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

**Amendment No. 2 to**
# FORM 8-K/A

## CURRENT REPORT

**Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported)**: December 17, 2018**

# RESHAPE LIFESCIENCES INC.
(Exact name of registrant as specified in its charter)

**Commission File Number: 1-33818**

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

**1001 Calle Amanecer**
**San Clemente, CA  92673**
(Address of principal executive offices, including zip code)

**(949) 429-6680**
(Registrant's telephone number, including area code)

**Not Applicable**
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Emerging growth company ☐

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

**Explanatory Note**

On December 18, 2018, ReShape Lifesciences Inc. (the "Company") filed a current report on Form 8-K relating to its acquisition from Apollo Endosurgery, Inc. ("Apollo") of substantially all of the assets exclusively related to Apollo's Lap-Band product line and Apollo's acquisition from the Company of substantially all of the assets exclusively related to the Company's ReShape Balloon product line. The Company filed Amendment No. 1 to the Form 8-K on December 21, 2018 to provide certain pro forma financial information giving effect to the Company's sale of the assets of the ReShape Balloon product line as required by Item 9.01(b) of Form 8-K. The purpose of this Amendment No. 2 to the Form 8-K is to provide the financial statements related to Apollo's Lap-Band product line and to amend the previously filed pro forma financial information as of and for the nine months ended September 30, 2018 to give effect to the Company's acquisition of the Lap-Band product line.

**Item 9.01 Financial Statements and Exhibits.**

(a) Financial statements of businesses acquired

Exhibit 99.1 filed herewith contains the Abbreviated Financial Statements of the LAP-BAND® Business of ReShape Lifesciences Inc.

(b) Pro forma financial information.

The unaudited pro forma financial information as of and for the nine months ended September 30, 2018, previously filed by Amendment No. 1 dated December 21, 2018, to give effect to the Company's sale of the assets of the ReShape Balloon product line, have been updated to include the effect of the Company's acquisition of the assets of the Lap-Band product line as required by Item 9.01(b) of Form 8-K and are attached hereto as Exhibit 99.2.

(d) Exhibits

| Exhibit No. | Description |
|---|---|
| 23.1 | Consent of KPMG LLP, Independent Auditors. |
| 99.1 | Abbreviated Financial Statements of the LAP-BAND® Business of ReShape Lifesciences Inc. |
| 99.2 | Unaudited pro forma financial information. |

## SIGNATURE

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

**RESHAPE LIFESCIENCES INC.**

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

Dated: March 1, 2019

**Exhibit 23.1**

**Consent of Independent Auditors**

The Board of Directors
ReShape Lifesciences Inc.:

We consent to the incorporation by reference in the Registration Statement Nos. 333-211940, 333-196646, 333-184181, 333-176174, 333-171244, 333-159592, and 333-149662 on Form S-8 and Registration Statement Nos. 333-225083, 333-205353, 333-195855, 333-183313, 333-171944, 333-170503, 333-171052, 333-166011, 333-158516 and 333-216600 on Form S-3 of ReShape Lifesciences Inc. of our report dated March 1, 2019, with respect to the statement of assets acquired and liabilities assumed and the related statement of net revenues and direct expenses as of and for the nine months ended September 30, 2018 of the LAP-BAND® Business of ReShape Lifesciences Inc., and the related notes, which report appears in the Form 8-K/A of ReShape Lifesciences Inc. dated March 1, 2019.

/s/ KPMG LLP

Austin, Texas
March 1, 2019

Exhibit 99.1

**The LAP-BAND® Business of ReShape Lifesciences Inc.**
**Abbreviated Financial Statements**
**As of and for the nine months ended September 30, 2018**

**Index**

**INDEPENDENT AUDITORS' REPORT**

The Management of ReShape Lifesciences Inc.:

We have audited the accompanying financial statements of the LAP-BAND® Business of ReShape Lifesciences Inc., which comprise the Statements of Assets Acquired and Liabilities Assumed as of September 30, 2018, and the Statements of Net Revenues and Direct Expenses for the nine months ended September 30, 2018 and the related notes to the financial statements.

**Management's Responsibility for the Financial Statements**

Management is responsible for the preparation and fair presentation of these financial statements in accordance with U.S. generally accepted accounting principles; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

**Auditors' Responsibility**

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

**Opinion**

In our opinion, the financial statements referred to above present fairly, in all material respects, the assets acquired and liabilities assumed of the LAP-BAND® Business as of September 30, 2018, and its net revenues and direct expenses for the nine months ended September 30, 2018 in accordance with U.S. generally accepted accounting principles.

**Emphasis of Matter**

The accompanying financial statements were prepared in connection with Apollo Endosurgery, Inc.'s divestiture of the LAP-BAND® Business and, as described in Note 2, were prepared for the purposes of ReShape Lifesciences Inc. complying with Rule 8-04 of the Securities and Exchange Commission's Regulation S-X. These financial statements are not intended to be a complete presentation of the financial position or results of operations of the LAP-BAND® Business. Our opinion is not modified with respect to this matter.

KPMG LLP
Austin, Texas

March 1, 2019

**The LAP-BAND® Business of ReShape Lifesciences Inc.**
**Statement of Assets Acquired and Liabilities Assumed**

| | | September 30 2018 |
|---|---|---|
| Inventory, net | $ | 804,908 |
| Property and equipment, net | | 556,337 |
| Intangible assets, net | | 23,151,438 |
| Total assets acquired | $ | 24,512,683 |
| | | |
| Total liabilities assumed | $ | — |
| | | |
| Total net assets acquired | $ | 24,512,683 |

**The LAP-BAND® Business of ReShape Lifesciences Inc.**
**Statement of Net Revenues and Direct Expenses**

| | | Nine Months Ended September 30, 2018 |
|---|---|---|
| Product revenues, net | $ | 14,672,257 |
| | | |
| Direct expenses: | | |
| Cost of product revenues | | 4,249,618 |
| Research and development expenses | | 750,502 |
| Selling, general, and administrative expenses | | 618,265 |
| Amortization of intangible assets | | 4,012,917 |
| | | |
| Total direct expenses | $ | 9,631,302 |
| | | |
| Net product revenues less direct expenses | $ | 5,040,955 |

The accompanying notes are an integral part of these abbreviated financial statements.

## 1. Background

On December 17, 2018, ReShape Lifesciences Inc. (the "Company") entered into an Asset Purchase Agreement (the "Purchase Agreement") with Apollo Endosurgery, Inc. ("Apollo") pursuant to which the Company acquired from Apollo certain assets exclusively related to Apollo's Lap-Band product line (the "LAP-BAND®" Business") and Apollo acquired from the Company substantially all of the assets exclusively related to the Company's ReShape Balloon product line. In addition, the Company agreed to pay Apollo $17 million in cash, of which $10 million was paid at the closing of the transaction, $2 million is payable on the first anniversary of the closing date, $2 million is payable on the second anniversary of the closing date, and $3 million is payable on the third anniversary of the closing date. The Lap-Band system is designed to provide minimally invasive long-term treatment of severe obesity and is an alternative to more invasive surgical stapling procedures such as the gastric bypass or sleeve gastrectomy.

## 2. Basis of Presentation and Direct Costs

The Statement of Assets Acquired and Liabilities Assumed as of September 30, 2018 and the related Statement of Net Revenues and Direct Expenses for the nine months ended September 30, 2018 (collectively, the "Abbreviated Financial Statements") of the LAP-BAND® Business have been prepared for the purpose of supporting the Company in complying with Rule 8-04 of the U.S. Securities and Exchange Commission's Regulation S-X. The Abbreviated Financial Statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP").

These accompanying statements were prepared for the purpose of complying with the rules and regulations of the Securities and Exchange Commission under Rule 8-04 of Regulation S-X. Historically, complete financial statements have never been prepared for the LAP-BAND® Business as Apollo did not maintain the LAP-BAND® Business as a stand-alone business, division or subsidiary for the periods presented, and, therefore, it is impractical to prepare stand-alone or full carve-out financial statements for the LAP-BAND® Business. The Statement of Assets Acquired and Liabilities Assumed and Net Revenues and Direct Expenses of the LAP-BAND® Business have been derived from the operating activities attributed to the LAP-BAND® Business from Apollo's books and records and only includes assets acquired in the Purchase Agreement which consist principally of finished goods inventory in the United States and Canada, certain property plant and equipment and intangible assets. The Statement of Net Revenues and Direct Expenses include all revenues and direct expenses worldwide but do not purport to reflect all of the costs, expenses, and cash flows that would have been associated had the LAP-BAND® Business been operated as a stand-alone, separate entity. In addition, the Statement of Net Revenues and Direct Expenses may not be indicative of the operating results going forward given the omission of certain corporate overhead described in the notes to the financial statements and changes in the business that may be made by the Company. A reasonable allocation of marketing, clinical, quality and regulatory expenses incurred by Apollo on behalf of the LAP-BAND® Business is included and described in the notes to the financial statements. However, no additional or separate allocations have been made for certain general and administrative, interest or income tax expenses as the Company considered such items to be corporate expenses and not directly related to the LAP-BAND® Business.

Statements of cash flows are not presented as such data was not maintained by Apollo for the LAP-BAND® Business acquired as it did not operate as a separate business or a separate legal entity.

## 3. Summary of Significant Accounting Policies

*Use of estimates* — The preparation of these Abbreviated Financial Statements in conformity with U.S. GAAP requires management to make certain estimates and assumptions that affect the amounts reported. The estimates and associated assumptions are based on historical experience, complex judgments and various other factors that are believed to be reasonable under the circumstances but are inherently uncertain and unpredictable. Estimates are used in determining such items as adjustments for contingent consideration. These estimates and underlying assumptions can affect all elements of these Abbreviated Financial Statements. Actual results may differ from these estimates.

*Revenue Recognition* — The principal source of revenue for the LAP-BAND® Business is from the sale of its products. Revenue is recognized when control of the promised goods is transferred to customers, in an amount that reflects the consideration we expect to be entitled to in an exchange for those goods. Generally, these conditions are met under the agreements with most customers upon product shipment. This includes sales to distributors, who sell the products to their customers, take title to the products and assume all risks of ownership at the time of shipment. Distributors are obligated to pay within specified terms regardless of when, if ever, they sell the products.

Customers and distributors generally have the right to return or exchange products purchased for up to thirty days from the date of product shipment. At the end of each period, management determines the extent to which its revenues need to be reduced to account for expected returns and exchanges. Certain customers may receive volume rebates or discounts, which are accounted for as variable consideration. The Company estimates these amounts based on the expected amount to be provided to customers and reduce revenues recognized.

We record a contract liability when cash payments are received in advance of the transfer of goods. Taxes collected from customers and remitted to governmental authorities are accounted for on a net basis. Accordingly, such amounts are excluded from revenues. Amounts billed to customers related to shipping and handling are included in revenues. Shipping and handling costs related to revenue producing activities are included in cost of sales.

*Research and development expenses* — Research and development expenses include costs related to clinical trials, regulatory and quality programs that are specifically identifiable with the Lap-Band product line and also include estimates from Apollo management that allocated non-specific departmental costs based on experience and product line know-how. No Lap-band specific product research or development costs are included here as there were none.

*Selling, general and administrative expenses* — Selling, general and administrative expenses include identifiable costs directly associated directly with the Lap-Band product line and include advertising and promotion, which are expensed as incurred. Depreciation expense specifically identifiable to the assets directly associated to the Lap-Band product are also included. Marketing expenses include estimates from Apollo management that allocated non-specific departmental costs based on experience and product line know-how. No additional or separate allocations have been made for certain selling, general and administrative expenses as the Company considered such items to be corporate expenses and not directly related to the LAP-BAND® Business.

*Inventory, net* — Inventory is stated at the lower of cost or net realizable value, net of any allowances. Charges for excess and obsolete inventory are based on specific identification of obsolete inventory items and an analysis of inventory items approaching expiration date. We record estimated excess and obsolescence charges to cost of sales. Inventories are stated using the weighted average cost approach, which approximates actual costs.

*Property and Equipment* — Property and equipment are carried at cost less accumulated depreciation. Depreciation is computed using the straight-line method over the estimated useful lives of the related assets, except for leasehold improvements, which are depreciated straight-line over the shorter of the estimated useful life or the life of the lease. Major renewals and betterments are capitalized. Validation costs (including materials and labor) that are required to bring machinery to working condition are capitalized. Expenditures for repairs and maintenance and minor replacements are charged to expense as incurred.

*Intangibles* — Definite-lived intangible assets consist of customer relationships, product technology, trade names, patents and trademarks and capitalized software which are amortized over their estimated useful lives. Costs to extend the lives of and renew patents and trademarks are capitalized when incurred.

*Valuation of Long-lived Assets* — Long-lived assets, including definite-lived intangible assets, are monitored and reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of any such asset may not be recoverable. The determination of recoverability is based on an estimate of undiscounted cash flows expected to result from the use of an asset and its eventual disposition. The estimate of undiscounted cash flows is based upon, among other things, certain assumptions about expected future operating performance. The estimates of undiscounted cash flows may differ from actual cash flows. If the sum of the undiscounted cash flows is less than the carrying value of the asset, an impairment charge is recognized, measured as the amount by which the carrying value exceeds the fair value of the asset. The evaluation of long-lived assets for the period ended September 30, 2018 resulted in no impairment losses.

## 4. Intangible assets, net

At September 30, 2018, the gross and net amounts of the amortizable intangible assets were:

| | September 30, 2018 | | |
|---|---|---|---|
| | Gross Value | Accumulated Amortization | Net Carrying Amount |
| Amortizable intangible assets: | | | |
| Lap-Band Technology | $ 15,500,000 | $ (7,491,667) | $ 8,008,333 |
| Trade Names | 6,199,958 | (2,996,646) | 3,203,312 |
| Customer Relationships | 23,779,588 | (12,770,519) | 11,009,069 |
| Patents & Trademarks | 2,691,922 | (1,761,197) | 930,724 |
| Total amortizable intangible assets | $ 48,171,468 | $ (25,020,030) | $ 23,151,438 |

Amortization of intangible assets for the period ended September 30, 2018 was $4.0 million.

Amortizable intangible assets are amortized over their estimated useful lives, which range from 5 to 10 years, using the straight-line method. At September 30, 2018, the total future amortization of intangible assets for the next 5 years is as follows:

| | Estimated Amortization Expense |
|---|---|
| Three Months ended December 31, 2018 | $ 1,337,639 |
| Year ended 2019 | 5,241,756 |
| Year ended 2020 | 5,032,382 |
| Year ended 2021 | 4,911,818 |
| Year ended 2022 | 4,630,068 |
| Nine months ended September 30, 2023 | 1,636,108 |
| Thereafter | 361,667 |
| Total Amortization Expense | $ 23,151,438 |

## 5. Subsequent Events

Management has evaluated events and transactions for potential recognition or disclosure through March 1, 2019, the date the Abbreviated Financial Statements were available to be issued. No events or transactions have occurred through such date that requires disclosure, other than those already disclosed, in these Abbreviated Financial Statements.

Exhibit 99.2

**RESHAPE LIFESCIENCES INC**
**UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL STATEMENTS**

On December 17, 2018, ReShape Lifesciences Inc. (the “Company”) completed the previously announced transactions contemplated by the Asset Purchase Agreement with Apollo Endosurgery, Inc. (“Apollo”) pursuant to which the Company acquired from Apollo substantially all of the assets exclusively related to Apollo’s Lap-Band product line and Apollo acquired from the Company substantially all of the assets exclusively related to the Company’s ReShape Balloon product line. In addition, the Company agreed to pay Apollo $17 million in cash, of which $10 million was paid at the closing of the transaction, $2 million is payable on the first anniversary of the closing date, $2 million is payable on the second anniversary of the closing date, and $3 million is payable on the third anniversary of the closing date. These unaudited pro forma condensed combined financial statements give effect to the sale of the ReShape Balloon product line and the acquisition of the Lap-Band product line.

The unaudited pro forma condensed combined statements of operations of the Company for the nine months ended September 30, 2018 assumes the transaction had occurred on January 1, 2018. The unaudited pro forma condensed combined balance sheet of the Company as of September 30, 2018 assumes the transaction had occurred on September 30, 2018.

The unaudited pro forma condensed combined financial statements and the accompanying notes should be read in conjunction with the unaudited condensed consolidated financial statements of the Company as of and for the three and nine-month periods ended September 30, 2018, as contained in its Quarterly Report on Form 10-Q filed on November 14 , 2018, the audited consolidated financial statements and accompanying notes and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” included in the Company’s Form 10-K for the fiscal year ended December 31, 2017 and the audited financial statements of the LAP-BAND® Business of ReShape Lifesciences Inc. included as Exhibit 99.1 of this Form 8-K/A

The unaudited pro forma condensed combined financial statements represent the Company’s best estimates and are provided for illustrative and informational purposes only and are not intended to represent or be indicative of what the Company’s results of operations or financial position would have been had the transaction occurred on the dates indicated. The unaudited pro forma condensed combined financial statements also should not be considered representative of the Company’s future results of operations or financial position.

**ReShape Lifesciences Inc.**
**Unaudited Pro Forma Condensed Combined Statement of Operations**
**For the Nine Months Ended September 30, 2018**

| | Historical | Balloon Sale(1) | Historical LAP-BAND® Business (2) | Pro Forma Adjustments(3) | | Pro Forma Continuing Operations |
|---|---|---|---|---|---|---|
| Revenue | $ 1,953,603 | $ 1,797,258 | $14,672,257 | $ | | $ 14,828,602 |
| Costs and expenses: | | | | | | |
| Cost of revenue | 1,727,659 | 1,641,731 | 4,249,618 | 19,268 | 4(a) | 4,354,814 |
| Selling, general and administrative | 21,108,610 | 12,546,732 | 618,265 | 1,998 | 4(b) | 9,182,141 |
| Research and development | 6,379,098 | 1,431,405 | 750,502 | | | 5,698,195 |
| Amortization of intangible assets | 2,025,521 | 1,924,774 | 4,012,917 | (2,857,723) | 4(c) | 1,255,941 |
| Goodwill impairment | 27,186,620 | 13,182,047 | — | — | | 14,004,573 |
| Total costs and expenses | 58,427,508 | 30,726,689 | 9,631,302 | (2,836,457) | | 34,495,664 |
| Operating loss | (56,473,905) | (28,929,431) | 5,040,955 | 2,836,457 | | (19,667,062) |
| Other income (expense): | | | | | | |
| Interest income (expense), net | (611) | 891 | — | (248,228) | 4(d) | (249,730) |
| Warrants expense | — | — | — | — | | — |
| Change in value of warrant liability | 1,494 | — | — | — | | 1,494 |
| Other, net | (137,331) | (1) | — | — | | (137,330) |
| Loss before income taxes | (56,610,353) | (28,928,541) | 5,040,955 | 2,588,229 | | (20,052,628) |
| Income tax expense (benefit) | (3,121,670) | 1,860 | — | — | | (3,123,530) |
| Net income (loss) | $ (53,488,683) | $(28,930,401) | $ 5,040,955 | $ 2,588,229 | | $(16,929,098) |

(1) Represents the Company’s best estimates of revenues and expenses attributable to the ReShape Balloon product line.
(2) Derived from the audited financial statements of the LAP-BAND® Business of ReShape Lifesciences Inc.
(3) See Note 4 to the Unaudited Pro Forma Condensed Combined Financial Statements for additional information about the pro forma adjustments as referenced above.

**ReShape Lifesciences Inc.**
**Unaudited Pro Forma Condensed Combined Balance Sheet**
**As of September 30, 2018**

| | Historical | Balloon Sale(1) | Historical LAP-BAND® Business(2) | Pro Forma Adjustments(3) | | Pro Forma Continuing Operations |
|---|---|---|---|---|---|---|
| **ASSETS** | | | | | | |
| Current assets: | | | | | | |
| Cash and cash equivalents | $ 472,873 | $ — | $ — | $ — | | $ 472,873 |
| Accounts, receivable, net | 532,095 | — | — | — | | 532,095 |
| Inventory | 1,057,753 | 732,912 | 804,908 | 19,268 | 4(a) | 1,149,017 |
| Prepaid expenses and other current assets | 601,115 | — | — | — | | 601,115 |
| Total current assets | 2,663,836 | 732,912 | 804,908 | 19,268 | | 2,755,100 |
| Property and equipment, net | 181,192 | 52,394 | 556,337 | 13,318 | 4(b) | 698,453 |
| Intangible assets, net | 44,127,057 | 22,418,976 | 23,151,438 | (7,748,851) | 4(c) | 37,110,668 |
| Other assets | 81,757 | — | — | — | | 81,757 |
| Total assets | $ 47,053,842 | $23,204,282 | $24,512,683 | $ (7,716,265) | | $ 40,645,978 |
| **LIABILITIES AND STOCKHOLDERS' EQUITY** | | | | | | |
| Current liabilities: | | | | | | |
| Accounts payable | $ 4,427,824 | $ — | $ — | $ — | | $ 4,427,824 |
| Accrued expenses | 4,408,655 | — | — | — | | 4,408,655 |
| Asset purchase consideration payable, current | — | — | | 1,902,769 | 4(d) | 1,902,769 |
| Total current liabilities | 8,836,479 | — | — | 1,902,769 | | 10,739,248 |
| Asset purchase consideration payable, noncurrent | — | | | 4,393,649 | 4(d) | 4,393,649 |
| Deferred income taxes | 2,168,761 | — | — | — | | 2,168,761 |
| Common stock warrant liability | 74 | — | — | — | | 74 |
| Total liabilities | 11,005,314 | — | — | 6,296,418 | | 17,301,732 |
| Stockholders' equity: | | | | | | |
| Preferred stock | 961 | — | — | — | | 961 |
| Common stock | 5,995 | — | — | — | | 5,995 |
| Additional paid-in capital | 428,263,550 | — | — | — | | 428,263,550 |
| Accumulated deficit/Net investment in product line assets | (392,221,978) | 23,204,282 | 24,512,683 | (14,012,683) | | (404,926,260) |
| Total stockholders' equity | 36,048,528 | 23,204,282 | 24,512,683 | (14,012,683) | | 23,344,246 |
| Total liabilities and stockholders' equity | $ 47,053,842 | $23,204,282 | $24,512,683 | $ (7,716,265) | | $ 40,645,978 |

(1) Represents the Company's best estimates of assets attributable to the ReShape Balloon product line sold.
(2) Derived from the audited financial statements of the LAP-BAND® Business of ReShape Lifesciences Inc.
(3) See Note 4 to the Unaudited Pro Forma Condensed Combined Financial Statements for additional information about the pro forma adjustments as referenced above.

**Note 1 - Description of Acquisition**

On December 17, 2018, ReShape Lifesciences Inc. (the "Company") acquired from Apollo Endosurgery, Inc. ("Apollo") substantially all of the assets exclusively related to Apollo's Lap-Band product line and Apollo acquired from the Company substantially all of the assets exclusively related to the Company's ReShape Balloon product line ("Asset Purchase Agreement"). In addition, the Company agreed to pay Apollo purchase consideration of $17 million, of which $10 million was paid at the closing of the transaction, $2 million is payable on the first anniversary of the closing date, $2 million is payable on the second anniversary of the closing date, and $3 million is payable on the third anniversary of the closing date.

The Company evaluated the Lap-Band product line asset acquisition under the guidance of ASU 2017-01, "Clarifying the Definition of a Business" and concluded that the group of assets acquired did not meet the definition of a business. Accordingly, the Lap-Band product line asset acquisition will be accounted for as an asset purchase and the assets acquired will be recorded at their relative fair values during the fourth quarter of 2018. The Company expects to account for the disposal of the Reshape Balloon product line assets as a discontinued operation.

**Note 2 - Basis of Presentation**

The Unaudited Pro Forma Condensed Combined Financial Statements are prepared in accordance with Article 8, rule 8-05, of the Securities and Exchange Commission Regulation S-X. The historical financial information has been adjusted to give effect to the transactions that are (i) directly attributable to the sale of the ReShape Balloon product line assets; (ii) directly attributable to the acquisition of the Lap-Band product line assets; (iii) factually supportable; and (iv) with respect to the Unaudited Pro Forma Condensed Combined Statements of Operations, expected to have a continuing impact on the operating results of the combined company.

The historical financial information of the Lap-Band product line is derived from the financial statements of the LAP-BAND® Business of ReShape Lifesciences Inc., which comprise the Statement of Assets Acquired and Liabilities Assumed as of September 30, 2018, and the Statement of Net Revenues and Direct Expenses for the nine months ended September 30, 2018. The historical financial information of the Company, the Company's ReShape Balloon product line and the LAP-BAND® Business of ReShape Lifesciences Inc. is presented in accordance with generally accepted accounting principles in the United States of America ("U.S. GAAP"), except that it does not contain all of the footnote disclosures normally required by U.S. GAAP.

**Note 3 – Asset Acquisition Transaction Cost and Fair Values of Assets Acquired**

The total transaction cost for the assets acquired is comprised of the net present value of the consideration transferred plus the transaction costs. No value was assigned to the ReShape Balloon assets transferred as part of the Lap-Band purchase transaction as management's projections of the ReShape Balloon product line as of the transaction date indicated negative cash flows.

| | |
|---|---|
| Asset purchase consideration paid at closing | $ 10,000,000 |
| Aggregate asset purchase consideration payable | 7,000,000 |
| Adjustment to net present value of asset purchase consideration payable | (703,582) |
| Present value of asset purchase consideration | 16,296,418 |
| Asset purchase transaction costs | 500,000 |
| Fair value of ReShape Balloon assets transferred | — |
| Total transaction cost | $ 16,796,418 |

A security agreement entered into by the Company and Apollo grants to Apollo a security interest in substantially all of the assets of the Company as security for the Company's obligations under the Asset Purchase Agreement, including its obligation to pay the remaining asset purchase consideration. The security interest will be terminated upon the earlier of the date the Company pays the asset purchase consideration to Apollo in full or completes an equity financing raising gross proceeds of at least $15 million.

Under the asset acquisition method of accounting, the total transaction cost is allocated to the relative fair values of the assets acquired. The table below represents the allocation of the relative fair values of the Lap-Band product line tangible and intangible assets acquired as of September 30, 2018.

| | |
|---|---|
| Developed technology/know-how | $ 14,441,383 |
| Trademarks | 961,204 |
| Inventory | 824,176 |
| Fixed assets | 569,655 |
| Total transaction cost | $ 16,796,418 |

**Note 4 - Pro Forma Adjustments**

The Unaudited Pro Forma Condensed Combined Financial Statements reflect the following adjustments.

(a) The unaudited pro forma inventory as of September 30, 2018 was increased by $19,268 to reflect the adjustment to relative fair value of the Lap-Band inventory acquired. The unaudited pro forma cost of revenue was increased by $19,268 to reflect the incremental cost products sold during the period associated with the adjustment to relative fair value of the acquired Lap-Band inventory.

(b) The unaudited pro forma property and equipment, net was increased by $13,318 to reflect the adjustment to relative fair value of the Lap-Band property and equipment acquired. The unaudited pro forma selling, general and administrative expenses were increased by $1,998 for the incremental depreciation associated with the relative fair value adjustment to the acquired Lap-Band property and equipment. Depreciation on the acquired Lap-Band property and equipment was calculated using the straight-line method over an average estimated useful life of approximately five years.

(c) The unaudited pro forma intangible assets, net was decreased by $7,716,265 to reflect the adjustment to relative fair value of the Lap-Band intangible assets acquired. Amortization of intangible assets was decreased by $2,857,723 to reflect the amortization associated with the lower relative fair value of the acquired intangible assets as compared with their historical carrying values. Amortization of the definite-lived developed technology/know-how and trademarks was based upon an estimated useful life of ten years using the straight-line method of amortization.

(d) The unaudited pro forma current and noncurrent asset purchase consideration payable adjustments of $1,902,769 and $4,393,649, respectively, reflects the net present value of the remaining Lap-Band asset purchase consideration payable on the first, second and third anniversaries of the closing date of the transaction. The unaudited pro forma interest income (expense), net has been adjusted (decreased) to reflect the accretion of interest expense on the asset purchase consideration payable of $248,228.