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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 10-Q

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended September 30, 2017

Commission file number: 1-33818

RESHAPE LIFESCIENCES INC.

(Exact name of registrant as specified in its charter)

Delaware	**48-1293684**
(State or other jurisdiction of incorporation)	**(IRS Employer Identification No.)**

2800 Patton Road, St. Paul, Minnesota 55113
(Address of principal executive offices, including zip code)

(651) 634-3003
(Registrant's telephone number, including area code)

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 and posted on its corporate Website, if any, every Interactive Data File required to be submitted and posted 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 and post such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting 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	☐ (Do not check if a smaller reporting entity)	Smaller Reporting Company	☒
Emerging Growth Company	☐		

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

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

As of October 31, 2017, 21,718,713 shares of the registrant's Common Stock were outstanding.

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PART I – FINANCIAL INFORMATION

PART II – OTHER INFORMATION

Registered Trademarks and Trademark Applications: In the United States we have registered trademarks for vBLOC®, ENTEROMEDICS®, MAESTRO®, RESHAPE®, RESHAPE DUO®, and RESHAPE MEDICAL®, each registered with the United States Patent and Trademark Office, and trademark applications for vBLOC POWER TO CHOOSE and VBLOC POWER TO CHOOSE AND DESIGN. In addition, some or all of the marks vBLOC, ENTEROMEDICS, MAESTRO, MAESTRO SYSTEM ORCHESTRATING OBESITY SOLUTIONS, vBLOC POWER TO CHOOSE, vBLOC POWER TO CHOOSE AND DESIGN RESHAPE, RESHAPE DUO, RESHAPE MEDICAL and RESHAPE LIFESCIENCES are the subject of either a trademark registration or application for registration in Australia, Brazil, Canada, China, the European Community, India, Kuwait, Mexico, Saudi Arabia, Switzerland and the United Arab Emirates. We believe that we have common law trademark rights to GASTRIC VEST. This Quarterly Report on Form 10-Q contains other trade names and trademarks and service marks of ReShape Lifesciences and of other companies.

PART I – FINANCIAL INFORMATION

ITEM 1. CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

RESHAPE LIFESCIENCES INC.
Condensed Consolidated Balance Sheets
(Unaudited)

	September 30, 2017	December 31, 2016
ASSETS		
Current assets:		
Cash and cash equivalents	$ 23,433,297	$ 3,310,787
Accounts receivable (net of allowance for bad debts of $20,000 at September 30, 2017 and December 31, 2016)	333,057	143,692
Inventory	1,586,629	1,789,578
Prepaid expenses and other current assets	252,473	476,624
Total current assets	25,605,456	5,720,681
Property and equipment, net	195,514	200,720
Goodwill	6,397,671	—
Other intangible assets (net of accumulated amortization of $44,777 at September 30, 2017)	21,842,409	—
Other assets	1,142,304	1,119,405
Total assets	$ 55,183,354	$ 7,040,806
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 706,520	$ 1,311,706
Accrued expenses	3,427,245	2,751,415
Total current liabilities	4,133,765	4,063,121
Common stock warrant liability	2,159	39,119
Total liabilities	4,135,924	4,102,240
Commitments and contingencies (Note 5)		
Stockholders' equity:		
Preferred stock, 5,000,000 shares authorized:		
Series A convertible preferred stock, $0.01 par value; zero shares outstanding at September 30, 2017 and December 31, 2016; 12,531 and zero shares issued at September 30, 2017 and December 31, 2016, respectively	—	—
Conditional convertible preferred stock, $0.01 par value; 1,000,181 and zero shares issued and outstanding at September 30, 2017 and December 31, 2016	10,002	—
Series B convertible preferred stock, $0.01 par value; 20,000 shares issued and 11,003 and zero shares outstanding at September 30, 2017 and December 31, 2016	110	
Common stock, $0.01 par value; 300,000,000 shares authorized; 12,208,671 and 2,736,621 shares issued and outstanding at September 30, 2017 and December 31, 2016, respectively	122,087	27,366
Additional paid-in capital	376,057,278	303,852,582
Accumulated deficit	(325,142,047)	(300,941,382)
Total stockholders' equity	51,047,430	2,938,566
Total liabilities and stockholders' equity	$ 55,183,354	$ 7,040,806

See accompanying notes to condensed consolidated financial statements.

RESHAPE LIFESCIENCES INC.
Condensed Consolidated Statements of Operations
(Unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2017	2016	2017	2016
Sales revenue	$ 110,020	$ 296,760	$ 243,120	$ 644,760
Service revenue	250,000	—	250,000	—
Total revenue	360,020	296,760	493,120	644,760
Cost of revenue	214,511	146,631	298,506	342,070
Gross profit	145,509	150,129	194,614	302,690
Operating expenses:				
Selling, general and administrative	4,595,538	3,361,572	16,085,311	15,088,297
Research and development	1,109,641	1,253,390	3,586,129	3,879,378
Total operating expenses	5,705,179	4,614,962	19,671,440	18,967,675
Operating loss	(5,559,670)	(4,464,833)	(19,476,826)	(18,664,985)
Other income (expense):				
Interest income	—	1,493	100	4,991
Interest expense	—	(1,391,134)	—	(3,393,374)
Warrants expense	(4,438,149)	—	(4,438,149)	—
Change in value of warrant liability	5,047	241,741	(283,688)	3,330,254
Change in value of convertible notes payable	—	(909,030)	—	(200,004)
Other, net	(904)	(700)	(2,102)	(3,272)
Net loss	$ (9,993,676)	$ (6,522,463)	$ (24,200,665)	$ (18,926,390)
Net loss per share—basic and diluted	$ (1.06)	$ (11.77)	$ (3.19)	$ (69.14)
Shares used to compute basic and diluted net loss per share	9,470,807	554,028	7,589,239	273,751

See accompanying notes to condensed consolidated financial statements.

RESHAPE LIFESCIENCES INC.
Condensed Consolidated Statements of Cash Flows
(Unaudited)

	Nine Months Ended September 30,	
	2017	2016
Cash flows from operating activities:		
Net loss	$ (24,200,665)	$ (18,926,390)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation	113,831	109,382
Stock-based compensation	3,483,451	2,201,949
Warrants issued to former holders of convertible notes	4,438,149	—
Amortization of commitment fees, debt issuance costs and original issue discount	—	1,596,093
Amortization of intangible assets	44,777	—
Change in value of convertible notes payable	—	200,004
Change in value of warrant liability	283,688	(3,330,254)
Change in operating assets and liabilities:		
Accounts receivable	(189,365)	(133,752)
Inventory	(257,157)	(447,537)
Prepaid expenses and other current assets	224,151	459,970
Other assets	443,033	(290,480)
Accounts payable	(788,186)	508,769
Accrued expenses	675,829	(744,036)
Accrued interest payable	—	1,673,793
Net cash used in operating activities	(15,728,464)	(17,122,489)
Cash flows from investing activities:		
Acquisition, net of cash acquired	(1,848,720)	—
Purchases of property and equipment	(108,625)	(11,544)
Net cash used in investing activities	(1,957,345)	(11,544)
Cash flows from financing activities:		
Proceeds from warrants exercised	3,334,176	—
Proceeds from sale of common stock and warrants for purchase of common stock (January 2017)	6,468,148	—
Proceeds from sale of convertible preferred stock (January 2017)	12,531,000	—
Proceeds from sale of convertible preferred stock (August 2017)	18,400,000	—
Common stock financing costs	(2,505,244)	(28,000)
Preferred stock financing costs	(419,761)	—
Proceeds from convertible notes payable	—	17,250,000
Repayments on convertible notes payable	—	(446,867)
Debt issuance costs	—	(726,793)
Net cash provided by financing activities	37,808,319	16,048,340
Net increase in cash and cash equivalents	20,122,510	(1,085,693)
Cash and cash equivalents:		
Beginning of period	3,310,787	7,927,240
End of period	$ 23,433,297	$ 6,841,547
Supplemental disclosure:		
Cash paid for interest	$ —	$ 169,259
Noncash investing and financing activities:		
Issuance of convertible preferred shares and common shares for acquisition	$ 26,258,963	$ —
Conversion of convertible preferred shares to common stock	$ 21,528,000	$ —
Conversion of convertible notes and interest payable	$ —	$ 14,234,201

See accompanying notes to condensed consolidated financial statements.

ReShape Lifesciences Inc.
Notes to Condensed Consolidated Financial Statements
(Unaudited)

(1) Summary of Significant Accounting Policies

Description of Business

ReShape Lifesciences Inc. (the Company) is focused on the development and commercialization of minimally invasive medical devices to treat obesity, metabolic diseases and other gastrointestinal disorders. The Company was incorporated in the state of Minnesota on December 19, 2002 and was reincorporated in Delaware on July 22, 2004. In January 2006, the Company established EnteroMedics Europe Sárl, a wholly-owned subsidiary located in Switzerland. Prior to October 23, 2017, the Company was known as EnteroMedics Inc. While the Company is currently headquartered in St. Paul, Minnesota, in conjunction with its acquisition of ReShape Medical, Inc. (ReShape Medical) on October 2, 2017, it announced its intention to move its headquarters to San Clemente, California. See further information regarding the Company's acquisition of ReShape Medical in Note 11, Subsequent Events.

The Company's board of directors and stockholders approved a 1-for-70 reverse split (the Reverse Stock Split) of the Company's outstanding common stock that became effective after trading on December 27, 2016. The Reverse Stock Split did not change the par value of the Company's stock or the number of preferred shares authorized by the Company's Fifth Amended and Restated Certificate of Incorporation. An amendment to the Certificate of Incorporation was also approved in connection with the Reverse Stock Split to increase the number of shares of the Company's common stock authorized for issuance to 300 million shares, effective immediately after the Reverse Stock Split. All share and per share amounts have been retroactively adjusted to reflect the Reverse Stock Split for all periods presented.

On October 26, 2017, the Company filed a Certificate of Amendment to its Sixth Amended and Restated Certificate of Incorporation to reduce the number of authorized shares of the Company's common stock from 300 million to 275 million

Risks and Uncertainties

The Company is focused on the development and commercialization of minimally invasive medical devices to treat obesity, metabolic diseases and other gastrointestinal disorders. vBloc® Neurometabolic Therapy (vBloc Therapy), delivered by a U.S. Food and Drug Administration (FDA)-approved pacemaker-like device called the vBloc®System, is designed to help patients feel full and eat less by intermittently blocking hunger signals on the vagus nerve.

We have a limited operating history and only recently received FDA approval to sell the vBloc System in the United States. In addition, we have regulatory approval to sell the vBloc System in the European Economic Area and other countries that recognize the European CE Mark and do not have any other significant source of revenue currently. We have devoted substantially all of our resources to the development and commercialization of the vBloc System, which was formerly known as the Maestro or vBloc Rechargeable System.

On May 22, 2017 the Company acquired the Gastric Vest System™ (Gastric Vest) through the acquisition of BarioSurg, Inc. The Gastric Vest is an investigational, minimally invasive, laparoscopically implanted medical device being studied for weight loss in obese and morbidly obese patients. The Gastric Vest wraps around a plicated stomach, emulating the effect of conventional weight-loss surgery, and is intended to enable gastric volume reduction without permanently changing patient anatomy.

On October 2, 2017 the Company acquired ReShape Medical, Inc., a privately-held medical technology company that develops, manufactures and markets the ReShape® Dual Weight Loss Balloon (the ReShape Balloon), an FDA-approved, minimally invasive intragastric balloon designed to treat obesity patients with a body mass index (BMI) between 30 and 40, with one or more related comorbid conditions. Because the closing of this acquisition was after September 30, 2017, the Company's Consolidated Balance Sheets and Statements of Operations included with this Quarterly Report on Form 10-Q do not reflect the acquisition of ReShape Medical.

The Company's products require approval from the U.S. Food and Drug Administration (FDA) or corresponding foreign regulatory agencies prior to commercial sales. The Company received FDA approval on January 14, 2015 for vBloc Therapy, delivered via the vBloc System, and has begun a controlled commercial launch at select surgical centers in the United States. The vBloc System has also received CE Mark and was previously listed on the Australian Register of Therapeutic Goods (ARTG). The ReShape Balloon received FDA approval on July 28, 2015.

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.

The Company's 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.

Basis of Presentation

The Company has prepared the accompanying condensed consolidated financial statements in conformity with accounting principles generally accepted in the United States of America. The Company's fiscal year ends on December 31.

The accompanying condensed consolidated financial statements and notes thereto are unaudited. In the opinion of the Company's management, these statements include all adjustments, which are of a normal recurring nature, necessary to present a fair presentation. Interim results are not necessarily indicative of results for a full year. The condensed consolidated balance sheet as of December 31, 2016 was derived from audited consolidated financial statements, but does not include all disclosures required by accounting principles generally accepted in the United States of America. The information included in this Form 10-Q should be read in conjunction with the Company's Annual Report on Form 10-K for the year ended December 31, 2016.

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America 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.

Principles of Consolidation

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

Fair Value of Financial Instruments

Carrying amounts of certain of the Company's financial instruments, including cash and cash equivalents, accounts receivable, prepaid expenses and other current assets, accounts payable and accrued liabilities approximate fair value due to their short maturities. Certain of the Company's common stock warrants are required to be reported at fair value and the Company has elected to report its senior amortizing convertible notes at fair value. The fair values of common stock warrants and investments in debt and equity securities, if any, are disclosed in Note 4. The fair values of senior amortizing convertible notes (the Notes) outstanding, if any, are valued using a Binomial Lattice model.

Common Stock Warrant Liability

Common stock warrants that were issued in connection with the July 8, 2015 public offering (the Series A Warrants) and the common stock warrants issued in connection with the November 9, 2015, January 11, 2016 and

May 2, 2016 7% senior amortizing convertible notes (the Note Warrants) are classified as a liability in the condensed consolidated balance sheets, as the common stock warrants issued provide for certain anti-dilution protections in the event shares of common stock or securities convertible into shares of common stock are issued below the then-existing exercise price. The fair value of these common stock warrants is re-measured at each financial reporting period and immediately before exercise, with any changes in fair value being recognized as a component of other income (expense) in the condensed consolidated statements of operations.

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.

Inventory

The Company accounts for inventory at the lower of cost or market and records any long-term inventory as other assets in the condensed consolidated balance sheets.

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 condensed consolidated balance sheets and the resulting gain or loss is reflected in the condensed consolidated statements of operations. Repairs and maintenance are expensed as incurred.

Impairment of Long-Lived Assets, Intangible Assets and Goodwill

The Company evaluates its long-lived assets, including its 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 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 has not identified any such impairment losses to date. The Company tests Goodwill and indefinite-lived intangible assets for impairment annually as required.

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 has provided a full valuation allowance against the gross deferred tax assets. The Company's policy is to classify interest and penalties related to income taxes as income tax expense in the condensed consolidated statements of operations.

Medical Device Excise Tax

On January 14, 2015, the Company received FDA approval for vBloc Therapy, delivered via the vBloc System, and starting in the second quarter of 2015 revenues were generated from sales in the United States. As a result, the Company is now required to pay a quarterly Medical Device Tax which is a part of the Affordable Care Act, which

imposes a 2.3% excise tax on the sale of certain medical devices by device manufactures, producers or importers. The excise tax was effective on sales of devices made after December 31, 2012. The Company records the Medical Device Tax as an operating expense in the condensed consolidated statements of operations. A moratorium was placed on the Medical Device Tax for 2016 and 2017.

Comprehensive Loss

Comprehensive loss is defined as the change in equity of a company during a period from transactions and other events and circumstances excluding transactions resulting from investment owners and distributions to owners. There was no difference from reported net loss for the three and nine months ended September 30, 2017 and 2016.

Revenue Recognition

Sales revenue is recognized when persuasive evidence of an arrangement exists, title or risk of loss has passed, the selling price is fixed or determinable, and collection is reasonably assured. Products are sold through direct sales or medical device distributors and revenue is recognized upon sale to a bariatric center of excellence or a medical device distributor when no right of return or price protection exists. Terms of sales to international distributors are generally EXW, reflecting that goods are shipped “ex works,” in which risk of loss is assumed by the distributor at the shipping point. A provision for returns is recorded only if product sales provide for a right of return. No provision for returns was recorded for the three and nine months ended September 30, 2017 and 2016, as the product sales recorded did not provide for rights of return.

Revenues for services are recognized when earned, subject to limitations, if any, related to multiple deliverables. We evaluate each element in these multiple-element arrangements to determine whether they represent a separate unit of accounting and recognize each element as the services are performed.

Research and Development Expenses

Research and development expenses are charged to expense as incurred. Research and development expenses include, but are not limited to, product development, clinical trial expenses, including supplies, devices, explants and revisions, quality assurance, regulatory expenses, payroll and other personnel expenses, materials and consulting costs.

Patent Costs

Costs associated with the submission of a patent application are expensed as incurred given the uncertainty of the patents resulting in probable future economic benefits to the Company.

Stock-Based Compensation

The fair value method is applied to all share-based payment awards issued to employees and where appropriate, nonemployees, unless another source of literature applies. All option grants are expensed on a straight-line basis over the vesting period.

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. 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. The Company’s potential dilutive shares, which include outstanding common stock options and warrants, have not been included in the computation of diluted net loss per share for all periods as the result would be anti-dilutive.

The following table sets forth the computation of basic and diluted net loss per share for the three and nine months ended September 30, 2017 and 2016:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2017	2016	2017	2016
Numerator:				
Net loss	$ (9,993,676)	$ (6,522,463)	$ (24,200,665)	$ (18,926,390)
Denominator for basic and diluted net loss per share:				
Weighted-average common shares outstanding	9,470,807	554,028	7,589,239	273,751
Net loss per share—basic and diluted	$ (1.06)	$ (11.77)	$ (3.19)	$ (69.14)

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:

	September 30,	
	2017	2016
Stock options outstanding	1,331,166	1,414,918
Common shares underlying convertible preferred stock	9,787,210	—
Warrants to purchase common stock	14,308,337	3,953,413

Recently Issued or Adopted Accounting Standards

In May 2014, FASB issued Revenue from Contracts with Customers, Topic 606 (Accounting Standards Update No. 2014-09 (ASU 2014-09)), which provides a framework for the recognition of revenue, with the objective that recognized revenues properly reflect amounts an entity is entitled to receive in exchange for goods and services. This guidance will be effective for interim and annual reporting periods beginning after December 15, 2017. The Company intends to use the modified retrospective approach when it adopts the standard as required January 1, 2018. The Company's accounting for revenue related to vBloc products is not expected to materially change. The implications of the adoption of the new standard related to sales of ReShape Medical's products are currently being evaluated. Additionally, the new standard will likely require incremental revenue disclosures that may be significant.

In March 2016, FASB issued Improvements to Employee Share-Based Payment Accounting, (Accounting Standards Update No. 2016-09 (ASU 2016-09)), which is intended to simplify several aspects of the accounting for share-based payment transactions, including the income tax consequences, classification of awards as either equity or liabilities, the estimation of forfeitures, shares withheld for taxes and classification of shares withheld for taxes on the statement of cash flows. As part of the adoption of this guidance the Company has elected to account for forfeitures of share-based awards as they occur. The Company prospectively adopted ASU 2016-09 as required on January 1, 2017 and the adoption did not have a material effect on its consolidated financial statements.

In July 2017, FASB issued ASU 2017-11, Earnings Per Share (Topic 260); Distinguishing Liabilities from Equity (Topic 480); Derivatives and Hedging (Topic 815): (Part I) Accounting for Certain Financial Instruments with Down Round Features, (Part II) Replacement of the Indefinite Deferral for Mandatorily Redeemable Financial Instruments of Certain Nonpublic Entities and Certain Mandatorily Redeemable Noncontrolling Interests with a Scope Exception. The amendments in this update are intended to simplify the accounting for certain equity-linked financial instruments and embedded features with down round features that result in the strike price being reduced on the basis of the pricing of future equity offerings. Under the new guidance, a down round feature will no longer need to be considered when determining whether certain financial instruments or embedded features should be classified as liabilities or equity instruments. That is, a down round feature will no longer preclude equity classification when assessing whether an instrument or embedded feature is indexed to an entity's own stock. In addition, the amendments clarify existing disclosure requirements for equity-classified instruments. These amendments are effective for fiscal years, and interim periods within those years, beginning after December 15, 2018, with early adoption permitted. We early adopted the applicable amendments in the third quarter of 2017 on a retrospective basis.

There have been no other significant changes in recent accounting pronouncements during the nine months ended September 30, 2017 as compared to the recent accounting pronouncements described in the Company's Annual Report on Form 10-K for the year ended December 31, 2016.

(2) Liquidity and Management's Plans

The accompanying condensed consolidated financial statements have been prepared assuming the Company will continue as a going concern. The Company currently is not generating revenue from operations that is significant relative to its level of operating expenses, and does not anticipate generating revenue sufficient to offset operating costs in the short-term to mid-term. The Company has financed its operations to date principally through the sale of equity securities, debt financing and interest earned on investments. The Company's history of operating losses, limited cash resources and lack of certainty regarding obtaining significant third-party reimbursement for the vBloc System or timing thereof, raise substantial doubt about our ability to continue as a going concern absent a strengthening of our cash position.

On January 23, 2017, the Company closed an underwritten public offering consisting of units of common stock, convertible preferred stock and warrants to purchase common stock. Gross proceeds of the offering were $19.0 million, prior to deducting underwriting discounts and commissions and offering expenses of $2.5 million.

On August 16, 2017, the Company closed an underwritten public offering consisting of units of Series B Convertible Preferred Stock and warrants to purchase common stock. Gross proceeds of the offering were $20.0 million, prior to deducting underwriting discounts and commissions and offering expenses of approximately $2.0 million.

During the nine months ended September 30, 2017, common stock warrants for 599,670 shares of common stock were exercised by warrant holders of warrants issued January 23, 2017 with proceeds to the Company of $3.3 million.

As of September 30, 2017, the Company had $23.4 million of cash and cash equivalents to fund its operations through 2017 early 2018.

The Company's anticipated operations include plans to (i) integrate the sales and operations of the Company with the newly acquired ReShape Medical in order to expand sales of both the ReShape Balloon and vBloc as well as to obtain cost savings synergies, (ii) expand the controlled commercial launch of vBloc Therapy, delivered via the vBloc System, (iii) continue development of the Gastric Vest, (vi) seek opportunities to leverage the Company's intellectual property portfolio and custom development services to provide third party sales and licensing opportunities, and (v) 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, clinical and product development activities. However, the Company will ultimately need to achieve sufficient revenues from product sales and obtain additional debt or equity financing to support its operations.

Management is currently pursuing various funding options, including seeking additional equity financing as well as a strategic merger or other transaction to obtain additional funding or expand its product line to continue the development of, and to successfully commercialize, the ReShape Balloon, the vBloc System and the Gastric Vest. While the acquisition of ReShape Medical does provide incremental revenues to the Company, the cost to further develop and commercialize the ReShape Balloon is expected to significantly exceed revenues for the foreseeable future. While there can be no assurance that the Company will be successful in its efforts, the Company has a long history of raising equity financing to fund its development activities. Should the Company be unable to obtain adequate financing in the near term, the Company's business, result of operations, liquidity and financial condition would be materially and negatively affected, and the Company would be unable to continue as a going concern. Additionally, there can be no assurance that, assuming the Company is able to strengthen its cash position, it will achieve sufficient revenue or profitable operations to continue as a going concern.

(3) Acquisition

On May 22, 2017, the Company entered into an Agreement and Plan of Merger (the "Merger Agreement") to acquire all of the ownership interests of BarioSurg, Inc. ("BarioSurg"), a company developing the Gastric Vest System (the “Gastric Vest”), an investigational, minimally invasive, laparoscopically implanted medical device being studied for weight loss in obese and morbidly obese patients.

The consideration paid by the Company for all of the outstanding shares of capital stock and outstanding options of BarioSurg consisted of: (i) 1.38 million shares of common stock, par value $0.01 per share, of the Company ("Company Common Stock"), (ii) 1.0 million shares of newly created conditional convertible preferred stock, par value $0.01 per share, of the Company ("Company Preferred Stock"), which shares will convert into 5.0 million shares of Company Common Stock subject to and contingent upon the post-closing approval of the Company's stockholders in accordance with the NASDAQ Stock Market Rules, and (iii) $2.0 million in cash. At the closing of the Merger, 100,018 shares of Company Preferred Stock were deposited with an escrow agent to fund-post closing indemnification obligations of BarioSurg’s former stockholders. The total consideration paid by the Company, preliminarily valued at $28.3 million, includes: (a) $2.0 million in cash paid from our existing cash balances and (b) $26.3 million from the issuance of Company Common Stock and Company Preferred Stock. The preliminary valuation of the Company Common Stock and Company Preferred Stock took into account (i) the conversion ratio of the Company Preferred Stock, (ii) the average closing prices of our common stock on the NASDAQ Stock Market on the date the transaction was announced and the three trading days following the announcement, and (iii) a 19% discount for lack of marketability related to the shares issued in the transaction.

The purchase price consideration of $28.3 million does not include expenses of $131,000 and $367,000 for legal, accounting, audit, valuation and other services that were incurred during the three and nine months ended September 30, 2017 as part of the transaction and were expensed as incurred.

The following table summarizes the estimated fair values of the assets acquired and liabilities assumed as a result of the BarioSurg acquisition. The excess of the cost of the acquisition over the fair value of assets acquired was recorded as goodwill. The assessment of fair value is preliminary and is based on information that was available at the time the consolidated condensed financial statements were prepared. Accordingly, the allocation of purchase price is preliminary and, therefore, subject to adjustment in future periods.

Cash	$	151,280
Property and equipment		3,000
Goodwill		6,397,671
In Process Research & Development		20,720,939
Trademarks/tradenames		1,090,363
Covenant not to compete		75,884
Other assets		5,826
Current liabilities assumed		(186,000)
Net assets acquired	$	28,258,963

We believe that the amount of goodwill relative to identifiable intangible assets relates to several factors including (i) potential synergies related to market opportunities for multiple product offerings, (ii) future technology, and (iii) initial relationships and awareness of the Gastric Vest.

In-process research and development (“IPR&D”) consists of the Gastric Vest, which has not yet been clinically tested in the United States and has not yet been approved by the FDA. Acquired IPR&D assets are initially recognized at fair value and are classified as indefinite-lived assets until the successful completion or abandonment of the associated research and development efforts. The value assigned to IPR&D was determined by estimating the net cash flows from the Gastric Vest development project and discounting the net cash flows to their present value. During the development period, this asset will not be amortized as charges to earnings; instead, this asset will be subject to periodic impairment testing. Upon successful completion of the development process for the acquired IPR&D, the asset would then be considered a finite-lived intangible asset and amortization will commence. Trademarks/tradenames were valued using

the relief from royalty method and are being amortized over a 10-year period. The covenant not to compete is being amortized over a three-year period. The values of these intangible assets are considered Level 3 measurements.

The results of this acquisition, a $443,000 loss for the 2017 year-to-date period through September 30, is included in our consolidated operations beginning May 22, 2017.

Unaudited Pro Forma Information

The following unaudited pro forma financial information presents our combined results of operations as if the acquisition of BarioSurg and the related issuance of Company Common Stock had occurred on January 1, 2016. Pro forma information reflects adjustments that give effect to pro forma events that are directly attributable to the acquisition, factually supportable and expected to have a continuing impact on the combined results following the acquisition. In addition, the unaudited pro forma financial information do not purport to be indicative of the results that would have actually been obtained if the acquisition had occurred as of January 1, 2016 or that may be obtained in the future, and do not reflect future synergies, integration costs, or other such costs or savings.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2017	2016	2017	2016
Revenues	$ 360,020	$ 296,760	$ 493,120	$ 644,760
Net loss	$ (9,895,138)	$ (6,691,689)	$ (24,230,493)	$ (19,406,642)
Net loss per share—basic and diluted	$ (1.04)	$ (3.46)	$ (2.92)	$ (11.73)

The unaudited pro forma results include adjustments due to increases in amortization expense and acquisition related costs. The per share unaudited pro forma results also reflect adjustment of weighted average common shares outstanding to reflect the assumed issuance of 1.38 million shares of Company Common Stock as of January 1, 2016.

(4) Fair Value Measurements

Fair value of financial assets and liabilities is defined as the price that would be received to sell an asset or transfer a liability in an orderly transaction between market participants at the measurement date. A fair value hierarchy has been established that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1 measurements) and the lowest priority to unobservable inputs (Level 3 measurements). The three levels of the fair value hierarchy are described below:

- Level 1—Unadjusted quoted prices in active markets that are accessible at the measurement date for identical, unrestricted assets or liabilities.

- Level 2—Quoted prices for similar assets and liabilities in active markets, quoted prices for identical or similar assets or liabilities in markets that are not active or model-derived valuations for which all significant inputs are observable, either directly or indirectly.

- Level 3—Prices or valuation techniques that require inputs that are both significant to the fair value measurement and unobservable.

The Company’s assets that are measured at fair value on a recurring basis are classified within Level 1 or Level 2 of the fair value hierarchy. The Company does not hold any recurring assets that are measured at fair value using Level 3 inputs.

The Company did not hold any short-term investments classified as available for sale or held to maturity as of September 30, 2017 and December 31, 2016.

The fair value of the Company's common stock warrant liability is calculated using a Black-Scholes valuation model and is classified as Level 2 in the fair value hierarchy. The fair values are presented below along with the valuation assumptions:

	Series A Warrants	
	September 30, 2017	December 31, 2016
Risk-free interest rates	1.31 %	1.20 %
Expected life	15 months	24 months
Expected dividends	— %	— %
Expected volatility	194.28 %	122.03 %
Fair value	$ 2,159	$ 36,000

The following were the fair value assumptions used by the Company in calculating values of Note Warrants as of December 31, 2016:

	December 31, 2016		
	November 2015 Note Warrants	January 2016 Note Warrants	May 2016 Note Warrants
Risk-free interest rates	1.47 %	1.93 %	1.93 %
Expected life	46 months	48 months	52 months
Expected dividends	— %	— %	— %
Expected volatility	102.29 %	108.57 %	106.37 %
Fair value	$ 449	$ 1,633	$ 1,037

The following table summarizes fair value measurements of the Series A Warrants and Note Warrants by level at December 31, 2016 and September 30, 2017:

	Level 1	Level 2	Level 3	Total
Common stock warrants at December 31, 2016	$ —	$ 39,119	$ —	$ 39,119
Common stock warrants at September 30, 2017	$ —	$ 2,159	$ —	$ 2,159

During the three and nine months ended September 30, 2016, the Company had amounts outstanding from 7% senior amortizing convertible notes (the Notes) related to Note issuances on November 9, 2015 (the First Closing) and January 11, 2016 (the Second Closing) and May 2, 2016 (the Third Closing), when the Company issued Notes with principal amounts of $1.5 million, $11.0 million and $6.25 million, respectively. As of December 31, 2015, the fair value of the outstanding Notes from the First Closing was determined to be $1.3 million. The fair value of the Notes issued with the Second Closing was determined to be $9.9 million on the January 11, 2016 issue date and $2.4 million on September 30, 2016. The fair value of the Notes issued with the Third Closing was determined to be $6.0 million on the May 2, 2016 issue date and $3.2 million on September 30, 2016. The fair values were calculated using a Binomial Lattice model and the following assumptions:

	November 2015 Notes		January 2016 Notes	
	September 30, 2016	December 31, 2015	September 30, 2016	January 11, 2016
Risk-free interest rates	N/A	1.11 %	0.65 %	1.01 %
Expected life	N/A	1.86 years	1.11 years	1.83 years
Expected dividends	N/A	— %	— %	— %
Expected volatility	N/A	57.5 %	70.0 %	60.0 %
Fair value per share of common stock	N/A	$ 0.03	$ 0.002	$ 0.02

	May 2016 Notes	
	September 30, 2016	May 2, 2016
Risk-free interest rates	0.65 %	0.69 %
Expected life	1.11 years	1.52 years
Expected dividends	— %	— %
Expected volatility	70.0 %	65.0 %
Fair value per share of common stock	$ 0.002	$ 0.01

(5) Inventory

From the Company's inception, inventory related purchases had been used for research and development related activities and had accordingly been expensed as incurred. In December 2011, the Company began receiving ARTG listings for components of the vBloc Rechargeable System from the Australian Therapeutic Goods Administration, with the final components being listed on the ARTG in January 2012. As a result, the Company determined certain assets were recoverable as inventory beginning in December 2011. The Company accounts for inventory at the lower of cost or market and records any long-term inventory as other assets in the condensed consolidated balance sheets. There was $1.1 million and $676,000 of long-term inventory, primarily consisting of raw materials, as September 30, 2017 and December 31, 2016, respectively.

Current inventory consists of the following as of:

	September 30, 2017	December 31, 2016
Raw materials	$ 207,758	$ 335,606
Work-in-process	1,362,399	1,437,957
Finished goods	16,472	16,015
Inventory	$ 1,586,629	$ 1,789,578

(6) Commitments and Contingencies

Operating Lease

The Company rents its headquarters office, warehouse and laboratory facilities under an operating lease, which was originally set to expire on September 30, 2015. On August 25, 2015, the Company entered into an amendment extending the term of the operating lease for three years until September 30, 2018, with monthly base rent ranging from $18,925 to $20,345.

With the acquisition of BarioSurg, the Company also leases space in Lake Forest, California under an operating lease with monthly base rent of approximately $2,200 per month through September 30, 2018.

With the October 2, 2017 acquisition of ReShape Medical, the Company leases separate office and manufacturing/warehouse space in San Clemente, California. The operating lease for office space has a term that runs through June 30, 2022 with base rent of approximately $24,600 per month and with annual rent escalations of approximately 3%. The operating lease for manufacturing/warehouse space has a term that runs through October 31, 2019 with base rent of approximately $10,900 per month.

Total rent expense recognized for each of the three month periods ended September 30, 2017 and 2016 was $64,893 and $58,905 and for each of the nine-month periods was $185,436 and $176,175. At September 30, 2017, future minimum payments for the Company, including the lease obligations related to the October 2, 2017 acquisition of ReShape Medical (see also Note11, Subsequent Events) are as follows:

Year ending December 31,	
Remaining three months of 2017	$ 173,832
2018	633,695
2019	419,082
2020	319,262
2021	327,949
2022	165,061
	$ 2,038,881

vBloc Clinical Trials

The Company continues to evaluate the vBloc System in human clinical trials, including the EMPOWER trial and ReCharge trial. Both of these clinical trials require patients to be followed out to 60 months. The Company is required to pay for patient follow up visits only to the extent they occur. In the event a patient does not attend a follow up visit, the Company has no financial obligation. The Company is also required to pay for explants or revisions, including potential conversions of ReCharge control devices to active devices, should a patient request or be required to have one during the course of the clinical trials. The Company has no financial obligation unless an explant, revision or conversion is requested or required. Clinical trial costs are expensed as incurred.

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.

Litigation

On February 28, 2017, the Company received a class action and derivative complaint filed on February 24, 2017 in U. S. District Court for the District of Delaware by Vinh Du, one of the Company's shareholders. The complaint names as defendants ReShape Lifesciences, the board of directors and four members of our senior management, namely, Scott Youngstrom, Nick Ansari, Peter DeLange and Paul Hickey, and contains a purported class action claim for breach of fiduciary duty against the board of directors and derivative claims for breach of fiduciary duty against the board of directors and unjust enrichment against our senior management. The allegations in the complaint relate to the increase in the number of shares authorized for grant under our Second Amended and Restated 2003 Stock Incentive Plan (the "Plan"), which was approved by our shareholders at the Special Meeting of Shareholders held on December 12, 2016 (the "Special Meeting"), and to our subsequent grant of stock options on February 8, 2017, to the Company's Directors and senior management to purchase an aggregate of 1,093,450 shares of our common stock (the "Option Grants"). In the complaint, the plaintiff contends that (i) the number of shares authorized for grant under the Plan, as adjusted by the board of directors after the Special Meeting for the subsequent recapitalization of the Company, resulted from an alleged breach of fiduciary duties by the board of directors, and (ii) our senior management was allegedly unjustly enriched by the subsequent Option Grants. The plaintiff seeks relief in the form of an order rescinding the Plan as approved by the shareholders at the Special Meeting, an order cancelling the Option Grants, and an award to plaintiff for his costs, including fees and disbursements of attorneys, experts and accountants. On April 17, 2017, we filed a motion to dismiss the complaint based on the plaintiff's failure to satisfy Delaware's demand requirement for a derivative action and failure to state a valid claim. The motion is now fully briefed and the Court will hear oral argument on November 28, 2017. We believe the allegations in the complaint are without merit, and intend to defend the action vigorously.

On April 20, 2017, Fulfillium, Inc., filed a Complaint in the United States District Court for the District of Delaware accusing ReShape Medical, Inc., which the Company acquired on October 2, 2017 and is now a wholly-owned subsidiary of the Company, of trade secret misappropriation under the California Uniform Trade Secrets Act (CA. Civ. Code §3426 et seq.) and/or Delaware law (Code Ann. Title 6 §2001 et seq); and infringement of U.S. Patent Nos. 9,445,930 and 9,456,915. On July 28, 2017, Reshape Medical, Inc. filed a Rule 12(b)(6) motion to dismiss the trade secrets claims as time-barred and/or for failure to state a claim and to dismiss most of the patent infringement claims for failure to state a claim. ReShape Medical, Inc., also filed a motion to transfer the litigation to the United States District Court for the Central District of California. On October 10, 2017, Fulfillium filed a motion seeking leave to amend its complaint to add an investor in ReShape Medical, Inc. as a co-defendant, but did not amend the substantive allegations of its original Complaint that are the basis of the pending motion to dismiss. ReShape Medical, Inc. filed an opposition to the motion for leave to amend on October 24, 2017 and Fulfillium filed its Reply on October 31, 2017. The motions to dismiss and transfer were heard on November 7, 2017, and on November 9, 2017, the Court issued an Order granting-in-part the motion to dismiss, dismissing the trade secret claim and allegations of willful infringement, with leave to amend, and transferring the case to the United States District Court for the Central District of California. The Court did

not rule on the motion for leave to amend the complaint to add the proposed new party, which remains fully briefed. Management of the Company intends to vigorously defend against the claims and believes the risk of loss remote.

Except as disclosed in the foregoing paragraphs, the Company is not currently a party to any 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.

(7) Senior Amortizing Convertible Notes

On November 9, 2015, January 11, 2016 and May 2, 2016 the Company issued 7% senior amortizing convertible notes (the "Notes") with principal amounts of $1.5 million, $11.0 million and $6.25 million. Warrants were also issued in connection with each of the three Notes (the "Note Warrants"). As of December 31, 2016 the Notes were fully amortized, primarily through non-cash conversions of the Notes into shares of common stock. For the nine months ended September 30, 2016, the condensed consolidated statement of operations includes interest expense related to the Notes. See further details regarding the Notes and Note Warrants in footnote 8 to the Company's Consolidated Financial Statements contained in our Annual Report on Form 10-K for the Year Ended December 31, 2016.

(8) Stock-based Compensation

The fair value method of accounting for share-based payments is applied to all share-based payment awards issued to employees and where appropriate, nonemployees, unless another source of literature applies.

Based on the application of these standards, stock-based compensation expense for stock-based awards under the Company's Amended and Restated 2003 Stock Incentive Plan (the Plan) and inducement grants for the three and nine months ended September 30, 2017 and 2016, including $138,000 and $4,000 for nonemployees, respectively, was allocated to operating expenses follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2017	2016	2017	2016
Selling, general and administrative	$ 599,767	$ 310,133	$ 3,412,820	$ 1,731,768
Research and development	17,584	45,203	70,631	470,181
Total	$ 617,351	$ 355,336	$ 3,483,451	$ 2,201,949

As of September 30, 2017 there was approximately $5.2 million of total unrecognized compensation costs, related to employee unvested stock option awards, which are expected to be recognized over a weighted-average period of 2.4 years.

The estimated grant-date fair values of the stock options were calculated using the Black-Scholes valuation model, based on the following assumptions for the three and nine months ended September 30, 2017 and 2016:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2017	2016	2017	2016
Risk-free interest rates	1.88%-1.99%	1.03%	1.88%-2.34%	0.87%–1.64%
Expected life	6.25 years	4.00 years	6.00 years–10.00 years	4.00 years–6.25 years
Expected dividends	0%	0%	0%	0%
Expected volatility	90.93%	96.64%	90.93%–131.24%	88.43%–96.10%

Option activity under the Plan for the nine months ended September 30, 2017 was as follows:

	Shares Available For Grant	Outstanding Options	
		Number of Shares[1]	Weighted-Average Exercise Price[1]
Balance, December 31, 2016	2,988,243	19,840	$ 770.35
Shares reserved	—	—	—
Options granted	(1,333,450)	1,333,450	6.71
Options exercised	—	—	—
Options cancelled	22,124	(22,124)	55.73
Balance, September 30, 2017	1,676,917	1,331,166	$ 22.63

(1) Outstanding option amounts as of December 31, 2016 and September 30, 2017 include both 2003 Plan options as well as inducement options granted in November 2015 and January 2016 to executive officers in conjunction with their recruitment.

(9) Stock Sales

January 2017 Issuance of Common Stock, Convertible Preferred Stock and Warrants

On January 23, 2017, the Company closed an underwritten public offering consisting of units of common stock, convertible preferred stock and warrants to purchase common stock. Gross proceeds of the offering were $19.0 million, prior to deducting underwriting discounts and commissions and offering expenses of $2.5 million.

The offering was comprised of Class A Units, priced at a public offering price of $5.31 per unit, with each unit consisting of one share of common stock and one five-year warrant (each, a "2017 Warrant") to purchase one share of common stock with an exercise price of $5.84 per share, and Class B Units, priced at a public offering price of $1,000 per unit, with each unit comprised of one share of Series A Preferred Stock (the Preferred Stock), which was convertible into 188 shares of common stock, and 2017 Warrants to purchase 188 shares of common stock. The conversion price of the Preferred Stock issued in the transaction as well as the exercise price of the 2017 Warrants are fixed priced and do not contain any variable pricing features nor any price based anti-dilutive features apart from customary adjustments for splits and reverse splits of common stock and both have been recorded within Shareholders' Equity in the condensed consolidated balance sheet. The Preferred Stock included a beneficial ownership limitation of 4.99%, but had no dividend preference (except to extent dividends are also paid on the common stock), liquidation preference or other preferences over common stock. The securities comprising the units were issued separately in the offering.

A total of 1,218,107 shares of common stock, 12,531 shares of Preferred Stock convertible into 2,359,894 shares of common stock, and 2017 Warrants to purchase 3,577,994 shares of common stock were issued in the offering including the underwriters' exercise of their over-allotment option to purchase 466,695 shares of common stock and 2017 Warrants to purchase an additional 466,695 shares of common stock.

On January 23 and January 24, 2017 all shares of Preferred Stock issued in conjunction with the offering were converted by their holders into 2,359,894 shares of common stock.

August 2017 Issuance of Convertible Preferred Stock and Warrants

On August 16, 2017, the Company closed a firm commitment underwritten public offering (the "Offering") of 20,000 units consisting of one share of Series B Convertible Preferred Stock, par value $0.01 per share (the "Series B Preferred Stock"), which is convertible into 435 shares of common stock, par value $0.01 share (the "Common Stock"), at a conversion price of $2.30 per share, and one seven-year warrant to purchase 435 shares of Common Stock at an exercise price of $2.30 per share (the "Warrants"), at a public offering price of $1,000 per unit

The net proceeds received by the Company from the sale of the units was approximately $18.0 million, after deducting underwriting discounts and offering expenses.

The Series B Preferred Stock was determined to not be mandatorily redeemable under ASC 480. Additionally, the Company identified two embedded features within the Series B Preferred Stock: (1) optional conversion by the holder, and (2) redemption in the event of a fundamental change and the Company determined that neither of these embedded features required bifurcation under ASC 815. Since the Series B Preferred Stock is only redeemable in an ordinary liquidation, upon the occurrence of a fundamental transaction which is solely within the Company's control, or in circumstances when all common shareholders are entitled to receive the same form of consideration, the Series B Preferred Stock is presented within permanent equity.

The warrants issued with the Series B Preferred Stock were also classified in stockholders' equity as they are both indexed to the Company's own stock and meet the scope exception in ASC 815-10-15-74(a) and, accordingly, do not require derivative liability accounting pursuant to ASC 815.

Prior to the closing and subsequent to the Offering, certain purchasers of the units sold in the Offering notified the Company of their election to convert the shares of Series B Preferred Stock underlying such units into shares of Common Stock. As of September 30, 2017, 8,997 of the 20,000 shares of the Series B Preferred Stock issued in the offering had been converted into 3,913,695 shares of Common Stock.

On August 16, 2017, the Company also issued warrants to purchase an aggregate of 2,575,000 shares of Common Stock to certain parties (each, a "Holder") to the Securities Purchase Agreement (as amended, the "Purchase Agreement"), dated November 4, 2015, between the Company and the other parties named therein, as consideration for the waiver by each of the Holders of their right to participate in future securities offerings by the Company, which rights were granted pursuant to the Purchase Agreement. These warrants are in substantially the same form, and on the same terms as, the Warrants issued pursuant to the Offering. Because the Company received no additional consideration or future rights related to the warrants issued to the Holders, the Black Scholes value of the warrants was recorded as $4.4 million of expense as of the August 16, 2017 issuance date. The Black Scholes value was estimated using a risk-free interest rate of 2.03%, an expected life of 7.0 years, expected dividends of zero and expected volatility of 112.03%.

(10) Warrants

During the nine months ended September 30, 2017, common stock warrants for 599,670 shares of common stock were exercised by warrant holders with proceeds to the Company of $3.3 million.

Stock warrant activity for the nine months ended September 30, 2017 is as follows:

	Common Shares	Weighted Average Exercise Price
Balance, December 31, 2016	55,049	$ 238.90
Granted (1)	14,852,994	3.15
Exercised	(599,670)	5.56
Cancelled	(36)	238.90
Balance, September 30, 2017	14,308,337	$ 3.51

(1) See Note 9 regarding the issuance of warrants in January and August 2017

(11) Subsequent Events

Acquisition of ReShape Medical, Inc.

On October 2, 2017 the Company acquired ReShape Medical, Inc., a privately-held medical technology company that develops, manufactures and markets the ReShape® Dual Weight Loss Balloon, an FDA and CE marked approved, minimally invasive intragastric balloon designed to treat obesity patients with a body mass index (BMI) between 30 and 40, with one or more related comorbid conditions.

Under the terms of the agreement, the consideration paid by the Company for ReShape Medical consisted of 2,356,729 shares of common stock, 187,772 shares of series C convertible preferred stock (which will be convertible into 18,777,200 shares of common stock upon the receipt of the required approval of the Company's stockholders under NASDAQ rules), and approximately $5.0 million in cash, which amount was immediately used to pay ReShape Medical's outstanding senior secured indebtedness and certain transaction expenses of ReShape Medical. The Company agreed to hold a special meeting of its stockholders by December 31, 2017 to seek the required approval of the conversion of the series C convertible preferred stock into shares of common stock.

The Company expects that the ReShape Medical acquisition will be accounted for as a business combination and the Company will record the assets and liabilities acquired at their respective fair values during the fourth quarter of 2017.

Name Change of EnteroMedics Inc. to ReShape Lifesciences Inc.

On October 23, 2017, the Company announced that it filed a Certificate of Amendment to its Certificate of Incorporation with the Secretary of State of the State of Delaware to amend Article I of the Company's Certificate of Incorporation to change the name of the corporation to "ReShape Lifesciences Inc." effective on October 23, 2017. In addition, in connection with the name change, the Company's ticker symbol was changed to "RSLS" which became effective at the start of trading on October 23, 2017, and the Company's common stock will continue to trade on The NASDAQ Capital Market.

Special Meeting of Shareholders on October 25, 2017

At a Special Meeting of Shareholders on October 25, 2017, the Company's shareholders approved the following proposals set forth in the Company's Definitive Proxy Statement on Schedule 14A, which was filed with Securities and Exchange Commission and mailed to the Company's stockholders on or about October 6, 2017:

Proposal 1: Approval of the conversion of 1,000,181 shares of the Company's conditional convertible preferred stock issued to the former equity holders of BarioSurg, Inc. ("BarioSurg") in connection with the Company's May 22, 2017 acquisition of BarioSurg into 5,000,905 shares of the Company's common stock.

Proposal 2: Approval of the issuance of 916,834 shares of the Company's common stock upon the exercise of outstanding warrants issued to certain parties (each, a "Holder") to the Securities Purchase Agreement, dated November 4, 2015, between the Company and the other parties named therein, as consideration for the waiver by each of the Holders of their right to participate in future securities offerings by the Company.

Proposal 3: Approval of an amendment to the Company's Sixth Amended and Restated Certificate of Incorporation to reduce the number of authorized shares of common stock from 300,000,000 to 275,000,000.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion should be read in conjunction with the condensed consolidated financial statements and notes thereto appearing elsewhere in this Quarterly Report on Form 10-Q.

Except for the historical information contained herein, the matters discussed in this "Management's Discussion and Analysis of Financial Condition and Results of Operations," are forward-looking statements that involve risks and uncertainties. In some cases, these statements may be identified by terminology such as "may," "will," "should," "expects," "could," "intends," "might," "plans," "anticipates," "believes," "estimates," "predicts," "potential," or "continue," or the negative of such terms and other comparable terminology. These statements involve known and unknown risks and uncertainties that may cause our results, level of activity, performance or achievements to be materially different from those expressed or implied by the forward-looking statements. Factors that may cause or contribute to such differences include, among others, those discussed in the updated "Risk Factors" section attached as Exhibit 99.3 to our Current Report on Form 8-K filed on July 26, 2017.

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 a medical device company focused on the development and commercialization of minimally invasive medical devices to treat obesity, metabolic diseases and gastrointestinal disorders.

The vBloc®System, our initial product, is a U.S. Food and Drug Administration (FDA)-approved pacemaker-like device that delivers vBloc® Neurometabolic Therapy (vBloc Therapy) to help patients feel full and eat less by intermittently blocking hunger signals on the vagus nerve. Our therapy limits the expansion of the stomach, helps control hunger sensations between meals, reduces the frequency and intensity of stomach contractions and produces a feeling of early and prolonged fullness. We believe the vBloc System offers obese patients a minimally-invasive treatment that can result in significant, durable and sustained weight loss. We believe that our vBloc System allows bariatric surgeons to offer a new option to obese patients who are concerned about the risks and complications associated with currently available anatomy-altering, restrictive or malabsorptive surgical procedures.

We have a limited operating history and on January 14, 2015 received FDA approval to sell the vBloc System in the United States. In addition, we have regulatory approval to sell the vBloc System in the European Economic Area and other countries that recognize the European CE Mark and do not have any other source of revenue. We were incorporated in Minnesota on December 19, 2002 and later reincorporated in Delaware on July 22, 2004. Prior to October 23, 2017, the Company was known as EnteroMedics Inc. We have devoted substantially all of our resources to the development and commercialization of the vBloc System, which was formerly known as the Maestro or vBloc Rechargeable System.

On May 22, 2017, we acquired the Gastric Vest System™ through our acquisition of BarioSurg. The Gastric Vest System is an investigational, minimally invasive, laparoscopically implanted medical device being studied for weight loss in obese and morbidly obese patients. The Gastric Vest wraps around a plicated stomach, emulating the effect of conventional weight-loss surgery, and is intended to enable gastric volume reduction without permanently changing patient anatomy. The acquisition was completed under the terms of a merger agreement pursuant to which BarioSurg became a wholly-owned subsidiary of our company. The aggregate merger consideration we paid for all of the outstanding shares of capital stock and outstanding options of BarioSurg was: (i) 1.38 million shares of our common stock, (ii) 1.0 million shares of our newly created conditional convertible preferred stock, which shares will convert into 5.0 million shares of our common stock subject to and contingent upon the post-closing approval of our stockholders in accordance with the NASDAQ Stock Market Rules, and (iii) $2 million in cash.

On October 2, 2017 the Company acquired ReShape Medical, Inc., a privately-held medical technology company that develops, manufactures and markets the ReShape Dual Weight Loss Balloon® (the ReShape Balloon), an FDA and CE marked approved, minimally invasive intragastric balloon designed to treat obesity patients with a body mass index (BMI) between 30 and 40, with one or more related comorbid conditions. The ReShape Balloon received FDA approval on July 28, 2015. Because the closing of this acquisition was after September 30, 2017, the Company's Consolidated

Balance Sheets and Statements of Operations included with this Quarterly Report on Form 10-Q do not reflect the acquisition of ReShape Medical.

Under the terms of the merger agreement, the consideration paid by the Company for ReShape Medical consisted of 2,356,729 shares of common stock, 187,772 shares of series C convertible preferred stock (which will be convertible into 18,777,200 shares of common stock upon the receipt of the required approval of the Company's stockholders under NASDAQ rules), and approximately $5.0 million in cash, which amount was immediately used to pay ReShape Medical's outstanding senior secured indebtedness and certain transaction expenses of ReShape Medical. The Company agreed to hold a special meeting of its stockholders by December 31, 2017 to seek the required approval of the conversion of the series C convertible preferred stock into shares of common stock.

The Company's products require approval from the U.S. Food and Drug Administration (FDA) or corresponding foreign regulatory agencies prior to commercial sales. The Company received FDA approval on January 14, 2015 for vBloc Therapy, delivered via the vBloc System, and has begun a controlled commercial launch at select surgical centers in the United States. The vBloc System has also received CE Mark and was previously listed on the Australian Register of Therapeutic Goods (ARTG).

We received FDA approval on January 14, 2015 for vBloc Therapy, delivered via the vBloc System, for the treatment of adult patients with obesity who have a Body Mass Index (BMI) of at least 40 to 45 kg/m2, or a BMI of at least 35 to 39.9 kg/m2 with a related health condition such as high blood pressure or high cholesterol levels, and who have tried to lose weight in a supervised weight management program and failed within the past five years. In 2015 we began a controlled commercial launch at select surgical centers in the United States and had our first commercial sales. During 2015, we initiated a controlled expansion of our commercial operations and started the process of building a sales force. In January 2016, we hired new executives to oversee this expansion. Our direct sales force is supported by field clinical engineers who provide training, technical and other support services to our customers. Throughout 2016, our sales force called directly on key opinion leaders and bariatric surgeons at commercially-driven surgical centers that met our certification criteria. Additionally, in 2016, through a distribution agreement with Academy Medical, LLC, U.S. Department of Veterans Affairs (VA) medical facilities now offer the vBloc System as a treatment option to veterans using their veteran healthcare benefits. We plan to build on these efforts in 2017 with self-pay and veteran patient focused direct-to-patient marketing, key opinion leader and center specific partnering—all of this in conjunction with a multi-faceted reimbursement strategy. Our vBloc Therapy is a covered benefit for over 21 million U.S. veterans. The VA estimates that 78% of U.S. veterans are overweight or obese and nearly 25% of VA patients have diabetes.

To date, we have relied on, and anticipate that we will continue to rely on, third-party manufacturers and suppliers for the production of the vBloc System.

In 2016, we sold 62 vBloc units for $787,000 in revenue, and in 2015 we sold 24 units for $292,000 in revenue. We have incurred and expect to continue to incur significant sales and marketing expenses prior to recording sufficient revenue to offset these expenses. Additionally, our selling, general and administrative expenses have increased since we commenced commercial operations, and we expect that they will continue to increase as we continue to build the infrastructure necessary to support our expanding commercial sales, operate as a public company and develop our intellectual property portfolio. For these reasons, we expect to continue to incur operating losses for the next several years. We have financed our operations to date principally through the sale of equity securities, debt financing and interest earned on cash investments.

Our goal for the vBloc System remains broad coverage and reimbursement for vBloc Therapy. We believe that the most significant barrier to adoption for patients who want vBloc Therapy has been cost and lack of payer coverage. In June 2017, we launched our vBloc Now program. The vBloc Now program provides qualified patients battling obesity the opportunity to receive vBloc Therapy, including the device, procedure, and vBloc Achieve follow up program, at an affordable price in exchange for sharing detailed health data with ReShape Lifesciences. The program is available for a limited time, will reduce patient total out-of-pocket costs, and compete with leading covered bariatric surgery procedures as well as other low-cost weight loss devices.

In addition, the vBloc Now program provides us with additional commercial data concerning vBloc Therapy in order to enhance our case with third-party payers that the vBloc System can produce a clinically meaningful level of weight loss while also providing a positive impact on diabetes and other comorbidities in certain patients. While we do not expect to recognize any revenues in conjunction with the vBloc Now program, the Company anticipates that vBloc

Now program expenses, which are included in selling, general and administrative expenses, will be offset by a reduction in marketing and advertising expenses and will not increase the Company's overall operating expenses.

Financial Overview

Sales Revenue

We received FDA approval on January 14, 2015 for vBloc Therapy, delivered via the vBloc System, and began a controlled commercial launch at select surgical centers in the United States. We had our first commercial sales within the United States in 2015 and we recognized $292,000 in revenue. During the year ended December 31, 2016, recognized 787,000 in revenue. We have not generated revenue from commercial sales outside of the United States since 2012.

Any revenue from initial sales of a new product in the United States or internationally is difficult to predict and in any event will only modestly reduce our continued losses resulting from our research and development and other activities.

Service Revenue

During the 2017 third quarter, the Company provided certain custom development services based on its intellectual property portfolio that had been requested and contracted for by a third party.

Selling, General and Administrative Expenses

Our selling, general and administrative expenses consist primarily of compensation for executive, finance, market development and administrative personnel, including stock-based compensation. Other significant expenses include professional services and consulting fees, costs associated with attending medical conferences, other professional fees for legal services, including legal services associated with our efforts to obtain and maintain broad protection for the intellectual property related to our products, and accounting services, cash management fees and travel expenses.

Also included are the costs of promotional units periodically provided to select customers at no charge in order to introduce them to our product and to enhance our ability to collect commercial data of vBloc Therapy.

Research and Development Expenses

Our research and development expenses primarily consist of engineering, product development, quality assurance and clinical and regulatory expenses, incurred in the development of our vBloc Rechargeable System. Research and development expenses also include employee compensation, including stock-based compensation, consulting services, outside services, materials, clinical trial expenses, including supplies, devices, explants and revisions, depreciation and travel. We expense research and development costs as they are incurred.

Results of Operations

Comparison of the Three Months Ended September 30, 2017 and 2016

Sales Revenue. Sales were $110,000 for the three months ended September 30, 2017 compared with $297,000 for the third quarter of 2016. Unit sales for the third quarter of 2017 were 8 units compared to 22 units in the third quarter of 2016. The reduction in sales revenue was primarily due to the second quarter 2017 introduction of the vBloc Now program, under which qualified patients receive vBloc Therapy at a significantly reduced price and no revenue is recognized from units delivered under the program.

Service Revenue. During the 2017 third quarter, the Company provided certain custom development services based on its intellectual property portfolio that had been requested and contracted for by a third party.

Cost of Revenue. Cost of revenue was $215,000 for the three months ended September 30, 2017, compared to $147,000 for the three months ended September 30, 2016. The increase of $68,000 was due to the labor costs associated with custom development service revenue and was partially offset by the decline in vBloc unit sales. The Company's

gross margin percentage declined to 40.4% for the three months ended September 30, 2017 from 50.6% in the prior year period due to the lower margins earned on services revenue than on vBloc unit sales.

Selling, General and Administrative Expenses. Selling, general and administrative expenses were $4.6 million for the three months ended September 30, 2017 compared with $3.4 million and for the three months ended September 30, 2016. The $1.2 million or 36.7% increase was driven by a $1.0 million increase in payroll-related expenses, which included approximately $290,000 in non-cash stock compensation expense, a $492,000 increase in acquisition expenses incurred with the May 22, 2017 acquisition of BarioSurg, Inc. and the October 2, 2017 acquisition of ReShape Medical, a $245,000 increase in expenses related to 21 vBloc units implanted during the quarter as part of the vBloc Now program and an increase $172,000 in other professional fees. These expense increases were partially offset by a $403,000 decrease in advertising and marketing expenses and a $366,000 decrease in executive severance expenses

Research and Development Expenses. Research and development expenses declined to $1.1 million for the three months ended September 30, 2017 from $1.3 million for the three months ended September 30, 2016. The decrease of $144,000, or 11.5%, was primarily due to a decline of $322,000 in professional services and was partially offset by an increase in payroll-related expenses of approximately $119,000 (net of a decrease of $28,000 for non-cash stock based compensation) and an increase in supplies expense of $25,000.

Interest Expense. Interest expense was zero for the three months ended September 30, 2017, compared to $1.4 million for the three months ended September 30, 2016. Interest expense for the third quarter of 2016 included interest related to the then outstanding 7% senior amortizing convertible notes (the Notes) with original principal amounts of $1.5 million, $11.0 million and $6.25 million, respectively, and issuance dates of November 9, 2015, January 11, and May 2, 2016, respectively. As of December 31, 2016 the Notes were fully amortized.

Change in Value of Convertible Notes Payable. Since the Notes were fully amortized as of December 31, 2016, there was no valuation change to be recognized in the condensed consolidated statements of operations for the three months ended September 30, 2017. For the three months ended September 30, 2016 the value of the liability increased $909,000 based on the then outstanding Notes' fair market value calculated using a Binomial Lattice model.

Change in Value of Warrant Liability. The value of the common stock warrant liability for our Series A Warrants decreased $5,000 during the three months ended September 30, 2017, resulting from the marking to market of the Series A Warrants that remain outstanding. The value of the common stock warrant liability for our Series A and Note Warrants decreased $242,000 during the three months ended September 30, 2016. The fair market value of the warrant liability is calculated using the Black-Scholes valuation model, and is primarily driven by the reduction in the Company's stock price from $0.03 at December 31, 2015 to $0.002 at September 30, 2016.

Comparison of the Nine Months Ended September 30, 2017 and 2016

Sales Revenues. Sales revenues were $243,000 for the nine months ended September 30, 2017 compared with $645,000 for the nine months ended September 30, 2016. Unit sales for the nine months ended September 30, 2017 were 51 units compared to 29 units for the nine months ended September 30, 2016. The reduction in sales revenue was primarily due to the second quarter 2017 introduction of the vBloc Now program.

Service Revenue. During the 2017 third quarter, the Company provided certain custom development services based on its intellectual property portfolio that had been requested and contracted for by a third party.

Cost of Revenues. Cost of revenues were $299,000 for the nine months ended September 30, 2017, compared to $342,000 cost of goods sold for the nine months ended September 30, 2017. The decline was a result of decreased unit sales of vBloc, but was partially offset by labor costs related to custom development service revenues. The Company's gross margin percentage declined to 39.5% for the nine months ended September 30, 2017 from 46.9% due to both a reduction in average sales price of vBloc units as well as lower margins earned on services revenues.

Selling, General and Administrative Expenses. Selling, general and administrative expenses were $16.1 million for the nine months ended September 30, 2017, compared to $15.1 million for the nine months ended September 30, 2016. The decrease of $1.0 million, or 6.6%, from the prior year period was primarily due to an increase of $1.3 million for payroll-related expenses, which includes an increase of approximately $1.7 million for non-cash stock compensation, a

$728,000 increase from acquisition expenses incurred with the May 22, 2017 acquisition of BarioSurg, Inc. and the October 2, 2017 acquisition of ReShape Medical, a $652,000 increase in expenses related to 55 vBloc units implanted during the second and third quarters as part of the vBloc Now program. These expense increases were partially offset by lower advertising and marketing expenses of $1.3 million and lower executive severance expenses of $366,000.

Research and Development Expenses. Research and development expenses were $3.6 million for the nine months ended September 30, 2017, compared to $3.9 million for the nine months ended September 30, 2016. The decrease of $293,000, or 7.6%, was primarily due to a decrease of $483,000 in payroll-related expenses and a decrease of $22,000 in professional services expenses, partially offset by an increase in supply expenses of $119,000. The decrease of $483,000 in payroll-related expenses includes decreases of $400,000 for non-cash stock compensation expense.

Interest Expense. Interest expense was zero for the nine months ended September 30, 2017, compared to $3.4 for the nine months ended September 30, 2016. The decrease of $3.4 million is due to the Notes being fully amortized as of December 31, 2016. Interest expense for the first nine months of 2016 included interest related to the then outstanding Notes with original principal amounts of $1.5 million, $11.0 million and $6.25 million, respectively, and issuance dates of November 9, 2015, January 11, 2016 and May 2, 2016, respectively. As of December 31, 2016 the Notes were fully amortized.

Change in Value of Convertible Notes Payable. Since the convertible notes were fully amortized as of December 31, 2016, there was no valuation change to be recognized in the condensed consolidated statements of operations for the nine months ended September 30, 2017. For the nine months ended September 30, 2016 the value of the liability increased $200,000 based on the then outstanding Notes' fair market value calculated using a Binomial Lattice model.

Change in Value of Warrant Liability. The value of the common stock warrant liability for our Series A Warrants and Note Warrants increased $283,000 during the nine months ended September 30, 2017, primarily resulting of marking to market the Series A Warrants and the Note Warrants for 48,272 common shares as of the date of their exercise. The value of the common stock warrant liability for our Series A and Note Warrants decreased $3.3 million during the nine months ended September 30, 2016. The fair market value of the warrant liability is calculated using the Black-Scholes valuation model, and is primarily driven by the reduction in the Company's stock price from $0.03 at December 31, 2015 to $0.002 at September 30, 2016.

Liquidity and Capital Resources

As of September 30, 2017, we had $23.4 million in cash bank deposits. While we had no short-term money market funds or other investments at September 30, 2017, we periodically invest in short-term money market funds that 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. Periodically, we invest cash in excess of immediate requirements in accordance with our investment policy, primarily with a view to liquidity and capital preservation. At times, such deposits may be in excess of insured limits. We have not experienced any losses on our deposits of cash and cash equivalents.

We have financed our operations to date principally through the sale of equity securities, debt financing and interest earned on investments. On January 23, 2017, we received $19.0 million in gross proceeds, prior to deducting offering expenses of $2.5 million, at the closing of an underwritten public offering of units in order to fund our future operations. On August 16, 2017, the Company closed an underwritten public offering consisting of units of Series B Convertible Preferred Stock and warrants to purchase common stock. Gross proceeds of the offering were $20.0 million, prior to deducting underwriting discounts and commissions and offering expenses of approximately $2.0 million. Both public offerings were undertaken to fund future operations and acquistions.

In addition during the nine months ended September 30, 2017, the Company collected proceeds of $3.3 million from the exercise of common stock warrants for 599,670 shares of common stock.

Our anticipated operations include plans to (i) integrate the sales and operations of the Company with the newly acquired ReShape Medical in order to expand sales of both the ReShape Balloon and vBloc as well as to obtain cost savings synergies, (ii) expand the controlled commercial launch of vBloc Therapy, delivered via the vBloc System, (iii) continue development of the Gastric Vest, (iv) seek opportunities to leverage the Company's intellectual property

portfolio and custom development services to provide third party sales and licensing opportunities, and (v) explore and capitalize on synergistic opportunities to expand our portfolio and offer future minimally invasive treatments and therapies in the obesity continuum of care. We believe that we have 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, clinical and product development activities. However, the Company will ultimately need to achieve sufficient revenues from product sales and obtain additional debt or equity financing to support its operations.

Management is currently pursuing various funding options, including seeking additional equity financing as well as a strategic merger or other transactions to obtain additional funding or expand its product line to continue the development of, and to successfully commercialize, the ReShape Balloon, the vBloc System and the Gastric Vest. While the acquisition of ReShape Medical does provide incremental revenues to the Company, the cost to further develop and commercialize the ReShape Balloon is expected to significantly exceed revenues for the foreseeable future. While there can be no assurance that the Company will be successful in its efforts, the Company has a long history of raising equity financing to fund its development activities. Should the Company be unable to obtain adequate financing in the near term, the Company's business, result of operations, liquidity and financial condition would be materially and negatively affected, and the Company would be unable to continue as a going concern. Additionally, there can be no assurance that, assuming the Company is able to strengthen its cash position, it will achieve sufficient revenue or profitable operations to continue as a going concern.

Senior Amortizing Convertible Notes

On November 9, 2015, January 11, 2016 and May 2, 2016 the Company issued Notes with principal amounts of $1.5 million, $11.0 million and $6.25 million. The Note Warrants were issued in connection with each of the three Notes. As of December 31, 2016 the Notes were fully amortized, primarily through non-cash conversions of the Notes into shares of common stock. For the nine months ended September 30, 2016, the condensed consolidated statement of operations includes interest expense related to the Notes. See further details regarding the Notes and the Note Warrants in footnote 8 to the Company's consolidated financial statements contained in our Annual Report on Form 10-K for the Year Ended December 31, 2016, which are incorporated herein by reference.

Net Cash Used in Operating Activities

Net cash used in operating activities was $15.7 million and $17.1 million for the nine months ended September 30, 2017 and 2016, respectively. The decrease of $1.4 million was primarily due to reductions in charges related to valuation of warrants offset by increased uses of cash for working capital. Net cash used in operating activities primarily reflects the net loss for those periods, less noncash expenses for stock-based compensation, depreciation and amortization, change in value of convertible notes payable, change in value of warrant liability, and partially offset by changes in operating assets and liabilities.

Net Cash Used in Investing Activities

Net cash used in investing activities was $2.0 million and $12,000 for the nine months ended September 30, 2017 and 2016, respectively. On May 22, 2017 $1.85 million of net cash was used to purchase BarioSurg. Other uses of cash for investing activities for the periods are attributable to the purchase of property and equipment.

Net Cash Provided by Financing Activities

Net cash provided by financing activities was $37.8 million and $16.0 million for the nine months ended September 30, 2017 and 2016, respectively. Net cash provided by financing activities for the nine months ended September 30, 2017 was due to $39.0 million in gross proceeds from the issuance equity securities on January 23, 2017 and August 16, 2017 along with $3.3 million in proceeds from the exercise of common stock warrants. Partially offsetting these amounts were $4.5 million of expenses related to the equity offerings. For the nine months ended September 30, 2016, $17.25 million of cash provided by financing activities consisted of $11.0 million from the issuance of Notes on January 11, 2016 and $6.25 million from the issuance of notes on May 2, 2016, partially offset by $447,000 of cash payments on the Notes and $727,000 in debt issuance and common stock financing costs.

Operating Capital and Capital Expenditure Requirements

We received FDA approval on January 14, 2015 for vBloc Therapy, delivered via the vBloc System, and began a controlled commercial launch at select bariatric centers of excellence in the United States. We had our first commercial sales within the United States in 2015 and for the years ended December 31, 2015 and 2016, we recognized $292,000 and $787,000 in revenue, respectively. For the nine months ended September 30, 2017, we recognized $493,000 in revenue. We anticipate that we will continue to incur net losses for the next several years as we develop our products, commercialize our vBloc System, develop the corporate infrastructure required to sell our products, operate as a publicly-traded company and pursue additional applications for our technology platform.

We have financed our operations to date principally through the sale of equity securities, debt financing and interest earned on investments. As of December 31, 2016, we had $3.3 million of cash and cash equivalents. On January 23, 2017, we received $19.0 million in gross proceeds, prior to deducting offering expenses of $2.5 million, at the closing of an underwritten public offering of units consisting of common stock, convertible preferred stock and common stock warrants in order to fund our operations. On August 16, 2017, the Company closed an underwritten public offering consisting of units of Series B Convertible Preferred Stock and warrants to purchase common stock. Gross proceeds of the offering were $20.0 million, prior to deducting underwriting discounts and commissions and offering expenses of approximately $2.0 million.

Additionally, during the nine months ended September 30, 2017, common stock warrants for 599,6706 shares of common stock were exercised by warrant holders with proceeds to the Company of $3.3 million (see also Notes 9 and 10 to the condensed consolidated financial statements included with this Quarterly Report on Form 10-Q for the Quarter Ended September 30, 2017).

Our anticipated operations include plans to (i) integrate the sales and operations of the Company with the newly acquired ReShape Medical in order to expand sales of both the ReShape Balloon and vBloc as well as to obtain cost savings synergies, (ii) expand the controlled commercial launch of vBloc Therapy, delivered via the vBloc System, (iii) continue development of the Gastric Vest, (iv) seek opportunities to leverage the Company's intellectual property portfolio and custom development services to provide third party sales and licensing opportunities and (v) explore and capitalize on synergistic opportunities to expand our portfolio and offer future minimally invasive treatments and therapies in the obesity continuum of care. We believe that we have the flexibility to manage the growth of our expenditures and operations depending on the amount of available cash flows, which could include reducing expenditures for marketing, clinical and product development activities. However, the Company will ultimately need to achieve sufficient revenues from product sales and obtain additional debt or equity financing to support its operations.

Management is currently pursuing various funding options, including seeking additional equity financing as well as a strategic, merger or other transactions to obtain additional funding or further expand its product line to continue the development of, and to successfully commercialize, the ReShape Balloon, the vBloc System and the Gastric Vest. While the acquisition of ReShape Medical does provide incremental revenues to the Company, the cost to further develop and commercialize the ReShape Balloon is expected to significantly exceed revenues for the foreseeable future. While there can be no assurance that the Company will be successful in its efforts, the Company has a long history of raising equity financing to fund its development activities. Should the Company be unable to obtain adequate financing in the near term, the Company's business, result of operations, liquidity and financial condition would be materially and negatively affected, and the Company would be unable to continue as a going concern. Additionally, there can be no assurance that, assuming the Company is able to strengthen its cash position, it will achieve sufficient revenue or profitable operations to continue as a going concern.

Obtaining funds through the warrant holders' exercise of outstanding common stock warrants or the sale of additional equity and debt securities may result in dilution to our stockholders. If we raise additional funds through the issuance of debt securities, these securities could have rights senior to those of our common stock and could contain covenants that would restrict our operations. The sale of additional equity may require us to obtain approval from our stockholders to increase the number of shares of common stock we have authorized under our certificate of incorporation. We may require additional capital beyond our currently forecasted amounts. Any such required additional capital may not be available on reasonable terms, if at all. If we are unable to obtain additional financing, we may be required to reduce the scope of, delay, or eliminate some or all of, our planned research, development and commercialization activities, which could materially harm our business. In addition, if we raise additional funds through

collaboration, licensing or other similar arrangements, it may be necessary to relinquish valuable rights to products or proprietary technologies, or grant licenses on terms that are not favorable.

Our forecast of the period of time through which our financial resources will be adequate to support our operations, the costs to complete development of products and the cost to commercialize our products are forward-looking statements and involve risks and uncertainties, and actual results could vary materially and negatively as a result of a number of factors, including the factors discussed in in Exhibit 99.3 of our Current Report on Form 8-K filed on July 26, 2017.

Because of the numerous risks and uncertainties associated with the development of medical devices, such as our vBloc System, we are unable to estimate the exact amounts of capital outlays and operating expenditures necessary to complete the development of the 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 vBloc System, the ReShape Balloon and any other products that we may develop, including the Gastric Vest;
- the rate of market acceptance of our vBloc System and vBloc Therapy, the ReShape Balloon and any other product candidates, including the Gastric Vest;
- 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 vBloc System, the ReShape Balloon or our future products, including the Gastric Vest;
- 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.

Critical Accounting Policies and Estimates

We prepare our consolidated financial statements in accordance with accounting principles generally accepted in the United States. In doing so, we have to make estimates and assumptions that affect our reported amounts of assets, liabilities and expenses, as well as related disclosure of contingent assets and liabilities. In many cases, we could reasonably have used different accounting policies and estimates. In some cases, changes in the accounting estimates are reasonably likely to occur from period to period. Accordingly, actual results could differ materially from our estimates. To the extent that there are material differences between these estimates and actual results, our financial condition or results of operations will be affected. We base our estimates on past experiences and other assumptions that we believe are reasonable under the circumstances, and we evaluate these estimates on an ongoing basis.

Other than as described in *Impairment of Long-Lived Assets, Intangible Assets and Goodwill* in Note 1 to the condensed consolidated financial statements included in this Quarterly Report on Form 10-Q, during the nine months

ended September 30, 2017 there were no material changes to our significant accounting policies which are fully described in Note 2 to our consolidated financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2016.

Off-Balance Sheet Arrangements

As of September 30, 2017, we did not have any off-balance sheet arrangements.

Recent Accounting Pronouncements

In May 2014, FASB issued Revenue from Contracts with Customers, Topic 606 (Accounting Standards Update No. 2014-09 (ASU 2014-09)), which provides a framework for the recognition of revenue, with the objective that recognized revenues properly reflect amounts an entity is entitled to receive in exchange for goods and services. This guidance will be effective for interim and annual reporting periods beginning after December 15, 2017. The Company intends to use the modified retrospective approach when it adopts the standard as required January 1, 2018. The Company's accounting for revenue related to vBloc products is not expected to materially change. The implications of the adoption of the new standard related to sales of ReShape Medical's products are currently being evaluated. Additionally, the new standard will likely require incremental revenue disclosures that may be significant.

In March 2016, FASB issued Improvements to Employee Share-Based Payment Accounting, (Accounting Standards Update No. 2016-09 (ASU 2016-09)), which is intended to simplify several aspects of the accounting for share-based payment transactions, including the income tax consequences, classification of awards as either equity or liabilities, the estimation of forfeitures, shares withheld for taxes and classification of shares withheld for taxes on the statement of cash flows. As part of the adoption of this guidance the Company has elected to account for forfeitures of share-based awards as they occur. The Company prospectively adopted ASU 2016-09 as required on January 1, 2017 and the adoption did not have a material effect on its consolidated financial statements.

In July 2017, FASB issued ASU 2017-11, Earnings Per Share (Topic 260); Distinguishing Liabilities from Equity (Topic 480); Derivatives and Hedging (Topic 815): (Part I) Accounting for Certain Financial Instruments with Down Round Features, (Part II) Replacement of the Indefinite Deferral for Mandatorily Redeemable Financial Instruments of Certain Nonpublic Entities and Certain Mandatorily Redeemable Noncontrolling Interests with a Scope Exception. The amendments in this update are intended to simplify the accounting for certain equity-linked financial instruments and embedded features with down round features that result in the strike price being reduced on the basis of the pricing of future equity offerings. Under the new guidance, a down round feature will no longer need to be considered when determining whether certain financial instruments or embedded features should be classified as liabilities or equity instruments. That is, a down round feature will no longer preclude equity classification when assessing whether an instrument or embedded feature is indexed to an entity's own stock. In addition, the amendments clarify existing disclosure requirements for equity-classified instruments. These amendments are effective for fiscal years, and interim periods within those years, beginning after December 15, 2018, with early adoption permitted. We early adopted the applicable amendments in the third quarter of 2017 on a retrospective basis.

There have been no other significant changes in recent accounting pronouncements during the nine months ended September 30, 2017 as compared to the recent accounting pronouncements described in the Company's Annual Report on Form 10-K for the year ended December 31, 2016.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Our exposure to market risk is confined to our cash and cash equivalents. As of September 30, 2017, we had $23.4 million in cash and cash equivalents. The goals of our investment policy are preservation of capital, fulfillment of liquidity needs and fiduciary control of cash and investments. We also seek to maximize income from our investments without assuming significant risk. To achieve our goals, we may maintain a portfolio of cash equivalents and investments in a variety of securities of high credit quality. The securities in our investment portfolio, if any, are not leveraged, are classified as either available for sale or held-to-maturity and are, due to their very short-term nature, subject to minimal interest rate risk. We currently do not hedge interest rate exposure. Because of the short-term maturities of our cash equivalents, we do not believe that an increase in market rates would have any material negative

impact on the value of our investment portfolio. We have no investments denominated in foreign currencies and therefore our investments are not subject to foreign currency exchange risk.

ITEM 4. 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. Based on their evaluation as of September 30, 2017, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) were effective to ensure that information required to be disclosed by us in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms.

Changes in Internal Control Over Financial Reporting

Other than changes in internal controls related to goodwill and intangible assets, there were no changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the quarter ended September 30, 2017 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II – OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

On February 28, 2017, the Company received a class action and derivative complaint filed on February 24, 2017 in U. S. District Court for the District of Delaware by Vinh Du, one of the Company's shareholders. The complaint names as defendants ReShape Lifesciences, the board of directors and four members of our senior management, namely, Scott Youngstrom, Nick Ansari, Peter DeLange and Paul Hickey, and contains a purported class action claim for breach of fiduciary duty against the board of directors and derivative claims for breach of fiduciary duty against the board of directors and unjust enrichment against our senior management. The allegations in the complaint relate to the increase in the number of shares authorized for grant under our Second Amended and Restated 2003 Stock Incentive Plan (the "Plan"), which was approved by our shareholders at the Special Meeting of Shareholders held on December 12, 2016 (the "Special Meeting"), and to our subsequent grant of stock options on February 8, 2017, to the Company's Directors and senior management to purchase an aggregate of 1,093,450 shares of our common stock (the "Option Grants"). In the complaint, the plaintiff contends that (i) the number of shares authorized for grant under the Plan, as adjusted by the board of directors after the Special Meeting for the subsequent recapitalization of the Company, resulted from an alleged breach of fiduciary duties by the board of directors, and (ii) our senior management was allegedly unjustly enriched by the subsequent Option Grants. The plaintiff seeks relief in the form of an order rescinding the Plan as approved by the shareholders at the Special Meeting, an order cancelling the Option Grants, and an award to plaintiff for his costs, including fees and disbursements of attorneys, experts and accountants. On April 17, 2017, we filed a motion to dismiss the complaint based on the plaintiff's failure to satisfy Delaware's demand requirement for a derivative action and failure to state a valid claim. The motion is now fully briefed and the Court will hear oral argument on November 28, 2017. We believe the allegations in the complaint are without merit, and intend to defend the action vigorously.

On April 20, 2017, Fulfillium, Inc., filed a Complaint in the United States District Court for the District of Delaware accusing ReShape Medical, Inc., which the Company acquired on October 2, 2017 and is now a wholly-owned subsidiary of the Company, of trade secret misappropriation under the California Uniform Trade Secrets Act (CA. Civ. Code §3426 et seq.) and/or Delaware law (Code Ann. Title 6 §2001 et seq); and infringement of U.S. Patent Nos. 9,445,930 and 9,456,915. On July 28, 2017, Reshape Medical, Inc. filed a Rule 12(b)(6) motion to dismiss the trade secrets claims as time-barred and/or for failure to state a claim and to dismiss most of the patent infringement claims for failure to state a claim. ReShape Medical, Inc., also filed a motion to transfer the litigation to the United States District Court for the Central District of California. On October 10, 2017, Fulfillium filed a motion seeking leave to amend its complaint to add an investor in ReShape Medical, Inc. as a co-defendant, but did not amend the substantive allegations of its original Complaint that are the basis of the pending motion to dismiss. ReShape Medical, Inc. filed an opposition to the motion for leave to amend on October 24, 2017 and Fulfillium filed its Reply on October 31, 2017. The motions to dismiss and transfer were heard on November 7, 2017, and on November 9, 2017, the Court issued an Order granting-in-part the motion to dismiss, dismissing the trade secret claim and allegations of willful infringement, with leave to amend, and transferring the case to the United States District Court for the Central District of California. The Court did not rule on the motion for leave to amend the complaint to add the proposed new party, which remains fully briefed. Management of the Company intends to vigorously defend against the claims and believes the risk of loss remote.

Except as disclosed in the foregoing paragraphs, the Company is not currently a party to any 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 1A. RISK FACTORS

Except for the addition of the risk factors shown below, there have been no material changes to the risk factors set forth in Exhibit 99.3 of our Current Report on Form 8-K filed on July 26, 2017.

Our acquisition of ReShape Medical in October 2017 could adversely affect our operations, financial results and financial condition.

In October 2017, we acquired ReShape Medical, a privately-held medical technology company that develops, manufactures and markets the ReShape® Dual Weight Loss Balloon, an FDA and CE marked approved, minimally invasive intragastric balloon designed to treat obesity patients with a body mass index (BMI) between 30 and 40, with one or more related comorbid conditions. With respect to our acquisition of ReShape Medical and any future acquisitions, we may experience:

- difficulties in integrating the acquired businesses and their respective personnel and products into our existing business;
- difficulties in integrating commercial organizations;
- difficulties or delays in realizing the anticipated benefits of the acquisition;
- diversion of our management's time and attention from other business concerns;
- challenges due to limited or no direct prior experience in new markets or countries we may enter;
- inability to successfully develop new products and services on a timely basis that address our new market opportunities post-acquisition;
- inability to compete effectively against companies already serving the broader market opportunities expected to be available to us post-acquisition;
- unanticipated costs and other contingent liabilities; and
- any unforeseen compliance risks and accompanying financial and reputational exposure or loss not uncovered in the due diligence process and which are imputed to our company, such as compliance with federal laws and regulations, the advertising and promotion regulations under the federal Food, Drug and Cosmetic Act, the Anti-kickback Statute, the False Claims Act, the Physician Sunshine Payments Act and other applicable laws.

In addition, the FDA has published an announcement to alert health care providers of five reports of unanticipated deaths that occurred within one month of the placement of an intragastric balloon, one of which involved the ReShape Dual Weight Loss Balloon. The announcement indicated that the root cause or incidence of patient death in these cases had not been found and the FDA was not able to definitively attribute the deaths to the balloon devices or their respective insertion procedures. The announcement also indicated that the FDA had received an additional report of a death related to potential complications associated with an esophageal perforation related to the ReShape Dual Weight Loss Balloon. If these adverse events occur more frequently or other serious adverse effects are detected in liquid-filled intragastric balloons, the ReShape Dual Weight Loss Balloon product may be subject to adverse FDA action or additional communications from the FDA, which could harm our business.

We have invested, and expect to continue to invest, significant cash and other resources in connection with our acquisition of ReShape Medical. The consideration we paid to acquire ReShape Medical included $5 million in cash and our efforts to continue the commercialization of the ReShape Dual Weight Loss Balloon will require significant cash expenditures. There can be no assurance that we will be successful in our efforts. Should we be unable to obtain adequate financing or generate sufficient revenue in the future, our business, result of operations, liquidity and financial condition could be materially and adversely harmed.

If we do not achieve the contemplated benefits of our acquisition of ReShape Medical, our business and financial condition may be materially impaired.

We may not achieve the desired benefits from our acquisition of ReShape Medical. For any of the reasons described above and elsewhere in this report and even if we are able to successfully operate ReShape Medical within our company, we may not be able to realize the revenue and other growth that we anticipate from the acquisition in the time frame that we currently expect, and the costs of achieving these benefits may be higher than what we currently expect, because of a number of risks, including the possibility that the acquisition may not further our business strategy as we expected and risks related to contingent liabilities related to the acquisition such as those related to the FDA's announcement regarding the unanticipated deaths involving the ReShape Dual Weight Loss Balloon.

As a result of these risks, we may not achieve the anticipated strategic and financial benefits of the ReShape Medical acquisition.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

Unregistered Sales of Equity Securities

None.

Uses of Proceeds from Sale of Registered Securities

None.

Purchases of Equity Securities

None.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

ITEM 5. OTHER INFORMATION

None.

ITEM 6. EXHIBITS

Exhibit Number	Description of Document
1.1	Underwriting Agreement, dated August 11, 2017, among the Company and Ladenburg Thalmann & Co. Inc., as representative of the underwriters named therein (incorporated by reference to Exhibit 1.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on August 16, 2017)
2.1*	Agreement and Plan of Merger, dated as of October 2, 2017, by and among the Company, ReShape Medical, Inc., Nixon Subsidiary Inc., Nixon Subsidiary Holdings LLC and the ReShape Holder Committee (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 October 3, 2017)
3.1	Certificate of Designation of Series B Convertible Preferred Stock (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 August 16, 2017)
3.2	Certificate of Designation of Series C Convertible Preferred Stock (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 October 3, 2017)
3.3	Certificate of Amendment to Sixth Amended and Restated Certificate of Incorporation of the Company, dated October 20, 2017 (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 October 23, 2017)
3.4	Certificate of Amendment to Sixth Amended and Restated Certificate of Incorporation of the Company, dated October 26, 2017 (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 October 30, 2017)
10.1	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)
10.2	Warrant Agency Agreement, by and between the Company and Wells Fargo Bank, National Association, dated August 16, 2017 (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 16, 2017)
10.3	Form of Voting and Standstill Agreement between the Company and certain ReShape Medical, Inc. Holders (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 October 3, 2017)
10.4**	2017 Employment Inducement Incentive Award Plan
10.5**	Form of Stock Option Grant Notice and Stock Option Agreement under 2017 Employment Inducement Incentive Award Plan
10.6**	Form of Stock Option Grant Notice and Stock Option Agreement under Second Amended and Restated 2003 Stock Incentive Plan

Exhibit Number	Description of Document
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.
101**	Financial statements from the Quarterly Report on Form 10-Q of the Company for the quarter ended September 30, 2017, formatted in Extensible Business Reporting Language: (i) the Condensed Consolidated Balance Sheets, (ii) the Condensed Consolidated Statements of Operations, (iii) the Condensed Consolidated Statements of Comprehensive Loss, (iv) the Condensed Consolidated Statements of Cash flows and (v) the Notes to Condensed Consolidated Financial Statements.

* Pursuant to Item 601(b)(2) of Regulation S-K, the schedules to the Merger Agreement (identified therein) have been omitted from this report and will be furnished supplementally to the SEC upon request.

** Filed herewith.

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/ DAN W. GLADNEY

Dan W. Gladney
President and Chief Executive Officer
(Principal Executive Officer)

BY: /s/ Scott P. Youngstrom

Scott P. Youngstrom
Chief Financial
Officer and Chief Compliance Officer
(Principal Financial and Accounting Officer)

Dated: November 14, 2017

RESHAPE LIFESCIENCES INC.
2017 EMPLOYMENT INDUCEMENT INCENTIVE AWARD PLAN

Adopted: September 28, 2017

Section 1. Purpose.

The purpose of the Plan is to aid in attracting and retaining Eligible Persons capable of assuring the future success of the Company, to offer such Eligible Persons incentives to put forth maximum efforts for the success of the Company's business and to afford such Eligible Persons an opportunity to acquire a proprietary interest in the Company.

Section 2. Definitions.

As used in the Plan, the following terms shall have the meanings set forth below:

(a) "*Affiliate*" shall mean (i) any entity that, directly or indirectly through one or more intermediaries, is controlled by the Company and (ii) any entity in which the Company has a significant equity interest, in each case as determined by the Committee.

(b) "*Award*" shall mean any Option, Stock Appreciation Right, Restricted Stock, Restricted Stock Unit, Performance Award, Dividend Equivalent, Other Stock Grant or Other Stock-Based Award granted under the Plan.

(c) "*Award Agreement*" shall mean any written agreement, contract or other instrument or document evidencing any Award granted under the Plan.

(d) "*Board*" shall mean the Board of Directors of the Company.

(e) "*Change in Control*" shall mean the consummation of any of the following:

(i) any "person" (as such term is used in Sections 13(d) and 14(d)(2) of the Exchange Act who did not own shares of the capital stock of the Company on the date of grant of the Award shall, together with his, her or its Affiliates and Associates (as such terms are defined in Rule 12b-2 promulgated under the Exchange Act), become the "Beneficial Owner" (as such term is defined in Rule 13d-3 promulgated under the Exchange Act), directly or indirectly, of securities of the Company representing 50% or more of the combined voting power of the Company's then outstanding securities (any such person being hereinafter referred to as an "Acquiring Person");

(ii) the Continuing Directors cease to constitute a majority of the Company's Board;

(iii) There should occur (A) any consolidation or merger involving the Company and the Company shall not be the continuing or surviving corporation or the shares of the Company's capital stock shall be converted into cash, securities or other

property; provided, however, that this subclause (A) shall not apply to a merger or consolidation in which (1) the Company is the surviving corporation and (2) the stockholders of the Company immediately prior to the transaction have the same proportionate ownership of the capital stock of the surviving corporation immediately after the transaction; (B) any sale, lease, exchange or other transfer (in one transaction or a series of related transactions) of all or substantially all of the assets of the Company; or (C) any liquidation or dissolution of the Company;

(iv) The majority of the Continuing Directors determine, in their sole and absolute discretion, that there has been a Change in Control; or

(v) No Award Agreement shall provide for accelerated exercisability of any Award or the lapse of restrictions relating to any Award in connection with a change in control event other than a Change in Control as defined herein.

(f) "*Code*" shall mean the Internal Revenue Code of 1986, as amended from time to time, and any regulations promulgated thereunder.

(g) "*Committee*" shall mean either the Board or a committee of the Board appointed by the Board to administer the Plan, which shall consist solely of two or more Independent Directors each of whom is intended to qualify as a "non-employee director" as defined by Rule 16b-3 of the Exchange Act.

(h) "*Company*" shall mean ReShape Lifesciences Inc., a Delaware corporation, and any successor corporation.

(i) "*Continuing Director*" shall mean any person who is a member of the Board of Directors of the Company, while such person is a member of the Board of Directors, who is not an Acquiring Person, an Affiliate or Associate of an Acquiring Person or a representative of an Acquiring Person or of any such Affiliate or Associate and who (i) was a member of the Company's Board of Directors on the date of grant of the Option or (ii) subsequently became a member of the Board of Directors, upon the nomination or recommendation, or with the approval of, a majority of the Continuing Directors.

(j) "*Director*" shall mean a member of the Board.

(k) "*Dividend Equivalent*" shall mean any right granted under Section 6(e) of the Plan.

(l) "*Eligible Person*" shall mean any prospective employee who is commencing employment with the Company or an Affiliate, or is being rehired following a bona fide period of non-employment by the Company or an Affiliate, if he or she is granted an Award in connection with his or her commencement of employment with the Company or an Affiliate and such grant is an inducement material to his or her entering into employment with the Company or an Affiliate (within the meaning of NASDAQ Stock Market Rule IM-5636-1 or any successor rule, if the Company's securities are traded on the NASDAQ Stock Market, and/or the applicable requirements of any other established stock exchange on which the Company's securities are traded, as applicable, as such rules and requirements may be amended from time to time). Notwithstanding the foregoing, if the Company's securities are traded on the NASDAQ Stock

Market, an "Eligible Person" shall not include any prospective employee who has previously been an employee or Director of the Company unless following a bona fide period of non-employment by the Company or an Affiliate. The Committee may in its discretion adopt procedures from time to time to ensure that a prospective employee is eligible to participate in the Plan prior to the granting of any Awards to such individual under the Plan (including without limitation a requirement that each such prospective employee certify to the Company prior to the receipt of an Award under the Plan that he or she has had a bona fide period of non-employment, and that the grant of Awards under the Plan is an inducement material to his or her agreement to enter into employment with the Company or an Affiliate).

(m) "*Exchange Act*" shall mean the Securities Exchange Act of 1934, as amended.

(n) "*Fair Market Value*" shall mean, with respect to any property (including, without limitation, any Shares or other securities), the fair market value of such property determined by such methods or procedures as shall be established from time to time by the Committee. Notwithstanding the foregoing, unless otherwise determined by the Committee, the Fair Market Value of Shares on a given date for purposes of the Plan shall not be less than (i) the closing price as reported for composite transactions, if the Shares are then listed on a national securities exchange, (ii) the last sale price, if the Shares are then quoted on the NASDAQ Stock Market or (iii) the average of the closing representative bid and asked prices of the Shares in all other cases, on the date as of which fair market value is being determined. If on a given date the Shares are not traded in an established securities market, the Committee shall make a good faith attempt to satisfy the requirements of this clause and in connection therewith shall take such action as it deems necessary or advisable.

(o) "*Incentive Stock Option*" shall mean an option granted under Section 6(a) of the Plan that is intended to meet the requirements of Section 422 of the Code or any successor provision.

(p) "*Independent Director*" shall mean a Director of the Company who is not an Employee of the Company and who qualifies as "independent" within the meaning of NASDAQ Stock Market Rule 5605(a)(2), or any successor rule, if the Company's securities are traded on the NASDAQ Stock Market, and/or the applicable requirements of any other established stock exchange on which the Company's securities are traded, as applicable, as such rules and requirements may be amended from time to time.

(q) "*Non-Qualified Stock Option*" shall mean an option granted under Section 6(a) of the Plan that is not intended to be an Incentive Stock Option.

(r) "*Option*" shall mean a Non-Qualified Stock Option.

(s) "*Other Stock Grant*" shall mean any right granted under Section 6(f) of the Plan.

(t) "*Other Stock-Based Award*" shall mean any right granted under Section 6(g) of the Plan.

(u) "*Participant*" shall mean an Eligible Person designated to be granted an Award under the Plan.

(v) "*Performance Award*" shall mean any right granted under Section 6(d) of the Plan.

(w) "*Person*" shall mean any individual or entity, including a corporation, partnership, limited liability company, association, joint venture or trust.

(x) "*Plan*" shall mean the ReShape Lifesciences Inc. 2017 Employment Inducement Incentive Award Plan, as amended from time to time.

(y) "*Restricted Stock*" shall mean any Shares granted under Section 6(c) of the Plan.

(z) "*Restricted Stock Unit*" shall mean any unit granted under Section 6(c) of the Plan evidencing the right to receive a Share (or a cash payment equal to the Fair Market Value of a Share) at some future date.

(aa) "Rule 16b-3" shall mean Rule 16b-3 promulgated by the Securities and Exchange Commission under the Exchange Act or any successor rule or regulation.

(bb) "*Section 409A*" shall mean Section 409A of the Code, or any successor provision and the applicable Treasury Regulations and other applicable guidance thereunder.

(cc) "*Securities Act*" shall mean the Securities Act of 1933, as amended.

(dd) "*Share*" or "*Shares*" shall mean shares of Common Stock, $0.01 par value, of the Company or such other securities or property as may become subject to Awards pursuant to an adjustment made under Section 4(c) of the Plan.

(ee) "*Specified Employee*" shall mean a specified employee as defined in Section 409A(a)(2)(B) of the Code or applicable proposed or final regulations under Section 409A, determined in accordance with procedures established by the Company and applied uniformly with respect to all plans maintained by the Company that are subject to Section 409A.

(ff) "*Stock Appreciation Right*" shall mean any right granted under Section 6(b) of the Plan.

Section 3. Administration.

(a) Power and Authority of the Committee. The Plan shall be administered by the Committee. Subject to the express provisions of the Plan and to applicable law, the Committee shall have full power and authority to: (i) designate Participants; (ii) determine the type or types of Awards to be granted to each Participant under the Plan; (iii) determine the number of Shares to be covered by (or with respect to which payments, rights or other matters are to be calculated in connection with) each Award; (iv) determine the terms and conditions of any Award or Award Agreement; (v) amend the terms and conditions of any Award or Award Agreement and accelerate the exercisability of Options or the lapse of restrictions relating to Restricted Stock, Restricted Stock Units or other Awards; (vi) determine whether, to what extent and under what circumstances Awards may be exercised in cash, Shares, other securities, other Awards or other property, or canceled, forfeited or suspended; (vii) determine whether, to what extent and under what circumstances cash, Shares, other securities, other Awards, other property and other amounts

payable with respect to an Award under the Plan shall be deferred either automatically or at the election of the holder thereof or the Committee; (viii) interpret and administer the Plan and any instrument or agreement relating to, or Award made under, the Plan; (ix) establish, amend, suspend or waive such rules and regulations and appoint such agents as it shall deem appropriate for the proper administration of the Plan; (x) adopt procedures from time to time intended to ensure that an individual is an Eligible Person prior to the granting of any Awards to such individual under the Plan (including without limitation a requirement, if any, that each such individual certify to the Company prior to the receipt of an Award under the Plan that he or she has not been previously employed, has had a bona fide period of non-employment, and that the grant of Awards under the Plan is an inducement material to his or her agreement to enter into employment with the Company or an Affiliate); and (xi) make any other determination and take any other action that the Committee deems necessary or desirable for the administration of the Plan. Unless otherwise expressly provided in the Plan, all designations, determinations, interpretations and other decisions under or with respect to the Plan or any Award shall be within the sole discretion of the Committee, may be made at any time and shall be final, conclusive and binding upon any Participant, any holder or beneficiary of any Award.

(b) Delegation. The Committee may delegate its powers and duties under the Plan to one or more officers or Directors of the Company or any Affiliate or a committee of such officers or Directors, subject to such terms, conditions and limitations as the Committee may establish in its sole discretion; *provided, however*, that the Committee shall not delegate such authority in such a manner as would contravene Section 157 of the Delaware General Corporation Law. Notwithstanding anything to the contrary provided herein (a) Awards shall be approved by (i) the Committee, comprised of a majority of the Company's Independent Directors or (b) a majority of the Company's Independent Directors and (y) the authority to grant Awards shall not be delegated under any circumstances.

Section 4. Shares Available for Awards.

(a) Shares Available. Subject to adjustment as provided in Section 4(c), the aggregate number of Shares that may be issued under all Awards under the Plan from its inception shall be 1,500,000.

(b) Counting Shares. For purposes of this Section 4, except as set forth in this Section 4(b) below, if an Award entitles the holder thereof to receive or purchase Shares, the number of Shares covered by such Award or to which such Award relates shall be counted on the date of grant of such Award against the aggregate number of Shares available for granting Awards under the Plan.

(i) Shares Added Back to Reserve. Subject to the limitations in (ii) below, if any Shares covered by an Award or to which an Award relates are not purchased or are forfeited or are reacquired by the Company, or if an Award otherwise terminates or is cancelled without delivery of any Shares, then the number of Shares counted against the aggregate number of Shares available under the Plan with respect to such Award, to the extent of any such forfeiture, reacquisition by the Company, termination or cancellation, shall again be available for granting Awards under the Plan.

(ii) Shares Not Added Back to Reserve. Notwithstanding anything to the contrary in (i) above, the following Shares will not again become available for issuance under the Plan: (A) any Shares which would have been issued upon any exercise of an Option but for the fact that the exercise price was paid by a "net exercise" pursuant to the terms of the Option Agreement or any Shares tendered in payment of the exercise price of an Option; (B) any Shares withheld by the Company or Shares tendered to satisfy any tax withholding obligation with respect to any Award; (C) Shares covered by a stock-settled Stock Appreciation Right issued under the Plan that are not issued in connection with settlement in Shares upon exercise; or (D) Shares that are repurchased by the Company using Option exercise proceeds.

(iii) Cash-Only Awards. Awards that do not entitle the holder thereof to receive or purchase Shares shall not be counted against the aggregate number of Shares available for Awards under the Plan.

(iv) Adjustments. In the event that the Committee shall determine that any dividend or other distribution (whether in the form of cash, Shares, other securities or other property), recapitalization, stock split, reverse stock split, reorganization, merger, consolidation, split-up, spin-off, combination, repurchase or exchange of Shares or other securities of the Company, issuance of warrants or other rights to purchase Shares or other securities of the Company or other similar corporate transaction or event affects the Shares such that an adjustment is necessary in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan, then the Committee shall, in such manner as it may deem equitable, adjust any or all of (i) the number and type of Shares (or other securities or other property) that thereafter may be made the subject of Awards, (ii) the number and type of Shares (or other securities or other property) subject to outstanding Awards and (iii) the purchase or exercise price with respect to any Award; provided, however, that the number of Shares covered by any Award or to which such Award relates shall always be a whole number.

Section 5. Eligibility.

Any Eligible Person of the Company or any Affiliate, shall be eligible to be designated as a Participant. In determining which Eligible Persons shall receive an Award and the terms of any Award, the Committee may take into account the nature of the services rendered by the respective Eligible Persons, their potential contributions to the success of the Company or such other factors as the Committee, in its discretion, shall deem relevant.

Section 6. Awards.

(a) Options. The Committee is hereby authorized to grant Options to Participants with the following terms and conditions and with such additional terms and conditions not inconsistent with the provisions of the Plan as the Committee shall determine:

(i) Exercise Price. The purchase price per Share purchasable under an Option shall be determined by the Committee and shall not be less than 100% of the Fair Market Value of a Share on the date of grant of such Option.

(ii) Option Term. The term of each Option shall be fixed by the Committee.

(iii) Time and Method of Exercise. The Committee shall determine the time or times at which an Option may be exercised in whole or in part and the method or methods by which, and the form or forms (including, without limitation, cash, Shares, other securities, other Awards or other property, or any combination thereof, having a Fair Market Value on the exercise date equal to the applicable exercise price) in which, payment of the exercise price with respect thereto may be made or deemed to have been made. Alternatively, the Committee may, in its discretion, permit a Non-Qualified Stock Option to be exercised by delivering to the Participant a number of Shares having an aggregate Fair Market Value (determined as of the date of exercise) equal to the excess, if positive, of the Fair Market Value of the Shares underlying the Non-Qualified Stock Option being exercised, on the date of exercise, over the exercise price of the Non-Qualified Stock Option for such Shares.

(b) Stock Appreciation Rights. The Committee is hereby authorized to grant Stock Appreciation Rights to Participants subject to the terms of the Plan and any applicable Award Agreement. A Stock Appreciation Right granted under the Plan shall confer on the holder thereof a right to receive upon exercise thereof the excess of (i) the Fair Market Value of one Share on the date of exercise over (ii) the grant price of the Stock Appreciation Right as specified by the Committee, which price shall not be less than 100% of the Fair Market Value of one Share on the date of grant of the Stock Appreciation Right. Subject to the terms of the Plan and any applicable Award Agreement, the grant price, term, methods of exercise, dates of exercise, methods of settlement and any other terms and conditions of any Stock Appreciation Right shall be as determined by the Committee (except that the term of each Stock Appreciation Right shall be subject to the same limitation in Section 6(a)(ii) applicable to Options). The Committee may impose such conditions or restrictions on the exercise of any Stock Appreciation Right as it may deem appropriate.

(c) Restricted Stock and Restricted Stock Units. The Committee is hereby authorized to grant Restricted Stock and Restricted Stock Units to Participants with the following terms and conditions and with such additional terms and conditions not inconsistent with the provisions of the Plan as the Committee shall determine:

(i) Restrictions. Shares of Restricted Stock and Restricted Stock Units shall be subject to such restrictions as the Committee may impose (including, without limitation, a waiver by the Participant of the right to vote or to receive any dividend or other right or property with respect thereto), which restrictions may lapse separately or in combination at such time or times, in such installments or otherwise as the Committee may deem appropriate.

(ii) Issuance and Delivery of Shares. Any Restricted Stock granted under the Plan shall be issued at the time such Awards are granted and may be evidenced in such manner as the Committee may deem appropriate, including book-entry registration or issuance of a stock certificate or certificates, which certificate or certificates shall be held by the Company or held in nominee name by the stock transfer agent or brokerage service selected by the Company to provide such services for the Plan. Such certificate or

certificates shall be registered in the name of the Participant and shall bear an appropriate legend referring to the restrictions applicable to such Restricted Stock. Shares representing Restricted Stock that are no longer subject to restrictions shall be delivered (including by updating the book-entry registration) to the Participant promptly after the applicable restrictions lapse or are waived. In the case of Restricted Stock Units, no Shares shall be issued at the time such Awards are granted. Upon the lapse or waiver of restrictions and the restricted period relating to Restricted Stock Units evidencing the right to receive Shares, such Shares shall be issued and delivered to the holder of the Restricted Stock Units.

(iii) Forfeiture. Except as otherwise determined by the Committee or as provided in an Award Agreement, upon termination of employment or service (as determined under criteria established by the Committee) during the applicable restriction period, all Shares of Restricted Stock and all Restricted Stock Units at such time subject to restriction shall be forfeited and reacquired by the Company at the original purchase price; provided, however, that the Committee may, when it finds that a waiver would be in the best interest of the Company, waive in whole or in part Units. Upon the lapse or waiver of restrictions and the restricted period relating to Restricted Stock Units evidencing the right to receive Shares, such Shares shall be issued and delivered to the holders of the Restricted Stock Units.

(d) Performance Awards. The Committee is hereby authorized to grant Performance Awards to Participants subject to the terms of the Plan and any applicable Award Agreement. A Performance Award granted under the Plan (i) may be denominated or payable in cash, Shares (including, without limitation, Restricted Stock and Restricted Stock Units), other securities, other Awards or other property and (ii) shall confer on the holder thereof the right to receive payments, in whole or in part, upon the achievement of such performance goals during such performance periods as the Committee shall establish. Subject to the terms of the Plan and any applicable Award Agreement, the performance goals to be achieved during any performance period, the length of any performance period, the amount of any Performance Award granted, the amount of any payment or transfer to be made pursuant to any Performance Award and any other terms and conditions of any Performance Award shall be determined by the Committee.

(e) Dividend Equivalents. The Committee is hereby authorized to grant Dividend Equivalents to Participants, subject to the terms of the Plan and any applicable Award Agreement, under which such Participants shall be entitled to receive payments (in cash, Shares, other securities, other Awards or other property as determined in the discretion of the Committee) equivalent to the amount of cash dividends paid by the Company to holders of Shares with respect to a number of Shares determined by the Committee. Notwithstanding the foregoing, (i) the Committee may not grant Dividend Equivalents to Eligible Persons in connection with grants of Options or Stock Appreciation Rights to such Eligible Persons, and (ii) no Dividend Equivalent payments shall be made to a Participant with respect to any Award prior to the date on which all conditions or restrictions relating to such Award (or portion thereof to which the Dividend Equivalent relates) have been satisfied, waived or lapsed.

(f) Stock Awards. The Committee is hereby authorized, subject to the terms of the Plan and any applicable Award Agreement, to grant to Participants Shares without restrictions thereon as are deemed by the Committee to be consistent with the purpose of the Plan.

(g) Other Stock-Based Awards. The Committee is hereby authorized to grant to Participants subject to the terms of the Plan and any applicable Award Agreement, such other

Awards that are denominated or payable in, valued in whole or in part by reference to, or otherwise based on or related to, Shares (including, without limitation, securities convertible into Shares), as are deemed by the Committee to be consistent with the purpose of the Plan. No Award issued under this Section 6(g) shall contain a purchase right or an option-like exercise feature.

(h) General.

(i) No Cash Consideration for Awards. Awards shall be granted for no cash consideration or for such minimal cash consideration as may be required by applicable law.

(ii) Awards May Be Granted Separately or Together. Awards may, in the discretion of the Committee, be granted either alone or in addition to, in tandem with or in substitution for any other Award or any award granted under any plan of the Company or any Affiliate other than the Plan. Awards granted in addition to or in tandem with other Awards or in addition to or in tandem with awards granted under any such other plan of the Company or any Affiliate may be granted either at the same time as or at a different time from the grant of such other Awards or awards.

(iii) Forms of Payment under Awards. Subject to the terms of the Plan and of any applicable Award Agreement, payments or transfers to be made by the Company or an Affiliate upon the grant, exercise or payment of an Award may be made in such form or forms as the Committee shall determine (including, without limitation, cash, Shares, other securities, other Awards or other property or any combination thereof), and may be made in a single payment or transfer, in installments or on a deferred basis, in each case in accordance with rules and procedures established by the Committee. Such rules and procedures may include, without limitation, provisions for the payment or crediting of reasonable interest on installment or deferred payments or the grant or crediting of Dividend Equivalents with respect to installment or deferred payments.

(iv) Limits on Transfer of Awards. Except as provided by the Committee or by this Plan, any Award (other than any fully vested and unrestricted Shares issued pursuant to any Award) and any right under any such Award shall not be transferable by a Participant other than by will or by the laws of descent and distribution or by transfer of an Award back to the Company. The Committee may establish procedures as it deems appropriate for a Participant to designate a Person or Persons, as beneficiary or beneficiaries, to exercise the rights of the Participant and receive any property distributable with respect to any Award in the event of the Participant's death. The Committee, in its discretion and subject to such additional terms and conditions as it determines, may permit a Participant to transfer a Non-Qualified Stock Option to any "family member" (as defined in the General Instructions to Form S-8 (or any successor to such Instructions or such Form) under the Securities Act) at any time that such Participant holds such Option, provided that such transfers may not be for "value" (as defined in the General Instructions to Form S-8 (or any successor to such Instructions or such Form) under the Securities Act) and the family member may not make any subsequent transfers other than by will or by the laws of

descent and distribution. Each Award under the Plan or right under any such Award shall be exercisable during the Participant's lifetime only by the Participant (except as provided herein or in an Award Agreement or amendment thereto relating to a Non-Qualified Stock Option) or, if permissible under applicable law, by the Participant's guardian or legal representative. No Award (other than any fully vested and unrestricted Shares issued pursuant to any Award) or right under any such Award may be pledged, alienated, attached or otherwise encumbered, and any purported pledge, alienation, attachment or encumbrance thereof shall be void and unenforceable against the Company or any Affiliate.

(v) Term of Awards. The term of each Award shall be for such period as may be determined by the Committee.

(vi) Restrictions; Securities Exchange Listing. All Shares or other securities delivered under the Plan pursuant to any Award or the exercise thereof shall be subject to such restrictions as the Committee may deem advisable under the Plan, and to any applicable federal or state securities laws and regulatory requirements. The Committee may cause appropriate entries to be made or legends to be affixed to reflect such restrictions. If the Shares or other securities are listed on a securities exchange, the Company shall not be required to deliver any Shares or other securities covered by an Award until such Shares or other securities have been listed on such securities exchange.

(vii) Section 409A Provisions. Notwithstanding anything in the Plan or any Award Agreement to the contrary, to the extent that any amount or benefit that constitutes "deferred compensation" to a Participant under Section 409A and applicable guidance thereunder is otherwise payable or distributable to a Participant under the Plan or any Award Agreement solely by reason of the occurrence of a Change in Control or due to the Participant's disability or "separation from service" (as defined under Section 409A), such amount or benefit will not be payable or distributable to the Participant by reason of such circumstance unless the Committee determines in good faith that (i) the circumstances giving rise to such Change in Control, disability or separation from service meet the definition of a change in ownership or control, disability or separation from service, as the case may be, in Section 409A(a)(2)(A) of the Code and applicable proposed or final regulations, or (ii) the payment or distribution of such amount or benefit would be exempt from the application of Section 409A by reason of the short-term deferral exemption or otherwise. Any payment or distribution that otherwise would be made to a Participant who is a Specified Employee (as determined by the Committee in good faith) on account of separation from service may not be made before the date which is six months after the date of the Specified Employee's separation from service (or if earlier, upon the Specified Employee's death) unless the payment or distribution is exempt from the application of Section 409A by reason of the short-term deferral exemption or otherwise.

Section 7. Amendment and Termination; Adjustments.

Except to the extent prohibited by applicable law and unless otherwise expressly provided in an Award Agreement or in the Plan:

(a) Amendments to the Plan. The Board may amend, alter, suspend, discontinue or terminate the Plan; provided, however, that, notwithstanding any other provision of the Plan or any Award Agreement, without the approval of the stockholders of the Company, no such amendment, alteration, suspension, discontinuation or termination shall be made that, absent such approval:

(i) if a class of the Company's securities is then listed on a securities exchange, would cause Rule 16b-3 to become unavailable with respect to the Plan; or

(ii) would violate the rules or regulations of the NASDAQ Stock Market, any other securities exchange or the Financial Industry Regulatory Authority, Inc. that are applicable to the Company.

(b) Amendments to Awards. Except as otherwise expressly provided in the Plan, the Committee may waive any conditions of or rights of the Company under any outstanding Award, prospectively or retroactively. Except as otherwise expressly provided in the Plan (specifically including the next two sentences hereof), the Committee may amend, alter, suspend, discontinue or terminate any outstanding Award, prospectively or retroactively, but no such action may adversely affect the rights of the holder of such Award without the consent of the Participant or holder or beneficiary thereof. If any provision of the Plan or an Award Agreement would result in adverse tax consequences under Section 409A, the Committee may amend that provision (or take any other action reasonably necessary) to avoid any adverse tax results and no action taken to comply with Section 409A shall be deemed to impair or otherwise adversely affect the rights of any holder of an Award or beneficiary thereof. In the event of any reorganization, merger, consolidation, split-up, spin-off, combination, repurchase or exchange of Shares or other securities of the Company or any other similar corporate transaction or event involving the Company (or the Company shall enter into a written agreement to undergo such a transaction or event), the Committee or the Board may, in its sole discretion, provide for any of the following to be effective upon the consummation of the event (or effective immediately prior to the consummation of the event, provided that the consummation of the event subsequently occurs):

(i) either (A) termination of any such Award, whether or not vested, in exchange for an amount of cash and/or other property, if any, equal to the amount that would have been attained upon the exercise of the vested portion of such Award or realization of the Participant's vested rights (and, for the avoidance of doubt, if, as of the date of the occurrence of the transaction or event described in this Section 7(b)(i)(A), the Committee or the Board determines in good faith that no amount would have been attained upon the exercise of the vested portion of such Award or realization of the Participant's vested rights, then such Award may be terminated by the Company without any payment) or (B) the replacement of such Award with other rights or property selected by the Committee or the Board, in its sole discretion;

(ii) that such Award be assumed by the successor or survivor corporation, or a parent or subsidiary thereof, or shall be substituted for by similar options, rights or awards covering the stock of the successor or survivor corporation, or a parent or subsidiary thereof, with appropriate adjustments as to the number and kind of shares and prices;

(iii) that such Award shall be exercisable or payable or fully vested with respect to all Shares covered thereby, notwithstanding anything to the contrary in the applicable Award Agreement; or

(iv) that the Award cannot vest, be exercised or become payable after a date certain in the future, which may be the effective date of such event.

(c) Correction of Defects, Omissions and Inconsistencies. The Committee may correct any defect, supply any omission or reconcile any inconsistency in the Plan or any Award in the manner and to the extent it shall deem desirable to carry the Plan into effect.

Section 8. Income Tax Withholding; Tax Bonuses.

(a) Withholding. In order to comply with all applicable federal or state income tax laws or regulations, the Company may take such action as it deems appropriate to ensure that all applicable federal or state payroll, withholding, income or other taxes, which are the sole and absolute responsibility of a Participant are withheld or collected from such Participant. In order to assist a Participant in paying all or a portion of the federal and state taxes to be withheld or collected upon exercise or receipt of (or the lapse of restrictions relating to) an Award, the Committee, in its discretion and subject to such additional terms and conditions as it may adopt, may permit the Participant to satisfy such tax obligation by (i) electing to have the Company withhold a portion of the Shares otherwise to be delivered upon exercise or receipt of (or the lapse of restrictions relating to) such Award with a Fair Market Value equal to the amount of such taxes or (ii) electing to deliver to the Company Shares other than Shares issuable upon exercise or receipt of (or the lapse of restrictions relating to) such Award with a Fair Market Value equal to the amount of such taxes. The election, if any, must be made on or before the date that the amount of tax to be withheld is determined.

(b) Tax Bonuses. The Committee, in its discretion, shall have the authority, at the time of grant of any Award under this Plan or at any time thereafter, to approve cash bonuses to designated Participants to be paid upon their exercise or receipt of (or the lapse of restrictions relating to) Awards in order to provide funds to pay all or a portion of federal and state taxes due as a result of such exercise or receipt (or the lapse of such restrictions). The Committee shall have full authority in its discretion to determine the amount of any such tax bonus.

Section 9. General Provisions.

(a) Actions Required Upon Grant of Award. Following the issuance of any Award under the Plan, the Company shall comply with any applicable announcement and notification requirements set forth in the listing requirements of the applicable securities exchange.

(b) No Rights to Awards. No Eligible Person, Participant or other Person shall have any claim to be granted any Award under the Plan, and there is no obligation for uniformity of treatment of Eligible Persons, Participants or holders or beneficiaries of Awards under the Plan. The terms and conditions of Awards need not be the same with respect to any Participant or with respect to different Participants.

(c) Award Agreements. No Participant will have rights under an Award granted to such Participant unless and until an Award Agreement shall have been duly executed on behalf of the Company and, if requested by the Company, signed by the Participant.

(d) No Limit on Other Compensation Arrangements. Nothing contained in the Plan shall prevent the Company or any Affiliate from adopting or continuing in effect other or additional compensation arrangements, and such arrangements may be either generally applicable or applicable only in specific cases.

(e) No Right to Employment. The grant of an Award shall not be construed as giving a Participant the right to be retained in the employ of the Company or any Affiliate, nor will it affect in any way the right of the Company or an Affiliate to terminate such employment at any time, with or without cause. In addition, the Company or an Affiliate may at any time dismiss a Participant from employment free from any liability or any claim under the Plan, unless otherwise expressly provided in the Plan or in any Award Agreement.

(f) Governing Law. The validity, construction and effect of the Plan or any Award, and any rules and regulations relating to the Plan or any Award, shall be determined in accordance with the laws of the State of Minnesota.

(g) Severability. If any provision of the Plan or any Award is or becomes or is deemed to be invalid, illegal or unenforceable in any jurisdiction or would disqualify the Plan or any Award under any law deemed applicable by the Committee, such provision shall be construed or deemed amended to conform to applicable laws, or if it cannot be so construed or deemed amended without, in the determination of the Committee, materially altering the purpose or intent of the Plan or the Award, such provision shall be stricken as to such jurisdiction or Award, and the remainder of the Plan or any such Award shall remain in full force and effect.

(h) No Trust or Fund Created. Neither the Plan nor any Award shall create or be construed to create a trust or separate fund of any kind or a fiduciary relationship between the Company or any Affiliate and a Participant or any other Person. To the extent that any Person acquires a right to receive payments from the Company or any Affiliate pursuant to an Award, such right shall be no greater than the right of any unsecured general creditor of the Company or any Affiliate.

(i) No Fractional Shares. No fractional Shares shall be issued or delivered pursuant to the Plan or any Award, and the Committee shall determine whether cash shall be paid in lieu of any fractional Shares or whether such fractional Shares or any rights thereto shall be canceled, terminated or otherwise eliminated.

(j) Headings. Headings are given to the Sections and subsections of the Plan solely as a convenience to facilitate reference. Such headings shall not be deemed in any way material or relevant to the construction or interpretation of the Plan or any provision thereof.

(k) Other Benefits. No compensation or benefit awarded to or realized by any Participant under the Plan shall be included for the purpose of computing such Participant’s compensation under any compensation-based retirement, disability, or similar plan of the Company unless required by law or otherwise provided by such other plan.

Section 10. Effective Date of the Plan.

The Plan shall be effective as of the date of its approval and adoption by the Board.

Section 11. Term of the Plan.

Awards shall only be granted under the Plan during a 10-year period beginning on the date of approval by the Board. However, unless otherwise expressly provided in the Plan or in an applicable Award Agreement, any Award theretofore granted may extend beyond the end of such 10-year period, and the authority of the Committee provided for hereunder with respect to the Plan and any Awards, and the authority of the Board to amend the Plan and to waive any conditions or rights of the Company under any Award pursuant to 7(b) hereof, shall extend beyond the termination of the Plan.

Section 12. Stockholder Approval. It is expressly intended that approval of the Company's stockholders not be required as a condition of the effectiveness of the Plan, and the Plan's provisions shall be interpreted in a manner consistent with such intent for all purposes. Specifically, NASDAQ Stock Market Rule 5635(c) generally requires stockholder approval for stock option plans or other equity compensation arrangements adopted by companies whose securities are listed on the NASDAQ Stock Market pursuant to which stock awards or stock may be acquired by officers, directors, employees or consultants of such companies. NASDAQ Stock Market Rule 5635(c)(4) provides an exemption in certain circumstances for "employment inducement" awards (within the meaning of NASDAQ Stock Market Rule 5635(c)(4)). Notwithstanding anything to the contrary herein, if the Company's securities are traded on the NASDAQ Stock Market, then Awards under the Plan may only be made to employees who have not previously been an employee or Director of the Company or an Affiliate, in each case as an inducement material to the employee's entering into employment with the Company or an Affiliate. Awards under the Plan will be approved by (a) the Committee, comprised of a majority of the Company's Independent Directors, or (b) a majority of the Company's Independent Directors. Accordingly, pursuant to NASDAQ Stock Market Rule 5635(c)(4), the issuance of Awards and the shares of Stock issuable upon exercise or vesting of such Awards pursuant to the Plan are not subject to the approval of the Company's stockholders.

EXHIBIT 10.5

RESHAPE LIFESCIENCES INC.
2017 EMPLOYMENT INDUCEMENT INCENTIVE AWARD PLAN

STOCK OPTION GRANT NOTICE

ReShape Lifesciences Inc., a Delaware corporation (the "***Company***"), pursuant to the ReShape Lifesciences Inc. 2017 Employment Inducement Incentive Award Plan (as may be amended from time to time, the "***Plan***"), hereby grants to the individual listed below (the "***Optionee***"), a non-qualified stock option to purchase the number of shares of Common Stock, par value $0.01 per share, of the Company (the "***Shares***"), set forth below (the "***Option***"). This Option is subject to all of the terms and conditions set forth herein and in the Stock Option Agreement attached hereto as Exhibit A (the "***Option Agreement***") and the Plan, each of which is incorporated herein by reference. Unless otherwise defined herein, the terms defined in the Plan shall have the same defined meanings in this Stock Option Grant Notice (the "***Grant Notice***") and the Option Agreement.

Optionee:	[_____]
Grant Date:	[_____]
Vesting Commencement Date:	[_____]
Exercise Price per Share:	$[___] /Share
Total Number of Shares Subject to the Option:	[_____] Shares
Expiration Date:	[_____]
Vesting Schedule:	**[*25%*]** shares will vest on **[*One-year anniversary of Grant Date*]**, and the remaining **[*75%*]** shares will vest in as nearly equal amounts as possible on the last day of each of the next 36 months thereafter.
Termination:	The Option shall terminate on the Expiration Date set forth above or, if earlier, in accordance with the terms of the Agreement
Type of Option:	Non-Qualified Stock Option

The undersigned Optionee acknowledges that he or she has received a copy of this Grant Notice, the Option Agreement and the Plan. As an express condition to the grant of the Option hereunder, the Optionee agrees to be bound by the terms of this Grant Notice, the Option Agreement and the Plan. The undersigned Optionee further acknowledges that as of the Grant Date, this Grant Notice, the Option Agreement and the Plan set forth the entire understanding between the Optionee and the Company regarding the acquisition of stock in the Company and supersede all prior oral and written agreements on that subject with the exception of (i) options previously granted and delivered to the Optionee under the Plan, and (ii) any agreements noted in an attachment to this Grant Notice.

RESHAPE LIFESCIENCES INC.		**OPTIONEE**	
By:	_____	By:	_____
Name:	_____	Print Name:	_____
Title:	_____		
		Address:	_____
		Email:	_____

EXHIBIT A
TO STOCK OPTION GRANT NOTICE

STOCK OPTION AGREEMENT

Pursuant to the Stock Option Grant Notice (the "***Grant Notice***") to which this Stock Option Agreement (this "***Agreement***") is attached, ReShape Lifesciences Inc., a Delaware corporation (the "***Company***"), has granted to the Optionee an option (the "***Option***") under the ReShape Lifesciences Inc. 2017 Employment Inducement Incentive Award Plan (as amended from time to time, the "***Plan***") to purchase the number of Shares indicated in the Grant Notice.

ARTICLE I.

GENERAL

1.1 Incorporation of Terms of Plan. The Option is subject to the terms and conditions of the Plan, which are incorporated herein by reference. In the event of any inconsistency between the Plan and this Agreement, the terms of the Plan shall control.

1.2 Defined Terms. Wherever the following terms are used in this Agreement, they shall have the meanings specified below, unless the context clearly indicates otherwise. Capitalized terms not specifically defined herein shall have the meanings specified in the Plan and the Grant Notice.

(a) "***Retirement***" shall mean a Separation from Service due to a normal or approved early termination of employment or service pursuant to and in accordance with an applicable retirement/pension plan, program, policy or practice of the Company or an Affiliate, as determined by the Company or the Affiliate in its sole discretion.

(b) "***Separation from Service***" shall mean the Optionee's "separation from service" from the Company or any Affiliate within the meaning of Section 409A(a)(2)(A)(i) of the Code.

ARTICLE II.

GRANT OF OPTION

2.1 Grant of Option; Employment Inducement Award.

(a) In consideration of the Optionee's past and/or continued employment with or service to the Company or any Affiliate and for other good and valuable consideration, effective as of the Grant Date set forth in the Grant Notice (the "***Grant Date***"), the Company irrevocably grants to the Optionee the Option to purchase any part or all of the aggregate number of Shares set forth in the Grant Notice, upon the terms and conditions set forth in the Plan and this Agreement. The Option shall be a Non-Qualified Stock Option.

(b) The Option is intended to constitute an "employment inducement" award under NASDAQ Stock Market Rule 5635(c)(4), and consequently is intended to be exempt from the NASDAQ Stock Market rules regarding shareholder approval of stock option plans or other equity compensation arrangements. This Agreement and the terms and conditions of the Option shall be interpreted in accordance and consistent with such exemption.

2.2 Exercise Price. The exercise price of the Shares subject to the Option shall be as set forth in the Grant Notice, without commission or other charge; *provided, however*, that the exercise price per share of the Shares subject to the Option shall not be less than 100% of the Fair Market Value of a Share on the Grant Date.

2.3 Consideration to the Company. In consideration of the grant of the Option by the Company, the Optionee agrees to render faithful and efficient services to the Company or any Affiliate. Nothing in the Plan or this Agreement shall confer upon the Optionee any right to continue in the employ or service of the Company or any Affiliate or shall interfere with or restrict in any way the rights of the Company and its Affiliates, which rights are hereby expressly reserved, to discharge or terminate the services of the Optionee at any time for any reason whatsoever, with or without cause, except to the extent expressly provided otherwise in a written agreement between the Company or an Affiliate and the Optionee.

ARTICLE III.

PERIOD OF EXERCISABILITY

3.1 Commencement of Exercisability.

(a) Subject to Sections 3.1(b), 3.2, 3.3, 5.7 and 5.8 hereof, the Option shall become vested and exercisable in such amounts and at such times as are set forth in the Grant Notice.

(b) No portion of the Option which has not become vested and exercisable as of the date of the Optionee's Termination of Service shall thereafter become vested and exercisable, except as may be otherwise provided by the Committee or as set forth in a written agreement between the Company and the Optionee.

3.2 Duration of Exercisability. Any installments provided for in the vesting schedule set forth in the Grant Notice are cumulative. Each such installment which becomes vested and exercisable pursuant to the vesting schedule set forth in the Grant Notice shall remain vested and exercisable until it becomes unexercisable under Section 3.3 hereof.

3.3 Expiration of Option. The Option may not be exercised to any extent by anyone after the first to occur of the following events:

(a) The Expiration Date set forth in the Grant Notice;

(b) The date that is three (3) months from the date of the Optionee's Termination of Service by the Company without cause or by the Optionee for any reason (other than due to Retirement, death or disability);

(c) The expiration of one (1) year from the date of the Optionee's Termination of Service by reason of the Optionee's death or disability;

(d) The expiration of six (6) months from the date of the Optionee's Termination of Service by reason of the Optionee's Retirement; or

(e) The start of business on the date of the Optionee's Termination of Service by the Company for cause.

"Termination of Service" shall mean:

(a) As to a consultant or independent contractor, the time when the engagement of the Optionee as a consultant or independent contractor to the Company and its Affiliates is terminated for any reason, with or without cause, including, without limitation, by resignation, discharge, death or retirement, but excluding terminations where the consultant or independent contractor simultaneously commences or remains in employment and/or service as an employee and/or Director with the Company or any Affiliate.

(b) As to a Non-Employee Director, the time when an Optionee who is a Non-Employee Director ceases to be a Director for any reason, including, without limitation, a termination by resignation, failure to be elected, death or retirement, but excluding terminations where the Optionee simultaneously commences or remains in employment and/or service as an employee, consultant and/or independent contractor with the Company or any Affiliate.

(c) As to an employee, the time when the employee-employer relationship between the Optionee and the Company and its Affiliates is terminated for any reason, including, without limitation, a termination by resignation, discharge, death, disability or Retirement, but excluding terminations where the Optionee simultaneously commences or remains in service as a consultant, independent contractor and/or Director with the Company or any Affiliate.

The Committee, in its sole discretion, shall determine the effect of all matters and questions relating to any Termination of Service, including, without limitation, whether a Termination of Service has occurred, whether any Termination of Service resulted from a discharge for cause and whether any particular leave of absence constitutes a Termination of Service. For purposes of the Plan, an Optionee's employee-employer relationship or consultancy relationship shall be deemed to be terminated in the event that the Affiliate employing or contracting with such Optionee ceases to remain an Affiliate following any merger, sale of stock or other corporate transaction or event (including, without limitation, a spin-off).

3.4 Change in Control. In the event that a Change in Control occurs, (a) all outstanding Options shall be subject to the agreement pursuant to which such Change in Control is consummated and (b) the vesting schedule of the Options held by Optionee shall accelerate such that on the date the Change in Control is completed, 50% of any then-unvested shares subject to the Options held by Optionee shall immediately vest, irrespective of which of the provisions described in clauses (i) through (v) below are set forth in the agreement pursuant to which such Change in Control is consummated (except in the case of clause (iv), in which case 100% of the Options would become vested). Such agreement shall provide for one or more of the following:

(i) The continuation of such outstanding Options by the Company (if the Company is the surviving corporation).

(ii) The assumption of such outstanding Options by the surviving corporation or its parent in a manner that complies with Section 424(a) of the Code.

(iii) The substitution by the surviving corporation or its parent of new options for such outstanding Options in a manner that complies with Section 424(a) of the Code.

(iv) Full exercisability of such outstanding Options and full vesting of the Shares subject to such Options, followed by the cancellation of such Options. The full exercisability of such Options and full vesting of the Shares subject to such Options may be contingent on the closing of such Change in Control. The Optionee shall be able to exercise such Options during a period of not less than five full business days preceding the closing date of such Change in Control, unless (A) a shorter period is required to permit a timely closing of such Change in Control and (B) such shorter period still offers the Optionee a reasonable opportunity to exercise

such Options. Any exercise of such Options during such period may be contingent on the closing of such Change in Control.

(v) The cancellation of such outstanding Options and a payment to the Optionee equal to the excess of (A) the Fair Market Value of the Shares subject to such Options (whether or not such Options are then exercisable or such Shares are then vested) as of the closing date of such Change in Control over (B) their aggregate exercise price. Such payment shall be made in the form of cash, cash equivalents, or securities of the surviving corporation or its parent with a Fair Market Value equal to the required amount. Such payment may be made in installments and may be deferred until the date or dates when such Options would have become exercisable or such Shares would have vested. Such payment may be subject to vesting based on the Optionee's continuing service to the Company or its affiliates, provided that the vesting schedule shall not be less favorable to the Optionee than the schedule under which such Options would have become exercisable or such Shares would have vested. If the aggregate exercise price of the Shares subject to such Options exceeds the Fair Market Value of such Shares, then such Options may be cancelled without making a payment to the Optionee. For purposes of this Subsection (v), the Fair Market Value of any security shall be determined without regard to any vesting conditions that may apply to such security.

ARTICLE IV.

EXERCISE OF OPTION

4.1 Person Eligible to Exercise. Except as provided in Section 4.2 hereof, during the lifetime of the Optionee, only the Optionee may exercise the Option or any portion thereof. After the death of the Optionee, any exercisable portion of the Option may, prior to the time when the Option becomes unexercisable under Section 3.3 hereof, be exercised by the deceased Optionee's beneficiary or by any person empowered to do so under the deceased Optionee's will or under the then-applicable laws of descent and distribution, subject to Section 6(h)(iv) of the Plan.

4.2 Partial Exercise. Any exercisable portion of the Option or the entire Option, if then wholly exercisable, may be exercised in whole or in part at any time prior to the time when the Option or portion thereof becomes unexercisable under Section 3.3 hereof. However, the Option shall not be exercisable with respect to fractional shares.

4.3 Manner of Exercise. The Option, or any exercisable portion thereof, may be exercised solely by delivery to the stock administrator of the Company (or any other person or entity designated by the Company) of all of the following prior to the time when the Option or such portion thereof becomes unexercisable under Section 3.3 hereof:

(a) A written or electronic notice complying with the applicable rules established by the Committee stating that the Option, or a portion thereof, is exercised. The notice shall be signed by the Optionee or other person then-entitled to exercise the Option or such portion of the Option;

(b) Full payment of the exercise price and applicable withholding taxes for the Shares with respect to which the Option, or portion thereof, is exercised, in a manner permitted by Section 4.4 hereof;

(c) Any other representations or documents as may be required in the Committee's sole discretion to effect compliance with all applicable provisions of the Securities Act, the Exchange Act, any other federal, state or foreign securities laws or regulations, the rules of any securities exchange,

national market system or automated quotation system on which the Shares are listed, quoted or traded or any other applicable law; and

(d) In the event the Option or portion thereof shall be exercised pursuant to Section 4.1 hereof by any person or persons other than the Optionee, appropriate proof of the right of such person or persons to exercise the Option (as determined by the Committee in its sole discretion).

Notwithstanding any of the foregoing, the Company shall have the right to specify all conditions of the manner of exercise, which conditions may vary by country and which may be subject to change from time to time.

4.4 Method of Payment. Payment of the exercise price shall be by any of the following, or a combination thereof, at the election of the Optionee:

(a) Cash;

(b) Check;

(c) Delivery of a written or electronic notice that the Optionee has placed a market sell order with a broker with respect to Shares then issuable upon exercise of the Option, and that the broker has been directed to pay a sufficient portion of the net proceeds of the sale to the Company in satisfaction of the aggregate exercise price; *provided*, that payment of such proceeds is then made to the Company upon settlement of such sale;

(d) With the consent of the Committee, surrender of other Shares which have been held by the Optionee for such period of time as may be required by the Committee in order to avoid adverse accounting consequences and having a Fair Market Value on the date of surrender equal to the aggregate exercise price of the Shares with respect to which the Option or portion thereof is being exercised;

(e) With the consent of the Committee, surrendered Shares issuable upon the exercise of the Option having a Fair Market Value on the date of exercise equal to the aggregate exercise price of the Shares with respect to which the Option or portion thereof is being exercised; or

(f) With the consent of the Committee, such other form of legal consideration as may be acceptable to the Committee.

4.5 Conditions to Issuance of Stock Certificates. The Shares deliverable upon the exercise of the Option, or any portion thereof, may be either previously authorized but unissued Shares, treasury Shares or issued Shares which have been purchased on the open market. Such Shares shall be fully paid and nonassessable. The Company shall not be required to issue or deliver any certificates or make any book entries evidencing Shares purchased upon the exercise of the Option or portion thereof prior to fulfillment of the conditions set forth in Section 6 of the Plan.

4.6 Rights as Stockholder. The holder of the Option shall not be, nor have any of the rights or privileges of, a stockholder of the Company, including, without limitation, voting rights and rights to dividends, in respect of any Shares purchasable upon the exercise of any part of the Option unless and until such Shares shall have been issued by the Company to such holder (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company). No adjustment shall be made for a dividend or other right for which the record date is prior to the date the Shares are issued, except as provided in Section 6(e) of the Plan.

ARTICLE V.

OTHER PROVISIONS

5.1 Administration. The Committee shall have the power to interpret the Plan and this Agreement as provided in the Plan. All interpretations and determinations made by the Committee in good faith shall be final and binding upon the Optionee, the Company and all other interested persons.

5.2 Transferability of Option. Without limiting the generality of any other provision hereof, the Option shall be subject to the restrictions on transferability set forth in Section 6(h)(iv) of the Plan.

5.3 Adjustments. The Optionee acknowledges that the Option is subject to modification and termination in certain events as provided in this Agreement and Section 4(c) of the Plan.

5.4 Tax Consultation. **The Optionee understands that the Optionee may suffer adverse tax consequences as a result of the grant, vesting and/or exercise of the Option, and/or with the purchase or disposition of the Shares subject to the Option. The Optionee represents that the Optionee has consulted with any tax consultants the Optionee deems advisable in connection with the purchase or disposition of such shares and that the Optionee is not relying on the Company for any tax advice.**

5.5 Optionee's Representations. The Optionee shall, if required by the Company, concurrently with the exercise of all or any portion of this Option, make such written representations as are deemed necessary or appropriate by the Company and/or the Company's counsel.

5.6 Section 409A. This Agreement and the Grant Notice shall be interpreted in accordance with the requirements of Section 409A of the Code. The Committee may, in its discretion, adopt such amendments to the Plan, this Agreement or the Grant Notice or adopt other policies and procedures (including amendments, policies and procedures with retroactive effect), or take any other actions, as the Committee determines are necessary or appropriate to comply with the requirements of Section 409A of the Code or an available exemption thereof; *provided, however*, that the Committee shall have no obligation to take any such action(s) or to indemnify any person from failing to do so.

5.7 Amendment, Suspension and Termination. To the extent permitted by the Plan, this Agreement may be wholly or partially amended or otherwise modified, suspended or terminated at any time or from time to time by the Committee or the Board; *provided, however*, that, except as may otherwise be provided by the Plan, no amendment, modification, suspension or termination of this Agreement shall adversely affect the Option in any material way without the prior written consent of the Optionee.

5.8 Not a Contract of Service Relationship. Nothing in this Agreement or in the Plan shall confer upon the Optionee any right to continue to serve as an employee, Director, consultant or other service provider of the Company or any of its Affiliates or shall interfere with or restrict in any way the rights of the Company and its Affiliates, which rights are hereby expressly reserved, to discharge or terminate the services of the Optionee at any time for any reason whatsoever, with or without cause, except to the extent expressly provided otherwise in a written agreement between the Company or an Affiliate and the Optionee.

5.9 Limitations Applicable to Section 16 Persons. Notwithstanding any other provision of the Plan or this Agreement, if the Optionee is subject to Section 16 of the Exchange Act, then the Plan, the Option and this Agreement shall be subject to any additional limitations set forth in any applicable exemptive rule under Section 16 of the Exchange Act (including any amendment to Rule 16b-3 of the Exchange Act) that are requirements for the application of such exemptive rule. To the extent permitted

by applicable law, this Agreement shall be deemed amended to the extent necessary to conform to such applicable exemptive rule.

5.10 Conformity to Securities Laws. The Optionee acknowledges that the Plan and this Agreement are intended to conform to the extent necessary with all provisions of the Securities Act and the Exchange Act, and any and all regulations and rules promulgated by the Securities and Exchange Commission thereunder, as well as all applicable state securities laws and regulations. Notwithstanding anything herein to the contrary, the Plan shall be administered, and the Option is granted and may be exercised, only in such a manner as to conform to such laws, rules and regulations. To the extent permitted by applicable law, the Plan and this Agreement shall be deemed amended to the extent necessary to conform to such laws, rules and regulations.

5.11 Limitation on the Optionee's Rights. Participation in the Plan confers no rights or interests other than as herein provided. This Agreement creates only a contractual obligation on the part of the Company as to amounts payable and shall not be construed as creating a trust. The Plan, in and of itself, has no assets. The Optionee shall have only the rights of a general unsecured creditor of the Company and its Affiliates with respect to amounts credited and benefits payable, if any, with respect to the Option, and rights no greater than the right to receive the Common Stock as a general unsecured creditor with respect to Options, as and when payable hereunder.

5.12 Successors and Assigns. The Company or any Affiliate may assign any of its rights under this Agreement to single or multiple assignees, and this Agreement shall inure to the benefit of the successors and assigns of the Company and its Affiliates. Subject to the restrictions on transfer set forth in this Article V, this Agreement shall be binding upon the Optionee and his or her heirs, executors, administrators, successors and assigns.

5.13 Entire Agreement. The Plan, the Grant Notice and this Agreement (including all Exhibits thereto, if any) constitute the entire agreement of the parties and supersede in their entirety all prior undertakings and agreements of the Company and its Affiliates and the Optionee with respect to the subject matter hereof.

5.14 Notices. Any notice to be given under the terms of this Agreement to the Company shall be addressed to the Company in care of the Secretary of the Company at the Company's principal office, and any notice to be given to the Optionee shall be addressed to the Optionee at the Optionee's last address reflected on the Company's records. Any notice shall be deemed duly given when sent via email or when sent by reputable overnight courier or by certified mail (return receipt requested) through the United States Postal Service.

5.15 Governing Law. The laws of the State of Minnesota shall govern the interpretation, validity, administration, enforcement and performance of the terms of this Agreement regardless of the law that might be applied under principles of conflicts of laws.

5.16 Titles. Titles are provided herein for convenience only and are not to serve as a basis for interpretation or construction of this Agreement.

EXHIBIT 10.6

RESHAPE LIFESCIENCES INC.
SECOND AMENDED AND RESTATED 2003 STOCK INCENTIVE PLAN

STOCK OPTION GRANT NOTICE

ReShape Lifesciences Inc., a Delaware corporation (the "***Company***"), pursuant to the ReShape Lifesciences Inc. Second Amended and Restated 2003 Stock Incentive Plan (as may be amended from time to time, the "***Plan***"), hereby grants to the individual listed below (the "***Optionee***"), an option to purchase the number of shares of Common Stock, par value $0.01 per share, of the Company (the "***Shares***"), set forth below (the "***Option***"). This Option is subject to all of the terms and conditions set forth herein and in the Stock Option Agreement attached hereto as Exhibit A (the "***Option Agreement***") and the Plan, each of which is incorporated herein by reference. Unless otherwise defined herein, the terms defined in the Plan shall have the same defined meanings in this Stock Option Grant Notice (the "***Grant Notice***") and the Option Agreement.

Optionee:	[_____]
Grant Date:	[_____]
Vesting Commencement Date:	[_____]
Exercise Price per Share:	$[___] /Share
Total Number of Shares Subject to the Option:	[_____] Shares
Expiration Date:	[_____]
Vesting Schedule:	**[*25%*]** shares will vest on **[*One-year anniversary of Grant Date*]**, and the remaining **[*75%*]** shares will vest in as nearly equal amounts as possible on the last day of each of the next 36 months thereafter.
Termination:	The Option shall terminate on the Expiration Date set forth above or, if earlier, in accordance with the terms of the Agreement
Type of Option:	☐ Incentive Stock Option ☐ Non-Qualified Stock Option

The undersigned Optionee acknowledges that he or she has received a copy of this Grant Notice, the Option Agreement and the Plan. As an express condition to the grant of the Option hereunder, the Optionee agrees to be bound by the terms of this Grant Notice, the Option Agreement and the Plan. The undersigned Optionee further acknowledges that as of the Grant Date, this Grant Notice, the Option Agreement and the Plan set forth the entire understanding between the Optionee and the Company regarding the acquisition of stock in the Company and supersede all prior oral and written agreements on that subject with the exception of (i) options previously granted and delivered to the Optionee under the Plan, and (ii) any agreements noted in an attachment to this Grant Notice.

RESHAPE LIFESCIENCES INC.		**OPTIONEE**	
By:	_____	By:	_____
Name:	_____	Print Name:	_____
Title:	_____		
		Address:	_____
		Email:	_____

EXHIBIT A
TO STOCK OPTION GRANT NOTICE

STOCK OPTION AGREEMENT

Pursuant to the Stock Option Grant Notice (the "***Grant Notice***") to which this Stock Option Agreement (this "***Agreement***") is attached, ReShape Lifesciences Inc., a Delaware corporation (the "***Company***"), has granted to the Optionee an option (the "***Option***") under the ReShape Lifesciences Inc. Second Amended and Restated 2003 Stock Incentive Plan (as amended from time to time, the "***Plan***") to purchase the number of Shares indicated in the Grant Notice.

ARTICLE I.

GENERAL

1.1 Incorporation of Terms of Plan. The Option is subject to the terms and conditions of the Plan, which are incorporated herein by reference. In the event of any inconsistency between the Plan and this Agreement, the terms of the Plan shall control.

1.2 Defined Terms. Wherever the following terms are used in this Agreement, they shall have the meanings specified below, unless the context clearly indicates otherwise. Capitalized terms not specifically defined herein shall have the meanings specified in the Plan and the Grant Notice.

(a) "***Retirement***" shall mean a Separation from Service due to a normal or approved early termination of employment or service pursuant to and in accordance with an applicable retirement/pension plan, program, policy or practice of the Company or an Affiliate, as determined by the Company or the Affiliate in its sole discretion.

(b) "***Separation from Service***" shall mean the Optionee's "separation from service" from the Company or any Affiliate within the meaning of Section 409A(a)(2)(A)(i) of the Code.

ARTICLE II.

GRANT OF OPTION

2.1 Grant of Option. In consideration of the Optionee's past and/or continued employment with or service to the Company or any Affiliate and for other good and valuable consideration, effective as of the Grant Date set forth in the Grant Notice (the "***Grant Date***"), the Company irrevocably grants to the Optionee the Option to purchase any part or all of the aggregate number of Shares set forth in the Grant Notice, upon the terms and conditions set forth in the Plan and this Agreement. Unless designated as a Non-Qualified Stock Option in the Grant Notice, the Option shall be an Incentive Stock Option to the maximum extent permitted by law.

2.2 Exercise Price. The exercise price of the Shares subject to the Option shall be as set forth in the Grant Notice, without commission or other charge; *provided, however*, that the exercise price per share of the Shares subject to the Option shall not be less than 100% of the Fair Market Value of a Share on the Grant Date. Notwithstanding the foregoing, if this Option is an Incentive Stock Option and the Optionee owns stock possessing more than 10% of the total combined voting power of all classes of stock of the Company or of its Affiliates as of the Grant Date (a "***Greater Than 10% Stockholder***"), the exercise price per share of the Shares subject to the Option shall not be less than 110% of the Fair Market Value of a Share on the Grant Date.

2.3 Consideration to the Company. In consideration of the grant of the Option by the Company, the Optionee agrees to render faithful and efficient services to the Company or any Affiliate. Nothing in the Plan or this Agreement shall confer upon the Optionee any right to continue in the employ or service of the Company or any Affiliate or shall interfere with or restrict in any way the rights of the Company and its Affiliates, which rights are hereby expressly reserved, to discharge or terminate the services of the Optionee at any time for any reason whatsoever, with or without cause, except to the extent expressly provided otherwise in a written agreement between the Company or an Affiliate and the Optionee.

ARTICLE III.

PERIOD OF EXERCISABILITY

3.1 Commencement of Exercisability.

(a) Subject to Sections 3.1(b), 3.2, 3.3 and 5.8 hereof, the Option shall become vested and exercisable in such amounts and at such times as are set forth in the Grant Notice.

(b) No portion of the Option which has not become vested and exercisable as of the date of the Optionee's Termination of Service shall thereafter become vested and exercisable, except as may be otherwise provided by the Committee or as set forth in a written agreement between the Company and the Optionee.

3.2 Duration of Exercisability. Any installments provided for in the vesting schedule set forth in the Grant Notice are cumulative. Each such installment which becomes vested and exercisable pursuant to the vesting schedule set forth in the Grant Notice shall remain vested and exercisable until it becomes unexercisable under Section 3.3 hereof.

3.3 Expiration of Option. The Option may not be exercised to any extent by anyone after the first to occur of the following events:

(a) The Expiration Date set forth in the Grant Notice;

(b) If this Option is designated as an Incentive Stock Option and the Optionee is a Greater Than 10% Stockholder as of the Grant Date, the expiration of five (5) years from the Grant Date;

(c) The date that is three (3) months from the date of the Optionee's Termination of Service by the Company without cause or by the Optionee for any reason (other than due to Retirement, death or disability);

(d) The expiration of one (1) year from the date of the Optionee's Termination of Service by reason of the Optionee's death or disability;

(e) The expiration of six (6) months from the date of the Optionee's Termination of Service by reason of the Optionee's Retirement; or

(f) The start of business on the date of the Optionee's Termination of Service by the Company for cause.

The Optionee acknowledges that an Incentive Stock Option exercised more than three (3) months after the Optionee's termination of employment, other than by reason of death or disability, will be taxed as a Non-Qualified Stock Option.

"Termination of Service" shall mean:

(a) As to a consultant or independent contractor, the time when the engagement of the Optionee as a consultant or independent contractor to the Company and its Affiliates is terminated for any reason, with or without cause, including, without limitation, by resignation, discharge, death or retirement, but excluding terminations where the consultant or independent contractor simultaneously commences or remains in employment and/or service as an employee and/or Director with the Company or any Affiliate.

(b) As to a Non-Employee Director, the time when an Optionee who is a Non-Employee Director ceases to be a Director for any reason, including, without limitation, a termination by resignation, failure to be elected, death or retirement, but excluding terminations where the Optionee simultaneously commences or remains in employment and/or service as an employee, consultant and/or independent contractor with the Company or any Affiliate.

(c) As to an employee, the time when the employee-employer relationship between the Optionee and the Company and its Affiliates is terminated for any reason, including, without limitation, a termination by resignation, discharge, death, disability or Retirement, but excluding terminations where the Optionee simultaneously commences or remains in service as a consultant, independent contractor and/or Director with the Company or any Affiliate.

The Committee, in its sole discretion, shall determine the effect of all matters and questions relating to any Termination of Service, including, without limitation, whether a Termination of Service has occurred, whether any Termination of Service resulted from a discharge for cause and whether any particular leave of absence constitutes a Termination of Service; provided, however, that, with respect to Incentive Stock Options, unless the Committee determines otherwise, or as otherwise required by applicable law, a leave of absence, change in status from an employee to an independent contractor or other change in the employee-employer relationship shall constitute a Termination of Service only if, and to the extent that, such leave of absence, change in status or other change interrupts employment for the purposes of Section 422(a)(2) of the Code. For purposes of the Plan, an Optionee's employee-employer relationship or consultancy relationship shall be deemed to be terminated in the event that the Affiliate employing or contracting with such Optionee ceases to remain an Affiliate following any merger, sale of stock or other corporate transaction or event (including, without limitation, a spin-off).

3.4 Change in Control. In the event that a Change in Control occurs, (a) all outstanding Options shall be subject to the agreement pursuant to which such Change in Control is consummated and (b) the vesting schedule of the Options held by Optionee shall accelerate such that on the date the Change in Control is completed, 50% of any then-unvested shares subject to the Options held by Optionee shall immediately vest, irrespective of which of the provisions described in clauses (i) through (v) below are set forth in the agreement pursuant to which such Change in Control is consummated (except in the case of clause (iv), in which case 100% of the Options would become vested). Such agreement shall provide for one or more of the following:

(i) The continuation of such outstanding Options by the Company (if the Company is the surviving corporation).

(ii) The assumption of such outstanding Options by the surviving corporation or its parent in a manner that complies with Section 424(a) of the Code (whether or not such Options are Incentive Stock Options).

(iii) The substitution by the surviving corporation or its parent of new options for such outstanding Options in a manner that complies with Section 424(a) of the Code (whether or not such Options are Incentive Stock Options).

(iv) Full exercisability of such outstanding Options and full vesting of the Shares subject to such Options, followed by the cancellation of such Options. The full exercisability of such Options and full vesting of the Shares subject to such Options may be contingent on the closing of such Change in Control. The Optionee shall be able to exercise such Options during a period of not less than five full business days preceding the closing date of such Change in Control, unless (A) a shorter period is required to permit a timely closing of such Change in Control and (B) such shorter period still offers the Optionee a reasonable opportunity to exercise such Options. Any exercise of such Options during such period may be contingent on the closing of such Change in Control.

(v) The cancellation of such outstanding Options and a payment to the Optionee equal to the excess of (A) the Fair Market Value of the Shares subject to such Options (whether or not such Options are then exercisable or such Shares are then vested) as of the closing date of such Change in Control over (B) their aggregate exercise price. Such payment shall be made in the form of cash, cash equivalents, or securities of the surviving corporation or its parent with a Fair Market Value equal to the required amount. Such payment may be made in installments and may be deferred until the date or dates when such Options would have become exercisable or such Shares would have vested. Such payment may be subject to vesting based on the Optionee's continuing service to the Company or its affiliates, provided that the vesting schedule shall not be less favorable to the Optionee than the schedule under which such Options would have become exercisable or such Shares would have vested. If the aggregate exercise price of the Shares subject to such Options exceeds the Fair Market Value of such Shares, then such Options may be cancelled without making a payment to the Optionee. For purposes of this Subsection (v), the Fair Market Value of any security shall be determined without regard to any vesting conditions that may apply to such security.

3.5 Special Tax Consequences. The Optionee acknowledges that, to the extent that the aggregate Fair Market Value (determined as of the time the Option is granted) of all Shares with respect to which "incentive stock options" (within the meaning of Section 422 of the Code, but without regard to Section 422(d) of the Code), including the Option, are exercisable for the first time by the Optionee in any calendar year exceeds $100,000, the Option and such other options shall be Non-Qualified Stock Options to the extent necessary to comply with the limitations imposed by Section 422(d) of the Code. The Optionee further acknowledges that the rule set forth in the preceding sentence shall be applied by taking the Option and other "incentive stock options" into account in the order in which they were granted, as determined under Section 422(d) of the Code and the Treasury Regulations thereunder.

ARTICLE IV.

EXERCISE OF OPTION

4.1 Person Eligible to Exercise. Except as provided in Section 4.2 hereof, during the lifetime of the Optionee, only the Optionee may exercise the Option or any portion thereof. After the death of the Optionee, any exercisable portion of the Option may, prior to the time when the Option becomes unexercisable under Section 3.3 hereof, be exercised by the deceased Optionee's beneficiary or by any person empowered to do so under the deceased Optionee's will or under the then-applicable laws of descent and distribution, subject to Section 6(h)(iv) of the Plan.

4.2 Partial Exercise. Any exercisable portion of the Option or the entire Option, if then wholly exercisable, may be exercised in whole or in part at any time prior to the time when the Option or portion thereof becomes unexercisable under Section 3.3 hereof. However, the Option shall not be exercisable with respect to fractional shares.

4.3 Manner of Exercise. The Option, or any exercisable portion thereof, may be exercised solely by delivery to the stock administrator of the Company (or any other person or entity designated by the Company) of all of the following prior to the time when the Option or such portion thereof becomes unexercisable under Section 3.3 hereof:

(a) A written or electronic notice complying with the applicable rules established by the Committee stating that the Option, or a portion thereof, is exercised. The notice shall be signed by the Optionee or other person then-entitled to exercise the Option or such portion of the Option;

(b) Full payment of the exercise price and applicable withholding taxes for the Shares with respect to which the Option, or portion thereof, is exercised, in a manner permitted by Section 4.4 hereof;

(c) Any other representations or documents as may be required in the Committee's sole discretion to effect compliance with all applicable provisions of the Securities Act, the Exchange Act, any other federal, state or foreign securities laws or regulations, the rules of any securities exchange, national market system or automated quotation system on which the Shares are listed, quoted or traded or any other applicable law; and

(d) In the event the Option or portion thereof shall be exercised pursuant to Section 4.1 hereof by any person or persons other than the Optionee, appropriate proof of the right of such person or persons to exercise the Option (as determined by the Committee in its sole discretion).

Notwithstanding any of the foregoing, the Company shall have the right to specify all conditions of the manner of exercise, which conditions may vary by country and which may be subject to change from time to time.

4.4 Method of Payment. Payment of the exercise price shall be by any of the following, or a combination thereof, at the election of the Optionee:

(a) Cash;

(b) Check;

(c) Delivery of a written or electronic notice that the Optionee has placed a market sell order with a broker with respect to Shares then issuable upon exercise of the Option, and that the broker has been directed to pay a sufficient portion of the net proceeds of the sale to the Company in satisfaction of the aggregate exercise price; *provided*, that payment of such proceeds is then made to the Company upon settlement of such sale;

(d) With the consent of the Committee, surrender of other Shares which have been held by the Optionee for such period of time as may be required by the Committee in order to avoid adverse accounting consequences and having a Fair Market Value on the date of surrender equal to the aggregate exercise price of the Shares with respect to which the Option or portion thereof is being exercised;

(e) With the consent of the Committee, surrendered Shares issuable upon the exercise of the Option having a Fair Market Value on the date of exercise equal to the aggregate exercise price of the Shares with respect to which the Option or portion thereof is being exercised; or

(f) With the consent of the Committee, such other form of legal consideration as may be acceptable to the Committee.

4.5 Conditions to Issuance of Stock Certificates. The Shares deliverable upon the exercise of the Option, or any portion thereof, may be either previously authorized but unissued Shares, treasury Shares or issued Shares which have been purchased on the open market. Such Shares shall be fully paid and nonassessable. The Company shall not be required to issue or deliver any certificates or make any book entries evidencing Shares purchased upon the exercise of the Option or portion thereof prior to fulfillment of the conditions set forth in Section 6 of the Plan.

4.6 Rights as Stockholder. The holder of the Option shall not be, nor have any of the rights or privileges of, a stockholder of the Company, including, without limitation, voting rights and rights to dividends, in respect of any Shares purchasable upon the exercise of any part of the Option unless and until such Shares shall have been issued by the Company to such holder (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company). No adjustment shall be made for a dividend or other right for which the record date is prior to the date the Shares are issued, except as provided in Section 6(e) of the Plan.

ARTICLE V.

OTHER PROVISIONS

5.1 Administration. The Committee shall have the power to interpret the Plan and this Agreement as provided in the Plan. All interpretations and determinations made by the Committee in good faith shall be final and binding upon the Optionee, the Company and all other interested persons.

5.2 Transferability of Option. Without limiting the generality of any other provision hereof, the Option shall be subject to the restrictions on transferability set forth in Section 6(h)(iv) of the Plan.

5.3 Adjustments. The Optionee acknowledges that the Option is subject to modification and termination in certain events as provided in this Agreement and Section 4(c) of the Plan.

5.4 Tax Consultation. **The Optionee understands that the Optionee may suffer adverse tax consequences as a result of the grant, vesting and/or exercise of the Option, and/or with the purchase or disposition of the Shares subject to the Option. The Optionee represents that the Optionee has consulted with any tax consultants the Optionee deems advisable in connection with the purchase or disposition of such shares and that the Optionee is not relying on the Company for any tax advice.**

5.5 Notification of Disposition. If this Option is designated as an Incentive Stock Option, the Optionee shall give prompt notice to the Company of any disposition or other transfer of any Shares acquired under this Agreement if such disposition or transfer is made (a) within two (2) years from the Grant Date with respect to such Shares or (b) within one (1) year after the transfer of such Shares to the Optionee. Such notice shall specify the date of such disposition or other transfer and the amount realized, in cash, other property, assumption of indebtedness or other consideration, by the Optionee in such disposition or other transfer.

5.6 Optionee's Representations. The Optionee shall, if required by the Company, concurrently with the exercise of all or any portion of this Option, make such written representations as are deemed necessary or appropriate by the Company and/or the Company's counsel.

5.7 Section 409A. This Agreement and the Grant Notice shall be interpreted in accordance with the requirements of Section 409A of the Code. The Committee may, in its discretion, adopt such amendments to the Plan, this Agreement or the Grant Notice or adopt other policies and procedures (including amendments, policies and procedures with retroactive effect), or take any other actions, as the Committee determines are necessary or appropriate to comply with the requirements of Section 409A of the Code or an available exemption thereof; *provided, however*, that the Committee shall have no obligation to take any such action(s) or to indemnify any person from failing to do so.

5.8 Amendment, Suspension and Termination. To the extent permitted by the Plan, this Agreement may be wholly or partially amended or otherwise modified, suspended or terminated at any time or from time to time by the Committee or the Board; *provided, however*, that, except as may otherwise be provided by the Plan, no amendment, modification, suspension or termination of this Agreement shall adversely affect the Option in any material way without the prior written consent of the Optionee.

5.9 Not a Contract of Service Relationship. Nothing in this Agreement or in the Plan shall confer upon the Optionee any right to continue to serve as an employee, Director, consultant or other service provider of the Company or any of its Affiliates or shall interfere with or restrict in any way the rights of the Company and its Affiliates, which rights are hereby expressly reserved, to discharge or terminate the services of the Optionee at any time for any reason whatsoever, with or without cause, except to the extent expressly provided otherwise in a written agreement between the Company or an Affiliate and the Optionee.

5.10 Limitations Applicable to Section 16 Persons. Notwithstanding any other provision of the Plan or this Agreement, if the Optionee is subject to Section 16 of the Exchange Act, then the Plan, the Option and this Agreement shall be subject to any additional limitations set forth in any applicable exemptive rule under Section 16 of the Exchange Act (including any amendment to Rule 16b-3 of the Exchange Act) that are requirements for the application of such exemptive rule. To the extent permitted by applicable law, this Agreement shall be deemed amended to the extent necessary to conform to such applicable exemptive rule.

5.11 Conformity to Securities Laws. The Optionee acknowledges that the Plan and this Agreement are intended to conform to the extent necessary with all provisions of the Securities Act and the Exchange Act, and any and all regulations and rules promulgated by the Securities and Exchange Commission thereunder, as well as all applicable state securities laws and regulations. Notwithstanding anything herein to the contrary, the Plan shall be administered, and the Option is granted and may be exercised, only in such a manner as to conform to such laws, rules and regulations. To the extent permitted by applicable law, the Plan and this Agreement shall be deemed amended to the extent necessary to conform to such laws, rules and regulations.

5.12 Limitation on the Optionee's Rights. Participation in the Plan confers no rights or interests other than as herein provided. This Agreement creates only a contractual obligation on the part of the Company as to amounts payable and shall not be construed as creating a trust. The Plan, in and of itself, has no assets. The Optionee shall have only the rights of a general unsecured creditor of the Company and its Affiliates with respect to amounts credited and benefits payable, if any, with respect to the Option, and rights no greater than the right to receive the Common Stock as a general unsecured creditor with respect to Options, as and when payable hereunder.

5.13 Successors and Assigns. The Company or any Affiliate may assign any of its rights under this Agreement to single or multiple assignees, and this Agreement shall inure to the benefit of the successors and assigns of the Company and its Affiliates. Subject to the restrictions on transfer set forth in this Article V, this Agreement shall be binding upon the Optionee and his or her heirs, executors, administrators, successors and assigns.

5.14 Entire Agreement. The Plan, the Grant Notice and this Agreement (including all Exhibits thereto, if any) constitute the entire agreement of the parties and supersede in their entirety all prior undertakings and agreements of the Company and its Affiliates and the Optionee with respect to the subject matter hereof.

5.15 Notices. Any notice to be given under the terms of this Agreement to the Company shall be addressed to the Company in care of the Secretary of the Company at the Company's principal office, and any notice to be given to the Optionee shall be addressed to the Optionee at the Optionee's last address reflected on the Company's records. Any notice shall be deemed duly given when sent via email or when sent by reputable overnight courier or by certified mail (return receipt requested) through the United States Postal Service.

5.16 Governing Law. The laws of the State of Minnesota shall govern the interpretation, validity, administration, enforcement and performance of the terms of this Agreement regardless of the law that might be applied under principles of conflicts of laws.

5.17 Titles. Titles are provided herein for convenience only and are not to serve as a basis for interpretation or construction of this Agreement.

Exhibit 31.1

CERTIFICATION

I, Dan W. Gladney, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q 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/ DAN W. GLADNEY
Dan W. Gladney
President and Chief Executive Officer

Date: November 14, 2017

Exhibit 31.2

CERTIFICATION

I, Scott P. Youngstrom certify that:

1. I have reviewed this Quarterly Report on Form 10-Q 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/ Scott P. Youngstrom
Scott P. Youngstrom
Chief Financial Officer
and Chief Compliance Officer

Date: November 14, 2017

Exhibit 32.1

CERTIFICATION

Pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended (the Exchange Act), and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. §1350), Dan W. Gladney, in his capacity as Chief Executive Officer of ReShape Lifesciences Inc., hereby certifies that, to the best of his knowledge:

1. 1.The Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2017 to which this Certification is attached as Exhibit 32.1 (the Report) fully complies with the requirements of Section 13(a) or 15(d) of the Exchange Act; and

2. 2. The information contained in the Report fairly presents, in all material respects, the financial condition and the results of operations of ReShape Lifesciences Inc. as of, and for, the periods covered by the Report.

By: /S/ DAN W. GLADNEY
Dan W. Gladney
President and Chief Executive Officer

Date: November 14, 2017

Exhibit 32.2

CERTIFICATION

Pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended (the Exchange Act), and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. §1350), Scott P. Youngstrom, in his capacity as Chief Financial Officer of ReShape Lifesciences Inc., hereby certifies that, to the best of his knowledge:

1. 1.The Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2017 to which this Certification is attached as Exhibit 32.2 (the Report) fully complies with the requirements of Section 13(a) or 15(d) of the Exchange Act; and

2. 2. The information contained in the Report fairly presents, in all material respects, the financial condition and the results of operations of ReShape Lifesciences Inc. as of, and for, the periods covered by the Report.

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

Date: November 14, 2017