6 persons)	24,224	*
	5% Stockholders		
	Yair Schneid (2) 1 Wood Lane, Suffern, NY 10901	2,461,000	10.5%

* The percentage of shares of common stock beneficially owned does not exceed one percent of the outstanding shares of common stock.

(1) Includes 102 shares subject to restricted stock units that will vest within 60 days of December 31, 2023.

(2) Mr. Schneid has sole voting and dispositive power over all such shares.

Securities Authorized for Issuance under Equity Compensation Plans

The table below provides information about our common stock that may be issued under our equity compensation plans as of December 31, 2023.

Plan Category	Number of Securities to be Issued upon Exercise of Outstanding Options, Warrants and Rights (a)	Weighted Average Exercise Price of Outstanding Options, Warrants and Rights (b)	Number of Securities Remaining Available for Future Issuance under Equity Compensation Plans (Excluding Securities Reflected in Column (a)) (c)
Equity compensation plans approved by security holders	15,218	$377.75	110,798
Equity compensation plans not approved by security holders	—	—	—
Total	15,218	$377.75	110,798

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

Review of Related Person Transactions

In accordance with its written charter, our Audit Committee is responsible for reviewing all related party transactions as they are presented, and the approval of the Audit Committee is required for all such transactions. The term "related party transactions" refers to transactions required to be disclosed in our filings with the SEC pursuant to Item 404 of Regulation S-K. As a smaller reporting company, we are also required to review and approve any transaction, arrangement or relationship in which our company is a participant, the amount involved exceeds the lesser of $120,000 or one percent of the average of our total assets at year-end for the last two completed fiscal years, and a related person has a direct or indirect material interest. In considering related party transactions, our Audit Committee is guided by its fiduciary duty to our stockholders. Our Audit Committee does not have any written or oral policies or procedures regarding the review, approval and ratification of transactions with related parties. Additionally, each of our directors and executive officers are required to annually complete a directors' and officers' questionnaire that elicits information about related party transactions. Our Nominating and Governance Committee and Board of Directors annually review all transactions and relationships disclosed in the director and officer questionnaires, and the Board makes a formal determination regarding each director's independence.

Director Independence

Our Board of Directors reviews at least annually the independence of each director. During these reviews, our Board of Directors considers transactions and relationships between each director (and his or her immediate family and affiliates), ReShape Lifesciences and our management to determine whether any such transactions or relationships are inconsistent with a determination that the director was independent. This review is based primarily on responses of the directors to questions in a directors' and officers' questionnaire regarding employment, business, familial, compensation and other relationships with ReShape Lifesciences and our management. Our Board of Directors has determined that no transactions or relationships existed that would disqualify any of our directors under the Nasdaq Stock Market rules or require disclosure under SEC rules, with the exception of Paul Hickey, our President and Chief Executive Officer, because of his current employment relationship with ReShape Lifesciences. Based upon that finding, the Board of Directors determined that Ms. McDougal and Messrs. Blackford, Gladney and Minocherhomjee are "independent" and the composition of our Board of Directors meets the requirements for independence under the Nasdaq Stock Market. Each of our Audit, Compensation, and Nominating and Governance Committees is composed only of independent directors.

ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES

Principal Accountant Fees and Services

The following table represents aggregate fees billed to the Company for the fiscal year ended December 31, 2023 and December 31, 2022 by RSM US LLP and BDO USA, LLP, the Company's independent registered accounting firms during such fiscal years.

	Fiscal Year Ended	
	2023	**2022**
Audit Fees[(1)]	$ 749,001	$ 1,011,774
Audit-Related Fees	314,622	178,893
Tax Fees	—	—
All Other Fees	—	—
Total Fees	$ 1,063,623	$ 1,190,667

(1) Includes fees billed, or estimates of fees to be billed, for professional services rendered in connection with the audit of our consolidated financial statements for the referenced fiscal year ended, review of interim consolidated financial statements and services that are normally provided by RSM, in connection with statutory and regulatory filings and engagements.

Administration of Engagement of Independent Auditor

The Audit Committee is responsible for appointing, setting compensation for and overseeing the work of our independent registered public accounting firm. The Audit Committee has established a policy for pre-approving the services provided by our independent registered public accounting firm in accordance with the auditor independence rules of the SEC. This policy requires the review and pre-approval by the Audit Committee of all audit and permissible non-audit services provided by our independent registered public accounting firm and an annual review of the financial plan for audit fees. To ensure that auditor independence is maintained, the Audit Committee annually pre-approves the audit services to be provided by our independent registered public accounting firm and the related estimated fees for such services, as well as the nature and extent of specific types of audit-related, tax and other non-audit services to be provided by the independent registered public accounting firm during the year.

As the need arises, other specific permitted services are pre-approved on a case-by-case basis during the year. A request for pre-approval of services on a case-by-case basis must be submitted by our Chief Financial Officer, providing information as to the nature of the particular service to be provided, estimated related fees and management's assessment of the impact of the service on the auditor's independence. The Audit Committee has delegated to its Chair pre-approval authority between meetings of the Audit Committee. Any pre-approvals made by the Chair must be reported to the Audit Committee. The Audit Committee will not delegate to management the pre-approval of services to be performed by our independent registered public accounting firm.

All of the services provided by our independent registered public accounting firm in 2023 were approved by the Audit Committee under its pre-approval policies.

PART IV.

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a) The following documents are filed as part of this report:

1. Consolidated Financial Statements. See "Index to Consolidated Financial Statements" in Part II, Item 8 herein.

2. Financial Statement Schedules. Other schedules are not applicable and have not been included herein.

3. Exhibits

ITEM 16. FORM 10-K SUMMARY

Not applicable

EXHIBIT INDEX

Exhibit Number	Description of Document
2.2	Agreement and Plan of Merger, dated as of January 19, 2021, by and among Obalon Therapeutics, Inc. Optimus Merger Sub, Inc., and the Company (incorporated by reference to Exhibit 2.1 to the Company's Current report on Form 8-K filed with the Securities and Exchange Commission on January 20, 2021).
3.1	Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.2 to Obalon's Registration Statement on Form S-1, filed with the Securities and Exchange Commission on September 26, 2016.).
3.2	Certificate of Amendment to the Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to Obalon's Current Report on Form 8-K, filed with the Securities and Exchange Commission on June 14, 2018).
3.3	Certificate of Second Amendment to the Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to Obalon's Current Report on Form 8-K, filed with the Securities and Exchange Commission on July 24, 2019).
3.4	Third Amendment to the Amended and Restated Certificate of Incorporation of the Company (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 15, 2021).
3.5	Fourth Amendment to the Amended and Restated Certificate of Incorporation of the Company (incorporated by reference to Exhibit 3.2 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 15, 2021).
3.6	Fifth Amendment to the Amended and Restated Certificate of Incorporation of the Company (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on December 28, 2022).
3.7	Certificate of Designation of Preferences, Rights and Limitations of Series C Convertible Preferred Stock (incorporated by reference to Exhibit 3.3 to the Current Report on Form 8-K filed by the Company on June 15, 2021).
3.8	Restated Bylaws (incorporated by reference to Exhibit 3.4 to Obalon's Registration Statement on Form S-1, filed with the SEC on September 26, 2016).
4.1	Description of Registrant's Securities (incorporated by reference to the description under the heading "Description of Capital Stock" in the Company's Registration Statement on Form S-1 filed with the Securities and Exchange Commission on February 3, 2023)
4.2	Form of Common Warrant (incorporated by reference to Exhibit 4.1 to Amendment No. 3 to the Company's Registration Statement on Form S-1 filed by with the Securities and Exchange Commission on February 3, 2023).
4.3	Form of Pre-Funded Warrant (incorporated by reference to Exhibit 4.2 to Amendment No. 1 to the Company's Registration Statement on Form S-1 filed with the Securities and Exchange Commission on January 27, 2023).
4.4	Form of Underwriters' Warrant (incorporated by reference to Exhibit 4.3 to Amendment No. 1 to the Company's Registration Statement on Form S-1 filed with the Securities and Exchange Commission on January 27, 2023).
4.5	Form of Warrant Agency Agreement between the Company and American Stock Transfer & Trust Company, LLC (incorporated by reference to Exhibit 4.3 to Amendment No. 1 to the Company's Registration Statement on Form S-1 filed with the Securities and Exchange Commission on January 27, 2023).
4.6	Form of Common Stock Purchase Warrant and form of Pre-Funded Warrant (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K filed by the Company on April 26, 2023).
4.7	Form of Common Stock Purchase Warrant and form of Pre-Funded Warrant (incorporated by reference to Exhibit 4.2 to the Current Report on Form 8-K filed by the Company on April 26, 2023).

Exhibit Number	Description of Document
4.8	Form of Common Stock Purchase Warrant (incorporated by reference to Exhibit 4.1 to Amendment No. 2 to the Company's Registration Statement on Form S-1 filed with the Securities and Exchange Commission on September 27, 2023).
4.9	Form of Pre-Funded Warrant (incorporated by reference to Exhibit 4.2 to Amendment No. 2 to the Company's Registration Statement on Form S-1 filed with the Securities and Exchange Commission on September 27, 2023).
4.10	Form of Placement Agent's Common Stock Purchase Warrant issued October 3, 2023 (incorporated by reference to Exhibit No. 4.3 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on October 5, 2023).
4.11	Form of Common Stock Purchase Warrant (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on November 14, 2022).
4.12	Form of Pre-funded Warrant (incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on November 14, 2022).
4.13	Form of New Warrant (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 23, 2022).
4.14	Form of Series A Common Stock Purchase Warrant issued November 28, 2018 (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on November 28, 2018).
4.15	Form of Pre-Funded Common Stock Purchase Warrant issued November 28, 2018 (incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on November 28, 2018).
4.16	Form of Placement Agent's Common Stock Purchase Warrant issued November 28, 2018 (incorporated by reference to Exhibit 4.3 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on November 28, 2018).
4.17	Form of Common Stock Purchase Warrant issued September 20, 2018 (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on September 20, 2018).
4.18	Form of Placement Agent's Common Stock Purchase Warrant issued September 20, 2018 (incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on September 20, 2018).
4.19	Form of Common Stock Purchase Warrant issued August 3, 2018 (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on August 2, 2018).
4.20	Form of Placement Agent's Common Stock Purchase Warrant issued August 3, 2018 (incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on August 2, 2018).
4.21	Form of Common Stock Purchase Warrant issued July 12, 2018 (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on July 12, 2018).
4.22	Form of Placement Agent's Common Stock Purchase Warrant issued July 12, 2018 (incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on July 12, 2018).
4.23	Form of Common Stock Purchase Warrant issued June 21, 2018 (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 21, 2018).

Exhibit Number	Description of Document
4.24	Form of Placement Agent's Common Stock Purchase Warrant issued June 21, 2018 (incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 21, 2018).
4.25	Form of Common Stock Purchase Warrant issued June 8, 2018 (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 8, 2018).
4.26	Form of Placement Agent's Common Stock Purchase Warrant issued June 8, 2018 (incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 8, 2018).
4.27	Form of Common Stock Purchase Warrant issued April 3, 2018 (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on April 3, 2018).
4.28	Form of Warrant, dated August 16, 2017 (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on August 16, 2017).
4.29	Form of Series C Warrant, dated as of July 8, 2015, by and between the Company and several accredited investors. (incorporated herein by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed on July 7, 2015 (File No. 1-33818)).
4.30	Form of Warrant (incorporated herein by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed on November 5, 2015 (File No. 1-33818)).
4.31	Form of Warrant to purchase shares of Common Stock. (incorporated herein by reference to Exhibit 4.3 to the Company's Registration Statement on Form S-1 filed on January 11, 2017 (File No. 333-213704)).
10.1†	2022 Equity Incentive Plan (incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on December 20, 2022).
10.2†	Second Amended and Restated 2003 Stock Incentive Plan, as amended on May 23, 2018 (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on May 25, 2018).
10.3	Form of Securities Purchase Agreement, dated April 20, 2023, by and between ReShape Lifesciences Inc. and the Investor (incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on April 26, 2023).
10.4†	Form of Stock Option Grant Notice and Stock Option Agreement under Second Amended and Restated 2003 Stock Incentive Plan (incorporated herein by reference to Exhibit 10.6 to the Company's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 14, 2017).
10.5	Exclusive License Agreement, dated September 19, 2023, by and between ReShape Lifesciences Inc. and Biorad Medysis Pvt. Ltd. (incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on September 22, 2023).
10.4	Form of Indemnification Agreement entered into by and between the Company and each of its executive officers and directors. (Incorporated herein by reference to Exhibit 10.17 to Amendment No. 1 to the Company's Registration Statement on Form S-1 filed with the Securities and Exchange Commission on July 6, 2007.
10.5†	Employment Agreement, dated November 1, 2022, by and between ReShape and Paul F. Hickey (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 14, 2022).
10.6†*	Executive Employment Agreement, dated October 29, 2019, by and between the Company and Thomas Stankovich.

Exhibit Number	Description of Document
10.7†	Retention Bonus Agreement, dated August 2, 2022, between the Company and Thomas Stankovich (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on August 2, 2022.
10.8	Lease Agreement, dated March 13, 2023, by and between the Irvine Company LLC and the Company.
10.9	Lease agreement, entered into January 20, 2017, by and between the Company and San Clemente Holdings, LLC (incorporated by reference to Exhibit 10.38 to the Company's Annual Report on Form 10-K filed with the Securities and Exchange Commission on April 2, 2018).
10.11	Warrant Exercise Agreement, dated June 16, 2022, by and among ReShape Lifesciences Inc. and the investor party thereto (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 23, 2022).
10.12	Form of Securities Purchase Agreement, dated November 8, 2022, by and between ReShape Lifesciences Inc. and the investor party thereto (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on November 14, 2022).
10.13	Form of Warrant Amendment Agreement, dated November 8, 2022, by and between ReShape Lifesciences Inc. and the investor party thereto (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on November 14, 2022).
14.1	Code of Conduct and Ethics of the Company. (Incorporated herein by reference to Exhibit 14.1 to the Company's Registration Statement on Form S-1 filed on May 25, 2007 (File No. 333-143265)).
21.1*	Subsidiaries of ReShape Lifesciences Inc.
23.1*	Consent of RSM US LLP, Independent Registered Public Accounting Firm.
24.1*	Power of Attorney (included on signature page to this Form 10-K).
31.1*	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2*	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1*	Certification of Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2*	Certification of Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
97.1	Clawback Policy
101*	Financial statements from the Annual Report on Form 10-K of the Company for the year ended December 31, 2023, formatted in Inline XBRL: (i) the Consolidated Statements of Operations, (ii) the Consolidated Balance Sheets, (iii) the Consolidated Statements of Stockholders' Equity; (iv) the Consolidated Statements of Cash Flows and (v) the Notes to Consolidated Financial Statements.
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)

* Filed herewith.

† Indicates management contract or compensation plan or agreement.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

RESHAPE LIFESCIENCES INC.

By: /s/ PAUL F. HICKEY
Paul F. Hickey
President and Chief Executive Officer

Dated: April 1, 2024

POWERS OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Paul F. Hickey and Thomas Stankovich, and each of them, as his true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments to this report, and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them or their substitutes may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

Signature	Title	Date
/S/ PAUL F. HICKEY **Paul F. Hickey**	President, and Chief Executive Officer (principal executive officer)	April 1, 2024
/S/ THOMAS STANKOVICH **Thomas Stankovich**	Senior Vice President and Chief Financial Officer (principal financial and accounting officer)	April 1, 2024
/S/ DAN W. GLADNEY **Dan W. Gladney**	Executive Chair of the Board	April 1, 2024
/S/ GARY D. BLACKFORD **Gary D. Blackford**	Director	April 1, 2024
/S/ LORI C. MCDOUGAL **Lori McDougal**	Director	April 1, 2024
/S/ ARDA MINOCHERHOMJEE **Arda Minocherhomjee**	Director	April 1, 2024

Exhibit 10.6

RESHAPE LIFESCIENCES
EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (the "Agreement") is made and entered on October 29, 2019 (the "Agreement Date"), between ReShape Lifesciences, ("Company"), a Delaware corporation with its principal place of business at I 00 I Calle Amanecer, San Clemente, CA 92673; and **Thomas Stankovich** ("Employee"), a California resident whose address is 29011 Modjeska Peak, Trabuco Canyon, CA 92679, for the purpose of setting forth the terms and conditions of Employee's employment by Company.

WITNESETH:

WHEREAS, the Company desires to employ Employee as the Chief Financial Officer of the Company, and for Employee to hold such position, on the terms and conditions, and for the consideration, hereinafter set forth and Employee desires to be employed by the Company and hold such position on such terms and conditions and for such consideration; and

WHEREAS, Employee executed a Nondisclosure and Noncompetition Agreement with the Company on October 29, 2019 ("Nondisclosure and Noncompetition Agreement"), which is attached as Exhibit A to this Agreement and fully incorporated herein.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and obligations contained herein, the Company and Employee agree as follows:

ARTICLE I EMPLOYMENT, TERM AND DUTIES

1.1 **Employment.** Effective on the Agreement Date, Employee will be employed as the Company's Chief Financial Officer. Employee accepts such employment and agrees to perform services for the Company pursuant to the terms and conditions set forth in this Agreement.

1.2 **Term.** The term of this Agreement shall commence on the Agreement Date and, unless earlier terminated in accordance with Article III of this Agreement, shall terminate one year from the Agreement Date (the "Term"); provided, however, that the Term of this Agreement shall automatically renew for successive one-year terms thereafter unless, at least 90 days before the expiration of the initial Te1m or any additional Term, either party provides written notice to the other of its or his desire to terminate this Agreement.

1.3 Position and Duties.

1.3.1 **Service with Company.** During the Term, Employee agrees to perform such duties and responsibilities as are assigned to him from time to time by Company's Chief Executive Officer (the "CEO") and/or Board of Directors (the "Board).

1.3.2 **Performance of Duties.** During the Term, Employee agrees to serve Company in an executive capacity as its Chief Financial Officer or such other position as the Company may assign, and shall perform such duties as are required by the CEO and/or the Board.

l.3.2a Employee shall at all times be subject to, and shall abide by, the policies established by the Company, including but not limited to the policies set forth in the Company's employee handbook, as it may be updated from time to time.

l.3.2b Employee agrees that to the best of his ability and experience he will at all times loyally and conscientiously perform all of the duties and obligations required of him either expressly or implicitly by the terms of this Agreement and that may be assigned to him in accordance with this Agreement.

ARTICLE II
COMPENSATION, BENEFITS AND EXPENSES

2.1 **Base Salary.** Subject to the provisions of Article III of this Agreement, during the Term, Company shall pay Employee a"Base Salary" of$300,000.00 on an annualized basis or such other rate as may from time to time be approved by the Board and/or Company. Such Base Salary shall be paid in substantially equal regular periodic payments, less deductions and withholdings, in accordance with Company's regular payroll procedures, policies and practices, as such may be modified from time to time. The Base Salary shall be reviewed by the Board annually for potential adjustment on the basis of performance; and Employee shall be eligible, at Company's sole discretion, for annual salary changes consistent with Company's procedures, policies and practices. If Employee's Base Salary is increased from time to time during the Term, the increased amount shall become the Base Salary for the remainder of the Term and any extensions of the Term and for as long thereafter as required pursuant to Article III as applicable, subject to any subsequent increases.

2.2 **Incentive Compensation.** In addition to Base Salary, Company may make Employee eligible for cash or equity awards pursuant to Company's Incentive Compensation Plan, if any, as may be applicable and adopted by Company. Except to the extent as otherwise provided in Article III in connection with a termination of Employee's employment, payment of incentive compensation will be subject to Employee achieving certain objectives set annually by the CEO and/or the Board of Directors (the "Board"), with the target amount of any cash incentive compensation for any calendar year to be approved by the Board, which target in no event shall be more than 30% (subject to performance of the specified objectives) of Employee's Base Salary in effect from time to time; provided, the 2019 cash incentive compensation will be pro-rated based on Employee's employment with the Company from the Agreement Date to December 31, 2019. Company shall pay any such incentive compensation for which Employee may be eligible for a calendar year on or before March 15 of the following year (provided that Employee is employed on such date). Employee will not be entitled to receive incentive compensation for any calendar year in which Employee's employment is terminated, except as may be provided in Article III.

2.3 **Non-Qualified Stock Option Award.** Company will grant Employee a non-qualified stock option under the Company's 2019 Employee Inducement Incentive Award Plan (the "Incentive Award Plan") to purchase 1.25% shares of the Company's common stock at an exercise

price per share equal to the Fair Market Value (as defined in the Incentive Award Plan) of one share of common stock on the date of grant, subject to and contingent upon the approval of the Company's board of directors, the te1ms of which will be governed by the Incentive Award Plan and a non-qualified stock option award agreement to be executed in connection with such grant which will include, an10ng other terms, that such award will vest twenty five percent (25%) at the first anniversary of the Agreement Date and 2.0833% per month thereafter.

2.4 **Participation in Benefits.** During the Term of Employee's employment by Company, Employee shall be entitled to participate in the employee benefits offered generally by Company to its employees, to the extent that Employee's position, tenure, salary, health and other qualifications make Employee eligible to participate. Employee is eligible to receive vacation benefits in accordance with the Company's "Paid Time Off' policy. Employee's participation in such benefits shall be subject to the terms of the applicable plans, as the same may be amended from time to time. Company does not guarantee the adoption or continuance of any particular employee benefit during Employee's employment; and nothing in this Agreement is intended to, or shall in any way restrict the right of Company to amend, modify or terminate any of its benefit plans during the Term of this Agreement.

ARTICLE III
TERMINATION AND COMPENSATION FOLLOWING TERMINATION

3.1 **Termination.** Subject to the respective continuing obligations of the parties under this Agreement, this Agreement and Employee's employment hereunder may be terminated as of the applicable date, whether before or at the end of the Term (the "Separation Date") under any of the following circumstances:

3.1.1 **Termination by Mutual Agreement.** By mutual written agreement of the parties at any time, which may specify a Separation Date.

3.1.2 **Termination by Employee's Death.** If Employee dies during the Term, the date of his death shall be his Separation Date.

3.1.3 **Termination Due to Employee's Disability.** If Employee becomes Disabled, the Separation Date shall be the effective date of his resignation or his discharge by the Company because of the Disability, after engaging in a good faith interactive process, whichever occurs first. For purposes of this Agreement, "Disabled" or "Disability" means the incapacity or inability of Employee, whether due to accident, sickness or otherwise, to perform the essential functions of Employee's position under this Agreement, with or without reasonable accommodation (provided that no accommodation that imposes undue hardship on Company will be required).

To the extent Employee is unable to perform the essential functions of his position for more than 90 days during any period of 180 consecutive days, the parties agree that he will be put on an unpaid leave of absence as a reasonable accommodation, and that the Company need not guarantee reinstatement when Employee is released back to work as holding his job open at that time would be an undue hardship. Any disputes over this Section shall be resolved by the parties in Arbitration under Section 4.5.

3.1.4 **Termination by Company for Cause.** Company may terminate this Agreement and Employee's employment for Cause immediately upon written notice to Employee. For purposes of this Agreement, "Cause" means: (a) willful breach of Employee's duties to Company or willful breach of this Agreement; (b) Employee's conviction of any felony or any crime involving fraud, dishonesty, or moral turpitude; (c) Employee's willful participation in any fraud against or affecting Company or any subsidiary, affiliate, customer, supplier, client, agent, or employee thereof; or (d) any other act that Company reasonably determines constitutes gross or willful misconduct materially detrimental to Company including, but not limited to, unethical practices, dishonesty, disloyalty, or any other acts harmful to Company; provided, however that a for Cause termination pursuant to clause (a), if susceptible of cure, which determination is in the sole discretion of Company to make, shall not become effective unless Employee fails to cure such failure to perform or breach within 30 days after his receipt of written notice from Company, such notice to describe such failure to perform or breach and identity what reasonable actions shall be required to cure such failure to perform or breach.

For purposes of this Section 3.1.4, no act, or failure to act, on Employee's part shall be considered "dishonest" or "willful" unless done, or omitted to be done, by Employee in bad faith and without reasonable belief that his action or omission was in or not opposed to, the best interest of Company. Any act, or failure to act, based upon authority given pursuant to a resolution duly adopted by the Board or based upon the advice of counsel for Company shall be conclusively presumed to be done, or omitted to be done, by Employee in good faith and in the best interests of Company. Furthermore, the term "Cause" shall not include ordinary negligence or failure to act, whether due to an error in judgment or otherwise, if Employee has exercised substantial efforts in good faith to perform the duties reasonably assigned or appropriate to his position.

3.1.5 **Termination by Employee without Good Reason.** Employee may at any time voluntarily terminate his employment under this Agreement, for any reason or no reason, with 30 days' written notice.

3. I .6 **Termination by Company without Cause.** Company may terminate Employee's employment under this Agreement at any time for any reason or no reason with 30 days' written notice, except that no notice shall be required for a termination without Cause following a "Change in Control" as defined in Employee's Non-Incentive Stock Option Agreement(s), as the case may be, with Company (collectively, the "Stock Option Agreements").

3.1.7 **Termination by Employee for Good Reason.** Employee may at any time voluntarily terminate his employment pursuant to this Agreement for Good Reason (as defined below); provided, however, that any resignation by Employee for Good Reason shall not be effective unless and until the following two conditions have been satisfied: (a) he has notified Company in writing of the facts that he believes constitute Good Reason, within 90 days after such facts first becomes known to him; and (b) Company fails to cure such Good Reason within 30 days after its receipt of that notice. Employee's resignation shall be effective before the end of that 30-day period as of any earlier date on which Company refuses to cure or denies the existence of such Good Reason. The effective date of any resignation for Good Reason shall be a Separation Date. If Company timely cures such Good Reason, or it is determined that the reason for Employee's resignation was not a Good Reason, he shall be deemed not to have resigned unless he elects to resign under Section 3.1.5.

For purposes of this Agreement, "Good Reason" means, at any time: (a) the assignment by Company to Employee of employment duties, functions or responsibilities that are significantly different from, and result in a material diminution of, Employee's duties, functions or responsibilities; (b) a material reduction in Employee's Base Salary or the minimum target amount provided under Section 2.2 for his cash incentive compensation for any calendar year of more than 50%; or (c) a Company requirement that Employee be based at any office or location more than 50 miles from Employee's primary work location before the date of this Agreement.

3.1.8 **Termination at End of Term.** The termination of this Agreement and Employee's employment, as of the end of the initial Term or any additional Term, pursuant to the operation of the provisions of Section 1.2, shall entitle Employee only to the payments provided in Sections 3.2.1 and 3.3.

3.2 **Compensation following Termination of Employment.** If Employee's employment pursuant to this Agreement is terminated before the end of the Term, or by Company as of the end of the Term, Employee shall be entitled to the following compensation and benefits upon such termination:

3.2.1 **Payment of Base Salary.** If Employee's employment is terminated pursuant to any subsection of Section 3.1, Company shall, within 14 calendar days following the Separation Date, pay to Employee, Employee's surviving spouse (or, if none, Employee's estate), as the case may be, any amounts due to Employee for Base Salary through the Separation Date.

If a termination occurs pursuant to Section 3.1.5 (by Employee without Good Reason), when Company receives Employee's notice Company shall have the option, at its discretion (a) to continue to engage Employee's services through the 30 day notice period until the Separation Date, or (b) terminate the use of Employee's services during the 30 day notice period before the Separation Date but treat Employee as if he were providing services through the 30 day notice period until the Separation Date for purposes of determining Employee's compensation due him pursuant to this Section 3.2.1.

3.2.2 **Payment of Severance for Termination by Company without Cause or by Employee for Good Reason.** If (a) Employee's employment is terminated pursuant to either of Sections 3.1.6 (by Company without Cause) or 3.1.7 (by Employee for Good Reason),

(b) Employee has executed and delivered to Company, within 60 days after the effective date of that termination, a written release in substantially the same form as is attached hereto as Exhibit B, and (c) the rescission period specified therein has expired, Company shall, subject to any payment delay required by Section 3.2.6, continue to pay, as severance pay, Employee's Base Salary (at the rate in effect on the Separation Date) for a period of six (6) months following the Separation Date. To the extent that Employee has received stock options or other equity awards, the terms of such stock options and/or the Company's Stock Incentive Plan shall determine the vesting of any Options or other equity awards upon termination under this Section 3.2.2. Such payments of Base Salary will be at the usual and customary pay intervals of Company and will be subject to all appropriate deductions and withholdings. For purposes of Employee's qualification for severance pay, his right to any series of such payments due under this Agreement is treated as the right to a series of sepm·ate payments, each of which is subject to all of the requirements of this Section 3.2.2.

3.2.3 **Payment of Severance at End of Term.** If (a) Employee's employment terminates pursuant to Section 3.1.8, (b) Employee has executed and delivered to Company, within 60 days after the effective date of that termination, a written release in substantially the same form as is attached hereto as Exhibit B, and (c) the rescission period specified therein has expired, Company shall, subject to any payment delay required by Section 3.2.6, continue to pay, as severance pay, Employee's Base Salary at the rate in effect on the Separation Date, for a period of six months following the Separation Date. To the extent that Employee has received stock options or other equity awards, the terms of such stock options and/or the Company's Stock Incentive Plan shall determine the vesting of any Options or other equity awards upon termination under this Section 3.2.3.

3.2.4 **Effects of Change in Control.** Upon the occurrence of a Change in Control (as defined in the Stock Option Agreement), Company agrees that, notwithstanding any contrary provisions of the Stock Option Agreements or Company's Incentive Award Plan, the vesting schedule of Employee's stock options granted in the Stock Option Agreements (the "Options") shall accelerate such that on the date the Change in Control is completed, 100% of any then-unvested shares subject to the Options held by Employee shall immediately vest; *provided, however,* that if, in connection with the consummation of the transaction resulting in the Change in Control, Employee receives a cash payment with respect to each Option (after they become fully vested) equal to the difference or "spread" between (a) the per share amount paid to holders of Company's common stock in such transaction and (b) the per share exercise price under the applicable Stock Option Agreement, his Options shall be cancelled upon the consummation of the Change in Control in exchange for such cash payment.

3.2.5 **General Provision Regarding Treatment of Options.** Except as otherwise specified in Sections 3.2.2 and 3.2.4 of this Agreement, the terms of the Incentive Award Plan and Stock Option Agreements, as applicable, shall govern the treatment of the Options following the Separation Date.

3.2.6 **Potential Delay of Severance Payments.**If, as of the Separation Date, (a) Company's common stock is publicly traded (as dete1mined under Code Section 409A), (b) Employee is a "specified employee" (as determined under Code Section 409A), and (c) any pmiion of the severance pay due Employee under Sections 3.2.2, 3.2.3 would exceed the sum of the applicable limited separation pay exclusions (or otherwise not qualify for any exclusion) as determined pursuant to Code Section 409A, then payment of the excess amount shall be delayed until the first regular payroll date of Company following the six month anniversary of Employee's Separation Date (or the date of his death, if earlier than that anniversary), and shall include a lump sum equal to the aggregate amounts that Employee would have received had payment of this excess amount commenced as provided in Sections 3.2.2 or 3.2.3 after the Separation Date. If Employee continues to perform any services for Company (as an employee or otherwise) after the Separation Date, such six month period shall be measured from the date of Employee's "separation from service" as defined pursuant to Code Section 409A. Each payment under this Agreement shall be treated as a separate payment for purposes of Code Section 409A.

3.3 **Benefits Following Certain Employment Terminations.** Except as othe1wise provided in this Section 3.3, the benefits to which Employee (or, as applicable, Employee's spouse, eligible dependents or estate) may be entitled upon termination of his employment, pursuant to the plans

and policies of Company described in Article II of this Agreement, shall be determined and paid in accordance with such plans, policies and applicable laws.

3.3.1 COBRA Reimbursements Following Certain Employment Terminations. If Employee's employment is terminated pursuant to any of Section 3.1.2, Section 3.1.3, Section 3.1.6, Section 3.1.7 or Section 3.1.8, subject to Employee's execution and non-revocation of the Release, if Employee timely and effectively elects continuation coverage under Company's group health plans pursuant to section 4980B of the Code, as amended ("COBRA") or similar state law, Company will pay or reimburse the premiums for such coverage of Employee (and Employee's dependents, as applicable) at the same rate it pays for active employees for a period of 6 months from the Separation Date; provided, however, that Company's obligation to make such payments shall immediately expire if Employee ceases to be eligible for continuation coverage under COBRA or similar state law or otherwise terminates such coverage or, if earlier, the date Employee becomes eligible for group health plan coverage with a new employer of Employee.

3.4 **Surrender of Records and Property.** Upon termination of Employee's employment with Company, Employee shall deliver promptly to Company all Confidential Information as defined in the Nondisclosure and Noncompetition Agreement attached at Exhibit A, and all Company property including, but not necessarily limited to records, manuals, books, blank forms, documents, letters, memoranda, business plans, minutes, notes, notebooks, reports, computer disks, computer software, computer programs (including source code, object code, on-line files, documentation, testing materials and plans and reports), computer print-outs, member or customer lists, credit cards, keys, identification, products, access cards, designs, drawings, sketches, devices, specifications, formulae, data, tables or calculations or copies thereof, and all other tangible or intangible prope1ty relating in any way to the business of Company that are the property of Company or any subsidiary or affiliate, if any, or which relate in any way to the business, products, practices or techniques of Company or any subsidiary or affiliate.

3.6 **Code Section 409A.** Notwithstanding anything to the contrary in this Agreement, Employee will experience a termination of employment with the Company only if such termination also constitutes a "separation from service" as defined under Code Section 409A. The payment and benefits provided under this Article III are intended to be exempt from, or comply with, the requirements of Code Section 409A and this Agreement will be construed and administered to give effect to such intent.

ARTICLE IV
MISCELLANEOUS PROVISIONS

4.1 **Company Remedies.** Employee acknowledges and agrees that the restrictions and agreements contained in this Agreement and in the Nondisclosure and Noncompetition Agreement that is attached as Exhibit A to this Agreement are reasonable and necessary to protect legitimate interests of Company; that any violation of the Nondisclosure and Noncompetition Agreement would be highly injurious to Company; that Employee's violation of the Nondisclosure and Noncompetition Agreement would cause Company irreparable harm that would not be adequately compensated by monetary damages; and that the remedy at law for any breach of any of the provisions of the Nondisclosure and Noncompetition Agreement will be inadequate.

4.2 **Assignment.** This Agreement shall not be assignable, in whole or in part, by Employee without the written consent of Company and any purported or attempted assignment or transfer of this Agreement or any of Employee's duties, responsibilities or obligations hereunder shall be void. This Agreement shall inure to the benefit of and be binding upon Employee, Employee's heirs and personal representatives. This Agreement shall inure to the benefit of and be binding upon Company and its successors and assigns. Notwithstanding the foregoing, Company may not, without the written consent of Employee, assign its rights and obligations under this Agreement to any business entity that has become the successor to Company in the event of a sale, merger, liquidation or similar transaction. After any such assigmnent by Company to which Employee has given such consent, Company shall be discharged from all further liability hereunder and such successor assignee shall thereafter be deemed to be Company for the purposes of all provisions of this Agreement.

4.3 **Notices.** All notices, requests, demands and other communications under this Agreement shall be in writing, shall be deemed to have been duly given on the date of service if personally served on the parties to whom notice is to be given, or on the third day after mailing if mailed to the parties to whom notice is given, whether by first class, registered, or certified mail, and properly addressed as follows:

If to Company, at:	ReShape Lifesciences 1001 Calle Amanecer San Clemente, CA 92673
If to Employee, at:	Thomas Stankovich 29011 Modjeska Pea Trabuco Canyon, CA 92679

Any party may change the address for the purpose of this Section by giving the other written notice of the new address in the manner set forth above.

4.4 **Governing Law/Venue.** The validity, interpretation, performance and enforcement of this Agreement shall be governed by the laws of the State of California, without regard to conflicts of laws principles thereof. The parties irrevocably consent and agree that the venue of any cause of action seeking injunctive relief shall be California District Court, Orange County, and the parties further irrevocably consent to the personal jurisdiction of the California District Court for any such action.

4.5 **Mediation and Arbitration.** Employee and the Company agree that any and all disputes regarding this Agreement or Employee's employment with the Company will first be addressed in mediation before a mutually agreeable mediator, paid for by the Company. If the matter cannot be resolved in mediation, then the dispute will be resolved in binding arbitration administered by JAMS pursuant to its Employment Arbitration Rules then in effect (available at www.jamsadr.com and upon request). The arbitration shall take place in San Clemente, California before an experienced employment arbitrator licensed to practice law in California and mutually selected by the parties. The arbitrator may not modify or change this Agreement in any way. All out-of pocket costs of the arbitration, including the fees of the arbitrator, the costs of any record or

transcript of the arbitration, administrative fees, and other fees and costs shall be paid for by the Company. Each party shall initially be responsible for his/its own attorneys' fees, except that the arbitrator may award such fees and costs, exclusive of the arbitrator's fees, to the prevailing party in a manner consistent with applicable law as set forth in Paragraph 4.12. All procedural and substantive rights that the Employee and the Company would have in a court of law, will be extended to the parties in arbitration, including full discove1y, the application of the Federal Rules of Evidence, and all forms of relief. The parties expressly acknowledge that they are waiving any right they may have to a jury trial for any and all claims covered by this Agreement.

4.5 a **Class Action Waiver.** Except as otherwise required under applicable law, the Company and Employee expressly intend and agree as follows: (1) that class action and representative action procedures shall not be asserted, nor will they apply, in any arbitration pursuant to this Agreement; (2) that neither the Company nor Employee will assert, participate in, or join class action or representative action claims against the other in arbitration or otherwise; and (3) that the Company and Employee shall only submit their own, individual claims in arbitration and will not seek to represent the interests of any other person.

4.6 **Construction.** Notwithstanding the general rules of construction, both Company and Employee acknowledge that both parties were given an equal opportunity to negotiate the terms and conditions contained in this Agreement, and agree that the identity of the drafter of this Agreement is not relevant to any interpretation of the terms and conditions of this Agreement.

To the extent any provision of this Agreement may be deemed to provide a benefit to Employee that is treated as non-qualified deferred compensation pursuant to Code Section 409A, such provision shall be interpreted in a manner that qualifies for any applicable exemption from compliance with Code Section 409 or, if such interpretation would cause any reduction of benefit(s), such provision shall be interpreted (if reasonably possible) in a manner that complies with Code Section 409A and does not cause any such reduction.

4.7 **Severability.** In the event any provision of this Agreement (or portion thereof) shall be held illegal or invalid for any reason, said illegality or invalidity shall not in any way affect the legality or validity of any other provision of this Agreement. To the extent any provision (or portion thereof) of this Agreement shall be determined to be invalid or unenforceable in any jurisdiction, such provision (or portion thereof) shall be deemed to be deleted from this Agreement as to such jurisdiction only, and the validity and enforceability of the remainder of such provision and of this Agreement shall be unaffected.

4.8 **Entire Agreement.** This Agreement, including the Nondisclosure and Noncompetition Agreement that is attached as its Exhibit A and fully incorporated herein, is the final, complete and exclusive agreement of the parties and sets forth the entire agreement between Company and Employee with respect to Employee's employment by Company, and there are no undertakings, covenants or commitments other than as set fmth herein. The Agreement may not be altered or amended, except by a writing executed by Employee and a member of the Board. This Agreement supersedes, terminates, replaces and supplants any and all other prior understandings or agreements between the parties relating in any way to the hiring or employment of Employee by Company.

4.9 **Survival.** The parties expressly acknowledge and agree that the provisions of this Agreement that by their express or implied terms extend beyond the expiration of this Agreement or the termination of Employee's employment under this Agreement, shall continue in full force and effect, notwithstanding Employee's termination of employment under this Agreement or the expiration of this Agreement.

4.10 **Waivers.** No failure on the part of either party to exercise, and no delay in exercising, any right or remedy under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right or remedy under this Agreement preclude any other or further exercise thereof or the exercise of any other right or remedy granted hereby or by any related document or by law.

4.11 **Attorneys' Fees for Resolving Disputes.** If any party to this Agreement is made or shall become a party to any litigation (including arbitration) commenced by or against the other party involving the enforcement of any of the rights or remedies of such party, or arising on account of a default of the other party in its performance of any of the other party's obligations hereunder, then the prevailing party in such litigation shall be entitled to receive from the other party all costs incurred by the prevailing party in such litigation, plus reasonable attorneys' fees to be fixed by the court or arbitrator (as applicable), with interest thereon from the date of judgment or arbitrator's decision at the rate of 8% or, if less, the maximum rate permitted by law.

[Signature Page Follows]

IN WITNESS WHEREOF, the paities hereto have executed this Agreement as of the date first above written.

ReShape Lifesciences

By _____
Its: _____

_____
Thomas Stanokvich

Exhibit A
ReShape Lifesciences Inc.

Nondisclosure and Non-Solicitation Agreement

This is an agreement between _____ (" Employee") and ReShape Lifesciences Inc., its affiliates, successors and assigns ("Employer"). The patties agree that Employer would be substantially harmed if Employee competes with Employer during employment with Employer or after termination of employment with Employer. The parties further agree that Employer would be substantially harmed if Employee were to disclose its Confidential, Proprietary and Trade Secret Information.

Therefore, in consideration of Employer's employment of Employee for monetary compensation, benefits, access to Employer's Trade Secrets and/or Confidential Information, and/or other valuable consideration provided by Employer, Employee agrees as follows:

I. Nondisclosure of Confidential, Proprietary, and Trade Secret Information

Employee agrees not to disclose Confidential Information to any other third party or company, other than in connection with Employee's employment with Employer, or use such information, directly or indirectly, for any purpose whatsoever, without the prior written consent of Employer.

For purposes of this Agreement, "Confidential Information" means any information that is not generally known to the public or to other persons who can obtain economic value from its disclosure or use; information which derives independent economic benefit from not being known to such persons; and info1mation about the activities or business of Employer that is not generally known to others engaged in similar business or activities, its products, services, finances, trade secrets, contracts, patents filed or pending, the techniques used in completing customer projects, research and development, data and information, processes, designs, engineering, marketing plans or techniques, organization or operation. The foregoing list is intended to be illustrative rather than comprehensive. Additionally, the term "confidential info1mation" shall mean any confidential info1mation as that term is defined in any Agreement Employer may have with its customers or other third parties from time to time.

II. Assignment of Inventions

A) Disclosure and Assignment of Inventions and Other Works. During the term of this Agreement and for one year following the Separation Date, Employee shall promptly disclose to Employer in writing all ideas, improvements and discoveries, whether or not such are patentable or copyrightable, and whether or not in writing or reduced to practice ("Inventions") and any writings, drawings, diagrams, charts, tables, databases, software (in object or source code and recorded on any medium), and any other works of authorship, whether or not such are copyrightable ("Works of Authorship") that are conceived, made, discovered, written or created by Employee alone or jointly with any person, group or entity, whether during the normal hours of his employment at Employer or on Employee's

own time. Employee hereby assigns all rights to all such Inventions and Works of Authorship to Employer. Employee shall give Employer all the assistance it reasonably requires for Employer to perfect, protect, and use its rights to such Inventions and Works of Authorship. Employee shall sign all such documents, take all such actions and supply all such information that Employer considers necessary or desirable to transfer or record the transfer of Employer's entire right, title and interest in such Inventions and Works of Authorship and to enable Employer to obtain exclusive patent, copyright, or other legal protection for Inventions and Works of Authorship anywhere in the world, provided Employer shall bear all reasonable expenses of Employee in rendering such cooperation.

B) Prior Inventions. Employee has set forth on Exhibit A attached hereto a list of all significant Inventions, to the best of his knowledge, that Employee has, alone or jointly with others, made prior to his employment with Employer that Employee considers to be Employee's property or the property of third parties and that Employee wishes to exclude from the scope of this Agreement (collectively referred to as "Prior Inventions"). If no such disclosure is attached, or permission supporting evidence is available, Employee represents that there are no Prior Inventions. If, during Employee's employment with Employer, Employee incorporates a Prior Invention into an Employer product or process, Employer is hereby granted a nonexclusive, royalty-free, irrevocable, perpetual, worldwide license (with rights to sublicense through multiple tiers of sublicenses) to make, have made, modify, use and sell such Prior Invention. Notwithstanding the foregoing, Employee agrees that Employee will not incorporate, or permit to be incorporated, Prior Inventions in any Employer Inventions without Employer's prior written consent.

C) Notice and Acknowledgment. In accordance with California Statutes, the foregoing paragraph does not require Employee to assign or offer to assign to Employer any of Employee's rights in an Invention that Employee developed entirely on Employee's own time without using Employer's equipment, supplies, facilities or trade secret information, and (a) that does not relate directly to Employer's business or to Employer's actual or demonstrably anticipated research or development, or (b) that does not result from any work performed by Employee for Employer. For the purpose of this Section, "Employer's business" shall be defined as development pertaining to implantable medical devices to treat obesity or devices to apply signals to a vagus nerve to treat a gastrointestinal disorder (e.g., obesity, pancreatitis or irritable bowel syndrome).

To the extent a provision in this Agreement purports to require Employee to assign Inventions otherwise excluded by this paragraph, the provision is against the public policy of the State of California and is unenforceable. By signing this Agreement, Employee acknowledges receipt of the notification required by California Statutes.

III. Non-Solicitation of Employees

Employee hereby acknowledges that Employer's employees, consultants and other contractors constitute vital and valuable aspects of its business and missions on a worldwide basis. In recognition of that fact, for a period of one year following the termination of this Agreement for any reason whatsoever, Employee shall not solicit, or assist anyone else in the solicitation of, any of Employer's then-current employees, consultants and other contractors to terminate their

respective relationships with Employer and to become employees, consultants and other contractors of any enterprise with which Employee may then be associated, affiliated or connected.

IV. Employer Remedies

Employee acknowledges and agrees that the restnct10ns and agreements contained in this Agreement are reasonable and necessary to protect legitimate interests of Employer, that the services to be rendered by Employee are of a special, unique and extraordinary character, that it would be difficult to replace such services, that any violation of this Agreement would be highly injurious to Employer, Employee's violation of any provision of this Agreement would cause Employer irreparable harm that would not be adequately compensated by monetary damages, and that the remedy at law for any breach of this Agreement will be inadequate. Accordingly, Employee specifically agrees that Employer shall be entitled, in addition to any remedy at law, to preliminary and permanent injunctive relief and specific performance for any actual or threatened violation of this Agreement and to enforce the provisions of this Agreement. Should a breach of the agreement occur, Employer will be entitled to recover costs, including attorney's fees, incurred in enforcing the te1ms of the Agreement for each breach. If a Court finds any part of the Agreement to be invalid, the remainder of the provisions shall remain in full force and effect to the extent possible.

V. Governing Law/Venue

The validity, interpretation, performance and enforcement of this Agreement shall be governed by the laws of the State of California, without regard to conflicts of laws principles thereof. The parties irrevocably consent and agree that the venue of any cause of action seeking injunctive relief shall be California District Court, Orange County, and the patties further irrevocably consent to the personal jurisdiction of the California District Comt for any such action.

VI. Construction

Notwithstanding the general rules of construction, both Employer and Employee acknowledge that both parties were given an equal opportunity to negotiate the terms and conditions contained in this Agreement, and agree that the identity of the drafter of this Agreement is not relevant to any interpretation of the terms and conditions of this Agreement.

VII. Severability

In the event any provision of this Agreement (or portion thereof) shall be held illegal or invalid for any reason, said illegality or invalidity shall not in any way affect the legality or validity of any other provision of this Agreement. To the extent any provision (or portion thereof) of this Agreement shall be determined to be invalid or unenforceable in any jurisdiction, such provision (or portion thereof) shall be deemed to be deleted from this Agreement as to such jurisdiction only, and the validity and enforceability of the remainder of such provision and of this Agreement shall be unaffected.

VIII. Waiver

Failure by Employer to enforce any provision of this Agreement will not constitute a waiver of or a prohibition against any further enforcement of that provision or any other provision of this Agreement.

IX. Entire Agreement and Amendment

This Agreement supersedes all previous agreements between the parties concerning the subject matter of this Agreement. All amendments to this Agreement must be in writing and signed by the parties to be effective.

X. At Will Employment

This Agreement is not an employment agreement for any specified period of time and Employee understands that either Employee or Employer may terminate the employment relationship at any time and for any reason or no reason at all.

XI. Succession and Survival

This Agreement and the rights, duties and obligations of this Agreement shall survive the termination of Employee's employment with Employer and shall inure to the benefit of and shall be binding upon Employee's heirs, assigns and personal representatives and the successors of Employer.

Executed this _____day of _____ 20___.

EMPLOYEE

By: _____

Printed Name: _____

RESHAPE LIFESCIENCES INC.

By: _____

Printed Name: _____
Its: _____

To: **ReShape Lifesciences Inc.**

From: _____

Date: _____

Subject: **Prior Inventions**

1. Except as listed in Section 2 below, the following is a complete list of all inventions or improvements relevant to the subject matter of my employment by ReShape Lifesciences, Inc. ("Employer") that have been made or conceived or first reduced to practice by me alone or jointly with others prior to my engagement by Employer :

   No inventions or improvements.

☐ See below:

_____

_____

_____

_____

_____

☐ Additional sheets attached

2. Due to a prior confidentiality agreement, I cannot complete the disclosure under Section **1** above with respect to inventions or improvements generally listed below, the proprietary rights and duty of confidentiality with respect to which I owe to the following parties:

	Invention or Improvement	**Party(ies)**	**Relationship**
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____

☐ Additional sheets attached

EXHIBIT B

CONFIDENTIAL SEPARATION AGREEMENT AND GENERAL RELEASE

This Confidential Separation Agreement and General Release (hereinafter "Agreement") is entered into by and between _____(hereinafter "you") and ReShape Lifesciences Inc. (hereinafter "ReShape Lifesciences").

WHEREAS, you and ReShape Lifesciences entered into an Employment Agreement dated _____ ("Employment Agreement") which terminates effective ---------- except as to certain provisions outlined below;

WHEREAS, ReShape Lifesciences wishes to provide you with the separation benefits described in Section 2 below; and

WHEREAS, you and ReShape Lifesciences want to fully and finally settle all issues, differences, and claims, whether potential or actual, between you and ReShape Lifesciences, including, but not limited to, any claim that might arise out of your employment with ReShape Lifesciences or the termination of your employment with ReShape Lifesciences;

NOW, THEREFORE, in consideration of the provisions and of the mutual covenants contained herein, you and ReShape Lifesciences agree as follows:

I. Separation from Employment. Effective _____ (your "date of separation"), your employment with ReShape Lifesciences terminates. Except as provided in this Agreement, all benefits and privileges of employment end as of your date of separation.

2. Separation Benefits. As consideration for your promises and obligations under this Agreement, and subject to the terms and conditions of this Agreement, including the release of claims set forth below, ReShape Lifesciences agrees to pay you, as separation pay, the gross amount of _____,less applicable deductions and withholdings for state and federal taxes, which amount represents six months of your base salary as of your date of separation. The separation pay will be divided and paid to you in substantially equal periodic payments at the usual and customary pay intervals of ReShape Lifesciences, less deductions and withholdings. The payments will begin within 30 business days of the date on which ReShape Lifesciences receives this Agreement signed by you, *provided that* you do not revoke or rescind this Agreement as set forth below. You agree that you ai·e not entitled to the separation benefits provided to you in this Agreement if you do not sign this Agreement.

3. Incentive Compensation. You are not entitled to receive incentive compensation for calendar year____.

4. Medical, Dental, and Life Insurance. The benefits to which you (or, as applicable, your spouse and eligible dependents) may be entitled upon termination of your employment shall be dete1mined and paid in accordance with such plans, policies and applicable laws.

5. Stock Options. All options to purchase shares of common stock of ReShape Lifesciences held by you (the "Options") are subject to the terms of one or more Stock Option Agreements between you and the Company (each, an "Option Agreement") and were granted pursuant to the ReShape Lifesciences Inc. 2019 Employee Inducement Incentive Award Plan, as

amended (the "Plan"). Pursuant to the terms and conditions set forth in the Option Agreements, ReShape Lifesciences agrees that, notwithstanding anything to the contrary set forth in such Option Agreements or the Plan, during the two-year period following your date of separation, you shall be permitted to exercise any Option immediately to the extent that such Option was vested as of your date of separation or would have vested within one year of your date of separation had your employment with Company not terminated. Notwithstanding anything to the contrary set forth in such Option Agreements or the Plan, ReShape Lifesciences shall have a right, following your date of separation, to buy back all such Options based on the per share exercise price under the applicable Option Agreement. The parties agree and acknowledge that, with respect to any Options that were intended by the parties to be treated as "incentive stock options" within the meaning of Section 422 of the Internal Revenue Code of 1986, as amended, such Options, to the extent they may be exercised by you more than 90 days following your date of separation, shall be treated as non-qualified options, notwithstanding any provision in the Option Agreements to the contra1y.

6. Confidential Information; Nonsolicitation. You executed an Employment Agreement with ReShape Lifesciences as well as a Nondisclosure and Noncompetition Agreement, copies of which is attached hereto as Exhibit A. All provisions of both agreements, including those, that by their terms, survive the termination of your employment will continue in full force and effect and are not negated or otherwise affected by this Agreement, including but not limited to the Employment Agreement Section 4.1: Company Remedies; Section 4.4: Governing Law/Venue; Section 4.5: Arbitration; and the Confidentiality and Non-Solicitation attached to the Employment Agreement as its Exhibit A and fully incorporated therein.

7. Return ofReShape Lifesciences Property. You acknowledge that, on or before the date you sign this Agreement, you have returned all ReShape Lifesciences property in your possession, including, but not limited to, all files, memoranda, documents, records, copies of the foregoing, any ReShape Lifesciences credit card, computer, fax machine, Sma1tphone, printer, copier, keys, access cards, and any other property of ReShape Lifesciences in your possession. You also acknowledge that, on or before the date you sign this Agreement, you have provided ReShape Lifesciences with any and all pass codes and/or personal identification numbers used by you to access the ReShape Lifesciences computer system, e-mail system, and/or the Internet, and/or documents or files contained on and saved in the ReShape Lifesciences computer system.

8. Duty to Cooperate. You agree that, beginning on the date you are presented with this Agreement, you will cooperate with ReShape Lifesciences with respect to the transition of your duties, the preservation of effective operations and customer service, and ReShape Lifesciences' strategic and commercial initiatives. As part of your agreement to cooperate, you will provide a list identifying the status of major projects under way, pending customer interactions, the status of sale cycles with customers, the names and contact information of key contacts at customers, and any other information reasonably requested by ReShape Lifesciences regarding your duties and responsibilities. You further agree that, in the 30 day period following your acceptance of this Agreement you will periodically make yourself accessible and available during normal business hours for consultation with ReShape Lifesciences representatives in connection with the transition of your duties and responsibilities. You agree that such consultation may include appearing from time to time at the office of ReShape Lifesciences for conferences.

9. Confidentiality. You agree that the existence and terms and conditions of this Agreement (other than Exhibit A) shall remain confidential and that you will not disclose any information concerning the provisions of this Agreement to any person or entity, including, but not limited to, any present or former employee of ReShape Lifesciences. These confidentiality provisions are subject to the following exceptions: you may disclose the provisions of this Agreement to your attorneys, accountants, tax and financial advisors, and immediate family, or in the course of legal proceedings involving ReShape Lifesciences, or in response to a subpoena, court order, or inquiry by a government agency. You further agree that, if any information concerning the provisions of this Agreement is revealed as permitted by this section, you shall inform the recipient of the information that it is confidential, and the recipient shall agree to keep the information confidential.

10. Release. By this Agreement, you intend to settle any and all claims that you have or may have against ReShape Lifesciences as a result ofReShape Lifesciences hiring you, your employment with ReShape Lifesciences, and the decision to terminate your employment with ReShape Lifesciences. You agree that, in exchange for ReShape Lifesciences' promises in this Agreement, and in exchange for the consideration provided to you by ReShape Lifesciences, described above in Section 2, you, on behalf of your heirs, successors and assigns, hereby release and discharge ReShape Lifesciences, its predecessors, successors, assigns, parents, affiliates, subsidiaries, and related companies, and their officers, directors, shareholders, agents, servants, employees, and insurers (collectively "the Released Parties") from all liability for damages and from all claims that you may have against the Released Parties occurring up through the date you sign this Agreement. You understand and agree that your release of claims in this Agreement includes, but is not limited to, any claims you may have under: Title VII of the Federal Civil Rights Act of 1964, as amended; the Americans with Disabilities Act; the Equal Pay Act; the Employee Retirement Income Security Act; the Age Discrimination in Employment Act of 1967, as amended; the Older Workers Benefit Protection Act; the Family and Medical Leave Act; the Worker Adjustment and Retraining Notification Act of 1988; the False Claims Act and/or any other local, state, or federal law governing discrimination in employment and/or the payment of wages and benefits.

You also agree and understand that you are giving up all other claims, whether grounded in contract or tort theories, including but not limited to: wrongful discharge; breach of contract; any claim for unpaid compensation (including, but not limited to, any claims for PTO or severance except as set forth in this Agreement, or for incentive compensation); tortious interference with contractual relations; promissory estoppel; detrimental reliance; breach of the implied covenant of good faith and fair dealing; breach of express or implied promise; breach of manuals or other policies; breach of fiduciary duty; assault; battery; fraud; false imprisonment; invasion of privacy; intentional or negligent misrepresentation; defamation, including libel, slander, discharge defamation and self-publication defamation; discharge in violation of public policy; whistleblower; qui tam actions; intentional or negligent infliction of emotional distress; or any other theory, whether legal or equitable.

You understand that nothing contained in this Agreement, including but not limited to this Section I 0, will be interpreted to prevent you from filing a charge with the Equal Employment Opportunity Commission ("EEOC"), or any other governmental agency or from participating in or cooperating with an EEOC or other governmental agency investigation or proceeding.

However, you agree that you are waiving the right to monetary damages or other individual legal or equitable relief awarded as a result of any such proceeding.

11. Time to Accept. You are hereby informed that the terms of this Agreement shall be open for acceptance and execution by you through and including _____, during which time you may consult with an attorney and consider whether to accept this Agreement. Changes to this Agreement, whether material or immaterial, will not restart the running of this acceptance period. You hereby are advised to consult with an attorney prior to signing this Agreement.

12. Consideration and Revocation Period. You are hereby informed of your right to revoke your release of claims, insofar as it extends to potential claims under the Age Discrimination in Employment Act, by informing ReShape Lifesciences of your intent to revoke your release of claims within 7 calendar days following your signing of this Agreement. You are also informed of your right to rescind your release of claims, insofar as it extends to potential claims under the California Human Rights Act, by delivering a written rescission to ReShape Lifesciences within 15 calendar days after your signing of this Agreement. You understand that any such revocation or rescission must be made in writing and delivered by hand or by certified mail, return receipt requested, postmarked on or before the last day within the applicable revocation period to: Erica Charlton, HR Payroll Specialist, ReShape Lifesciences, Inc., I 001 Calle Amanecer, CA 92673. If you exercise your right to revoke or rescind this Agreement, ReShape Lifesciences may, at its option, either nullify this Agreement in its entirety, or keep it in effect in all respects other than as to that portion of your release of claims that you have revoked or rescinded. You agree and understand that if ReShape Lifesciences chooses to nullify the Agreement in its entirety, ReShape Lifesciences will have no obligations under this Agreement to you or to others whose rights derive from you.

13. Entire Agreement. This Agreement, as well as the exhibits hereto and any agreements referenced herein, is the final, complete and exclusive agreement of the parties and sets forth the entire agreement between ReShape Lifesciences and you with respect to your employment by ReShape Lifesciences, and there are no undertakings, covenants or commitments other than as set forth herein. The Agreement may not be altered or amended, except by a writing executed by you and a member of the Board. Except as otherwise indicated, this Agreement supersedes, te1minates, replaces and supplants any and all prior understandings or agreements between the parties relating in any way to you hiring or employment by ReShape Lifesciences.

14. Governing Law. The laws of the State of California will govern the validity, construction and performance of this Agreement, without regard to the conflict of law provisions of any other jurisdictions. If any part of this Agreement is construed to be in violation of any law, such part shall be modified to achieve the objective of the parties to the fullest extent permitted and the balance of this Agreement shall remain in full force and effect. If such modification is not possible, said provision will be deemed severable from the remaining provisions of this Agreement and the balance of this Agreement shall remain in full force and effect.

15. Remedies. Any disputes with regard to this Agreement will be governed by the Arbitration Agreement in Section 4.5 of your Employment Agreement.

16. Non-Disparagement/Litigation Assistance. You agree to refrain from any disparagement of the Company, including to the Company's owners, former and cun-ent employees to members of the public. You further agree not to commence, maintain, prosecute or participate in (except as may be required by law, pursuant to court order, or in response to a valid subpoena) any action, charge, complaint, or proceeding of any kind (on your own behalf and/or on behalf of any other person or entity and/or on behalf of or as a member of any alleged class of persons) in any court, or before any administrative or investigative body or agency (whether public, quasi-public or private) against the Company or any Released Party with respect to any act, omission, transaction or occurrence arising out of your employment at the Company.

17. No Admission. Nothing in this Agreement is intended to be, and nothing will be deemed to be, an admission of liability by ReShape Lifesciences or you that either party has violated any state or federal statute, local ordinance or principle of common law, or that either party has engaged in any wrongdoing.

18. Waiver. No waiver of any provision of this Agreement shall be binding unless executed in writing by the party making the waiver. The waiver by either party of a breach by the other party of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the dates set forth below to be effective as of the date shown below.

I acknowledge and agree that I have read this Agreement in its entirety and that I agree to the conditions and obligations set forth herein. Further, I agree that I have had adequate time to consider the terms of this Agreement and that I am voluntarily entering into this Agreement with a full understanding of its meaning. I understand that I am hereby advised to consult with an attorney before signing this Agreement.

Dated: _____

_____
Thomas Stankovich

RESHAPE LIFESCIENCES INC.

Dated: _____

By: _____
Its: _____

Exhibit 21.1

Subsidiaries

Reshape Lifesciences, Inc. (Delaware)
ReShape Weightloss, Inc. (Delaware)
ReShape Lifesciences Netherlands B.V. (Netherlands)
ReShape Lifesciences Australia Pty Ltd (Australia)
ReShape Costa Rica Sociedad de Responsabilidad Limited (Costa Rica)
Obalon Center for Weight Loss, Inc. (Delaware)

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statements on Form S-8 (Nos. 333-213988, 333-218482, 333-224864, 333-232759, 333-235876, and 333-236062), Form S-3 (Nos. 333-221264, 333-227160, 333-259301, and 333-259303), and Form S-1 (333-229142, 333-232276, and 333-236327) of ReShape Lifesciences Inc. of our report dated April 17, 2023, relating to the consolidated financial statements of ReShape Lifesciences Inc., appearing in this Annual Report on Form 10-K of ReShape Lifesciences Inc. for the year ended December 31, 2022.

/s/ RSM US LLP

Irvine, California

April 17, 2023

EXHIBIT 31.1

CERTIFICATIONS

I, Paul F. Hickey, certify that:

1. I have reviewed this Annual Report on Form 10-K of ReShape Lifesciences Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the consolidated financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ PAUL F. HICKEY

Paul F. Hickey
President and Chief Executive Officer

Date: April 1, 2024

EXHIBIT 31.2

CERTIFICATIONS

I, Thomas Stankovich, certify that:

1. I have reviewed this Annual Report on Form 10-K of ReShape Lifesciences Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the consolidated financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/S/ THOMAS STANKOVICH

Thomas Stankovich
Chief Financial Officer
and Senior Vice President, Finance

Date: April 1, 2024

EXHIBIT 32.1

CERTIFICATION PURSUANT TO
18 U.S.C. §1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of ReShape Lifesciences Inc. (the Company) on Form 10-K for the period ended December 31, 2023 as filed with the Securities and Exchange Commission on the date hereof (the Report), I, Paul F. Hickey, President and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. §1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/S/ PAUL F. HICKEY
Paul F. Hickey
President and Chief Executive Officer

April 1, 2024

EXHIBIT 32.2

CERTIFICATION PURSUANT TO
18 U.S.C. §1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of ReShape Lifesciences (the Company) on Form 10-K for the period ended December 31, 2023 as filed with the Securities and Exchange Commission on the date hereof (the Report), I, Thomas Stankovich, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. §1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/S/ THOMAS STANKOVICH

Thomas Stankovich
Chief Financial Officer
and Senior Vice President, Finance

April 1, 2024

RESHAPE LIFESCIENCES INC.
CLAWBACK POLICY

This ReShape Lifesciences Inc. Clawback Policy (this "**Policy**") was approved effective as of September 19, 2023 (the "**Effective Date**") by the Compensation Committee (the "**Committee**") of the Board of Directors (the "**Board**") of ReShape Lifesciences Inc. (the "**Company**"). This Policy is adopted pursuant to and intended to comply with Rule 5608 (Recovery of Erroneously Awarded Compensation) of The Nasdaq Stock Market LLC ("**Nasdaq**") so long as the Company's securities are listed on Nasdaq.

Purpose and Policy Statement

The Company is committed to conducting business with integrity in accordance with high ethical standards and in compliance with all applicable laws, rules and regulations. This includes the Company's commitment to comply with all laws, rules and regulations applicable to the presentation of the Company's financial information to the public and to the recovery of erroneously awarded incentive-based compensation.

As a result, the Committee has adopted this Policy to provide that, in the event the Company is required to prepare an accounting restatement due to the material noncompliance of the Company with any financial reporting requirement under the securities laws, including any required accounting restatement to correct an error in previously issued financial statements that is material to the previously issued financial statements, or that would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period (each, as applicable, a "**Restatement**"), the Company will recover reasonably promptly the amount of any "erroneously awarded compensation" "received" by an "executive officer," in each case as such terms are defined in this Policy, if and to the extent required by any federal or state law, rule or regulation, or rule, regulation, policy or listing standard of the Securities and Exchange Commission ("**SEC**") or any securities exchange on which the Company's securities are listed, including without limitation, Nasdaq Rule 5608 (Recovery of Erroneously Awarded Compensation).

In the event of any change in any federal or state law, rule or regulation, or rule, regulation, policy or listing standard of the SEC or any securities exchange on which the Company's securities are listed after the Effective Date, which requires the Company to recover compensation from an executive officer, the Company will seek recovery under this Policy to the extent required by such laws, rules, regulations or listing standards.

Administration

The Committee has full power, authority, and sole and exclusive discretion to reasonably construe, interpret and administer this Policy. The Committee will interpret this Policy consistent with Nasdaq Rule 5608 (Recovery of Erroneously Awarded Compensation) and any guidance issued thereunder, the rules and regulations of the SEC, and any other applicable laws, rules or regulations governing the mandatory recovery of compensation, as such laws, rules or regulations may change, be interpreted or evolve from time to time. All determinations and decisions made by the Committee will be made in its reasonable discretion and will be final, conclusive and binding on all affected individuals.

The term "**Committee**" as used in this Policy means the Compensation Committee of the Board, or in the absence of such a committee, a majority of the "independent directors" (as defined under Nasdaq Rule 5605(a)(2)) serving on the Board.

Applicability

This Policy applies to all "incentive-based compensation" "received" by a person, in each case as such terms are defined in this Policy:

- After beginning service as an "executive officer," as such term is defined in this Policy, and who served as an executive officer at any time during the performance period for that incentive-based compensation;

- While the Company has a class of securities listed on Nasdaq or another national securities exchange or a national securities association; and

- During the three completed fiscal years immediately preceding the date that the Company is required to prepare the Restatement, plus any transition period (that results from a change in the Company's fiscal year) within or immediately following those three completed fiscal years; provided, however, that a transition period between the last day of the Company's previous fiscal year end and the first day of its new fiscal year that comprises a period of nine to 12 months would be deemed a completed fiscal year; and provided, further, that the Company's obligation to recover erroneously awarded compensation is not dependent on if or when the restated financial statements are filed.

For purposes of determining the relevant recovery period, the date that the Company is required to prepare a Restatement is the earlier to occur of: (i) the date the Company's Board, a committee of the Board or the officer or officers of the Company authorized to take such action if Board action is not required, concludes, or reasonably should have concluded, that the Company is required to prepare a Restatement; or (ii) the date a court, regulator or other legally authorized body directs the Company to prepare a Restatement.

Executive Officers Covered by Policy

This Policy covers the Company's current and former executive officers who received erroneously awarded compensation regardless of whether the executive officer committed misconduct or contributed to the error.

The term "**executive officer**" as used in this Policy means the Company's:

- president;
- principal financial officer;
- principal accounting officer (or if there is no such accounting officer, the controller);
- any vice-president of the Company in charge of a principal business unit, division or function (such as sales, administration or finance);
- any other officer who performs a policy-making function; or
- any other person who performs similar policy-making functions for the Company and executive officers of the Company's parents or subsidiaries if such individuals perform such policy-making functions for the Company.

Policy-making function is not intended to include policy-making functions that are not significant.

Identification of an executive officer for purposes of this Policy would include at a minimum executive officers identified by the Company pursuant to Item 401(b) of SEC Regulation S-K.

Authority and Obligation to Recover Erroneously Awarded Compensation; Exceptions

In the event of a Restatement, the Company must reasonably promptly recover any "erroneously awarded compensation," as such term is defined in this Policy, in compliance with this Policy, except to the extent one of the three conditions below is met and the Committee has made a determination that recovery would be impracticable.

1. The direct expense paid to a third party to assist in enforcing this Policy would exceed the amount to be recovered and the Company has made a reasonable attempt to recover any amount of erroneously awarded compensation, has documented such reasonable attempt(s) to recover and provided that documentation to Nasdaq.

2. Recovery would violate home country law where that law was adopted prior to November 28, 2022 and the Company has obtained an opinion of home country counsel, acceptable to Nasdaq, that recovery would result in such a violation and has provided such opinion to Nasdaq.

3. Recovery would likely cause an otherwise tax-qualified retirement plan, under which benefits are broadly available to employees of the Company, to fail to meet the requirements of Section 401(a)(13) or 411(a) of the U.S. Internal Revenue Code and regulations thereunder.

Erroneously Awarded Compensation

The term "**erroneously awarded compensation**" as used in this Policy means that amount of "incentive-based compensation" received that exceeds the amount of "incentive-based compensation" that otherwise would have been received had it been determined based on the restated amounts, and must be computed without regard to any taxes paid.

For incentive-based compensation based on stock price or total shareholder return, where the amount of erroneously awarded compensation is not subject to mathematical recalculation directly from the information in a Restatement,

- the amount must be based on a reasonable estimate of the effect of the Restatement on the stock price or total shareholder return upon which the incentive-based compensation was received; and

- the Company must maintain documentation of the determination of that reasonable estimate and provide such documentation to Nasdaq.

The term "**incentive-based compensation**" as used in this Policy means any compensation that is granted, earned or vested based wholly or in part upon the attainment of a financial reporting measure.

The term "**financial reporting measures**" as used in this Policy means measures that are determined and presented in accordance with the accounting principles used in preparing the Company's financial statements, and any measures that are derived wholly or in part from such measures. Financial reporting measures include, without limitation, stock price and total shareholder return, and may include non-GAAP financial measures. A financial reporting measure need not be presented within the Company's financial statements or included in an SEC filing to constitute a financial reporting measure for this purpose.

Incentive-based compensation is deemed "**received**" as such term is used in this Policy by an executive officer in the Company's fiscal period during which the financial reporting measure specified in the incentive-based compensation award is attained, even if the payment or grant of the incentive-based compensation occurs after the end of that period.

Notwithstanding the generality of the foregoing, "incentive-based compensation" is intended to be interpreted and construed broadly and includes with respect to any plan that takes into account incentive-based compensation (other than a tax-qualified plan) any amount contributed to a notional account based on erroneously awarded compensation and any earnings accrued to date on that notional account. Such plans include without limitation long-term disability plans, life insurance plans, supplemental executive retirement plans and other compensation, if it is based on incentive-based compensation.

For clarity and the avoidance of doubt, "incentive-based compensation" does not include the following:

- base salary (other than any base salary increase earned wholly or in part based on the attainment of a financial reporting measure, which increase is subject to recovery as incentive-based compensation hereunder);

- bonuses paid solely at the discretion of the Committee or Board that are not paid from a "bonus pool" that is determined by satisfying a financial reporting measure performance goal;

- bonuses paid solely upon satisfying one or more subjective standards (e.g. demonstrated leadership) and/or completion of a specified employment period;

- non-equity incentive plan awards earned solely upon satisfying one or more strategic measures (e.g., consummating a merger or divestiture), or operational measures (e.g., completion of a project); and

- equity awards for which the grant is not contingent upon achieving any financial reporting measure performance goal, and vesting is contingent solely upon completion of a specified employment period and/or attaining one or more non-financial reporting measures.

Method of Recovery

The Committee will determine, in its reasonable discretion, the method for recovering incentive-based compensation hereunder, which may include, without limitation, any one or more of the following:

- requiring reimbursement of cash incentive-based compensation previously paid;

- seeking recovery of any gain realized on the vesting, exercise, settlement, sale, transfer or other disposition of any equity-based awards;

- cancelling or rescinding some or all outstanding vested or unvested equity-based awards;

- adjusting or withholding from unpaid compensation, deferred compensation or other set-off;

- cancelling or setting-off against planned future grants of equity-based awards; and/or

- any other method required or authorized by applicable law or contract.

Enforceability

In addition to the adoption of this Policy, the Company will take steps to implement an agreement to this Policy by all current and future executive officers. In furtherance of the foregoing, each executive officer subject to this Policy is required to sign and return to the Company the Acknowledgement Form attached hereto as **Exhibit A** pursuant to which such executive officer will agree to be bound by the terms and comply with this Policy.

Policy Not Exclusive

Any recovery under this Policy is in addition to, and not in lieu of, any other remedies or rights of recovery that may be available to the Company pursuant to the terms of any other clawback or recovery policy or any similar policy in any employment agreement, incentive or equity compensation plan or award or other agreement and any other legal rights or remedies available to the Company.

Notwithstanding the generality of the foregoing, to the extent that the requirements under the provisions of Section 304 of the Sarbanes-Oxley Act of 2002 are broader than the provisions in this Policy, the provisions of such law will apply to the Company's Chief Executive Officer and Chief Financial Officer.

No Indemnification

The Company will not indemnify or agree to indemnify any executive officer or former executive officer against the loss of erroneously awarded compensation nor will the Company pay or agree to pay any insurance premium to cover the loss of erroneously awarded compensation.

Effective Date

This Policy is effective as of the Effective Date and applies to all incentive-based compensation received by the Company's current and former executive officers on or after the Effective Date.

Required Disclosures

The Company will file all disclosures with respect to this Policy in accordance with the requirements of the federal securities laws, including the disclosure required by the applicable SEC filings and will provide all required SEC and other disclosures regarding this Policy and in the event of a Restatement.

Amendment and Termination

The Committee may amend, modify or terminate this Policy in whole or in part at any time in its sole discretion and may adopt such rules and procedures that it deems necessary or appropriate to implement this Policy or to comply with Nasdaq Rule 5608 (Recovery of Erroneously Awarded Compensation) and any other applicable laws, rules and regulations.

Successors

This Policy shall be binding and enforceable against all current and former executive officers of the Company and their respective beneficiaries, heirs, executors, administrators, or other legal representatives.

* * * * * *

Adopted by the Compensation Committee
of the Board of Directors of ReShape Lifesciences Inc.
on September 19, 2023.

RESHAPE LIFESCIENCES INC.
CLAWBACK POLICY

ACKNOWLEDGEMENT FORM

By signing below, the undersigned acknowledges and confirms that the undersigned has received and reviewed a copy of the ReShape Lifesciences Inc. Clawback Policy (the "**Policy**").

By signing this Acknowledgement Form, the undersigned acknowledges and agrees that the undersigned is and will continue to be subject to the Policy and that the Policy will apply both during and after the undersigned's employment with ReShape Lifesciences Inc. and its direct and indirect subsidiaries.

Further, by signing below, the undersigned agrees to abide by the terms of the Policy, including, without limitation, by returning any erroneously awarded compensation (as defined in the Policy) to ReShape Lifesciences Inc. and its direct and indirect subsidiaries to the extent required by, and in a manner permitted by, the Policy.

Signature: _____
Name: _____
Date: _____