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

Form
10-K

(Mark one)

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

For the fiscal year ended December 31, 2020

or

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

For the transition period from to

Commission file number: 1-33818

RESHAPE LIFESCIENCES INC.

(Exact name of registrant as specified in its charter)

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

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

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

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

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

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

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

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

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

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

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

Large accelerated filer ☐	Accelerated filer ☐
Non-accelerated filer ☒	Smaller reporting company ☒
	Emerging growth company ☐

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

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

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

At June 30, 2020, the last business day of the registrant's most recently completed second fiscal quarter, the aggregate market value of the registrant's common stock held by non-affiliates of the registrant, based upon the closing price of a share of the registrant's common stock as reported by the OTCQB Market on that date was $1,769,725.

As of March 8, 2021, 6,166,554 shares of the registrant's Common Stock were outstanding.

Documents Incorporated by Reference

None.

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PART I

PART II

PART III

PART IV

Registered Trademarks and Trademark Applications: In the United States we have registered trademarks for LAP-BAND®, LAP-BAND AP®, LAP BAND SYSTEM®, RAPIDPORT®, RESHAPE® and RESHAPE MEDICAL®, each registered with the United States Patent and Trademark Office, and trademark applications for RESHAPE VEST, and RESHAPE LIFESCIENCES. In addition, some or all of the marks LAP-BAND, LAP-BAND AP, LAP-BAND SYSTEM, RAPIDPORT, RESHAPE, RESHAPE MEDICAL, RESHAPE VEST, and RESHAPE LIFESCIENCES are the subject of either a trademark registration or an application for registration in Australia, Canada, the European Community, Mexico, Saudi Arabia, South Korea, and the United Arab Emirates. We believe that we have common law trademark rights to RESHAPE VEST. This Annual Report on Form 10-K contains other trade names and trademarks and service marks of ReShape Lifesciences and of other companies.

ITEM 1. BUSINESS

Our Company

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

Our current portfolio includes the FDA-approved LAP-BAND® system, which provides minimally invasive, long-term treatment of obesity and is an alternative to more invasive and extreme surgical stapling procedures such as the gastric bypass or sleeve gastrectomy. The recently launched ReShapeCare™ virtual health coaching program is a novel reimbursed telehealth weight-management program that supports healthy lifestyle changes for all medically managed weight-loss patients, not just the LAP-BAND, further expanding our reach and market opportunity. The ReShape Vest™ system is an investigational (outside the U.S.) minimally invasive, laparoscopically implanted medical device that wraps around the stomach, emulating the gastric volume reduction effect of conventional weight-loss surgery. It helps enable rapid weight loss in obese and morbidly obese patients without permanently changing patient anatomy. The Diabetes Bloc-Stim Neuromodulation is a technology under development as a new treatment for type 2 diabetes mellitus. ReShape's Diabetes Bloc-Stim Neuromodulation is expected to use bioelectronics to manage blood glucose in treatment of diabetes and individualized 24/7 glucose control. Additional products and accessories from the Company facilitate alternative gastric surgical procedures and ongoing product support for healthcare practitioners and patients (adjustments, etc.).

Proposed Merger with Obalon Therapeutics, Inc.

On January 19, 2021, we entered into an Agreement and Plan of Merger (the "Merger Agreement") with Obalon Therapeutics, Inc., a Delaware corporation ("Obalon"), and Optimus Merger Sub, Inc., a Delaware corporation and a wholly-owned subsidiary of Obalon ("Merger Sub"), pursuant to which Merger Sub will merge with and into ReShape, with ReShape as the surviving corporation and a wholly-owned subsidiary of Obalon (the "Merger"). As a result of the Merger, Obalon will be renamed "ReShape Lifesciences Inc."

Subject to the terms and conditions of the Merger Agreement, at the closing of the Merger, each outstanding share of ReShape common stock and series B convertible preferred stock will be converted into the right to receive shares of common stock of Obalon ("Obalon Shares") based on the exchange ratio set forth in the Merger Agreement. Upon completion of the Merger, ReShape stockholders will own approximately 51% of the combined company's outstanding common stock and Obalon stockholders will own approximately 49%, subject to the terms of the Merger Agreement. Obalon will, at the effective time of the Merger, assume the outstanding warrants and series C convertible preferred stock of ReShape, subject to the terms of the Merger Agreement. All outstanding stock options of ReShape will be cancelled and terminated at the effective time of the Merger without any right to receive any consideration. No fractional shares will be issued in connection with the Merger and Obalon will pay cash in lieu of any such fractional shares. The Merger is intended to qualify for federal income tax purposes as a tax-free reorganization under the provisions of Section 368(a) of the Internal Revenue Code of 1986, as amended.

Consummation of the Merger is subject to certain closing conditions, including, among other things, approval by the stockholders of ReShape and Obalon and the NASDAQ Stock Market's approval of (i) the Listing of Additional Shares Notice covering the Obalon Shares to be issued in the Merger and (ii) the continued listing of the combined company following completion of the Merger ((i) and (ii) together, the "NASDAQ Approvals"). Pursuant to the Merger Agreement, ReShape has agreed to exercise its reasonable best efforts to take all necessary steps to obtain the NASDAQ Approvals following the execution of the Merger Agreement, which may include procuring additional equity or debt investments, financings or other capital raising efforts. The Merger Agreement contains specified termination rights for both ReShape and Obalon. If Obalon terminates the Merger Agreement as a result of ReShape's breach of its covenant to use its reasonable best efforts to obtain the NASDAQ Approvals, or if either party terminates the Merger Agreement because the NASDAQ Approvals have not been obtained within 30 days following the later of the Obalon Stockholders' Meeting and the ReShape Stockholders' Meeting, then ReShape will be required to pay Obalon a $1.0 million termination fee, which amount has been deposited with a third-party escrow agent.

See "Part I—Item 1A Risk Factors" for a discussion of certain risks related to the Merger.

Our Product Portfolio

LAP-BAND System

The LAP-BAND system, which we acquired from Apollo Endosurgery, Inc. ("Apollo"), in December 2018, 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. The LAP-BAND system is an adjustable saline-filled silicone band that is laparoscopically placed around the upper part of the stomach through a small incision, creating a small pouch at the top of the stomach, which slows the passage of food and creates a sensation of fullness. The procedure can normally be performed as an outpatient procedure and patients can go home the day of the procedure without the need for an overnight hospital stay.

The LAP-BAND system has been in use in Europe since 1993 and received the CE mark in 1997 and approved in Australia in 1994, by the TGA. FDA approved the LAP-BAND system for use the U.S. in 2001. The LAP-BAND system has been approved in 21 countries and more than 1,000,000 LAP-BAND systems have been sold worldwide.

The LAP-BAND system was approved for use in the U.S. for patients with a Body Mass Index ("BMI") greater than or equal to 40 or a BMI greater than or equal to 30 with one or more obesity-related comorbidity conditions.

The LAP-BAND system has been subject to more than 400 peer-reviewed publications and extensive real-world experience. Adjustable gastric banding using the LAP-BAND system has been reported to be significantly safer than gastric bypass while statistically producing the same weight loss five years after surgery when accompanied by an appropriate post-operative follow-up and adjustment protocol. Studies have reported sustained resolution or improvement in type 2 diabetes, gastroesophageal reflux, obstructive sleep apnea, asthma, arthritis, hypertension and other pre-existing obesity related comorbidities following gastric banding. The gastric banding surgical procedure is generally reimbursed by most payors and insurance programs that cover bariatric surgery.

Benefits. LAP-BAND system offers the following benefits:

- **Minimally Invasive.** The LAP-BAND system does not change anatomy and is removable or reversible.
- **Lifestyle Enhancing.** The LAP-BAND system helps patients lose weight and live a more comfortable life and potentially reduces co-morbidities from excess weight.
- **Durable Weight Loss.** The LAP-BAND system offers a sustainable solution that helps patients achieve long-term success.

ReShapeCare

ReShapeCare is a HIPAA-compliant, virtual coaching program delivered through our innovative app which enhances behavior change through engagement. ReShapeCare is prescribed by a patient's physician and may be covered by insurance for up 26 visits per reimbursement year.

The program is based on four established dimensions of successful behavior change—sleep, nutrition, exercise, stress—and is designed to provide flexible structure and support from a live certified health coach in a manner that is simple and practical.

Clinical studies prove that online health coaching leads to higher patient satisfaction, more successful weight loss outcomes, and improvements in metabolic health and enhances quality of life. ReShapeCare is appropriate for all weight loss patients, medical weight loss patients, and pre- and post-surgical bariatric patients.

The program is designed to ReShape the patient's life through better sleep, nutrition, exercise, and stress management. Patients get paired with a ReShapeCare certified health coach who will be with them every step of the way through their journey, including through daily text messaging or live phone or video calls. The web and mobile app make it easy to increase positive actions and awareness by receiving daily educational content, personalized exercise, and progress reports. This program creates an atmosphere of community with social support from peers and by joining group sessions. When it comes to nutrition, patients can utilize an easy-to-follow, personalized nutrition plan with a

recipe library and restaurant guide. Tracking your food is as easy as taking a snapshot from your phone and sending it to your coach. Patients can connect their own devices to automatically track sleep, stress, and weight. This real-time health data can be used to optimize the program to get the best possible results.

ReShape Vest

The ReShape Vest is an investigational, minimally invasive, laparoscopically implanted medical device being studied for weight loss in morbidly obese adults with a BMI of at least 35. The device wraps around the stomach, emulating the effect of conventional weight loss surgery, and is intended to enable gastric volume reduction. This device is designed to restrict the intake of food and provide the feeling of fullness without cutting or permanently removing portions of the stomach, or bypassing any portion of the gastrointestinal tract. The implantation of the device mimics a traditional weight-loss surgery, it is anatomy sparing and may not require vitamin supplementation.

In a small pilot study conducted outside the United States, at 12 months, ReShape Vest patients demonstrated a mean percent excess weight loss of 85% and a mean percent total body weight loss of 30.2%, an average waist circumference reduction of approximately 15 inches, an average drop in HbA1c (Hemoglobin A1c) of 2.1 points, an average decrease of systolic blood pressure of 13mmHg, and an average increase in HDL “good cholesterol” of 29 mg/dl.

Benefits. The ReShape Vest, once approved for sale, would offer an additional weight loss solution that emulates the effect of conventional weight loss surgery through a procedure that is minimally invasive and anatomy sparing. The ReShape Vest potentially offers the following benefits:

- **Minimizes Changes to Normal Anatomy.** The ReShape Vest emulates the effects of conventional weight-loss surgery without stapling, cutting or removing any portion of the stomach.

- **Permanent Physical Restriction of the Stomach.** The stomach has the capacity to expand over time through overeating. The ReShape Vest provides physical restriction that maintains the reshaped stomach at a consistent size, as long as the device remains in the patient.

- **Removable/Reversible.** The ReShape Vest is designed to be removed laparoscopically, permitting the removal of the device at a later time, if that is desired.

- **Allows Normal Ingestion and Digestion of Foods Found in a Typical, Healthy Diet.** The ReShape Vest leaves the digestive anatomy largely unaltered, hence patients are able to maintain a more consistent nutritional balance compared with conventional bariatric surgical approaches. This feature allows patients to affect positive changes in their eating behavior in a non-forced and potentially more consistent way.

Evaluation of the ReShape Vest has been underway in a pivotal clinical investigation with a planned 95-subject enrollment in Belgium, Czech Republic, Spain and The Netherlands. Enrollment had been completed in Spain shortly before the COVID-19 pandemic affected Spain and the rest of Europe. This pandemic has impacted our ability to complete enrollment in the remaining countries and impeded clinical follow up with enrolled patients of the Spanish cite. Considering the unpredictability of and efforts to control this pandemic through 2021, we are continuing to work with identified clinical sites to determine when we will resume enrollment and subsequent filing for CE certification.

Diabetes Bloc-Stim Neuromodulation Device

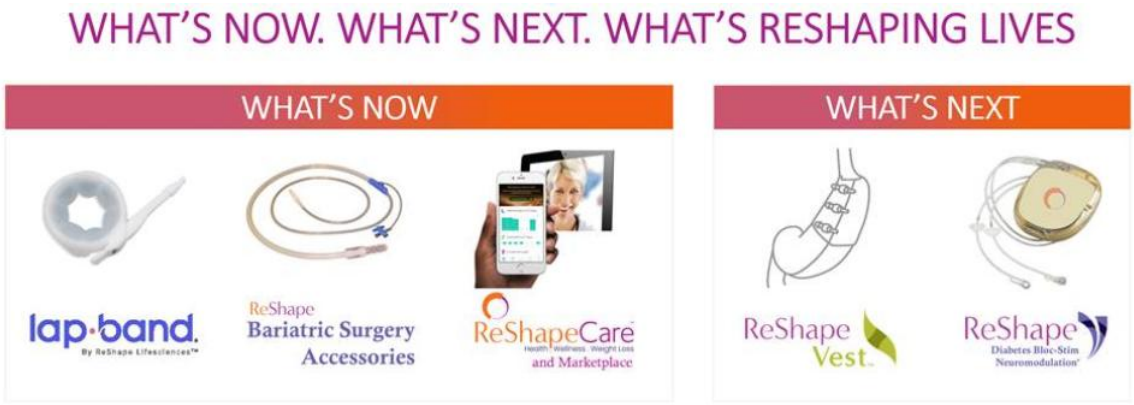
The ReShape Diabetes Bloc-Stim Neuromodulation is a technology under development as a new treatment for type 2 diabetes mellitus (T2DM). It combines ReShape Lifesciences’ proprietary Vagus Nerve Block (vBloc) technology platform in combination with Vagus nerve stimulation. This new dual Vagus nerve neuromodulation selectively modulates vagal block and stimulation to the liver and pancreas to manage blood glucose. ReShape’s Diabetes Bloc-Stim Neuromodulation is expected to use bioelectronics to manage blood glucose in treatment of diabetes and individualized 24/7 glucose control. The goal is to reduce costs of treatment and complications that arise from poorly controlled blood glucose and non-compliance to T2DM medication.

ReShape's Diabetes Bloc-Stim Neuromodulation technology is in preclinical development. It has demonstrated safety and efficacy through experiments in diabetic swine utilizing Phase I funding from an NIH Small Business Innovation Research Grant.

Our Strategic Focus

Develop and Commercialize a Differentiated Portfolio of Products/Therapies

An overarching strategy for our company is to develop and commercialize a product, program and services portfolio that is differentiated from our competition by offering transformative technologies that consists of a selection of patient-friendly, non-anatomy changing, lifestyle enhancing products, programs and services that provide alternatives to traditional bariatric surgery that help patients achieve durable weight loss. With the LAP-BAND system, accessories, ReShapeCare virtual coaching program, and the ReShape Vest and Diabetes Bloc-Stim Neuromodulation (if approved for commercial use), we believe we have multiple compelling and differentiated medical devices. We believe that we are well positioned for the existing market and can serve more of the overweight and obese population with our solutions and thereby help expand the addressable market for obesity.



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

Our clinical development strategy is to collaborate closely with regulatory bodies, healthcare providers, obesity therapy lifestyle experts and others involved in the obesity management process, patients and their advocates and scientific experts. We have established relationships with obesity therapy experts and healthcare providers, including physicians and hospitals, and have identified LAP-BAND patient ambassadors and we believe these individuals will be important in promoting patient awareness and gaining widespread adoption of the LAP-BAND, it's accessories, ReShapeCare and the ReShape Vest. Additionally, with these relationships we believe we will be able to expand the awareness of the Diabetes Bloc-Stim Neuromodulation technology to patients with type 2 diabetes mellitus.

Expand and Protect Our Intellectual Property Position

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

Alternative Weight Loss Solutions

ReShapeCare, provides a weight loss solution through behavioral changes, improving the patients' sleep, nutrition, exercise and stress. ReShapeCare is appropriate for all weight loss patients, medical weight loss patients, and pre- and post-surgical bariatric patients.

If we are able to commercialize the ReShape Vest, we believe that we will be able to offer three distinct weight loss treatment solutions that may be selected by the physician depending on the severity of the patient's BMI or

condition. Together, the LAP-BAND, ReShapeCare and ReShape Vest provide a minimally-invasive continuum of care for bariatric patients and their care providers.

Our Market

The Obesity and Metabolic Disease Epidemic

Obesity is a disease that has been increasing at an alarming rate with significant medical repercussions and associated economic costs. The World Health Organization ("WHO") currently estimates that more than 2.1 billion adults, approximately 30% of the global population, are overweight. The global economic impact of obesity is approximately $2.0 trillion, or approximately 2.8% of global GDP. Healthcare costs for severely or morbidly obese adults are 81% higher than for healthy weight adults and obesity is responsible for 5% of deaths worldwide. We believe our product and programs and product candidates could address a $1.64 billion per year global surgical device market.

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

The United States Market

Obesity has been identified by the U.S. Surgeon General as the fastest growing cause of disease and death in the United States, and according to a 2014 McKinsey Report is the leading cause of preventable death in the U.S. Currently, it is estimated that approximately 160 million American adults are overweight or obese, 74 million American adults are overweight, 78 million American adults are obese or severely obese, and 24 million American adults are morbidly obese. It is estimated that if obesity rates stay consistent, 51% of the U.S. population will be obese by 2030. According to data from the U.S. Department of Health and Human Services, almost 80% of adults with a BMI above 30 have comorbidity, and almost 40% have two or more of these comorbidities. According to The Obesity Society and the CDC, obesity is associated with many significant weight-related comorbidities including Type 2 diabetes, high blood-pressure, sleep apnea, certain cancers, high cholesterol, coronary artery disease, osteoarthritis and stroke. According to the American Cancer Society, 572,000 Americans die of cancer each year, over one-third of which are linked to excess body weight, poor nutrition and/or physical inactivity. Over 75% of hypertension cases are directly linked to obesity, and more than 90% of the approximately 28 million U.S. adults with Type 2 diabetes are overweight or have obesity.

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

Current Treatment Options and Their Limitations

We believe existing bariatric surgery and endoscopic procedural options for the treatment of obesity have seen limited adoption to date, with approximately 1% of the obese population qualifying for treatment actually seeking treatment, due to patient concerns and potential side effects including permanently altered anatomy and morbidity.

The principal treatment alternatives available today for obesity include:

- **Behavioral modification.** Behavioral modification, which includes diet and exercise, is an important component in the treatment of obesity; however, most obese patients find it difficult to achieve and maintain significant weight loss with a regimen of diet and exercise alone.

- **Pharmaceutical therapy.** Pharmaceutical therapies often represent a first option in the treatment of obese patients but carry significant safety risks and may present troublesome side effects and compliance issues.

- **Bariatric Surgery and Endoscopic Procedures.** In more severe cases of obesity, patients may pursue more aggressive surgical treatment options such as sleeve gastrectomy and gastric bypass. These procedures promote weight loss by surgically restricting the stomach's capacity and outlet size. While largely effective, these procedures generally result in major lifestyle changes, including dietary restrictions and food intolerances, and they may present substantial side effects and carry short- and long-term safety and side effect risks that have limited their adoption.

Our Research and Development

Current R&D Focus

We have an experienced research and development team, including clinical, regulatory affairs and quality assurance, comprised of scientists and mechanical engineers with significant clinical knowledge and expertise. Our research and development efforts are focused in the following major areas:

- supporting the current LAP-BAND system;
- expanding and improving on the LAP-BAND portfolio;
- gaining clinical evidence to the efficacy of the ReShape Vest;
- testing and developing the Diabetes Bloc-Stim Neuromodulation device; and
- suction and calibration tubing line for gastric and bariatric surgeries.

We have spent a significant portion of our capital resources on research and development. Our research and development expenses were $3.5 million in 2020 and $3.1 million in 2019.

Our Competition

The market for obesity treatments is competitive, subject to technological change and significantly affected by new product development. Our primary competition in the obesity treatment market is currently from bariatric surgical and endoscopic procedures.

Our LAP-BAND system competes, and we expect that our ReShape Vest system will compete, with surgical obesity procedures, including gastric bypass, gastric balloons, sleeve gastrectomy and the endoscopic sleeve. These current surgical procedures are performed in less than 1% of all eligible obese patients today. Current manufacturers of gastric balloon and suturing products that are approved in the United States include Apollo (ORBERA Intragastric Balloon System and OverStitch Endoscopic Suturing System) and Obalon Therapeutics, Inc. (Obalon Balloon System).

In June 2016, Aspire Bariatrics, Inc. received FDA approval for the Aspire Assist® System, an endoscopic alternative to weight loss surgery for people with moderate to severe obesity. We are also aware that GI Dynamics, Inc. has received approvals in various international countries to sell its EndoBarrier Gastrointestinal Liner.

We also compete against the manufacturers of pharmaceuticals that are directed at treating obesity and the 99% of obese patients eligible for surgery that are not willing to pursue a surgical option. We are aware of a number of drugs that are approved for long-term treatment of obesity in the United States: Orlistat, marketed by Roche as Xenical and GlaxoSmithKline as Alli, Belviq marketed by Arena Pharmaceuticals, Inc., Qsymia, marketed by VIVUS, Inc. and Contrave, marketed by Orexigen Therapeutics, Inc. In addition, we are aware of a pivotal trial for GELESIS100 that is being conducted by Gelesis, Inc.

In addition to competition from surgical obesity procedures, we compete with several private early-stage companies developing neurostimulation devices for application to the gastric region and related nerves for the treatment of obesity. Further, we know of two intragastric balloon companies either in clinical trials or working toward clinical trials in the U.S: Spatz3 Adjustable Balloon and Allurion Technology's Elipse Balloon. These companies may prove to be significant competitors, particularly through collaborative arrangements with large and established companies. They

also compete with us in recruiting and retaining qualified scientific and management personnel, establishing clinical trial sites and subject registration for clinical trials, as well as in acquiring technologies and technology licenses complementary to our programs or advantageous to our business.

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

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

Many of our competitors are larger than we are and are either publicly-traded or are divisions of publicly-traded companies, and they enjoy several competitive advantages over us, including:

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

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

Market Opportunity

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

- provide proven, long-term weight loss;
- preserve normal anatomy;
- are “non-punitive” in that they support continued ingestion and digestion of foods and micronutrients such as vitamins and minerals found in a typical, healthy diet while allowing the user to modify his or her eating

behavior appropriately without inducing punitive physical restrictions that physically force a limitation of food intake;

- diminish undesirable side-effects;
- facilitate outpatient surgical procedures;
- minimize the risks of re-operations, malnutrition and mortality; and
- reduce the natural hunger drive of patients.

Our Intellectual Property

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

LAP-BAND

As of December 31, 2020, we had 48 total U.S. and foreign patents and patent applications related to our LAP-BAND system. The international patents and patent applications are in regions including Germany, France, Spain, the United Kingdom, Mexico, Canada, Italy, the Netherlands, Portugal, Ireland, Belgium, Poland, Australia, and South Korea. The issued patents expire between the years 2021 and 2031.

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

ReShape Vest

As of December 31, 2020, we had four granted U.S. patents and four granted foreign patents in China, Israel, Canada and Australia related to our ReShape Vest and 12 pending patents in the U.S. and foreign countries. The patents expire between the years 2028 and 2038.

We also have U.S. and international trademark applications for the RESHAPE VEST brand name.

ReShapeCare

As of December 31, 2020, we applied for two U.S. trademarks related to the ReShapeCare™ logo and name. The trademarks cover electronic pedometers and electronic day planners for tracking food, body weight, pre-recorded nutritional and fitness; as well as nutritional and medical counseling and services.

Diabetes Bloc-Stim Neuromodulation Device

As of December 31, 2020, we filed a trademark application for Bloc-Stim Neuromodulation. The USPTO Examiner is reviewing the application and provided the Company with a disclaimer being required for “Neuromodulation”, as this a standard requirement for words that are in the standard vernacular.

Sales and Distribution

We market directly to patients but sell the LAP-BAND system to select surgical centers throughout the U.S. and internationally having patients that would like to treat obesity and its comorbidities. The surgical centers then perform the LAP-BAND procedure and are most-commonly reimbursed by leading insurance providers. Alternatively, surgical

centers can offer the LAP-BAND as a cash-pay procedure. Our sales representatives are supported by field clinical experts who provide training, technical support, and other support services at various implant centers. Our sales representatives help implement consumer marketing programs and provide surgical centers and implanting surgeons with educational patient materials.

In order to support our LAP-BAND sales efforts, we have seven dedicated team members to support the US Region. We have also launched marketing campaigns in several top strategic accounts that allow us to partner with clinics in marketing efforts and use digital and traditional marketing to drive qualified leads to physicians. During 2020, our international sales efforts were through a combination of direct and distributor sales channels, with a focus on top LAP-BAND customers in Australia, The Middle East and strategic countries in Europe.

Our Manufacturers and Suppliers

To date, all of the materials and components for our products, as well as any related outside services, are procured from qualified suppliers and contract manufacturers in accordance with our proprietary specifications. All of our key manufacturers and suppliers have experience working with commercial implantable device systems, are ISO certified and are regularly audited by various regulatory agencies including the FDA. Our key manufacturers and suppliers have a demonstrated record of compliance with international regulatory requirements.

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

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

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

Government Regulations

Device Classification and Regulations

United States

Our products and products under development are regulated by the FDA as medical devices under the Federal Food, Drug, and Cosmetic Act ("FFDCA") and the regulations promulgated under the FFDCA. Pursuant to the FFDCA, the FDA regulates the research, design, testing, manufacture, safety, labeling, storage, record keeping, advertising, sales and distribution, post-market adverse event reporting, production and advertising and promotion of medical devices in the United States. Noncompliance with applicable requirements can result in warning letters, fines, injunctions, civil

penalties, recall or seizure of products, total or partial suspension of production, failure of the government to grant premarket approval for devices and criminal prosecution.

Medical devices in the United States are classified into one of three classes, Class I, II or III, on the basis of the amount of risk and the controls deemed by the FDA to be necessary to reasonably ensure their safety and effectiveness. Class I, low risk, devices are subject to general controls (e.g., labeling and adherence to good manufacturing practices). Class II, intermediate risk, devices are subject to general controls and to special controls (e.g., performance standards, and premarket notification). Generally, Class III devices are those which must receive premarket approval by the FDA to ensure their safety and effectiveness (e.g., life-sustaining, life-supporting and implantable devices, or new devices), and require clinical testing to validate safety and effectiveness and FDA approval prior to marketing and distribution. The FDA also has the authority to require clinical testing of Class II devices. In both the United States and certain international markets, there have been a number of legislative and regulatory initiatives and changes, such as the Modernization Act and the EU-Medical Device Regulations, which could and have altered the healthcare system in ways that could impact our ability to sell our medical devices profitably.

The FFDCA provides two basic review processes for medical devices. Certain products (Class II) may qualify for a submission authorized by Section 510(k) of the FFDCA, where the manufacturer submits to the FDA a premarket notification of the manufacturer's intention to commence marketing the product. The manufacturer must, among other things, establish that the product to be marketed is substantially equivalent to another legally marketed product. Marketing may commence when the FDA issues a letter finding the subject device is subject device is substantially equivalent to a legally marketed predicate device. If a medical device does not qualify for the 510(k) procedure (Class III), the manufacturer must file a Premarket Approval Application ("PMA") with the FDA. This procedure requires more extensive pre-filing clinical and preclinical testing than the 510(k) processes and involves a significantly longer FDA review process. A PMA is required to establish the safety and effectiveness of the device and a key component of a PMA submission is the pivotal clinical trial data, as discussed in more detail below.

Premarket Approval

The ReShape vBloc® and the LAP-BAND system are medical devices that required a PMA submission from the FDA to market in the United States. The FDA approved ReShape vBloc in January of 2015 and the LAP-BAND system in 2001 with post-approval conditions intended to ensure the safety and effectiveness of the devices. Failure to comply with the conditions of approval can result in material adverse enforcement action, including the loss or withdrawal of the approvals. Referenced in the FDA Guidance, after a device achieves initial PMA approval, any additional significant modifications to the manufacturing process, labeling, use and design of a device requires a PMA supplement to be submitted and approved through the premarket approval process. Premarket approval supplements often require submission of the same type of information as a PMA except that the supplement is limited to information needed to support any changes from the device covered by the original PMA. In addition, holders of an approved PMA are required to submit annual reports to the FDA that include relevant information on the continued use of the device. In September 2018, ReShape Lifesciences made a financial decision to stop the manufacturing and commercializing the vBloc product line in the US. This business decision was not related to the safety or efficacy of the device. On January 27, 2021, FDA accepted a PMA amendment to formally withdraw the vBloc PMA. On February 2, 2021, FDA accepted the PMA amendment for ReCharge Post Approval Study closure and the study status is marked "Completed" on the FDA Post-Approval Studies webpage. On March 4, 2021, FDA accepted the PMA amendment for ReNew Post Approval Study termination and the study status is marked "Terminated" on the FDA Post-Approval Studies webpage.

The ReShape Vest with weight loss indication will be considered a Class III Long Term Implantable product by the FDA requiring the PMA path. A pivotal trial for the ReShape Vest will likely include approximately 250 implanted patients monitored up to three years. Other implantable devices for the treatment of obesity relied on twelve-month endpoints for the PMA submission with annual follow-up visits up to five years and we expect the pivotal trial for the ReShape Vest to be similar. A U.S. pivotal trial requires FDA Investigational Device Exemption ("IDE") submission and approval.

Clinical Trials

A clinical trial is almost always required to support a PMA or certain 510(K) submissions. Clinical trials for a "significant risk" device such as ours require submission to the FDA of an application for an IDE for clinical studies to be conducted within the United States. The IDE application must be supported by appropriate data, such as animal and

laboratory testing results, showing that it is safe to test the device in humans and that the testing protocol is scientifically sound. In the United States, a clinical trial for a significant risk device may begin once the IDE application is approved by the FDA and by the Institutional Review Boards ("IRBs") overseeing the clinical trial at the various investigational sites.

Clinical trials require extensive recordkeeping and detailed reporting. Our clinical trials must be conducted under the oversight of an IRB for each participating clinical trial site and in accordance with applicable regulations and policies including, but not limited to, the FDA's good clinical practice IDE requirements. ReShape Lifesciences, the trial Data Safety Monitoring Board, the FDA or the IRB for each site at which a clinical trial is being performed may suspend a clinical trial at any time for various reasons, including a belief that the risks to study subjects outweigh the anticipated benefits.

Pervasive and Continuing U.S. Regulation

Numerous regulatory requirements apply. These include:

- Quality System Regulation, which requires manufacturers to follow design, testing, control, documentation, complaint handling and other quality assurance procedures during the design and manufacturing processes;
- regulations which govern product labels and labeling, prohibit the promotion of products for unapproved or "off-label" uses and impose other restrictions on labeling and promotional activities;
- medical device reporting regulations, which require that manufacturers report to the FDA if their device may have caused or contributed to a death or serious injury or malfunctioned in a way that would likely cause or contribute to a death or serious injury if it were to recur;
- notices of correction or removal and recall regulations;
- periodic reporting of progress related to clinical trials, post approval studies required as conditions of PMA approval and relevant changes to information contained within the PMA approval; and
- reporting of transfers of value and payments to physicians and teaching hospitals.

Advertising and promotion of medical devices are also regulated by the Federal Trade Commission and by state regulatory and enforcement authorities. Recently, some promotional activities for FDA-regulated products have resulted in enforcement actions brought under healthcare reimbursement laws and consumer protection statutes. In addition, under the federal Lanham Act, competitors and others can initiate litigation relating to advertising claims.

Compliance with regulatory requirements is enforced through periodic facility inspections by the FDA, which may be unannounced. Because we rely on contract manufacturing sites and service providers, these additional sites are also subject to these FDA inspections. Failure to comply with applicable regulatory requirements can result in enforcement action, which may include any of the following sanctions:

- warning letters or untitled letters;
- fines, injunction and civil penalties;
- recall or seizure of our products;
- customer notification, or orders for repair, replacement or refund;
- operating restrictions, partial suspension or total shutdown of production or clinical trials;
- refusing our request for premarket approval of new products;
- withdrawing premarket approvals that are already granted; and

- criminal prosecution.

International Regulations

International sales of medical devices are subject to foreign government regulations, which vary substantially from country to country. The time required to obtain approval by a foreign country may be longer or shorter than that required for FDA approval/clearance, and the requirements may differ. The primary regulatory environment in Europe is that of the European Union ("EU"), which consists of 27 member states encompassing nearly all the major countries in Europe. Additional countries that are not part of the EU, but are part of the European Economic Area ("EEA"), and other countries, such as Switzerland, have voluntarily adopted laws and regulations that mirror those of the EU with respect to medical devices. The EU has adopted Directive 90/385/EEC as amended by 2007/47/EC for active implantable medical devices and numerous standards that govern and harmonize the national laws and standards regulating the design, manufacture, clinical trials, labeling and adverse event reporting for medical devices that are marketed in member states. Medical devices that comply with the requirements of the national law of the member state in which their Notified Body is located will be entitled to bear CE marking, indicating that the device conforms to applicable regulatory requirements, and, accordingly, can be commercially marketed within the EU and other countries that recognize this mark for regulatory purposes.

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

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

Since the beginning of 2020, the COVID-19 pandemic slowed most of the economy in the European Union. This resulted in many different challenges ranging from notified bodies that were no longer able to perform audits, to manufacturers that were forced to increase their production beyond their existing capabilities or forced to stop their production all together. The original date of application of Regulation (EU) 2017/745 on medical device (MDR) was May 26, 2020. Due to COVID-19 pandemic the date of application for MDR was postponed to May 26, 2021. The Company will continue to implement changes across our quality systems to become compliant with the new MDR.

Patient Privacy Laws

United States and various international laws have been evolving to protect the confidentiality of certain patient health information, including patient medical records. These laws restrict the use and disclosure of certain patient health information. Enforcement actions, including financial penalties, related to patient privacy issues are globally increasing. The management of patient data may have an impact on certain clinical research activities and product design considerations.

Employees

As of December 31, 2020, we had 37 employees, all of which were full-time. All of these employees are located in the U.S.

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

Information About our Executive Officers

The following table sets forth information regarding our executive officers as of March 1, 2021:

Name	Age	Position
Barton P. Bandy	60	President and Chief Executive Officer
Thomas Stankovich	60	Senior Vice President and Chief Financial Officer

Barton P. Bandy has served as our President and Chief Executive Officer since April 1, 2019. Mr. Bandy has extensive leadership experience in health care and specifically in the obesity and bariatric space. Most recently, Mr. Bandy was President and Chief Executive Officer of BroadSpot Imaging Corporation, a developer of medical devices for eye care, since April 2017. From April 2013 to August 2016, Mr. Bandy was President of Wellness at Alphaeon Corporation, where he was responsible for business development, commercial activities, strategy and acquisition integration. He previously spent 10 years as the senior executive leading the Inamed and Allergan Health Divisions through the launch, growth and transition of the LAP-BAND.

Thomas Stankovich has served as our Chief Financial Officer since October 30, 2019. Mr. Stankovich has extensive leadership experiences as the CFO for multiple public and private healthcare companies. Mr. Stankovich has spent the past nine years as the Global Senior Vice President and Chief Financial Officer of MP Biomedicals, a life science and molecular biology-diagnostics company. Prior to MP Biomedicals, Mr. Stankovich served as Chief Financial Officer at Response Genetics where he successfully led the company through their initial public offering. Additionally, Mr. Stankovich served as Chief Financial Officer for Ribapham Inc., where he also led the company through their initial public offering, which at the time became the second largest ever initial public offering in the biotechnology sector. Mr. Stankovich also held the Chief Financial Officer position at ICN International which later changed its name to Valeant Pharmaceuticals.

Our Corporate Information

We were originally incorporated in the state of Minnesota in December 2002 and reincorporated in the state of Delaware in July 2004. In 2017, we changed our name from EnteroMedics Inc. to ReShape Lifesciences Inc. Our shares of common stock trade on the OTCQB Market under the symbol RSLS.

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

Our principal executive offices are located at 1001 Calle Amanecer, San Clemente, California 92673, and our telephone number is (949) 429-6680. Our website address is *www.reshapelifesciences.com*. The information on, or that may be accessed through, our website is not incorporated by reference into this Annual Report on Form 10-K and should not be considered a part of this Annual Report on Form 10-K.

ITEM 1A. RISK FACTORS

SUMMARY OF RISK FACTORS

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

Risks Related to Our Proposed Merger with Obalon

- Fluctuations in the market price of Obalon Shares will affect the value of the Merger consideration.
- The Merger may not be consummated unless important conditions are satisfied or waived and there can be no assurance that the Merger will be consummated.
- There can be no assurance that the Obalon Shares to be issued in the Merger will be on the Nasdaq Stock Market or, if listed, that the combined company will be able to comply with the continued listing standards.
- The Merger Agreement contains provisions that could discourage a potential competing acquirer of either ReShape or Obalon.
- The pendency of the Merger could materially adversely affect the business, financial condition, results of operations or cash flows of ReShape or Obalon.
- ReShape directors and executive officers and Obalon directors and executive officers have interests in the Merger that may be different from, or in addition to, the interests of ReShape stockholders and Obalon stockholders.
- Failure to consummate the Merger could negatively impact respective future stock prices, operations and financial results of ReShape and Obalon.
- Financial projections regarding ReShape may not prove accurate.
- The Merger may disrupt attention of ReShape management and Obalon management from ongoing business operations.
- The market price for Obalon Shares following completion of the Merger will continue to fluctuate and may be affected by factors different from those that historically have affected Obalon Shares and ReShape Shares.

Risks Related to Our Business and Industry

- We may be unable to attract and retain management and other personnel we need to succeed.
- Our ReShape Vest product is in the early stages of clinical evaluation. If the clinical trial is not successfully completed or any required regulatory approvals are not obtained, the ReShape Vest may not be commercialized and our business prospects may suffer.
- The shares of series C convertible preferred stock issued in connection with our acquisition of ReShape Medical have certain rights and preferences senior to our common stock, including a liquidation preference that is senior to our common stock.
- We are a medical device company with a limited history of operations and sales, and we cannot assure you that we will ever generate substantial revenue or be profitable.
- During the second quarter of 2019 we recorded a non-cash indefinite-lived intangible assets impairment loss, which significantly impacted our results of operations, and we may be exposed to additional impairment losses that could be material.
- We will need substantial additional funding and may be unable to raise capital when needed, which would force us to delay, reduce or eliminate our product development programs or liquidate some or all of our assets.
- We incur significant costs as a result of operating as a public company, and our management is required to devote substantial time to compliance initiatives.
- General economic and political conditions could have a material adverse effect on our business.
- We face significant uncertainty in the industry due to government healthcare reform.
- We are subject, directly or indirectly, to United States federal and state healthcare fraud and abuse and false claims laws and regulations. Prosecutions under such laws have increased in recent years and we may become subject to such litigation. If we are unable to, or have not fully complied with such laws, we could face substantial penalties.
- Failure to protect our information technology information technology infrastructure against cyber-based attacks, network security breaches, service interruptions or data corruption could materially disrupt our operations and adversely affect our business.

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

Risks Associated with Development and Commercialization of the LAP-BAND System, ReShapeCare, ReShape Vest and Diabetes Bloc-Stim Neuromodulation

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

Risks Related to Intellectual Property

- If we are unable to obtain or maintain intellectual property rights relating to our technology and neuroblocking therapy, the commercial value of our technology and any future products will be adversely affected and our competitive position will be harmed.
- Many of our competitors have significant resources and incentives to apply for and obtain intellectual property rights that could limit or prevent our ability to commercialize our current or future products in the United States or abroad.
- If we are unable to protect the confidentiality of our proprietary information and know-how, the value of our technology and products could be adversely affected.
- Intellectual property litigation is a common tactic in the medical device industry to gain competitive advantage. If we become subject to a lawsuit, we may be required to expend significant financial and other resources and our management's attention may be diverted from our business.

Risks Relating to Ownership of Our Common Stock

- Our common stock trades on an over-the-counter market.
- Our common stock may be deemed to be a "penny stock" and broker-dealers who make a market in our stock may be subject to additional compliance requirements.
- The trading price of our common stock has been volatile and is likely to be volatile in the future.
- Sales of a substantial number of shares of our common stock in the public market by existing stockholders, or the perception that they may occur, could cause our stock price to decline.
- We have a significant number of outstanding warrants, which may cause significant dilution to our stockholders, have a material adverse impact on the market price of our common stock and make it more difficult for us to raise funds through future equity offerings.
- You may experience future dilution as a result of future equity offerings.
- Since our securities are quoted on the OTCQB market, our stockholders may face significant restrictions on the resale of our securities due to state "blue sky" laws.
- Our organizational documents and Delaware law make a takeover of our company more difficult, which may prevent certain changes in control and limit the market price of our common stock.
- We have not paid dividends in the past and do not expect to pay dividends in the future, and any return on investment may be limited to the value of our common stock.

RISK FACTORS

Risks Related to Our Proposed Merger with Obalon

Fluctuations in the market price of Obalon Shares will affect the value of the Merger consideration.

At the effective time, each share of ReShape common stock and series B preferred stock (the "ReShape Shares") (other than shares held by Obalon, Merger Sub, any wholly-owned subsidiary of Obalon or ReShape, or by ReShape as treasury shares, which will be canceled and retired and cease to exist) will be converted into the right to receive a number of Obalon Shares, according to a ratio determined at least 10 days prior to the Obalon special meeting of stockholders to be held to approve such share issuance, that will result in the holders of such ReShape Shares owning 51% of the outstanding shares of common stock of the combined company immediately after the effective time of the Merger.

Because the exact number of Obalon Shares that will be issued in exchange for each ReShape Share will not be determined until a later date, the market value of the Merger consideration that ReShape stockholders will receive will depend both on the number of Obalon Shares to be issued and the price per Obalon Share at the effective time of the Merger. The exact number of Obalon Shares to be issued and the market price per Obalon Share is not currently known and may be less or more than the current market price.

Stock price changes may result from a variety of factors, including general market, industry and economic conditions, changes in the respective businesses, operations and prospects of ReShape and Obalon, regulatory considerations, results of the ReShape Special Meeting and the Obalon Special Meeting, announcements with respect to the Merger or any of the foregoing, and other factors beyond the control of ReShape or Obalon. You should obtain current market price quotations for ReShape Shares and for Obalon Shares, but as indicated above, the prices at the time the Merger is consummated may be greater than, the same as or less than such price quotations.

The Merger may not be consummated unless important conditions are satisfied or waived and there can be no assurance that the Merger will be consummated.

The Merger Agreement contains a number of conditions that must be satisfied or waived (to the extent permitted by applicable law) to consummate the Merger. Those conditions include, among others:

- the required approvals of the Obalon and ReShape stockholders;
- approval of the ReShape Merger Proposal by the ReShape stockholders;
- the absence of any adverse law or order promulgated, entered, enforced, enacted, or issued by any government entity that prohibits, restrains, or makes illegal the consummation of the Merger or the other transactions contemplated by the Merger Agreement;
- the effectiveness of a registration statement on Form S-4, which shall include this joint proxy statement/prospectus, under the Securities Act and the absence of any stop order issued by the SEC suspending the use of such registration statement;
- the Obalon Shares to be issued in the Merger being approved for listing on The Nasdaq Capital Market and approval of the combined company's continued listing on The Nasdaq Capital Market (certain risks related to obtaining such approvals are described below);
- subject to certain materiality exceptions, the accuracy of certain representations and warranties of each of Obalon and ReShape contained in the Merger Agreement and the compliance by each party with the covenants contained in the Merger Agreement; and
- the absence of a material adverse effect with respect to each of Obalon and ReShape.

These conditions to the consummation of the Merger may not be satisfied or waived (to the extent permitted by applicable law) and, as a result, the Merger may not be consummated at the time expected, or at all. In addition, ReShape or Obalon may elect to terminate the Merger Agreement in certain other circumstances.

There can be no assurance that the Obalon Shares to be issued in the Merger will be on the Nasdaq Stock Market or, if listed, that the combined company will be able to comply with the continued listing standards.

Nasdaq has determined that the proposed transaction constitutes a business combination that results in a change of control pursuant to its listing rules. Accordingly, the combined company will be required to satisfy all of Nasdaq's initial listing criteria and to complete Nasdaq's initial listing process in order for the Obalon Shares to be listed on Nasdaq. An application to list the Obalon Shares on The Nasdaq Capital Market upon consummation of the Merger has been filed as required by The Nasdaq Capital Market. Since Obalon went public in 2016, it has twice fallen below Nasdaq's minimum required level for stockholder equity and minimum bid price requirement. Obalon was downlisted in November 2020 from Nasdaq's Global Market to its Capital Market though it is currently in compliance with the continued listing standards of the Nasdaq Capital Market.

Nasdaq's approval of the listing application is a condition to the closing of the Merger and while ReShape and Obalon can each terminate the Merger Agreement if the condition is not satisfied (in which case, a $1 million termination fee may be payable to Obalon by ReShape), the parties can also each choose to waive the condition and consummate the Merger without Nasdaq's approval of the listing application. In the event ReShape and Obalon waive that condition and consummate the Merger without Nasdaq's approval of the listing application, the combined company would not be listed on The Nasdaq Capital Market.

In addition, if after listing, The Nasdaq Capital Market delists the Obalon Shares from trading on its exchange for failure to meet the continued listing standards, the combined company and its stockholders could face significant material adverse consequences including:

- a limited availability of market quotations for its securities;
- a determination that its common stock is a "penny stock" which will require brokers trading in its common stock to adhere to more stringent rules, possibly resulting in a reduced level of trading activity in the secondary trading market for its common stock;
- a limited amount of analyst coverage; and
- a decreased ability to issue additional securities or obtain additional financing in the future.

The Merger Agreement contains provisions that could discourage a potential competing acquirer of either ReShape or Obalon.

The Merger Agreement contains "no shop" provisions that restrict each of Obalon's and ReShape's ability to solicit, initiate or knowingly encourage and induce, or take any other action designed to facilitate competing third-party proposals relating to a merger, reorganization or consolidation of the company or an acquisition of the company's stock or assets. In addition, the other party generally has an opportunity to offer to modify the terms of the Merger in response to any competing acquisition proposals before the board of directors of the company that has received a third-party proposal may withdraw or qualify its recommendation with respect to the Merger.

The Merger Agreement does not permit either Obalon or ReShape to terminate the Merger Agreement in order to pursue a superior proposal. These provisions could discourage a potential third-party acquirer that might have an interest in acquiring all or a significant portion of Obalon or ReShape from considering or proposing an acquisition, even if it were prepared to pay consideration with a higher per share cash or market value than the market value proposed to be received or realized in the Merger.

The pendency of the Merger could materially adversely affect the business, financial condition, results of operations or cash flows of ReShape or Obalon.

The announcement and pendency of the Merger could disrupt ReShape's or Obalon's businesses, in any of the following ways, among others:

- ReShape's employees may experience uncertainty about their future roles with the combined company, which might adversely affect each company's ability to retain and hire key managers and other employees;

- the attention of ReShape management or Obalon management may be directed toward completion of the Merger, integration planning and transaction-related considerations and may be diverted from the company's day-to-day business operations and, following the completion of the Merger, the attention of the combined company's management may also be diverted to such matters;

- vendors, suppliers, business partners or others may seek to modify or terminate their business relationship with ReShape or Obalon or the combined company following completion of the Merger;

- ReShape or Obalon, or the combined company following completion of the Merger, and their respective directors could become subject to lawsuits relating to the Merger; and

- ReShape or Obalon may experience negative reactions from their stockholders and the medical community, among others.

These disruptions could be exacerbated by a delay in the completion of the Merger or termination of the Merger Agreement. Additionally, if the Merger is not consummated, each company will have incurred significant costs and diverted the time and attention of management. A failure to consummate the Merger may also result in negative publicity, reputational harm, litigation against ReShape or Obalon or their respective directors and officers, and a negative impression of the companies in the financial markets. The occurrence of any of these events individually or in combination could have a material adverse effect on either or both companies' financial statements and stock price.

In addition, the Merger Agreement restricts Obalon and ReShape from taking certain actions until the Effective Time without the consent of the other party, including, among others: the payment of dividends; the issuance of equity (including certain equity incentive awards); certain increases to employee compensation and benefits; capital expenditures; the incurrence of indebtedness; acquisitions and divestitures; and the entry into or amending certain material contracts. Obalon and ReShape are required to conduct business in the ordinary course consistent with past practice. The restrictive covenants, which are subject to various specific exceptions, may prevent Obalon or ReShape from pursuing attractive business opportunities that may arise prior to the consummation of the Merger. Although Obalon and ReShape may be able to pursue such activities with the other company's consent, the other company may not be willing to provide its consent.

ReShape directors and executive officers and Obalon directors and executive officers have interests in the Merger that may be different from, or in addition to, the interests of ReShape stockholders and Obalon stockholders.

Certain of the directors and executive officers of ReShape and certain of the directors and executive officers of Obalon negotiated the terms of the Merger Agreement and these individuals have interests in the Merger that may be different from, or in addition to, those of ReShape stockholders and Obalon stockholders, respectively. These interests include, but are not limited to, the continued service of certain of these ReShape individuals as directors and executive officers of Obalon after the date of the consummation of the Merger, certain other compensation arrangements with the Obalon directors and executive officers, and provisions in the Merger Agreement regarding continued indemnification of and advancement of expenses of the directors and executive officers of ReShape and Obalon.

Failure to consummate the Merger could negatively impact respective future stock prices, operations and financial results of ReShape and Obalon.

If the Merger is not consummated for any reason, ReShape and Obalon may be subjected to a number of material risks, including the following:

- a decline in the market prices of the shares of ReShape Common Stock or Obalon Shares to the extent that their current market prices reflect a market assumption that the Merger will be consummated and will be beneficial to the value of the business of Obalon after the Closing Date;

- having to pay certain costs related to the proposed Merger, such as legal, accounting, financial advisory, printing and mailing fees, which must be paid regardless of whether the Merger is consummated;

- addressing the consequences of operational decisions made since the signing of the Merger Agreement, including because of restrictions on ReShape's or Obalon's operations imposed by the terms of the Merger Agreement and decisions to delay or defer capital expenditures;

- returning the focus of management and personnel to operating ReShape or Obalon, as applicable, on a standalone basis, without any of the benefits expected to have been provided by the consummation of the Merger; and

- negative reactions from their respective stockholders, suppliers, employees, patients enrolled in our studies and the medical community.

In addition to the above risks, ReShape may be required, under certain circumstances, to pay to Obalon a termination fee of $1.0 million, which may materially adversely affect ReShape's financial condition. The business of ReShape or Obalon may be adversely impacted by the failure to pursue other beneficial opportunities due to the focus of ReShape and Obalon management on the Merger. A failure to consummate the Merger may also result in negative publicity, reputational harm, litigation against ReShape or Obalon or their respective directors and officers, and a negative impression of the companies in the financial markets.

If the Merger is not consummated, we cannot assure the Obalon stockholders or the ReShape stockholders that these risks will not materialize and will not materially adversely affect the business, financial results and stock price of the respective companies.

Financial projections regarding ReShape may not prove accurate.

In connection with the Merger, ReShape prepared and considered internal financial forecasts for ReShape. These financial projections are based on several assumptions, including regarding future operating cash flows, expenditures and income of ReShape, including benefits to be realized from the Merger. These financial projections were not prepared with a view to public disclosure, are subject to significant economic, competitive, industry and other uncertainties and may not be achieved in full, within projected timeframes or at all. The failure of ReShape to achieve projected results could have a material adverse effect on the price of the Obalon Shares, the combined company's financial position after the Closing Date, and the combined company's ability to pay dividends, and/or pay dividends at or above the rate currently paid by Obalon or ReShape, following the consummation of the Merger.

The Merger may disrupt attention of ReShape management and Obalon management from ongoing business operations.

Each of ReShape and Obalon has expended, and expects to continue to expend, significant management resources to consummate the Merger. The attention of each company's management may be diverted away from the day-to-day operations of the businesses of ReShape and Obalon, respectively, including implementing initiatives to improve performance, execution of existing business plans and pursuing other beneficial opportunities, in an effort to consummate the Merger. This diversion of management resources could disrupt ReShape's or Obalon's operations and may have an adverse effect on the respective businesses, financial conditions, results of operations and cash flows of the two companies or the combined company after the effective time of the Merger.

The market price for Obalon Shares following completion of the Merger will continue to fluctuate and may be affected by factors different from those that historically have affected Obalon Shares and ReShape Shares.

Following the completion of the Merger, Obalon stockholders and ReShape stockholders will be stockholders in the combined company. ReShape's business differs in important respects from that of Obalon and the combined company's business will differ from that of Obalon and ReShape prior to the completion of the Merger. Accordingly, the results of operations of the combined company and the market price of Obalon Shares after the completion of the Merger may be affected by factors different from those currently affecting the independent results of operations of each of Obalon and ReShape.

Risks Related to Our Business and Industry

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

Our success depends on the services of our senior management and other key employees. The loss of the services of one or more of our officers or key employees could delay or prevent the successful completion of our clinical trials and the commercialization of our LAP-BAND system and ReShapeCare, and the development of our ReShape Vest and Diabetes Bloc-Stim Neuromodulation. Our continued growth will require hiring a number of qualified clinical, scientific,

commercial and administrative personnel. Accordingly, recruiting and retaining such personnel in the future will be critical to our success. There is intense competition from other companies and research and academic institutions for qualified personnel in the areas of our activities. If we fail to identify, attract, retain and motivate these highly skilled personnel, we may be unable to continue our development and commercialization activities.

Our ReShape Vest product is in the early stages of clinical evaluation. If the clinical trial is not successfully completed or any required regulatory approvals are not obtained, the ReShape Vest may not be commercialized and our business prospects may suffer.

Our ReShape Vest product is in the early stages of development and is currently in the early stages of clinical evaluation. Our ability to market the ReShape Vest in the United States and abroad depends upon our ability to demonstrate the safety and effectiveness of the product with clinical data to support our requests for regulatory approval. The ReShape Vest may not be found to be safe and, where required, effective in clinical trials and may not ultimately be approved for marketing by U.S. or foreign regulatory authorities, which would have a negative impact on our net sales.

There is no assurance that we will be successful in achieving the desired results in our anticipated clinical trials for the ReShape Vest or, if we do, that the FDA or other regulatory agencies will approve the product for sale without the need for additional clinical trial data to demonstrate safety and efficacy. We continually evaluate the potential financial benefits and costs of clinical trials and the products being evaluated in them. If we determine that the costs associated with obtaining regulatory approval of a product exceed the potential financial benefits of that product or if the projected development timeline is inconsistent with our investment horizon, we may choose to stop a clinical trial and/or the development of a product.

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

There are currently 95,388 shares of our series C convertible preferred stock outstanding, which are convertible into 38 shares of our common stock. We issued the shares of our series C convertible preferred stock in connection with our acquisition of ReShape Medical. The series C convertible preferred stock has a liquidation preference of $274.88 per share, or $692,691.05 per underlying share of common stock, or approximately $26.2 million in the aggregate. Holders of the series C convertible preferred stock have the right to convert their shares into shares of common stock instead of receiving the liquidation preference. In general, the series C convertible preferred stock is entitled to receive dividends (on an as-if-converted-to-common stock basis) actually paid on shares of common stock when, as and if such dividends are paid on shares of common stock. No other dividends will be paid on shares of series C convertible preferred stock. While the series C convertible preferred stock generally does not have voting rights, as long as any shares of series C convertible preferred stock remain outstanding, we cannot, without the affirmative vote of holders of a majority of the then-outstanding shares of series C convertible preferred stock, (a) alter or change adversely the powers, preferences or rights given to the series C convertible preferred stock (including by the designation, authorization, or issuance of any shares of preferred stock that purports to have equal rights with, or be senior in rights or preferences to, the series C convertible preferred stock), (b) alter or amend the series C convertible preferred stock certificate of designation, (c) amend our certificate of incorporation or other charter documents in any manner that adversely affects any rights of the holders of series C convertible preferred stock, (d) increase the number of authorized shares of series C convertible preferred stock or (e) enter into any agreement with respect to any of the foregoing.

We are a medical device company with a limited history of operations and sales, and we cannot assure you that we will ever generate substantial revenue or be profitable.

We are a medical device company with a limited operating history upon which you can evaluate our business. The success of our business will depend on our ability to generate increased sales and control costs, as well as our ability to obtain additional regulatory approvals needed to market new versions of our LAP-BAND system or regulatory approvals needed to market our ReShape Vest, Diabetes Bloc-Stim Neuromodulation and any other products we may develop in the future, all of which we may be unable to do. If we are unable to successfully market our LAP-BAND system for its indicated use, ReShapeCare, or develop and commercialize the ReShape Vest or Diabetes Bloc-Stim Neuromodulation, we may never become profitable and may have to cease operations as a result. Our lack of a significant operating history also limits your ability to make a comparative evaluation of us, our products and our prospects.

During the second quarter of 2019 we recorded a non-cash indefinite-lived intangible assets impairment loss, which significantly impacted our results of operations, and we may be exposed to additional impairment losses that could be material.

We conduct our annual indefinite-lived intangible assets impairment analysis during the fourth quarter of each year or when circumstances suggest that an indicator for impairment may be present. During the second quarter of 2019, we performed a qualitative impairment analysis of the in-process research and development ("IPR&D"). Due to delays in the clinical trials experienced during the first six months of 2019, we revised its expectations of when revenues would commence for the ReShape Vest, thus reducing the projected near-term future net cash flows related to the ReShape Vest. As a result, we recorded an impairment charge of approximately $6.6 million of the excess of the carrying value over the estimated fair value. In the future, we may have additional indicators of potential impairment requiring us to record an impairment loss related to our remaining indefinite-lived and finite-lived intangible assets, which could also have a material adverse effect on our results of operations.

We will need substantial additional funding and may be unable to raise capital when needed, which would force us to delay, reduce or eliminate our product development programs or liquidate some or all of our assets.

Our operations have consumed substantial amounts of cash since inception. We expect to continue to spend substantial amounts on the development and commercialization of our products and on research and development, including conducting current and future clinical trials for our LAP-BAND system, ReShapeCare, ReShape Vest (if approved for sale) and Diabetes Bloc-Stim Neuromodulation (if approved for sale) and subsequent versions of our products. In addition, in December 2021 we are obligated to pay Apollo the final $3.0 million installment of the purchase price related to our acquisition of LAP-BAND system. For the years ended December 31, 2020 and 2019, net cash used in operating activities was $8.5 million and $14.2 million, respectively. We expect that our cash used in operations will continue to be significant in the upcoming years, and that we will need to raise additional capital to commercialize our LAP-BAND system and ReShapeCare, and to develop the ReShape Vest and Diabetes Bloc-Stim Neuromodulation, and to continue our research and development programs, and to fund our ongoing operations.

Our future funding requirements will depend on many factors, including:

- the cost and timing of establishing sales, marketing and distribution capabilities;
- the cost of establishing clinical and commercial supplies of our LAP-BAND system, ReShapeCare, ReShape Vest, Diabetes Bloc-Stim Neuromodulation and any products that we may develop;
- the rate of market acceptance of our LAP-BAND system, ReShapeCare, ReShape Vest, Diabetes Bloc-Stim Neuromodulation and any other product candidates;
- the cost of filing and prosecuting patent applications and defending and enforcing our patent and other intellectual property rights;
- the cost of defending, in litigation or otherwise, any claims that we infringe third-party patent or other intellectual property rights;
- the effect of competing products and market developments;
- the cost of explanting clinical devices;
- the terms and timing of any collaborative, licensing or other arrangements that we may establish;
- any revenue generated by sales of our LAP-BAND system, ReShapeCare, ReShape Vest and Diabetes Bloc-Stim Neuromodulation or our future products;
- the scope, rate of progress, results and cost of any clinical trials and other research and development activities;
- the cost and timing of obtaining any further required regulatory approvals; and

- the extent to which we invest in products and technologies, although we currently have no commitments or agreements relating to these types of transactions.

Until the time, if ever, when we can generate a sufficient amount of product revenue, we expect to finance our future cash needs through public or private equity offerings, debt financings or corporate collaboration, licensing arrangements and grants, as well as through interest income earned on cash balances.

Additional capital may not be available on terms favorable to us, or at all. If we raise additional funds by issuing equity securities, our stockholders may experience dilution. Debt financing, if available, may involve restrictive covenants or additional security interests in our assets. Any additional debt or equity financing that we complete may contain terms that are not favorable to us or our stockholders. If we raise additional funds through collaboration and licensing arrangements with third parties, it may be necessary to relinquish some rights to our technologies or products, or grant licenses on terms that are not favorable to us. If we are unable to raise adequate funds, we may have to delay, reduce the scope of, or eliminate some or all of, our development programs or liquidate some or all of our assets.

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

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

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

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

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

In addition, the coronavirus outbreak has begun to have indeterminable adverse effects on general commercial activity and the world economy. If the impact of the coronavirus outbreak continues for an extended period, it could materially adversely impact our operating and clinical activities as a result of the impacts on our supply chain, our clinical trial sites, access to patients and additional regulatory guidance could be delayed or impacted. Our business and results of operations could be adversely affected to the extent that this coronavirus or any epidemic harms the global economy.

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

In the United States, there have been and continue to be a number of legislative initiatives to contain healthcare costs. The Patient Protection and Affordable Care Act, as amended, (the "Affordable Care Act") as well as any future healthcare reform legislation, may have a significant impact on our business. The impact of the Affordable Care Act on the health care industry is extensive and includes, among other things, the federal government assuming a larger role in the health care system, expanding healthcare coverage of United States citizens and mandating basic healthcare benefits. The Affordable Care Act contains many provisions designed to generate the revenues necessary to fund the coverage expansions and to reduce costs of Medicare and Medicaid, including imposing a 2.3% excise tax on domestic sales of many medical devices by manufacturers that began in 2013. A moratorium was placed on the medical device excise tax through 2019. During December of 2019, the medical device excise tax was permanently repealed.

Congress is considering legislation to replace or repeal elements or all of the Affordable Care Act. In addition, there have been recent public announcements by members of Congress and the current presidential administration regarding their plans to repeal and replace the Affordable Care Act. Further, President Trump signed an Executive Order directing federal agencies with authorities and responsibilities under the Affordable Care Act to waive, defer, grant exemptions from, or delay the implementation of any provision of the Affordable Care Act that would impose a fiscal or regulatory burden on states, individuals, healthcare providers, health insurers, or manufacturers of pharmaceuticals or medical devices. At this time, it is not clear whether the Affordable Care Act will be repealed in whole or in part, and, if it is repealed, whether it will be replaced in whole or in part by another plan and what impact those changes will have on coverage and reimbursement for healthcare items and services covered by plans that were authorized by the Affordable Care Act. We expect that additional state and federal healthcare reform measures will be adopted in the future, any of which could limit the amounts that federal and state governments will pay for healthcare products and services, and also indirectly affect the amounts that private payers are willing to pay. In addition, any healthcare reforms enacted in the future may, like the Affordable Care Act, be phased in over a number of years but, if enacted, could reduce our revenue, increase our costs, or require us to revise the ways in which we conduct business or put us at risk for loss of business. In addition, our results of operations, financial position and cash flows could be materially adversely affected by changes under the Affordable Care Act and changes under any federal or state legislation adopted in the future.

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

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

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

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

damages sustained by the government, plus civil penalties for each separate false claim. Various states have also enacted laws modeled after the federal False Claims Act.

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

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

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

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

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

Risks Associated with Development and Commercialization of the LAP-BAND System, ReShapeCare, ReShape Vest and Diabetes Bloc-Stim Neuromodulation

Our efforts to increase revenue from our LAP-BAND system and ReShapeCare, and commercialize the ReShape Vest, Diabetes Bloc-Stim Neuromodulation and expanded line of bariatric surgical accessories may not succeed or may encounter delays which could significantly harm our ability to generate revenue.

Our ability to generate revenue will depend upon the sales of our LAP-BAND system, expanded line of bariatric surgical accessories, and ReShapeCare and successful commercialization of our ReShape Vest (if approved for sale) and

Diabetes Bloc-Stim Neuromodulation (if approved for sale). Our efforts to commercialize these products may not succeed for a number of reasons, including:

- we may not be able to obtain the regulatory approvals required for our ReShape Vest and/or Diabetes Bloc-Stim Neuromodulation;
- our products may not be accepted in the marketplace by physicians, patients and third-party payers;
- the price of our products, associated costs of the surgical procedure and treatment and the availability of sufficient third-party reimbursement for the system implantation and follow-up procedures;
- appropriate reimbursement and/or coding options may not exist to enable billing for the system implantation and follow-up procedures for our ReShape Vest;
- coverage policies for bariatric surgeries, including LAP-BAND may be restricted in the future;
- we may not be able to sell our products at a price that allows us to meet the revenue targets necessary to generate enough revenue for profitability;
- the frequency and severity of any side effects of our products;
- physicians and potential patients may not be aware of the perceived effectiveness and sustainability of the results of our products;
- we, or the investigators of our products, may not be able to have information on the outcome of the trials published in medical journals;
- the availability and perceived advantages and disadvantages of alternative treatments;
- any rapid technological change may make our products obsolete;
- we may not be able to have our products manufactured in commercial quantities or at an acceptable cost;
- we may not have adequate financial or other resources to complete the development and commercialization of our products or to develop sales and marketing capabilities for our products; and
- we may be sued for infringement of intellectual property rights and could be enjoined from manufacturing or selling our products.

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

If our products, or any other therapy or products for other gastrointestinal diseases and disorders that we may develop, do not achieve an adequate level of acceptance by the relevant constituencies, we may not generate significant product revenue and may not become profitable.

We may not be able to obtain required regulatory approvals for our ReShape Vest and/or Diabetes Bloc-Stim Neuromodulation in a cost-effective manner or at all, which could adversely affect our business and operating results.

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

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

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

Modifications to the LAP-BAND system may require additional approval from regulatory authorities, which may not be obtained or may delay our commercialization efforts.

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

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

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

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

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

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

We may be unable to manage our growth effectively.

Our business strategy entails significant future growth. For example, we will have to expand existing operations in order to increase revenue from our LAP-BAND system and ReShapeCare, and develop our ReShape Vest and Diabetes Bloc-Stim Neuromodulation, conduct additional clinical trials, increase our contract manufacturing capabilities, hire and train new personnel to handle the marketing and sales of our product, assist patients and healthcare providers in obtaining reimbursement for the use of our product and create and develop new applications for our technology. This growth may place significant strain on our management and financial and operational resources. Successful growth is also dependent upon our ability to implement appropriate financial and management controls, systems and procedures. Our ability to effectively manage growth depends on our success in attracting and retaining highly qualified personnel, for which the competition may be intense. If we fail to manage these challenges effectively, our business could be harmed.

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

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

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

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

Risks Related to Intellectual Property

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

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

management and key personnel from our business operations. Even if we were to prevail in any litigation, we cannot assure you that we can obtain an injunction that prevents our competitors from practicing our patented technology. Our competitors may independently develop similar or alternative technologies or products without infringing any of our patent or other intellectual property rights, or may design around our proprietary technologies.

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

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

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

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

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

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

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

There has been a history of frequent and extensive litigation regarding patent and other intellectual property rights in the medical device industry, and companies in the medical device industry have employed intellectual property

litigation to gain a competitive advantage. Accordingly, we may become subject to patent infringement claims or litigation in a court of law, or interference proceedings declared by the USPTO to determine the priority of inventions or an opposition to a patent grant in a foreign jurisdiction. We may also become subject to claims or litigation seeking payment of royalties based on sales of our product in connection with licensing or similar joint development arrangements with third parties or in connection with claims of patent infringement.

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

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

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

Risks Relating to Ownership of Our Common Stock

Our common stock trades on an over-the-counter market.

Our common stock trades on the OTCQB market and therefore may have less liquidity and may experience potentially more price volatility than experienced when our shares traded on Nasdaq. Stockholders may not be able to sell their shares of common stock on the OTCQB market in the quantities, at the times, or at the prices that could potentially be available on a more liquid trading market. The delisting of our common stock from Nasdaq in 2018 could also adversely affect our ability to obtain financing for our operations and/or result in a loss of confidence by investors or employees.

Our common stock may be deemed to be a "penny stock" and broker-dealers who make a market in our stock may be subject to additional compliance requirements.

If our common stock is deemed to be a "penny stock" as defined in the Securities Exchange Act of 1934, broker-dealers who make a market in our stock will be subject to additional sales practice requirements for selling our common stock to persons other than established customers and accredited investors. For instance, the broker-dealer must make a special suitability determination for the purchaser and receive the purchaser's written agreement to the transaction prior to the sale. Consequently, the penny stock rules, if they were to become applicable, would affect the ability or willingness of broker-dealers to sell our securities, and accordingly would affect the ability of stockholders to sell their securities in the public market. These additional procedures could also limit our ability to raise additional capital in the future.

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

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

- the denial or delay of regulatory clearances or approvals of our product or receipt of regulatory approval of competing products;
- our ability to accomplish clinical, regulatory and other product development milestones and to do so in accordance with the timing estimates we have publicly announced;
- changes in policies affecting third-party coverage and reimbursement in the United States and other countries;
- changes in government regulations and standards affecting the medical device industry and our product;
- ability of our products to achieve market success;
- the performance of third-party contract manufacturers and component suppliers;
- our ability to develop sales and marketing capabilities;
- actual or anticipated variations in our results of operations or those of our competitors;
- announcements of new products, technological innovations or product advancements by us or our competitors;
- developments with respect to patents and other intellectual property rights;
- sales of common stock or other securities by us or our stockholders in the future;
- additions or departures of key scientific or management personnel;
- disputes or other developments relating to proprietary rights, including patents, litigation matters and our ability to obtain patent protection for our technologies;
- the trading volume of our common stock;
- changes in earnings estimates or recommendations by securities analysts, failure to obtain or maintain analyst coverage of our common stock or our failure to achieve analyst earnings estimates;
- public statements by analysts or clinicians regarding their perceptions of our clinical results or the effectiveness of our products;
- decreases in market valuations of medical device companies; and
- general market conditions and other factors unrelated to our operating performance or the operating performance of our competitors.

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

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

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

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

As of December 31, 2020, we had outstanding 6,166,554 shares of common stock. In addition, as of that date we had outstanding warrants to acquire 14,285,113 shares of common stock. The issuance of shares of common stock upon the exercise of warrants would dilute the percentage ownership interest of all stockholders, might dilute the book value per share of our common stock and would increase the number of our publicly traded shares, which could depress the market price of our common stock.

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

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

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

Since our securities are quoted on the OTCQB market, our stockholders may face significant restrictions on the resale of our securities due to state "blue sky" laws.

Each state has its own securities laws, often called "blue sky" laws, which (i) limit sales of securities to a state's residents unless the securities are registered in that state or qualify for an exemption from registration, and (ii) govern the reporting requirements for broker-dealers doing business directly or indirectly in the state. Before a security is sold in a state, there must be a registration in place to cover the transaction, or the transaction must be exempt from registration. The applicable broker must be registered in that state. We do not know whether our common stock will be registered or exempt from registration under the laws of any state. Since our common stock is currently quoted on the OTCQB, a determination regarding registration will be made by those broker-dealers, if any, who agree to serve as the market-makers for our common stock. There may be significant state blue sky law restrictions on the ability of investors to sell,

and on purchasers to buy, our common stock. Investors should therefore consider the resale market for our common stock to be limited, as they may be unable to resell your common stock without the significant expense of state registration or qualification.

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

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

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

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

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

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

Our ability to use our federal and state NOL carryforwards to offset potential future taxable income is dependent upon our generation of future taxable income before the expiration dates of the NOL carryforwards, and we cannot predict with certainty when, or whether we will generate sufficient taxable income to use all of our NOL carryforwards. As of December 31, 2020, the Company had U.S. federal net operating loss carryforwards of $77.2 million. Of the total U.S. federal net operating loss carryforwards at December 31, 2020, $1.2 million is subject to a 20 year carryover period and will begin expiring in 2021. Losses generated beginning in 2018 will carryover indefinitely. The Company had state net operating loss carryforwards of $222.4 million at December 31, 2020, and had foreign net operating loss carryforwards of $0.3 million at December 31, 2020. Net operating loss carryforwards of the Company are subject to review and possible adjustment by the taxing authorities. With certain exceptions (e.g. the net operating loss carryforwards), the Company is no longer subject to U.S. federal, state or local examinations by tax authorities for years prior to 2016. There are no tax examinations currently in progress.

The Company's ability to utilize its net operating loss carryforwards, tax credits, and built-in items of deduction, including capitalized start-up costs and research and development costs, has been, and may continue to be substantially limited due to ownership changes. These ownership changes limit the amount of net operating loss carryforwards, credits and built-in items of deduction that can be utilized annually to offset future taxable income. In general, an ownership change, as defined in IRC Section 382, results from a transaction or series of transactions over a three-year period resulting in an ownership change of more than 50% of the outstanding stock of a company by certain stockholders or public groups. Due to the valuation allowance against deferred tax assets at December 31, 2020, the net effect of any further limitation will have no impact on results of operations.

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

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

ITEM 1B. UNRESOLVED STAFF COMMENTS

Not applicable.

ITEM 2. PROPERTIES

We lease approximately 14,479 square feet of office/warehouse space in San Clemente, California under an operating lease that expires June 30, 2022.

ITEM 3. LEGAL PROCEEDINGS

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

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

PART II.

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

Market Information

Our common stock is traded on the OTCQB Market under the symbol RSLS. Price quotations on the OTCQB reflect inter-dealer prices, without retail mark-up, markdown or commission, and may not necessarily represent actual transactions.

Number of Stockholders

As of March 8, 2020, there were approximately 19 holders of record of our common stock.

Securities Authorized for Issuance Under Equity Compensation Plans

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

Unregistered Sales of Equity Securities

None.

Uses of Proceeds from Sale of Registered Securities

None.

Dividend Policy

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

Issuer Purchases of Equity Securities

None.

ITEM 6. SELECTED FINANCIAL DATA

Not applicable.

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

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

Overview

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

Recent Developments

On January 30, 2020, WHO announced a global health emergency because of a new strain of coronavirus and the risks to the international community as the virus spreads globally beyond its points of origin. In March 2020, the WHO classified the COVID-19 outbreak as a pandemic, based on the rapid increase in exposure globally and on March 13, 2020, the United States declared a national emergency with respect to the coronavirus outbreak. In response to the COVID-19 pandemic, on March 27, 2020, President Trump signed into law the CARES Act, which provides for the PPP. The Company received a PPP Loan of $1.0 million dollars. On March 1, 2021, the Company received notice of forgiveness in the full amount of the loan including all accrued interest. See Note 8 to the consolidated financial statements.

On March 25, 2020, the Company executed a credit agreement with an institutional investor to borrow up to $3.5 million, of which $2.5 million was received up front and on June 23, 2020, the Company received the first draw down of $500 thousand. See Note 8 to the consolidated financial statements.

On April 16, 2020, the Company implemented various short-term cost reductions and cash flow improvement actions, such as reducing the compensation for executives, management and key employees and decreasing operating expenses where possible. In addition, the Company also identified temporary headcount reductions and made the decision to furlough a portion of its workforce. During the second quarter of 2020, certain government-mandated closures began to ease and many areas throughout the world and within the United States began to allow elective surgeries. As a result of the easing, the Company did see sales volumes improve as we progressed through the third quarter. During the fourth quarter of 2020, there was another surge in COVID-19 cases resulting in a slowdown, or in some cases a shutdown, of elective surgeries. Even after the COVID-19 outbreak has subsided, we may continue to experience materially adverse impact on our financial condition and results of operations. Additionally, on June 15, 2020, the Company ended the temporary pay reductions and the furloughed employees returned to work.

On September 14, 2020, the Company entered into the second amendment to the credit agreement that increased the amount available under delayed draw term loans by $2.0 million, of which $1.0 million was received upfront. In addition, to the increase in the amount available under delayed draw term loans, the maturity date of the loans under the credit agreement, including those under the amendment, was extended from September 24, 2020 to March 31, 2021.

On December 16, 2020, the Company entered into the third amendment to the credit agreement that increased the amount available under delayed draw term loans by $4.0 million, of which all the funds were received upfront. See Note 8 to the consolidated financial statements for further details.

During the third quarter of 2020, the Company launched ReShapeCare. ReShapeCare is an effective, convenient telehealth based coaching program and is typically covered by insurance providers. It works in partnership with patients and doctors, helping patients treat, manage, and improve the chronic, metabolic disease of obesity through a customizable program utilizing board certified clinical health coaches with the direction of their physician.

On January 19, 2021, the Company entered into an Agreement and Plan of Merger (the "Merger Agreement") with Obalon Therapeutics, Inc., a Delaware corporation ("Obalon"), and Optimus Merger Sub, Inc., a Delaware corporation and a wholly-owned subsidiary of Obalon ("Merger Sub"), pursuant to which Merger Sub will merge with and into ReShape, with ReShape as the surviving corporation and a wholly-owned subsidiary of Obalon (the "Merger"). As a result of the Merger, Obalon will be renamed "ReShape Lifesciences Inc." See Note 16 to the consolidated financial statements for further details.

On January 19, 2021, concurrently with the execution of the Merger Agreement, ReShape entered into a Credit Facility Agreement ("Credit Facility Agreement") with Armistice, which is ReShape's existing secured lender and majority stockholder, pursuant to which Armistice agreed to provide ReShape with a $15.0 million line of credit that ReShape may access from time to time until December 31, 2022. ReShape has not drawn down any amounts under the Credit Facility Agreement, but any advances will bear interest at a rate per annum equal to the LIBOR rate plus 2.5%. Any advances under the Credit Facility Agreement would be subject to the Guarantee and Collateral Agreement between ReShape and Armistice dated March 25, 2020. See Note 16 to the consolidated financial statements for further details.

On March 10, 2021, the Company and the Lender entered into the fifth amendment to the credit agreement. As part of this amendment the maturity date was amended from March 31, 2021 to March 31, 2022 or, if earlier, the date that is 15 days after the Company completes a capital raising transaction resulting in gross proceeds of at least $15 million. For further details see Note 16.

Financial Overview

Results of Operations

The following table sets forth certain data from our operating results from the years ended December 31, 2020 and 2019, expressed as percentages of net revenue (in thousands):

	Year Ended December 31,			
	2020		2019	
Revenue	$ 11,299	100.0 %	$ 15,089	100.0 %
Cost of goods sold	5,037	44.6 %	5,784	38.3 %
Gross profit	6,262	55.4 %	9,305	61.7 %
Operating expenses:				
Sales and marketing	4,694	41.5 %	4,847	32.1 %
General and administrative	10,527	93.2 %	17,224	114.1 %
Research and development	3,498	31.0 %	3,121	20.7 %
Impairment of intangible assets	—	— %	6,588	43.7 %
Loss on litigation settlement	—	— %	1,500	9.9 %
Loss on disposal of assets	—	— %	486	3.2 %
Total operating expenses	18,719	165.7 %	33,766	223.8 %
Operating loss	(12,457)	(110.2)%	(24,461)	(162.1)%
Other expense (income), net:				
Interest expense, net	2,049	18.1 %	451	3.0 %
Loss on extinguishment of debt	7,715	68.3 %	71	0.5 %
Warrant expense	—	— %	49,027	324.9 %
(Gain) loss on foreign currency	(410)	(3.6)%	(247)	(2)%
Other, net	—	— %	1,337	8.9 %
Loss from continuing operations before income taxes	(21,811)	(193.0)%	(75,100)	(497.7)%
Income tax benefit	(181)	(1.6)%	(893)	(5.9)%
Net loss	$ (21,630)	(191.4)%	$ (74,207)	(491.8)%

Non-GAAP Disclosures

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

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

Adjusted EBITDA

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

The following table contains a reconciliation of non-GAAP net loss to GAAP net loss attributable to common stockholders for the years ended December 31, 2020 and 2019 (in thousands).

	Years Ended December 31,	
	2020	2019
GAAP net loss attributable to common stockholders	$ (21,630)	$ (74,207)
Adjustments:		
Interest expense, net:	2,049	451
Income tax benefit	(181)	(893)
Depreciation and amortization	1,667	1,706
Stock-based compensation expense	1,323	2,311
Loss on extinguishment of debt	7,715	71
Warrant expense	—	49,027
Loss on litigation settlement	—	1,500
Impairment of intangible assets and goodwill	—	6,588
Loss on disposal of assets	—	486
Other, net	—	1,337
Non-GAAP loss	$ (9,057)	$ (11,623)

Comparison of Results of Operations

Net Revenue. The following table summarizes our net revenue by geographic location based on the location of customers for the years ended December 31, 2020 and 2019, as well as the percentage by location of total revenue and the amount of change and percentage of change (dollars in thousands):

	Year Ended December 31,				Amount Change	Percentage Change
	2020		2019			
United States	$ 8,275	73.2 %	$ 13,309	88.2 %	$ (5,034)	(37.8)%
Australia	1,086	9.6 %	1,167	7.7 %	(81)	(6.9)%
Europe	1,824	16.1 %	613	4.1 %	1,211	197.6 %
Rest of World	114	1.0 %	—	— %	114	100.0 %
Total net revenue	$ 11,299	100.0 %	$ 15,089	100.0 %	$ (3,790)	(25.1)%

Net revenue for the year ended December 31, 2020 was $11.3 million, a decrease of $3.8 million, or 25%, as compared to net revenue of $15.1 million for the year ended December 31, 2019. The primary reason for the overall decrease in net revenue is due to a reduction in sales from the COVID-19 pandemic, which caused elective surgeries to be shut down throughout the world at the end of the first quarter of 2020. Late in the second quarter of 2020, sales volumes began to improve and continued to improve through the beginning of the fourth quarter as select geographical regions began to open back up. During the fourth quarter of 2020, there was another surge in COVID-19 cases resulting in a slowdown, or in some cases a shutdown, of elective surgeries. Despite this, there was a 198% increase in revenue in Europe for the year ended December 31, 2020 as compared to the year ended December 31, 2019, which saw significant growth particularly in the UK. Although, many centers were closed, there was a push for bariatric surgery as obesity was called out as a major contributor to COVID-19 complications.

Cost of Goods Sold and Gross Profit: The following table summarizes our cost of goods sold and gross profit for the years ended December 31, 2020 and 2019, as well as percentage of total revenue and the amount of change and percentage of change (dollars in thousands):

	Year Ended December 31,				Amount Change	Percentage Change
	2020		2019			
Revenue	$ 11,299	100.0 %	$ 15,089	100.0 %	$ (3,790)	(25.1)%
Cost of goods sold	5,037	44.6 %	5,784	38.3 %	(747)	(12.9)%
Gross profit	$ 6,262	55.4 %	$ 9,305	61.7 %	$ (3,043)	(32.7)%

Gross profit. Gross profit for the year ended December 31, 2020 was $6.3 million, a decrease of $3.0 million, or 33%, as compared to gross profit of $9.3 million for the year ended December 31, 2019. Gross profit as a percentage of total revenue for the year ended December 31, 2020 was 55.4% compared to 61.7% for the same period in 2019. The decrease in gross profit margin is primarily due to reduced overall sales from the COVID-19 pandemic, coupled with an increase in international sales, which have a lower gross profit percentage than domestic sales.

Operating Expenses: The following table summarizes our operating expenses for the years ended December 31, 2020 and 2019, as well as the percentage of total revenue, and the amount of changes and percentage of change (dollars in thousands):

	Year Ended December 31,				Amount Change	Percentage Change
	2020		2019			
Sales and marketing	$ 4,694	41.5 %	$ 4,847	32.1 %	$ (153)	(3.2)%
General and administrative	10,527	93.2 %	17,224	114.1 %	(6,697)	(38.9)%
Research and development	3,498	31.0 %	3,121	20.7 %	377	12.1 %
Impairment of intangible assets	—	— %	6,588	43.7 %	(6,588)	(100.0)%
Loss on litigation settlement	—	— %	1,500	9.9 %	(1,500)	(100.0)%
Loss on disposal of assets	—	— %	486	3.2 %	(486)	(100.0)%
Total operating expenses	$ 18,719	165.7 %	$ 33,766	223.8 %	$ (15,047)	(44.6)%

Sales and Marketing Expense. Sales and marketing expenses were $4.7 million for the year ended December 31, 2020, a decrease of $0.1 million, or 3%, from $4.8 million for the year ended December 31, 2019. The primary reason for the decrease is a reduction in travel and entertainment expenses of $0.3 million, as the Company decreased travel in 2020 due to the COVID-19 pandemic, and a reduction in stock-based compensation expense of $0.2 million. These decreases were offset by an increase in consulting fees of $0.2 million, due to the roll out of ReShapeCare during the third quarter of 2020, and an increase in commissions from greater International sales and a larger Domestic sales force.

General and Administrative Expense. General and administrative expenses were $10.5 million for the year ended December 31, 2020, a decrease of $6.7 million, or 39%, from $17.2 million. The decrease is primarily due to decreases in audit, consulting, and other professional service provider expenses of $3.4 million, as a result of the Company changing many of its services providers late in 2019 in an effort across the board to reduce unnecessary and overinflated expenses; legal fees of $2.3 million, primarily a result of settled litigation in 2019; stock-based compensation expense of $0.7 million, from normal employee attrition and lack of stock options being granted since 2018; and bad debt expense of $0.2 million.

Research and Development Expense. Research and development expenses were $3.5 million for the year ended December 31, 2020, an increase of $0.4 million, or 12%, from $3.1 million for the year ended December 31, 2019. The primary reason is due to an increase in payroll related expenses of $0.2 million from greater headcount and consulting fees of $0.2 million, due to escalated efforts with the ReShape Vest and Diabetes Bloc-Stim Neuromodulation. The Company continues to focus on supreme innovation which includes developing the ReShape Vest and the investigational Diabetes Bloc-Stim Neuromodulation, and expanding and improving our current LAP-BAND portfolio.

Impairment of Intangible Assets. During the year ended December 31, 2020, the Company did not have an impairment of intangible assets. The Company incurred an impairment charge of $6.6 million for the year ended December 31, 2019. As a result of an impairment analysis performed during the second quarter of 2019, the Company determined there was an impairment of the indefinite-lived intangible asset recorded in connection with our acquisition of BarioSurg, Inc. (“BarioSurg”). We also assessed the recoverability of finite-lived intangible assets during the second quarter of 2019 and did not identify any impairment as a result of the performance of this analysis.

Legal Settlement. During the quarter ended September 30, 2019, the Company recognized a contingent loss of $1.5 million relating to the patent infringement claim with Fulfillium. Under the Settlement Agreement, Fulfillium agreed to dismiss with prejudice the previously disclosed lawsuits by Fulfillium.

Loss on Disposal of Assets. The Company did not have any losses related to the disposal of long-term assets for the year ended December 31, 2020. During the year ended December 31, 2019, the Company recorded a $0.5 million loss related to the disposal of long-term assets acquired in connection with the LAP-BAND purchase.

Interest Expense, Net. Net interest expense for the year ended December 31, 2020 was $2.0 million compared to $0.5 million for the year ended December 31, 2019. The primary reason for the increase of $1.5 million is due to the amortization of deferred issuance costs and the debt discount recorded as interest expense, related to the credit

agreement with an institutional investor, slightly offset by the interest expense related to the subordinated debentures in 2019.

Loss on Extinguishment of Debt. The Company recognized a loss on extinguishment of debt for the year ended December 31, 2020, of $7.7 million, related to the fair value of the warrants issued in connection with the third and fourth amendments of the credit agreement and discounts related to the amendments.

Warrant Expense. The Company did not have a warrant expense for the year ended December 31, 2020. Warrant expense for the year ended December 31, 2019 includes noncash expense of approximately $49.0 million for the value of the liability warrants issued in connection with our equity financing completed in June 2019 and September 2019 in excess of the proceeds received and changes in fair value of the warrant liability. As a result of the reverse stock split on November 12, 2019, the Company reclassified the warrant liability to equity.

Other, Net. There were no other, net expenses for the year ended December 31, 2020. Other, net expenses for the year ended December 31, 2019 includes $1.3 million of transaction costs required to be expensed as a result of the liability treatment for the warrants issued in connection with our June and September equity financings.

Income Tax Benefit. There was an income tax benefit of $0.2 million for the year ended December 31, 2020, while there was an income tax benefit of $0.9 million for the year ended December 31, 2019 for the reduction in the deferred tax liability associated with an indefinite-lived intangible asset, for which we recorded an impairment charge of $6.6 million during the three months ended June 30, 2019. The income tax benefit is the result of the indefinite lived deferred tax liability that had been netted with certain indefinite lived deferred tax assets. It is also net of an increase to the deferred tax valuation allowance of $3.5 million that was primarily due to an increase in the net operating loss carryforward deferred tax asset.

Liquidity and Capital Resources

We have financed our operations to date principally through the sale of equity securities and debt financing. During the years ended December 31, 2020 and 2019, we received aggregate net proceeds of $10.5 million and $15.0 million, respectively, from debt and equity offerings, and $0.7 million and $0.3 million, respectively, from the exercise of warrants to purchase common stock. As of December 31, 2020, we had $3.0 million of cash and cash equivalents, including $50 thousand of restricted cash.

Subsequent to year end management has successfully obtained a $15.0 million line of credit and has agreed to merge with Obalon as filed on January 19, 2021, which the Company anticipates will result in the combined company’s common stock being traded on the NASDAQ Stock Market Exchange. The Company is also pursuing further funding options, including seeking additional equity or debt financing to support the expansion of the Lap-Band product line, the introduction of ReShapeCare to the market place; and the continued development and, successful commercialization of the ReShape Vest and the ReShape Diabetes Bloc-Stim Neuromodulation.

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

	Year Ended December 31,	
	2020	2019
Net cash used in operating activities	$ (8,550)	$ (14,200)
Net cash used in investing activates	(2,390)	(2,014)
Net cash provided in financing activities	11,075	13,659
Effect of exchange rate changes	(113)	(8)
Net change in cash and cash equivalents	$ 22	$ (2,563)

Net Cash Used in Operating Activities

Net cash used in operating activities was $8.6 million and $14.2 million for the years ended December 31, 2020 and 2019, respectively. Net cash used in operating activities for the year ended December 31, 2020, was primarily the result of our net loss of $21.6 million, partially offset by non-cash adjustments for amortization of intangible assets of $1.7 million, stock-based compensation of $1.3 million, loss on extinguishment of debt of $7.7 million, amortization of debt discount and deferred debt issuance costs of $1.7 million, noncash interest expense of $0.2 million, bad debt expense of $0.3 million, and provision for inventory in excess and obsolescence of $0.2 million. In addition, the Company has focused efforts on collection of accounts receivable, which resulted in an increase to cash of $1.2 million, offset by an increase in change of inventory of $1.2 million, primarily due to expected inventory buildup related to our impending manufacturing transfer and a decrease in accounts payable and accrued liabilities of $1.0 million.

Net cash used in operating activities from continuing operations for the year ended December 31, 2019, was primarily the result of our net loss of $74.2 million, partially offset by non-cash adjustments for amortization of intangible assets of $1.7 million, impairment of intangible assets of $6.6 million, stock-based compensation of $2.3 million, warrant expenses of $49.0 million and warrant issuance costs of $1.4 million. Increases to accounts receivable of $3.6 million, inventory of $0.3 million and prepaid expenses and other of $0.4 million were partially offset by cash savings due to an increase in accounts payable, accrued liabilities and warranty liability of $3.0 million.

Net Cash Used in Investing Activities

Net cash used in investing activities was $2.4 million for the year ended December 31, 2020, as compared with $2.0 million for the year ended December 31, 2019. The investing activities in 2020 reflects the second annual payment of $2.0 million paid in connection with our acquisition of the LAP-BAND product line, as well as $0.4 million of capital expenditures related to the process of moving manufacturing transfer Costa Rica to the United States.

Net cash used in investing activities for the year ended December 31, 2019 reflected the first annual payment of $2.0 million paid in connection with our acquisition of the LAP-BAND product line.

Net Cash Provided by Financing

Net cash provided by financing of $11.1 million for the year ended December 31, 2020, consisted of proceeds from the credit agreement with an institutional investor of $9.5 million, $1.0 million received under the CARES Act in the form of a PPP Loan and $0.7 million in cash received from the exercise of warrants, offset by approximately $0.1 million of debt issuance costs.

Net cash provided by financing activities of $13.7 million for the year ended December 31, 2019, consisted of proceeds of $13.7 million from equity offerings and $0.1 million from the exercise of warrants to purchase common stock. In connection with these equity transactions, we paid an immaterial amount of related transaction costs. A portion of the net proceeds from the June 2019 equity financing was used to repay the $2.2 million face amount of convertible subordinated debentures that were issued at an original issue discount of 10 percent in March 2019.

Operating Capital and Capital Expenditure Requirements

Our anticipated operations include plans to (i) integrate the sales and operations of the Company with the LAP-BAND product line in order to expand sales domestically and internationally as well as to obtain cost savings synergies, (ii) introduce to the market place ReShapeCare, (iii) continue clinical test of the ReShape Vest, (iv) continue development of the Diabetes Bloc-Stim Neuromodulation, (v) seek opportunities to leverage our intellectual property portfolio and custom development services to provide third-party sales and licensing opportunities, and (vi) explore and capitalize on synergistic opportunities to expand our portfolio and offer future minimally invasive treatments and therapies in the obesity continuum of care. The Company believes that it has the flexibility to manage the growth of its expenditures and operations depending on the amount of available cash flows, which could include reducing expenditures for marketing, 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.

Obtaining funds through the sale of additional equity and debt securities or the warrant holders' exercise of outstanding common stock warrants 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 Part I, Item 1A, Risk Factors. We have based these estimates on assumptions that may prove to be wrong, and we could utilize our available capital resources sooner than we currently expect.

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

- the cost and timing of establishing sales, marketing and distribution capabilities;
- the cost of establishing clinical and commercial supplies of our ReShape Vest and Diabetes Bloc-Stim Neuromodulation, and any products that we may develop;
- the rate of market acceptance of our ReShape Vest and Diabetes Bloc-Stim Neuromodulation, and any other product candidates;
- the cost of filing and prosecuting patent applications and defending and enforcing our patent and other intellectual property rights;
- the cost of defending, in litigation or otherwise, any claims that we infringe third-party patent or other intellectual property rights;
- the effect of competing products and market developments;
- the cost of explanting clinical devices;
- the terms and timing of any collaborative, licensing or other arrangements that we may establish;
- any revenue generated by sales of our LAP-BAND, ReShapeCare, ReShape Vest, Diabetes Bloc-Stim Neuromodulation or our future products;
- the scope, rate of progress, results and cost of our clinical trials and other research and development activities;
- the cost and timing of obtaining any further required regulatory approvals; and
- the extent to which we invest in products and technologies, although we currently have no commitments or agreements relating to any of these types of transactions.

Off-balance-sheet Arrangements

Since our inception, we have not engaged in any off-balance-sheet arrangements, including the use of structured finance, special purpose entities or variable interest entities as defined by rules enacted by the SEC and FASB, and accordingly, no such arrangements are likely to have a current or future effect on our financial position, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources.

Critical Accounting Policies and Significant Judgments and Estimates

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

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

Revenue Recognition

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

For the Company's LAP-BAND product, these criteria are met under the agreements with most customers upon product shipment. This includes sales to distributors, who sell the products to their customers, take title to the products and assume all risks of ownership at the time of shipment. Distributors are obligated to pay within specified terms regardless of when, if ever, they sell the products. Refer to Note 12 for additional information about the Company's products and contractual arrangements.

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.

Intangible Assets and Long-Lived Assets

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

IPR&D acquired in business combinations is reviewed for impairment annually, or whenever an event occurs or circumstances change that would indicate the carrying amount may be impaired. Additionally, management reviews the carrying amounts of other intangible and long-lived assets whenever events or circumstances indicate that the carrying amounts of an asset may not be recoverable. The impairment reviews require significant estimates about fair value,

including estimation of future cash flows, selection of an appropriate discount rate, and estimates of long-term growth rates.

Research and Development Expenses

We record the estimated costs of research and development activities performed by third-party service providers based upon the estimated services provided but not yet invoiced and include these costs in accrued expenses and other payables in the Consolidated Balance Sheets and within research and development expense in the consolidated statements of operations. We accrue for these costs based on factors such as estimates of the work completed and in accordance with agreements established with its third-party service providers. As actual costs become known, the Company adjusts its accrued liabilities.

The Company's CRO arrangement generally requires payments in advance of services. Upon making a payment, the Company makes a determination as to the amount to record as a deferred charge and the amount of research and development expense. The amount of CRO related costs included in research and development expense each period is based upon the Company's estimate of the time period over which services will be performed, enrollment of patients, number of sites activated and level of effort to be expended. Any amount of advances paid in excess of expense recognized is included in prepaid expenses and other current assets on the Consolidated Balance Sheets. If the actual timing of the CRO's performance of services or the level of effort varies from the Company's estimate, the amount of prepaid CRO expense is adjusted accordingly.

We make significant judgments and estimates in determining the accrued balance and any deferred charges in each reporting period. Our understanding of factors such as the status and timing of services performed, the number of patients enrolled and the rate of patient enrollment may vary from our estimates and could result in us reporting amounts that are too high or too low in any particular period.

Income Taxes

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

Recent Accounting Pronouncements

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

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

Index to Financial Statements

Report of Independent Registered Public Accounting Firm

Shareholders and Board of Directors
ReShape Lifesciences, Inc.
San Clemente, California

Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheets of ReShape Lifesciences, Inc. (the "Company") as of December 31, 2020 and 2019, the related consolidated statements of operations, comprehensive loss, stockholders' equity, and cash flows for the years then ended, and the related notes (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2020 and 2019, and the results of its operations and its cash flows for the years then ended**,** in conformity with accounting principles generally accepted in the United States of America.

Basis for Opinion

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

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

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

Critical Audit Matters

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

Classification of Series G Warrants

As described in Note 8 and 11 to the Company's consolidated financial statement, between March and December 2020, the Company issued 6,400,000 Series G warrants. The warrants were issued to the Lender in conjunction with amendments made to the credit agreement and are classified within stockholders' equity.

We identified the assessment of the classification of the warrants as equity or liability as a critical audit matter due to the complexity in assessing warrant features, and the impact of those features on the accounting of the Series G warrants as equity or liability. Auditing the classification of these warrants required challenging and complex auditor judgment to

analyze the warrant features and increased audit effort involving the use of professionals with specialized skill and knowledge to assist in evaluating warrant features.

The primary procedures we performed to address this critical audit matter included:

- Utilizing personnel with specialized skill and knowledge to assist in assessing management's analysis over the classification of the warrants issued by i) evaluating the underlying terms of the agreements that affect the recognition in the consolidated financial statements and ii) assessing the appropriateness of conclusions reached by management.

/s/ BDO USA, LLP

We have served as the Company's auditor since 2019

Costa Mesa, California
March 10, 2021

RESHAPE LIFESCIENCES INC.

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

	December 31, 2020	December 31, 2019
ASSETS		
Current assets:		
Cash and cash equivalents	$ 2,957	$ 2,935
Restricted cash	50	50
Accounts and other receivables (net of allowance for doubtful accounts of $968 and $709 respectively)	2,620	4,096
Inventory	2,244	1,317
Prepaid expenses and other current assets	1,073	1,711
Total current assets	8,944	10,109
Property and equipment, net	584	16
Operating lease right-of-use assets	465	758
Other intangible assets, net	27,022	28,674
Other assets	46	99
Total assets	$ 37,061	$ 39,656
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 3,655	$ 4,263
Accrued and other liabilities	3,630	3,821
Warranty liability, current	397	105
Debt, current portion, net of deferred financing costs	3,609	1,909
Operating lease liabilities, current	314	291
Total current liabilities	11,605	10,389
Debt, noncurrent portion	9,168	2,728
Operating lease liabilities, noncurrent	163	477
Warranty liability, noncurrent	1,022	1,253
Deferred income taxes	615	702
Total liabilities	22,573	15,549
Commitments, contingencies and subsequent events		
Stockholders' equity:		
Preferred stock, 5,000,000 shares authorized:		
Series B convertible preferred stock, $0.001 par value; 3 issued and outstanding at December 31, 2020 and December 31, 2019, respectively	—	—
Series C convertible preferred stock, $0.001 par value; 95,388 shares issued and outstanding at December 31, 2020 and December 31, 2019	1	1
Common stock, $0.001 par value; 275,000,000 shares authorized at December 31, 2020 and December 31, 2019; 6,166,554 and 391,739 shares issued and outstanding at December 31, 2020 and December 31, 2019, respectively	6	—
Additional paid-in capital	529,429	517,311
Accumulated deficit	(514,827)	(493,197)
Accumulated other comprehensive loss	(121)	(8)
Total stockholders' equity	14,488	24,107
Total liabilities and stockholders' equity	$ 37,061	$ 39,656

See accompanying notes to consolidated financial statements.

RESHAPE LIFESCIENCES INC.

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

	Year Ended December 31,	
	2020	2019
Revenue	$ 11,299	$ 15,089
Cost of revenue	5,037	5,784
Gross profit	6,262	9,305
Operating expenses:		
Sales and marketing	4,694	4,847
General and administrative	10,527	17,224
Research and development	3,498	3,121
Impairment of intangible assets	—	6,588
Loss on litigation settlement	—	1,500
Loss on disposal of assets	—	486
Total operating expenses	18,719	33,766
Operating loss	(12,457)	(24,461)
Other expense (income), net:		
Interest expense, net	2,049	451
Loss on extinguishment of debt	7,715	71
Warrant expense	—	49,027
Gain on foreign currency exchange	(410)	(247)
Other, net	—	1,337
Loss before income tax provision	(21,811)	(75,100)
Income tax benefit	(181)	(893)
Net loss attributable to common shareholders	$ (21,630)	$ (74,207)
Net loss per share - basic and diluted:		
Net loss per share - basic and diluted	$ (3.12)	$ (42.93)
Shares used to compute basic and diluted net loss per share	6,927,021	1,728,722

See accompanying notes to consolidated financial statements.

RESHAPE LIFESCIENCES INC.

Consolidated Statements of Comprehensive Loss
(in thousands)

	Year Ended December 31,	
	2020	2019
Net loss	$ (21,630)	$ (74,207)
Foreign currency translation adjustments	(113)	(8)
Other comprehensive loss, net of tax	(113)	(8)
Comprehensive loss	$ (21,743)	$ (74,215)

See accompanying notes to consolidated financial statements.

RESHAPE LIFESCIENCES INC.

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

	Series B Convertible Preferred Stock		Series C Convertible Preferred Stock		Series E Convertible Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive Income (Loss)	Total Stockholders' Equity
	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount				
Balance December 31, 2018	159	$ —	95,388	$ 1	—	$ —	73,092	$ —	$ 450,652	$ (418,990)	$ —	$ 31,663
Net loss	—	—	—	—	—	—	—	—	—	(74,207)	—	(74,207)
Other comprehensive income (loss), net of tax	—	—	—	—	—	—	—	—	—	—	(8)	(8)
Stock-based compensation expense, net	—	—	—	—	—	—	—	—	2,311	—	—	2,311
Warrant expense	—	—	—	—	—	—	—	—	— 130	—	—	130
Sales of common stock and warrants, net of issuance and other costs	—	—	—	—	—	—	199,167	—	434	—	—	434
Warrant adjustment	—	—	—	—	—	—	—	—	(312)	—	—	(312)
Conversion of common stock into convertible preferred stock	—	—	—	—	1,192,000	12	(9,933)	—	(12)	—	—	—
Conversion of convertible preferred stock into common stock	(156)	—	—	—	(1,192,000)	(12)	10,973	—	12	—	—	—
Warrant liability reclassified to equity	—	—	—	—	—	—	—	—	63,954	—	—	63,954
Issuance of common stock upon exercise of warrants, net of transaction costs	—	—	—	—	—	—	118,440	—	142	—	—	142
Balance December 31, 2019	3	$ —	95,388	$ 1	—	$ —	391,739	$ —	$ 517,311	$ (493,197)	$ (8)	$ 24,107
Net loss	—	—	—	—	—	—	—	—	—	(21,630)	—	(21,630)
Other comprehensive income (loss), net of tax	—	—	—	—	—	—	—	—	—	—	(113)	(113)
Stock-based compensation expense, net	—	—	—	—	—	—	—	—	1,323	—	—	1,323
Issuance of warrants	—	—	—	—	—	—	—	—	— 9,917	—	—	9,917
Institutional exercise of warrants	—	—	—	—	—	—	5,665,834	6	673	—	—	679
Cashless exercise of warrants	—	—	—	—	—	—	58,981	—	—	—	—	—
Common stock issued for professional services	—	—	—	—	—	—	50,000	—	205	—	—	205
Balance December 31, 2020	3	$ —	95,388	$ 1	—	$ —	6,166,554	$ 6	$ 529,429	$ (514,827)	$ (121)	$ 14,488

See accompanying notes to consolidated financial statements.

RESHAPE LIFESCIENCES INC.

Consolidated Statements of Cash Flows
(in thousands)

	Year Ended December 31, 2020	2019
Cash flows from operating activities:		
Net loss	$ (21,630)	$ (74,207)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation expense	15	40
Amortization of intangible assets	1,652	1,666
Impairment of intangible assets	—	6,588
Noncash interest expense	230	451
Loss on extinguishment of debt	7,715	71
Stock-based compensation	1,323	2,311
Bad debt expense	259	439
Provision for inventory excess and obsolescence	248	—
Warrant expense	—	49,027
Amortization of debt discount and deferred debt issuance costs	1,697	—
Deferred income tax benefit	(86)	(1,143)
Loss on disposal of asset	—	486
Common stock warrant liability issuance costs	—	1,442
Other noncash items	21	57
Change in operating assets and liabilities:		
Accounts and other receivables	1,217	(3,619)
Inventory	(1,175)	(332)
Prepaid expenses and other current assets	843	(442)
Accounts payable and accrued liabilities	(992)	1,629
Warranty liability	61	1,358
Other	52	(22)
Net cash used in operating activities	(8,550)	(14,200)
Cash flows from investing activities:		
Capital expenditures	(390)	(14)
Acquisition of LAP-BAND product line assets	(2,000)	(2,000)
Cash used in investing activities:	(2,390)	(2,014)
Cash flows from financing activities:		
Proceeds from issuance of subordinated convertible debentures	—	2,000
Payments of financing costs	(59)	(21)
Repayment of subordinated convertible debentures	—	(2,200)
Proceeds from sale and issuance of equity securities	—	478
Proceeds from issuance of common stock warrant liabilities, net of issuance costs of $1,442	—	13,304
Payments of equity issuance costs	—	(44)
Proceeds from institutional exercise of warrants	679	142
Proceeds from credit agreement	9,500	—
Proceeds from PPP loan	955	—
Net cash provided by financing activities	11,075	13,659
Effect of currency exchange rate changes on cash and cash equivalents	(113)	(8)
Net increase (decrease) in cash, cash equivalents and restricted cash	22	(2,563)
Cash, cash equivalents and restricted cash at beginning of period	2,985	5,548
Cash, cash equivalents and restricted cash at end of period	$ 3,007	$ 2,985
Supplemental disclosure:		
Cash paid for income taxes	$ 40	$ —
Noncash investing and financing activities:		
Relative fair value of warrants classified as debt issuance costs	$ 1,393	$ —
Fair value of warrants included as a component of loss on extinguishment of debt	8,523	—
Capital expenditures accruals	193	—
Common stock warrant liabilities reclassified to equity	—	63,954
Conversion of common stock to convertible preferred stock	—	(1)

See accompanying notes to consolidated financial statements.

ReShape Lifesciences Inc.

Notes to Consolidated Financial Statements

(1) Description of the Business and Risks and Uncertainties

Description of Business

ReShape Lifesciences Inc. (the "Company") was originally incorporated in the state of Minnesota in December 2002 and reincorporated in the state of Delaware in July 2004. In 2017, the Company changed its name from EnteroMedics Inc. to ReShape Lifesciences Inc. The Company is headquartered in San Clemente, California. The Company is a developer of minimally invasive medical devices that advance bariatric surgery to treat obesity and metabolic diseases. The Company's current portfolio consist of the LAP-BAND® Adjustable Gastric Banding System, ReShapeCare™ virtual health coaching program, the ReShape Vest™, an investigational device to help treat more patients with obesity and the Diabetes Bloc-Stim Neuromodulation, a technology under development as a new treatment for type 2 diabetes mellitus. The Company sells the LAP-BAND worldwide and is managed in the following geographical regions: United States, Australia, Europe and the rest of world. Refer to Note 12 for additional information about operating segments.

Risks and Uncertainties

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

The medical device industry is characterized by frequent and extensive litigation and administrative proceedings over patent and other intellectual property rights. Whether a product infringes a patent involves complex legal and factual issues, the determination of which is often difficult to predict, and the outcome may be uncertain until the court has entered final judgment and all appeals are exhausted. The Company's competitors may assert that its products or the use of the Company's products are covered by U.S. or foreign patents held by them. Refer to Note 15 for additional information about contingencies and litigation matters.

On April 16, 2020, the Company implemented various short-term cost reductions and cash flow improvement actions, such as reducing the compensation for executives, management and key employees and decreasing operating expenses where possible. In addition, the Company also identified temporary headcount reductions and made the decision to furlough a portion of its workforce. During the second quarter of 2020, certain government-mandated closures began to ease and many areas throughout the world and within the United States began to allow elective surgeries. As a result of the easing, the Company did see sales volumes improve as we progressed through the third quarter. During the fourth quarter of 2020, there was another surge in COVID-19 cases resulting in a slowdown, or in some cases a shutdown of elective surgeries. Even after the COVID-19 outbreak has subsided, we may continue to experience materially adverse impact on our financial condition and results of operations. Additionally, on June 15, 2020, the Company ended the temporary pay reductions and the furloughed employees returned to work.

(2) Summary of Significant Accounting Policies

Basis of Presentation

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

Reverse Stock Splits

On November 11, 2019, the Company's board of directors and stockholders approved a 1-for-120 reverse stock split of the Company's outstanding common stock that became effective after the close of market on November 11, 2019. In addition, the Company's certificate of incorporation was amended to change the common stock par value from $0.01 per share to $0.001 per share. The reverse stock split in 2019 did not change the number of common or preferred shares authorized by the Company's certificate of incorporation. All par value, share and per share amounts have been retroactively adjusted to reflect the reverse stock split for all periods presented.

Principles of Consolidation

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

Use of Estimates

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

Cash and Cash Equivalents

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

Restricted Cash

Restricted cash represents $50 thousand related to a collateral money market account maintained by the Company as collateral in connection with corporate credit cards with Silicon Valley Bank at December 31, 2020 and 2019.

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

	December 31, 2020	December 31, 2019
Cash and cash equivalents	$ 2,957	$ 2,935
Restricted cash	50	50
Total cash, cash equivalents, and restricted cash in the consolidated statement of cash flows	$ 3,007	$ 2,985

Inventory

The Company accounts for inventory at the lower of cost or net realizable value, where net realizable value is based on market prices less costs to sell. The Company establishes inventory reserves for obsolescence based upon specific identification of expired or unusable units with a corresponding provision included in cost of revenue. The allowance for excess and slow-moving inventory was $0.1 million and $0.2 million at December 31, 2020 and 2019, respectively.

Property and Equipment, Net

Property and equipment are stated at cost less accumulated depreciation and amortization. Depreciation of property and equipment is computed using the straight-line method over their estimated useful lives of five to seven years for furniture and equipment and three to five years for computer hardware and software. Leasehold improvements are amortized on a straight-line basis over the lesser of their useful life or the term of the lease. Upon retirement or sale,

the cost and related accumulated depreciation or amortization are removed from the Consolidated Balance Sheets and the resulting gain or loss is reflected in the Consolidated Statements of Operations. Repairs and maintenance are expensed as incurred.

Other Intangible Assets

Intangible assets are recorded based on their fair values at the date of acquisition. Indefinite-lived intangible assets consist of in-process research and development ("IPR&D") for the ReShape Vest recorded in connection with the Company's acquisition of BarioSurg, Inc. ("BarioSurg") in May 2017. Finite-lived intangible assets primarily consist of developed technology and trademarks/tradenames and are being amortized on a straight-line basis over their estimated useful lives. See Note 6 for additional information.

Impairment of Indefinite-Lived and Long-Lived Assets

Acquired IPR&D is subject to impairment testing until completion or abandonment of the project. Indefinite-lived intangible assets are reviewed for impairment annually, or whenever an event occurs or circumstances change that would indicate that the carrying amount may be impaired. An impairment loss is recognized when the asset's carrying value exceeds its fair value. See Note 7 for additional information.

The Company evaluates long-lived assets under the provisions of ASC 350 "Intangibles–Goodwill and Other" and ASC 360 "Property, Plant, and Equipment" which addresses financial accounting and reporting for the impairment of long-lived assets and for long-lived assets to be disposed of. For purposes of assessing the recoverability of long-lived assets, the Company has one asset group which includes all assets of the Company. For assets to be held and used, the Company compares 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 assets over the assets' fair value or estimates of future discounted cash flows.

Income Taxes

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

Equity

Certain issuances of the Company's convertible preferred stock and warrants classified within equity contain non-standard down round features that result in the strike price being reduced on the basis of the pricing of future equity offerings. The value of the effect of the down round feature when it is triggered is recorded similar to a dividend and as a numerator adjustment in the basic earnings per share calculation.

Foreign Currency

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

Revenue Recognition

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

For the Company's LAP-BAND product, these criteria are met under the agreements with most customers upon product shipment. This includes sales to distributors, who sell the products to their customers, take title to the products and assume all risks of ownership at the time of shipment. Distributors are obligated to pay within specified terms regardless of when, if ever, they sell the products. Refer to Note 12 for additional information about the Company's products and contractual arrangements.

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 consist of costs incurred to further the Company's research and development activities, including product development, clinical trial expenses, quality assurance, regulatory expenses, payroll and other personnel expenses, materials and consulting costs. Certain of these activities, such as pre-clinical studies and clinical trials, may be conducted by third-party service providers at the direction of the Company. In addition, during 2018, the Company entered into an arrangement with a Contract Research Organization ("CRO") under which the CRO performs and manages research and development activities on the Company's behalf.

The Company records the estimated costs of research and development activities performed by third-party service providers based upon the estimated services provided but not yet invoiced and includes these costs in accrued expenses and other payables in the Consolidated Balance Sheets and within research and development expense in the Consolidated Statements of Operations. The Company accrues for these costs based on factors such as estimates of the work completed and in accordance with agreements established with its third-party service providers. As actual costs become known, the Company adjusts its accrued liabilities.

The Company's CRO arrangement generally requires payments in advance of services. Upon making a payment, the Company makes a determination as to the amount to record as a deferred charge and the amount of research and development expense. The amount of CRO related costs included in research and development expense each period is expensed based on the Company's estimate of the time period over which services will be performed, enrollment of patients, number of sites activated and level of effort to be expended. Any amount of advances paid in excess of expense recognized is included in prepaid expenses and other current assets on the Consolidated Balance Sheets. If the actual timing of the CRO's performance of services or the level of effort varies from the Company's estimate, the amount of prepaid CRO expense is adjusted accordingly.

Stock-Based Compensation

The Company applies ASC 718 Compensation — Stock Compensation and accordingly records compensation expense for stock options over the vesting or service period using the fair value on the date of grant, as calculated by the Company using the Black-Scholes model. The Company's stock-based compensation plans are more fully described in Note 13.

Net Loss Per Share

Basic net loss per share is computed by dividing net loss by the weighted-average number of common shares outstanding during the period, including the prefunded warrants that were reclassified from warrant liability to equity as

a result of the reverse stock split. Diluted net loss per share is based on the weighted-average common shares outstanding during the period plus dilutive potential common shares calculated using the treasury stock method. Such potentially dilutive shares are excluded when the effect would be to reduce a net loss per share. For purposes of basic and diluted per share computations, loss from continuing operations and net loss are reduced by the down round adjustments for convertible preferred stock and warrants.

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

	December 31,	
	2020	2019
Stock options	40	155
Convertible preferred stock	1,288	1,288
Warrants	13,483,446	13,647,740

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

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

Substantially all of the Company's revenue is denominated in U.S. dollars. Only a small portion of revenue and expenses are denominated in foreign currencies, principally the Australian dollar and Euro for 2020 and 2019. The Company has not entered into any hedging contracts. Future fluctuations in the value of the U.S. dollar may affect the price competitiveness of the Company's products outside the U.S.

Fair Value of Financial Instruments

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

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

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

Level 2 inputs are observable, either directly or indirectly.

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

The carrying amounts of the Company's financial instruments, including cash equivalents, accounts receivable, accounts payable and certain accrued and other liabilities approximate fair value due to their short-term maturities. Refer to Note 8 regarding the fair value of debt instruments and Note 12 regarding fair value measurements and inputs of warrants.

Recent Accounting Pronouncements

New accounting standards adopted by the Company in 2020 are discussed below or in the related notes, where appropriate.

In August 2018, the FASB issued ASU No. 2018-13, *Fair Value Measurement (Topic 820) – Disclosure Framework – Changes to the Disclosure Requirements for Fair Value Measurement*, which modifies the disclosure requirements on fair value measurements and is intended to improve the effectiveness of disclosures, including the consideration of costs and benefits. The guidance is effective on January 1, 2020. The adoption of this guidance did not have a material impact on the Company's consolidated financial statements.

In August 2018, the FASB issued ASU 2018-15 Intangibles-Goodwill and Other-Internal-Use Software (Subtopic 350-40), Customer's Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That Is a Service Contract. The amendments in this update align the requirements for capitalizing implementation costs incurred in a hosting arrangement that is a service contract with the requirements for capitalizing implementation costs incurred to develop or obtain internal-use software (and hosting arrangements that include an internal-use software license). The ASU is effective for the Company on January 1, 2020. The adoption of this guidance did not have a material impact on its consolidated financial statements.

New accounting standards not yet adopted are discussed below.

In December 2019, the FASB issued authoritative guidance intended to simplify the accounting for income taxes: ASU 2019-12, Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes. This guidance eliminates certain exceptions to the general approach to the income tax accounting model and adds new guidance to reduce the complexity in accounting for income taxes. This guidance is effective for annual periods after December 15, 2020, including interim periods within those annual periods. The Company is currently evaluating the potential impact of this guidance on its consolidated financial statements.

In June 2016, the FASB issued ASU 2016-13, Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments, which is intended to provide financial statement users with more useful information about expected credit losses on financial assets held by a reporting entity at each reporting date. In May 2019, the FASB issued ASU No. 2019-05, which amended the new standard by providing targeted transition relief. The new guidance replaces the existing incurred loss impairment methodology with a methodology that requires consideration of a broader range of reasonable and supportable forward-looking information to estimate all expected credit losses. In November 2019, the FASB issued 2019-11, which amended the new standard by providing additional clarification. This guidance is effective for the fiscal years and interim periods within those years beginning after December 15, 2022. The Company is currently evaluating the impact the guidance will have on its consolidated financial statements.

Various other accounting standards and interpretations have been issued with 2021 effective dates and effective dates subsequent to December 31, 2020. The Company has evaluated the recently issued accounting pronouncements that are currently effective or will be effective in 2021 and believe that none of them have had or will have a material effect on the Company's financial position, results of operations or cash flows.

(3) Liquidity and Management's Plans

The accompanying 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.

As of December 31, 2020, the Company had net negative working capital of $2.7 million. The Company's principal source of liquidity as of December 31, 2020 consisted of approximately $3.0 million of cash and cash equivalents, and $2.6 million of accounts receivable.

Our anticipated operations include plans to (i) integrate the sales and operations of the LAP-BAND product line in order to expand sales domestically and internationally as well as to obtain cost savings synergies, (ii) introduce to the market place ReShapeCare, (iii) continue clinical test of the ReShape Vest, (iv) continue development of the Diabetes Bloc-Stim Neuromodulation, (v) seek opportunities to leverage our intellectual property portfolio and custom development services to provide third-party sales and licensing opportunities, and (vi) explore and capitalize on synergistic opportunities to expand our portfolio and offer future minimally invasive treatments and therapies in the

obesity continuum of care. The Company believes that it has the flexibility to manage the growth of its expenditures and operations depending on the amount of available cash flows, which could include reducing expenditures for marketing, 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

Subsequent to year end management has successfully obtained a $15.0 million line of credit and has agreed to merge with Obalon, see Note 16 for further details, which the Company anticipates will result in the combined company's common stock being traded on the NASDAQ Stock Market Exchange. The Company is also pursuing further funding options, including seeking additional equity or debt financing to support the expansion of the Lap-Band product line, the introduction of ReShapeCare to the market place; and the continued development and, successful commercialization of the ReShape Vest and the ReShape Diabetes Bloc-Stim Neuromodulation.

COVID-19 Risk and Uncertainties and CARES Act

Additionally, on January 30, 2020, the World Health Organization ("WHO") announced a global health emergency because of a new strain of coronavirus originating in Wuhan, China (the "COVID-19 outbreak") and the risks to the international community as the virus spreads globally beyond its point of origin. In March 2020, the WHO classified the COVID-19 outbreak as a pandemic, based on the rapid increase in exposure globally and on March 13, 2020, the United States declared a national emergency with respect to the coronavirus outbreak. This outbreak has severely impacted global economic activity, and many countries and many states in the United States have reacted to the outbreak by instituting quarantines, mandating business and school closures and restricting travel. These mandated business closures have at times included the cessation of non-elective surgeries in Australia, Europe and the United States for all but emergency procedures. As a result of these mandates, on April 16, 2020, the Company implemented various short-term cost reductions and cash flow improvement actions, such as reducing the compensation for executives, management and key employees and decreasing operating expenses where possible. In addition, the Company also identified temporary headcount reductions and made the decision to furlough a portion of its workforce. During the second quarter of 2020, the mandated closures began to ease in many areas throughout the world and within the United States. As a result of this, elective surgeries started back up again through various parts of the world, which led to improved sales progressing through the third quarter. Even after the COVID-19 outbreak has subsided, the Company may continue to experience materially adverse impact on its financial condition and results of operation. Additionally, on June 15, 2020, the Company ended the temporary pay reductions and the furloughed employees returned to work. The full impact of the COVID-19 outbreak continues to evolve and it is uncertain as to the full magnitude that the pandemic will have on the Company's financial condition, liquidity, and future results of operations. Management is actively monitoring the impact of the global situation on the Company's financial condition, liquidity, operations, suppliers, industry, and workforce and has taken actions to mitigate the impact including among other things, temporary reductions in pay, and furloughs of certain positions along with deferrals in payment for cash preservation. Given the daily evolution of the COVID-19 outbreak and the global responses to curb its spread, the Company is not able to estimate the effects of the COVID-19 outbreak on its results of operations, financial condition, or liquidity for fiscal year 2021.

On March 27, 2020, President Trump signed into law the "Coronavirus Aid, Relief, and Economic Security (CARES) Act." The CARES Act, among other things, includes provisions relating to refundable payroll tax credits, deferment of employer side social security payments, net operating loss carryback periods, alternative minimum tax credit refunds, modifications to the net interest deduction limitations, increased limitations on qualified charitable contributions, and technical corrections to tax depreciation methods for qualified improvement property. The CARES Act established the Paycheck Protection Program ("PPP") under which the Company received a PPP loan described in more detail in Note 8 below. On February 3, 2021, the Company submitted the application for PPP loan forgiveness according to the terms and conditions of the SBA's Loan Forgiveness Application (Revised June 24, 2002). On March 1, 2021, the Company received confirmation from the SBA, the PPP Loan has been forgiven in full including all interest incurred.

(4) Supplemental Balance Sheet Information

Inventory

	December 31, 2020	December 31, 2019
Raw materials	$ 174	$ —
Sub-assemblies	733	—
Finished goods	1,337	1,317
Total inventory	$ 2,244	$ 1,317

Prepaid expenses and other current assets:

	December 31, 2020	December 31, 2019
Prepaid insurance	$ 619	$ 190
Prepaid contract research organization expenses	295	1,356
Other	159	165
Total prepaid expenses and other current assets	$ 1,073	$ 1,711

Accrued and other liabilities:

	December 31, 2020	December 31, 2019
Payroll and benefits	$ 1,735	$ 1,021
Accrued professional services	446	1,432
Customer deposits	398	202
Accrued insurance premium	272	87
Taxes	265	373
Equity transaction related liability	—	211
Other	514	495
Total accrued and other liabilities	$ 3,630	$ 3,821

In addition, to the accrued taxes included in the table above, the Company has $61 thousand of taxes payable to the Australian Taxation Office included within accounts payable in the consolidated balance sheet at December 31, 2020. There was no taxes payable included in accounts payable at December 31, 2019.

(5) Property and Equipment

Property and equipment consist of the following:

	December 31, 2020	December 31, 2019
Machinery and equipment	$ 179	$ —
Furniture and equipment	83	83
Computer hardware and software	78	78
Leasehold improvements	19	19
Construction in progress	404	—
	763	180
Less accumulated depreciation and amortization	(179)	(164)
Property and equipment, net	$ 584	$ 16

Depreciation expense for the years ended December 31, 2020 and 2019 were approximately $15 thousand and $40 thousand, respectively.

(6) Other Intangible Assets

Other intangible assets consist of the following:

	December 31, 2020			
	Weighted Average Useful Life (years)	Gross Carrying Amount	Accumulated Amortization	Net Book Value
Finite-lived intangible assets:				
Developed technology	10.0	$ 14,362	$ (2,933)	$ 11,429
Trademarks/Tradenames	10.0	2,045	(585)	1,460
Covenant not to compete	3.0	76	(76)	0
		16,483	(3,594)	12,889
Indefinite-lived intangible assets:				
In-process research and development	indefinite	14,133	—	14,133
Total		$ 30,616	$ (3,594)	$ 27,022

	December 31, 2019			
	Weighted Average Useful Life (years)	Gross Carrying Amount	Accumulated Amortization	Net Book Value
Finite-lived intangible assets:				
Developed technology	10.0	$ 14,362	$ (1,496)	$ 12,866
Trademarks/Tradenames	10.0	2,045	(381)	1,664
Covenant not to compete	3.0	76	(65)	11
		16,483	(1,942)	14,541
Indefinite-lived intangible assets:				
In-process research and development	indefinite	14,133	—	14,133
Total		$ 30,616	$ (1,942)	$ 28,674

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

	December 31,	
	2020	2019
Gross amount	$ 20,721	$ 20,721
Accumulated impairment loss	(6,588)	(6,588)
Indefinite-lived intangible assets, net	$ 14,133	$ 14,133

Amortization expense for both the years ended December 31, 2020 and 2019 were approximately $1.7 million.

Estimated amortization expense for each of the years ending December 31 is as follows:

Year ending December 31,	
2021	$ 1,641
2022	1,641
2023	1,641
2024	1,641
2025	1,641
Thereafter	4,684
	$ 12,889

(7) Impairment of Intangible Assets

During the second quarter of 2020, the Company determined a triggering event occurred due to the COVID-19 pandemic, and as such, the Company performed a quantitative analysis and determined the fair value of the IPR&D exceeded the carrying value and concluded there was no impairment of intangible assets. The Company has continued to monitor the delays and determined there is no impairment needed for the year ended December 31, 2020.

Second Quarter 2019

The Company has completed the feasibility study for the ReShape Vest and began clinical trials in Europe in 2018. During the second quarter of 2019, the Company performed a qualitative impairment analysis of the IPR&D. Due to delays in the clinical trials experienced during the first six months of 2019, the Company revised its expectations of when revenues would commence for the ReShape Vest, thus reducing the projected near-term future net cash flows related to the ReShape Vest. As a result, the Company performed a quantitative impairment analysis of the IPR&D and recorded a one-time nonrecurring impairment charge of $6.6 million, for the excess of the carrying value over the estimated fair value. The fair value of the IPR&D was estimated using an income approach using Level 3 assumptions which included discounting the revised projected future net cash flows to their present value, with a discount rate of 22.4%.

The Company also assessed the recoverability of finite-lived intangible assets and did not identify any impairment as a result the performance of this analysis.

(8) Debt

	December 31, 2020	December 31, 2019
Asset purchase consideration	$ 2,867	$ 4,637
Credit agreement	9,500	—
PPP Loan	955	—
Total debt	13,322	4,637
Less: unamortized debt discount	545	—
Less: current portion of debt	3,609	1,909
Debt, noncurrent portion	$ 9,168	$ 2,728

CARES Act

On April 24, 2020, the Company entered into a PPP Loan agreement with Silicon Valley Bank (“SVB”) under the PPP, which is part of the CARES Act administered by the United States Small Business Administration (“SBA”). As part of the application for these funds, the Company in good faith, has certified that the current economic uncertainty made the loan request necessary to support the ongoing operations of the Company. This certification further requires the Company to take into account our current business activity and our ability to access other sources of liquidity sufficient to support ongoing operations in a manner that is not significantly detrimental to the business. Under this program, the Company received proceeds of $1.0 million from the PPP Loan. In accordance with the requirements of the PPP, the Company intends to use proceeds from the PPP Loan primarily for payroll costs, rent and utilities. The PPP Loan has a 1.00% interest rate per annum, matures on April 24, 2022 and is subject to the terms and conditions applicable to loans administered by the SBA under the PPP. Under the terms of PPP, all or certain amounts of the PPP Loan may be forgiven if they are used for qualifying expenses as described in the CARES Act.

On February 23, 2021, the Company submitted the application for PPP loan forgiveness, in accordance with the terms and conditions of the SBA’s Loan Forgiveness Application (revised June 24, 2020). On March 1, 2021, the Company received confirmation from the SBA, the PPP Loan has been forgiven in full including all interest incurred.

Credit Agreement

On March 25, 2020, the Company executed a credit agreement up to $3.5 million, with an institutional investor (the "Lender"), who holds warrants in connection with the June 2019 and September 2019 transactions. On the day of closing, the Company received $2.5 million and the additional $1.0 million may be drawn from time to time 30 days after the closing date but prior to five months after the closing date, in $500 thousand increments per draw. On June 23, 2020, the Company made the first additional draw of $500 thousand and on July 29, 2020 the second $500 thousand draw was made.

On September 14, 2020, the Company and the Lender entered into the second amendment to the credit agreement that increased the amount available under delayed draw term loans by $2.0 million. The Company borrowed $1.0 million of the available amount immediately and the remaining $1.0 million was available in increments of least $500 thousand with at least 30 days between borrowings and issued an additional 1,200,000 Series G Warrants. On November 13, 2020, the Company made the first additional draw of $500 thousand and on December 16, 2020, at the time of the next amendment, the Company made the final draw of $500 thousand available within the terms of this amendment. The Company evaluated the accounting related to the amendment and in conjunction with the warrants issued. Based on this analysis the Company determined the agreements are substantially different and extinguished the original credit agreement and recorded the amended credit agreement as a new debt at a fair value of $3.9 million. As a result, the Company recorded a debt discount of approximately $0.6 million and a $2.4 million loss on extinguishment of debt which is comprised of the fair value of the warrants and unamortized debt issuance cost with the original credit agreement, offset by the debt discount. At September 30, 2020 there was approximately $0.5 million of unamortized debt discount. Pursuant to the amendment of the credit agreement, the maturity date of the loans are March 31, 2021 and the loans bear interest at LIBOR plus 2.5%.

On December 16, 2020, the Company and the Lender entered into the third amendment to the credit agreement that increased the amount available under delayed draw term loans by an additional $4.0 million. The Company borrowed the entire $4.0 million of the available amount immediately and issued an additional 4,000,000 Series G Warrants. The Company evaluated the accounting related to the amendment and in conjunction with the warrants issued. Based on this analysis the Company determined the agreements are substantially different and extinguished the original credit agreement and recorded the amended credit agreement as a new debt at a fair value of $8.9 million. As a result, the Company recorded a debt discount of approximately $0.6 million and a $5.3 million loss on extinguishment of debt which is comprised of the fair value of the warrants and unamortized debt discount cost with the original credit agreement, offset by the debt discount related to the new debt. At December 31, 2020 there was approximately $0.5 million of unamortized debt discount. Pursuant to the amendment of the credit agreement, the maturity date of the loan is March 31, 2021 and the loans bear interest at LIBOR plus 2.5%.

On March 10, 2021, the Company and the Lender entered into the fifth amendment to the credit agreement. As part of this amendment the maturity date was amended from March 31, 2021 to March 31, 2022 or, if earlier, the date that is 15 days after the Company completes a capital raising transaction resulting in gross proceeds of at least $15 million. For further details see Note 16.

Asset Purchase Consideration Payable

The Company granted Apollo a first security interest in substantially all of the Company's assets as security for the payment and performance when due of all of all of its obligations under the Asset Purchase Agreement, including the remaining asset purchase consideration. On October 28, 2019, the Company received the acknowledgement from Apollo of the termination of the security interest granted by the Company. The security interest was automatically terminated as a result of the Company completing a Qualified Financing, as defined in the Security Agreement, in connection with the Company's previously disclosed Securities Purchase Agreement, dated June 13, 2019, and Warrant Exercise Agreement, dated September 23, 2019. The net present value of the secured asset purchase consideration payable was determined using a discount rate of 5.1%. At December 31, 2020 and 2019, the aggregate carrying value of the current and noncurrent asset purchase consideration payable of approximately $2.9 million and $4.6 million respectively, as adjusted for accretion of interest of approximately $0.6 million and $0.3 million, respectively.

Convertible Subordinated Debentures

On March 29, 2019, the Company completed a private placement with certain healthcare focused institutional investors for the sale of secured subordinated original issue discount convertible debentures ("debentures") for a purchase price of $2.0 million. The debentures had a maturity of June 28, 2019 and a face amount of $2.2 million, reflecting a 10% original issue discount. The Company recorded an additional debt discount and a derivative liability for the fair value of the bifurcated embedded conversion features discussed below. The initial carrying amount of the debentures, net of discounts and deferred financing costs, was $1.5 million. The Company repaid the debentures on June 20, 2019 at their face amount of $2.2 million with proceeds from an equity financing which closed on June 18, 2019. In connection with the early repayment of the debentures, the Company recorded a loss on extinguishment of debt of $0.1 million, which consisted of the unamortized debt discount and deferred financing costs.

The debentures contained a conversion feature that provided that, at any time after June 28, 2019, if the debentures had not been repaid, but subject to certain investor ownership limitations, the debentures were convertible into shares of common stock at a conversion price equal to the lesser of $0.33 and 80% of the average of the lowest two volume weighted average prices of the Company's common stock during the 20 trading days prior to conversion. The Company analyzed the conversion features embedded in the debentures and determined that bifurcation and liability classification was required under ASC 815 due to the variable number of shares issuable upon conversion. The fair value of the bifurcated embedded conversion features was determined to be $0.5 million as of the issuance date using a Monte Carlo model and primarily Level 3 inputs. Upon the closing of the Company's equity financing and the Company's planned use of a portion of the proceeds to repay the debentures, the fair value of the embedded derivative liability was reduced to zero as the conversion feature was no longer available. The fair value adjustment to the embedded derivative liability of $0.5 million was recorded as a reduction to Interest Expense.

In connection with the financing, the Company amended the exercise price of warrants to purchase up to 66,667 shares of common stock held by the investors that were issued on November 28, 2018 from $180.00 per share to $1.20 per share. The value attributable to the exercise price reduction of $0.1 million was recorded in Warrant Expense and was estimated using the Black Scholes option pricing model using a risk-free interest rate of 2.2%, an expected term of 4.7 years, expected dividends of zero and expected volatility of 204.4%.

(9) Leases

On the date of adoption of Topic 842, the Company had noncancelable operating leases for office and warehouse space in San Clemente, California and noncancelable operating leases for certain office equipment that expire at various dates through 2022. Financing lease arrangements and the effects of any lease modifications have not been material. Certain of the Company's equipment leases include variable lease payments that are adjusted periodically based on actual usage. Lease and non-lease components are accounted for separately.

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

Operating lease costs for the year ended December 31, 2020 were $0.3 million. Variable lease costs were not material.

Supplemental information related to operating leases is as follows:

Balance Sheet Information at December 31, 2020		
Operating lease ROU assets	$	465
Operating lease liabilities, current portion	$	314
Operating lease liabilities, long-term portion		163
Total operating lease liabilities	$	477
Cash Flow Information for the Year Ended December 31, 2020		
Cash paid for amounts included in the measurement of operating leases liabilities	$	323

Maturities of operating lease liabilities at December 31, 2019 were as follows:

Twelve months ending December 31,		
2021	$	331
2022		166
2023		—
Total lease payments		497
Less: imputed interest		20
Total lease liabilities	$	477
Weighted-average remaining lease term at end of period (in years)		1.7
Weighted-average discount rate at end of period		5.1 %

(10) Equity

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

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

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

The Company had the following equity transactions during the years ended December 31, 2020 and 2019:

December 2020 Exercise of Warrants for Common Stock

On December 3, 2020, the Company issued 290,000 shares of common stock to two healthcare focused institutional investors, totaling 580,000 shares of common stock, as an exercise of pre-funded warrants issued in connection with the June 2019 and September 2019 private placement transactions. The Company received approximately $0.1 million in connection with these exercises.

June 2020 Cashless Exercise of Warrants for Common Stock

On June 23, 2020, the Company issued 58,981 shares of common stock as a cashless exercise of warrants issued to the placement agents in connection with the June 2019 private placement with healthcare focused institutional investors.

May 2020 Common Stock Issued for Professional Services

On May 28, 2020, the Company issued 50,000 shares of common stock, having an aggregate fair value of $0.2 million for ongoing professional services. The $0.2 million was recorded as a prepaid asset and will be amortized of the minimum life of the agreement.

April 2020 Exercise of Warrants for Common Stock

As discussed in Note 8 above, in connection with the credit agreement, the lender exercised its Series C and Series F warrants to purchase an aggregate of 5,085,834 shares of common stock with a current exercise price of $0.12 per warrant on April 15, 2020, in which the Company received net proceeds of $0.6 million.

September 2019 Issuance of Common Stock and Warrants

On September 23, 2019, the Company entered into a warrant exercise agreement with the holders of Series B warrants issued in the June 2019 private placement. The holders agreed to early exercise 3,333,334 Series B warrants in the private placement in exchange for 69,167 shares of common stock and 3,264,167 common stock equivalents in the form of Series F prefunded warrants. The net proceeds from the early exercise of Series B warrants were approximately $6.9 million, after deducting placement agent fees and other transaction costs. As an incentive for the warrant holders to exercise their Series B warrant in full, the warrant holders were issued new five-year series E warrants to purchase up to 3,333,334 unregistered shares of the Company’s common stock, in aggregate, at an exercise price of $6.00 per share, through a private placement. In connection with the registered direct offering, the placement agent received warrants to purchase 233,334 shares of common stock at an exercise price of $6.00 per share.

June 2019 Issuance of Common Stock and Warrants

On June 18, 2019, the Company completed a private placement with certain healthcare focused institutional investors for the sale of 130,000 shares of common stock at a purchase price of $2.40 per share and series C pre-funded warrants to purchase 3,203,334 shares of common stock at a purchase price of $2.28 per share. The exercise price of each pre-funded warrant is $0.12 per share. The Company also issued series A warrants to purchase 3,333,334 shares of common stock at an exercise price of $2.64 per share and series B warrants to purchase 3,333,334 shares of common stock at an exercise price of $2.40 per share. Net proceeds from the private placement were $6.9 million after deducting placement agent fees and other transaction costs. In connection with the registered direct offering, the placement agent received warrants to purchase 233,334 shares of common stock at an exercise price of $3.00 per share.

Conversions of Stock

On February 1, 2019, pursuant to an exchange agreement with Sabby Volatility Warrant Master Fund, Ltd. (“Sabby”) 9,993 shares of the Company’s common stock were exchanged for an aggregate of 1,192,000 shares of series E convertible preferred stock, par value $0.01 per share (“Series E Preferred Stock”) in a noncash transaction. Each share of Series E Preferred Stock was convertible into one share of common stock at Sabby’s election pre-effect of the reverse stock split that occurred during November 2019. In April 2019, all shares of Series E Preferred Stock were

converted into an equal number of shares of common stock. The November 2019 reverse stock split had no effect on this transaction.

During the year ended December 31, 2019, 156 shares of Series B Preferred Stock were converted into 1,040 shares of common stock. At December 31, 2020, the remaining 3 shares of Series B Preferred stock are convertible into 1,250 shares of common stock.

At December 31, 2020, the remaining 95,388 shares of Series C Convertible Preferred Stock, par value $0.001 per share, are convertible into 38 shares of common stock. The Series C Preferred Stock has no voting rights. In the event of any voluntary or involuntary liquidation of the Company, the Series C Preferred Stock holders shall be paid after other series of preferred stock, but take preferential treatment over common shareholders. The series C convertible preferred stock has a liquidation preference of $274.88 per share, or $692,691.05 per underlying share of common stock, or approximately $26.2 million in the aggregate. Holders of the series C convertible preferred stock have the right to convert their shares into shares of common stock instead of receiving the liquidation preference. In general, the series C convertible preferred stock is entitled to receive dividends (on an as-if-converted-to-common stock basis) actually paid on shares of common stock when, as and if such dividends are paid on shares of common stock. No other dividends will be paid on shares of series C convertible preferred stock.

(11) Warrants

The Company's grants of warrants to purchase common stock are primarily in connection with equity financings. See Note 10 for additional information about equity financings and the related issuance of warrants. Warrant activity was as follows:

	Shares	
Balance December 31, 2018	127,540	
Issued	16,934,170	(1)
Exercised	(3,451,642)	(2)
Cancelled	(139)	
Balance December 31, 2019	13,609,929	
Issued	6,400,000	(3)
Exercised	(5,724,815)	(4)
Cancelled	(1)	
Balance December 31, 2020	14,285,113	

(1) Warrants issued in 2019 include 6,467,501 of pre-funded warrants sold in connection with private placements completed on June 18, 2019 and September 23, 2019 ("June 2019 Pre-funded Warrants" and "September 2019 Pre-funded Warrants"). The pre-funded warrants do not expire. In addition, in June 2019 institutional investors purchased 3,333,333 Series A warrants, 3,333,334 Series B warrants, and in September 2019 the institutional investors purchased 3,333,334 Series E warrants. As part of both the June 2019 and September 2019 purchases there were 466,668 of placement agent warrants issued. For further details of the June and September 2019 transactions, see Note 10 equity above.

(2) Warrants exercised in 2019 51,667 of the November 2018 Pre-funded Warrants at their exercise price of $1.20 per share. Warrants exercised in 2019 also include 66,666 of the Series A warrants issued in November 2018 ("November 2018 Series A Warrants") at their exercise price of $1.20 per share, as adjusted. Warrants exercised in 2019 also include 3,333,334 of Series B warrants issued in June 2019.

(3) Warrants issued in 2020 include 6,400,000 of three issuances of Series G warrants.

(4) Warrants exercised in 2020 include 3,089,413 of Series C pre-funded warrants at an exercise price of $0.12 per shares, 2,576,421 Series F pre-funded warrants at an exercise price of $0.12 per share and 58,981 of placement agent warrants.

Warrant Liability

The Company had liability warrants related to the June 2019 and September 2019 transactions, due to the variable price feature that was in effect until the reverse stock split occurred on November 12, 2019. The Company analyzed the variable price features and established a warrant liability of $16.0 million and $24.6 million related to the June 2019 transaction and September 2019 transaction, respectively. As the initial fair value of both offering exceeded the cash received the company recorded $8.3 million and $17.2 million as warrant expense for the June 2019 transaction and September 2019 transaction, respectively. The initial fair value and changes to fair value through September 30, 2019 were determined using a Monte Carlo simulation model. The Company re-evaluated the warrants subsequent to reverse stock split and determined that the price becoming fixed, the warrants should be reclassified from liability to equity. In addition, as the price was fixed the Company determined the Monte Carlo simulation model was no longer the appropriate model; therefore the Company used a Black Scholes calculation to determine the fair value of these warrants at November 12, 2019. This resulted in the Company reclassifying $64.0 million of warrant liability to equity. The Company also recognized an additional $23.4 million of warrant expense for the changes in fair value of the liability warrants through November 12, 2019.

Warrant Assumptions – 2020 Warrants Issued

The following table provides the assumptions used to calculate the fair value of the Series G warrants issued during 2020, using a Black-Scholes model:

	Warrants Outstanding	Strike Price	Volatility	Remaining Life	Risk Free Rate
First Issuance	1,200,000	3.70	97.0 %	5.0	0.56 %
Second Issuance	1,200,000	3.25	101.1 %	5.0	0.27 %
Third Issuance	4,000,000	3.50	100.8 %	5.0	0.37 %

Warrant Assumptions – 2019 Warrants Issued

The following table provides the assumptions used to calculate initial fair value using a Monte Carlo simulation model:

	Strike Price	Volatility	Remaining Life
Series A	$ 2.64	164.1 %	5.22
Series B	$ 2.40	164.1 %	1.22
Series E	$ 6.00	93.2 %	5.11
Series F	$ 0.12	93.2 %	5.11

The following table provides the assumptions used at November 12, 2019, using a Black-Scholes model:

	Warrants Outstanding	Strike Price	Volatility	Remaining Life	Risk Free Rate
Series A	3,333,333	$ 2.64	93.5 %	5.1	1.73 %
Placement Agent - June	233,334	$ 3.00	93.5 %	4.7	1.73 %
Series E	3,333,334	$ 6.00	93.5 %	5.1	1.73 %
Series F	3,264,167	$ 0.12	93.5 %	5.1	1.73 %
Placement Agent - September	233,334	$ 6.00	93.5 %	4.9	1.73 %

(12) Revenue Disaggregation and Operating Segments

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

	Year Ended December 31,	
	2020	2019
United States	$ 8,275	$ 13,309
Australia	1,086	1,167
Europe	1,824	613
Rest of world	114	—
Total net revenue	$ 11,299	$ 15,089

- The next largest individual country outside the U.S. for the years ended December 31, 2020 and 2019 was Australia, which was 9.6% and 7.7% of total revenues, respectively.

Variable Consideration

The Company records revenue from customers in an amount that reflects the transaction price it expects to be entitled to after transferring control of the goods. Customers and distributors of the LAP-BAND product generally have the right to return or exchange products purchased for up to thirty days from the date of product shipment contingent upon a 10% restocking fee. Any such return or exchange of LAP-BAND products will be recorded as a reduction of revenue in the period incurred until sufficient historical information is available to enable management to estimate a returns reserve.

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

Warranty

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

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

Contract Balances

The Company records a receivable when it has an unconditional right to receive consideration after the performance obligations are satisfied.

Practical Expedients

The Company has elected the practical expedient not to determine whether contracts with customers contain significant financing components for contracts with a duration of one year or less.

Operating Segments

The Company conducts operations worldwide and is managed in the following geographical regions: United States, Australia, Europe and rest of world (primarily in The Middle East). All regions sell the LAP-BAND product line, which consisted of nearly all our revenue and gross profit for the years ended December 31, 2020 and 2019. During the second half of 2020 there were minimal revenue and gross profit related to ReShapeCare as this product was just

launched and there were no revenue or gross profit recorded for the ReShape Vest or Diabetes Bloc-Stim Neuromodulation in 2020 or 2019 because these two products are still in the development stage.

The Company's geographic segments are reported based on the financial information provided to the Chief Operating Decision Maker (the Chief Executive Officer, or "CODM"). The Company's CODM evaluates segment performance based on revenue and gross profit. The Company's CODM does not use operating segment assets information to allocate resources or to assess performance of the operating segments and thus total segment assets have not been disclosed.

(13) Stock-based Compensation

The ReShape Lifesciences Inc. Second Amended and Restated 2003 Stock Incentive Plan (the "Plan") provides for the grant of stock options or other stock-based awards to employees, officers, non-employee directors and outside consultants of the Company. In 2018, the Company's stockholders approved an amendment to the Plan that increased the number of shares authorized for issuance by 26 shares. The Plan amendment in 2018 also added an automatic share increase provision that provides for an annual increase on January 1 of each year beginning in 2019 such that the number of shares of common stock authorized for issuance under the Plan is equal to 15% of the total shares of common stock outstanding, on an as converted basis, as of the last day of the immediately preceding fiscal year. The increased number of shares available for issuance under the Plan is subject to adjustment in accordance with certain provisions of the Plan. As of January 1, 2021, the number of shares authorized for issuance increased from 2,100,443 to 3,067,949 and there were 3,067,909 shares of common stock available for issuance under the Plan.

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

In addition to the stock options granted pursuant to the Plan, the Company from time to time grants options to individuals as an inducement to accepting positions as employees (Inducement Grants). These Inducement Grants are made at the discretion of the board of directors and are issued outside of the Plan. Each of the Inducement Grants vests over a period of up to four years from the date of the officer's employment agreement.

Stock option activity for the Plan is as follows:

	Shares	Weighted Average Exercise Price Per Share	Weighted Average Remaining Contractual Life (years)
Outstanding at December 31, 2018	28	$ 2,957,210.16	
Shares reserved	—	—	
Options granted	—	—	
Options exercised	—	—	
Options cancelled	—	—	
Outstanding at December 31, 2019	28	2,957,210.16	
Options granted	—	—	
Options exercised	—	—	
Options cancelled	(3)	500,506.83	
Outstanding at December 31, 2020	25	3,264,298.08	6.8
Exercisable at December 31, 2020	21	3,884,244.46	6.8
Vested and expected to vest at December 31, 2020	25	3,884,244.46	6.9

As of December 31, 2020, stock options under the Plan that were outstanding, exercisable and vested and expected to vest under had no intrinsic value.

Stock option activity for Inducement Grants is summarized below:

	Shares	Weighted Average Exercise Price Per Share	Weighted Average Remaining Contractual Life (years)
Outstanding at December 31, 2018	18	$ 352,876.06	
Options granted	—	—	
Options exercised	—	—	
Options cancelled	—	—	
Outstanding at December 31, 2019	18	352,876.06	
Options granted	—	—	
Options exercised	—	—	
Options cancelled	(3)	532,766.92	
Outstanding at December 31, 2020	15	316,897.88	7.1
Exercisable at December 31, 2020	15	316,897.88	7.1
Vested and expected to vest at December 31, 2020	15	316,897.88	7.1

As of December 31, 2020, Inducement Grants outstanding, exercisable and vested and expected to vest had no intrinsic value.

There were no stock options granted during the years ended December 31, 2020 and 2019. Compensation cost for stock options granted to employees is based on the estimated grant-date fair value and is recognized over the vesting period of the applicable award on a straight-line basis.

Compensation expense related to stock options was recognized as follows:

	Year Ended December 31,	
	2020	2019
Sales and marketing	$ —	$ 151
General and administrative	1,323	2,115
Research and development	—	45
Total stock-based compensation expense	$ 1,323	$ 2,311

As of December 31, 2020, there was approximately $0.3 million of total unrecognized compensation related to unvested stock option awards, which is expected to be recognized over a weighted-average period of 1.2 years.

(14) Income Taxes

Income tax expense (benefit) consists of the following:

	Year ended December 31,	
	2020	2019
Deferred:		
Federal	$ (84)	$ (276)
State	(2)	(867)
Deferred income tax provision (benefit)	(86)	(1,143)
Current:		
Federal	—	—
State	1	18
Foreign	(96)	232
Total income tax provision (benefit), net	$ (181)	$ (893)

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

	Year ended December 31,	
	2020	2019
Income tax benefit at U.S. federal statutory rate	21.0 %	21.0 %
State income tax benefit, net of federal benefit	4.2 %	3.9 %
Stock warrant valuation	(10.2)%	(14.2)%
Other permanent differences	(0.6)%	(0.7)%
Research and development credit	— %	(0.2)%
Change in state tax rate	(0.3)%	— %
Foreign rate differential	0.5 %	(0.1)%
Other adjustments	1.4 %	0.3 %
Change in valuation allowance	(15.2)%	(8.8)%
Effective income tax rate	0.8 %	1.2 %

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

	December 31,	
	2020	2019
Deferred tax assets:		
Start-up costs	$ 1,192	$ 1,208
Capitalized research and development costs	503	612
Reserves and accruals	9,235	8,180
Property and equipment	133	55
Research and development credit	1,194	1,194
Lease liability	41	118
State and local taxes	2	4
Net operating loss carryforwards	30,156	27,860
Total gross deferred tax assets	42,456	39,231
Valuation allowance	(39,803)	(36,349)
Deferred tax assets, net of valuation allowance	2,653	2,882
Intangible assets	(3,151)	(3,396)
Operating lease right-of-use assets	(117)	(188)
Total gross deferred tax liabilities	(3,268)	(3,584)
Net deferred tax liability	$ (615)	$ (702)

In assessing the realization of deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during periods in which those temporary differences become deductible. Based on the level of historical losses, projections of losses in future periods and potential limitations pursuant to changes in ownership under Internal Revenue Code (“IRC”) Section 382, the Company provided a valuation allowance at both December 31, 2020 and 2019. The remaining net deferred tax liability at both December 31, 2020 and 2019 is the result of the deferred tax liability associated with the indefinite-lived intangible asset less the deferred tax asset associated with U.S. federal net operating loss and 163j interest limitation carryforward that do not expire. The Company has a policy that NOL’s are shown gross with valuation allowances with respect to IRC 382 limitations.

As of December 31, 2020 and 2019, the Company had U.S. federal net operating loss carryforwards of $77.2 million and $68.0 million, respectively. Of the total U.S. federal net operating loss carryforwards at December 31, 2020, $1.2 million is subject to a 20 year carryover period and will begin expiring in 2021. Losses generated beginning in 2018 will carryover indefinitely. The Company had state net operating loss carryforwards of $222.4 million and $212.7 million at December 31, 2020 and 2019, respectively and had foreign net operating loss carryforwards of $0.3 million and $0.4 million at December 31, 2020 and 2019, respectively. Net operating loss carryforwards of the Company are subject to review and possible adjustment by the taxing authorities. With certain exceptions (e.g. the net operating loss carryforwards), the Company is no longer subject to U.S. federal, state or local examinations by tax authorities for years prior to 2016. There are no tax examinations currently in progress.

The Company's ability to utilize its net operating loss carryforwards, tax credits, and built-in items of deduction, including capitalized start-up costs and research and development costs, has been, and may continue to be substantially limited due to ownership changes. These ownership changes limit the amount of net operating loss carryforwards, credits and built-in items of deduction that can be utilized annually to offset future taxable income. In general, an ownership change, as defined in IRC Section 382, results from a transaction or series of transactions over a three-year period resulting in an ownership change of more than 50% of the outstanding stock of a company by certain stockholders or public groups. Due to the valuation allowance against deferred tax assets at December 31, 2020, the net effect of any further limitation will have no impact on results of operations.

On March 27, 2020, the U.S. government enacted the Coronavirus Aid, Relief, and Economic Security Act, or the CARES Act, a $2.0 trillion relief package comprising a combination of tax provisions and other stimulus measures. The CARES Act broadly provides entities tax payment relief and significant business incentives and makes certain technical corrections to the 2017 Tax Cuts and Jobs Act, or the Tax Act. The tax relief measures for entities include a five-year net operating loss carry back, increases interest expense deduction limits, acceleration of alternative minimum tax credit refunds, payroll tax relief, and a technical correction to allow accelerated deductions for qualified improvement property. The Act also provides other non-income tax benefits, including federal funding for a range of stabilization measures and emergency funding to assist those impacted by the COVID-19 pandemic. Similar legislation is being enacted in other jurisdictions in which the Company operates. ASC Topic 740, Income Taxes, requires the effect of changes in tax rates and laws on deferred tax balances to be recognized in the period in which new legislation is enacted. The enactment of the CARES Act and similar legislation in other jurisdictions in which the Company operates was not material to the Company's income tax benefit for the year ended December 31, 2020

The Company has adopted accounting standards which prescribe a recognition threshold and measurement attribute for the financial statement recognition and measurement of uncertain tax positions taken or expected to be taken in a company's income tax return, and also provides guidance on derecognition, classification, interest and penalties, accounting in interim periods, disclosure, and transition. The Company had no amounts of unrecognized tax benefits that, if recognized, would affect its effective income tax rate for the years ended December 31, 2020 and 2019. The Company's policy is to classify interest and penalties related to income tax expense as tax expense. As of December 31, 2020, the Company had no amount accrued for the payment of interest and penalties related to unrecognized tax benefits.

(15) Commitments and Contingencies

Employee Arrangements and Other Compensation

Certain members of management are entitled to severance benefits payable upon termination following a change in control, which would approximate $1.8 million at December 31, 2020. The Company also has agreements with certain employees to pay bonuses based on targeted performance criteria. As of December 31, 2020 and 2019, approximately $1.3 million and $0.6 million was accrued for performance bonuses, which is included in accrued liabilities in the consolidated balance sheets.

Purchase Commitments

The Company generally purchases its products and accessories from a limited group of third-party suppliers through purchase orders. The Company had $1.7 million of purchase commitments as of December 31, 2020, for which the Company has not received the goods or services and which are expected to be purchased primarily within one year. These purchase commitments were made to secure better pricing and to ensure the Company will have the necessary inventory to meet anticipated near term demand. Although open purchase orders are considered enforceable and legally binding, the Company may be able to cancel, reschedule, or adjust requirements prior to supplier fulfillment.

Litigation

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

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.

(16) Subsequent Events

Agreement and Plan of Merger

On January 19, 2021, the Company entered into an agreement and plan of merger with Obalon Therapeutics, Inc., a Delaware corporation ("Obalon") and Optimus Merger Sub, Inc., a Delaware corporation and wholly-owned subsidiary of Obalon ("Merger Sub"), pursuant to which Merger Sub will merge with and into ReShape as the surviving corporation and a wholly-owned subsidiary of Obalon (the "Merger"). As a result of the Merger, Obalon will be renamed "ReShape Lifesciences Inc."

Subject to the terms and conditions of the Merger Agreement, at the closing of the Merger, each outstanding share of ReShape common stock and series B convertible preferred stock will be converted into the right to receive shares of common stock of Obalon ("Obalon Shares") based on the exchange ratio set forth in the Merger Agreement. Upon completion of the Merger, ReShape stockholders will own approximately 51% of the combined company's outstanding common stock and Obalon stockholders will own approximately 49%, subject to the terms of the Merger Agreement. Obalon will, at the effective time of the Merger, assume the outstanding warrants and series C convertible preferred stock of ReShape, subject to the terms of the Merger Agreement. All outstanding stock options of ReShape will be cancelled and terminated at the effective time of the Merger without any right to receive any consideration. No fractional shares will be issued in connection with the Merger and Obalon will pay cash in lieu of any such fractional shares. The Merger is intended to qualify for federal income tax purposes as a tax-free reorganization under the provisions of Section 368(a) of the Internal Revenue Code of 1986, as amended.

Consummation of the Merger is subject to certain closing conditions, including, among other things, approval by the stockholders of ReShape and Obalon and the NASDAQ Stock Market's approval of (i) the Listing of Additional Shares Notice covering the Obalon Shares to be issued in the Merger and (ii) the continued listing of the combined company following completion of the Merger ((i) and (ii) together, the "NASDAQ Approvals"). Pursuant to the Merger Agreement, ReShape has agreed to exercise its reasonable best efforts to take all necessary steps to obtain the NASDAQ Approvals following the execution of the Merger Agreement, which may include procuring additional equity or debt investments, financings or other capital raising efforts. The Merger Agreement contains specified termination rights for both ReShape and Obalon. If Obalon terminates the Merger Agreement as a result of ReShape's breach of its covenant to use its reasonable best efforts to obtain the NASDAQ Approvals, or if either party terminates the Merger Agreement because the NASDAQ Approvals have not been obtained within 30 days following the later of the Obalon Stockholders' Meeting and the ReShape Stockholders' Meeting, then ReShape will be required to pay Obalon a $1.0 million termination fee, which amount has been deposited with a third-party escrow agent.

At the effective time of the Merger, the Board of Directors of the combined company is expected to consist of the five current members of the Board of Directors of ReShape and the executive officers of the combined company will be the current executive officers of ReShape.

In addition, under the terms of the Merger Agreement, Obalon has agreed to file with NASDAQ a Listing of Additional Shares Notice covering the Obalon shares to be issued in connection with the Merger on the NASDAQ Stock

Market and to seek approval of NASDAQ to change its name to ReShape Lifesciences Inc. and its trading symbol for its shares of common stock to “RSLS” upon the effective time of the Merger.

The Merger Agreement contains customary representations, warranties and covenants by ReShape and Obalon. ReShape and Obalon have agreed, among other things, subject to certain exceptions, not to (1) directly or indirectly initiate, seek, or solicit, or knowingly encourage or facilitate any offer or alternative proposal for specified alternative transactions, or (2) participate or engage in discussions or negotiations regarding such an offer or proposal with, or furnish any nonpublic information regarding such an offer or proposal to, any person that has made or, to ReShape’s or Obalon’s knowledge, is considering making such an offer or proposal, (3) terminate, amend, modify, or waive any standstill or similar obligation (subject to certain conditions), or (4) enter into any agreement with respect to an alternative proposal. In addition, certain covenants require each of the parties to use, subject to the terms and conditions of the Merger Agreement, their commercially reasonable efforts to cause the Merger to be consummated as promptly as practicable. Subject to certain exceptions, the Merger Agreement also requires each of ReShape and Obalon to call and hold stockholders’ meetings and requires the board of directors of each of ReShape and Obalon to recommend approval of the Merger.

Credit Facility Agreement

On January 19, 2021, concurrently with the execution of the Merger Agreement, ReShape entered into a Credit Facility Agreement (“Credit Facility Agreement”) with Armistice, which is ReShape’s existing secured lender and majority stockholder, pursuant to which Armistice agreed to provide ReShape with a $15.0 million line of credit that ReShape may access from time to time until December 31, 2022. ReShape has not drawn down any amounts under the Credit Facility Agreement, but any advances will bear interest at a rate per annum equal to the LIBOR rate plus 2.5%. Any advances under the Credit Facility Agreement would be subject to the Guarantee and Collateral Agreement between ReShape and Armistice dated March 25, 2020.

Under the terms of the Credit Facility Agreement, Armistice agrees that the transactions contemplated by the Merger Agreement will not be deemed an “Event of Default” under the Credit Agreement (as defined below) and agrees to waive its right to require ReShape to purchase any outstanding warrants to purchase capital stock of ReShape held by Armistice that may be triggered by the completion of the transactions contemplated by the Merger Agreement, including to the extent the Merger may be considered a “Fundamental Transaction” under the terms of such warrants.

Waiver of Bigger Capital Fund LP and District 2 Capital Fund, LP

On January 19, 2021, concurrently with the execution of the Merger Agreement, Bigger Capital Fund LP and District 2 Capital Fund, LP each waived its right to require ReShape to purchase any outstanding warrants to purchase capital stock of ReShape held by Bigger Capital Fund LP and District 2 Capital Fund, LP that may be triggered by the completion of the transactions contemplated by the Merger Agreement, including to the extent the Merger may be considered a “Fundamental Transaction” under the terms of such warrants.

Amendment to Credit Agreement

On January 19, 2021, concurrently with the execution of the Merger Agreement, ReShape and Armistice entered into a fourth amendment (the “Credit Agreement Amendment”) to the Credit Agreement, dated March 25, 2020 (as amended, the “Credit Agreement”), pursuant to which ReShape borrowed an additional $1.0 million, which amount was used to fund the $1.0 escrow fund securing the termination fee under the Merger Agreement described above. As an inducement to Armistice to enter into the amendment and make the additional loan contemplated thereby, ReShape issued to Armistice a warrant to purchase an aggregate of 1,000,000 shares of ReShape’s common stock, with an exercise price per share equal to $3.50.

On March 10, 2021, the Company and the Lender entered into the fifth amendment to the credit agreement, dated March 25, 2020. Under the terms of this amendment the maturity date as amended from March 31, 2021 to March 31, 2022 or, if earlier, the date that is 15 days after the Company completes a capital raising transaction resulting in gross proceeds of at least $15 million. As a result of this amendment, the Company retroactively reclassified the outstanding balance net of debt discount from a short-term liability to long-term as of December 31, 2020.

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

None.

ITEM 9A. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

The Company's management, including the Chief Executive Officer and Chief Financial Officer, performed an evaluation of the effectiveness of the design and operation of the Company's disclosure controls and procedures (as defined in Rule 13a-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), as of December 31, 2020.

Based on their evaluation, the Chief Executive Officer and Chief Financial Officer have concluded as of December 31, 2020 that the Company's disclosure controls and procedures are designed at a reasonable assurance level and are effective in providing reasonable assurance that the information required to be disclosed by the Company in the reports 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 the Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

Management's Report on Internal Control Over Financial Reporting

The Company's management, including the Chief Executive Officer and Chief Financial Officer, is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Rule 13a-15(f) under the Exchange Act. Under the supervision and with the participation of the Company's management, including the Chief Executive Officer and Chief Financial Officer, the Company conducted an evaluation of the effectiveness of its internal control over financial reporting based on the framework in *Internal Control–Integrated Framework (2013)* issued by the Committee of sponsoring Organizations of the Treadway Commission (COSO). Based on that evaluation, the Company's management concluded that its internal control over financial reporting was effective as of December 31, 2020.

Changes in Internal Control Over Financial Reporting

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

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

ITEM 9B. OTHER INFORMATION

None.

PART III.

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

Director Compensation

Compensation for ReShape's directors is designed to result in compensation that is competitive with that provided by comparably-sized, publicly-traded, medical device companies. For 2020 (i) each non-employee director received an annual retainer of $35,000 for serving on the Board, (ii) each non-employee director who served on the Audit Committee, the Compensation Committee or the Nominating and Governance Committee, other than the chair of each of the committees, received an additional annual retainer of $8,000, $5,000 and $3,000, respectively, (iii) each of the chairs of the Audit Committee, the Compensation Committee and the Nominating and Governance Committee received an additional annual retainer of $17,500, $10,000 and $6,000, respectively, and (iv) ReShape's Lead Director received a $15,000 annual retainer in that role.

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

In February 2019, ReShape's Board approved and adopted a Change in Control Plan (the "CIC Plan"), which provides for certain benefits and payments to members of the Board and certain members of its senior management team in the event of a change in control of ReShape, as defined in the CIC Plan. The CIC Plan was adopted to ensure that ReShape will have the continued dedication of members of the Board and certain members of ReShape's senior management team, to diminish the distraction of such individuals that may occur as a result of a change in control, and to provide such individuals with compensation upon a change in control that is competitive with that of other similarly situated companies.

In the event of a change in control, a participant is entitled to receive a grant of shares of ReShape's common stock immediately prior to the effective time of the change in control such that the total number of shares of common stock owned by the participant would equal the participant's target percentage if such participant's then current ownership percentage was less than their target percentage, which is calculated assuming the conversion of any outstanding shares of preferred stock and the exercise of any outstanding warrants, stock options and other equity-based awards.

The target percentage for each of ReShape's non-employee directors is set forth below:

	Target %
Dan Gladney	2.00%
Gary Blackford	1.00%
Lori McDougal	1.00%
Arda Minocherhomjee	1.00%

The ReShape Board has approved the termination of the CIC Plan subject to and effectively immediately prior to completion of the Merger. Therefore, the members of the ReShape Board will not be entitled to any compensation under the CIC Plan if the Merger is completed.

The following table shows the compensation of the non-employee members of ReShape's Board during fiscal year 2020:

Director Compensation in 2020

Name[1]	Fees Earned or Paid in Cash ($)[2]	Total ($)
Dan Gladney	60,500	60,500
Gary Blackford	59,000	59,000
Lori McDougal	57,500	57,500
Arda Minocherhomjee	51,000	51,000

(1) Bart Bandy, who currently serves as President and Chief Executive Officer of ReShape, is not included in this table because he was an employee of ReShape during 2020 and thus received no compensation for his services as a director. The compensation that Mr. Bandy received as an employee of ReShape is shown in the "Summary Compensation Table."

(2) The amounts in this column include the annual Board of Director and committee retainer amounts for 2020 described above under the heading "Director Compensation."

The directors held options as of December 31, 2020, as follows:

Name	Vested Options	Unvested Options
Dan Gladney	17	4
Gary Blackford	—	—
Lori McDougal	—	—
Arda Minocherhomjee	—	—

Audit Committee

We have a separately-designated standing Audit Committee of our Board of Directors established in accordance with Section 3(a)(58)(A) of the Exchange Act. The Audit Committee consists of Lori McDougal (Chair), Gary Blackford and Arda Minocherhomjee. All of the Audit Committee members meet the existing independence and experience requirements of the OTCQB Market and the SEC. Our Board of Directors has determined that Lori McDougal, our current Audit Committee Chair, is a financial expert under the rules of the SEC.

Code of Business Conduct and Ethics

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

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

ITEM 11. EXECUTIVE COMPENSATION

Executive Compensation

Summary Compensation Table

The following table sets forth information regarding compensation earned by ReShape's named executive officers during its fiscal years ended December 31, 2020 and 2019.

Summary Compensation Table

Name and Principal Position	Year	Salary ($)	Bonus ($)	Option Awards ($)	Non-equity Incentive Plan Compensation ($)	All Other Compensation ($)	Total ($)
Bart Bandy[1]	2020	377,000	—	—	—	—	377,000
President and Chief Executive Officer	2019	292,500	—	—	—	—	292,500
Tom Stankovich[2]	2020	290,000	—	—	—	—	290,000
Chief Financial Officer	2019	53,461	—	—	—	—	53,461

(1) Mr. Bandy was hired as President and Chief Executive Officer effective as of April 1, 2019.

(2) Mr. Stankovich was hired as Chief Financial Officer effective as of October 30, 2019.

Employment Agreement with Bart Bandy

On August 26, 2019, ReShape entered into an executive employment agreement with Mr. Bandy, its President and Chief Executive Officer. The agreement has an initial term of one year and automatically renews for successive one year terms unless either party delivers written notice 90 days prior to the expiration of the current term or unless it is earlier terminated as described below. Pursuant to the agreement, Mr. Bandy is entitled to a base salary of $390,000, or a higher annual rate if approved by the Board of Directors, and to cash and equity awards pursuant to ReShape's incentive compensation plan, contingent on Mr. Bandy meeting certain annual objectives determined by the Compensation Committee. The agreement establishes that Mr. Bandy is eligible for an annual incentive compensation of up to 50% of his base salary for that year. Mr. Bandy's executive employment agreement also provides for the receipt of certain benefits upon the occurrence of particular termination events or a change in control. In addition, Mr. Bandy's agreement includes a non-disclosure and assignment provision and non-competition, non-solicitation and no recruitment commitments each lasting for a period of one year following termination.

Offer Letter with Tom Stankovich

Pursuant to Mr. Stankovich's offer letter, he will be paid an annual salary of $300,000 with a target bonus of up to 30% of his base salary. In addition, Mr. Stankovich would be entitled to severance equal to six months of his base salary if he is terminated by ReShape without cause.

Management Incentive Plan

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

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

Change in Control Plan

The target percentages for Mr. Bandy and Mr. Stankovich under our CIC Plan, which is described in more detail above under the heading "Director Compensation," are 4.0% and 1.25%, respectively. As discussed above, the ReShape Board has approved the termination of the CIC Plan subject to and effectively immediately prior to completion of the Merger. Therefore, Mr. Bandy and Mr. Stankovich will not be entitled to any compensation under the CIC Plan if the Merger is completed.

Long-Term Incentives

ReShape's Second Amended and Restated 2003 Stock Incentive Plan, as amended, allows ReShape the opportunity to grant stock options, restricted stock and other equity-based awards. In general, ReShape reviews equity awards as incentives for future performance and not as compensation for past accomplishments. ReShape also believes that equity awards reward continued employment by an executive officer, with an associated benefit to ReShape of employee continuity and retention. The exercise price of stock options awarded by the Compensation Committee has been and will continue to be the closing sales price of ReShape's common stock on the date of grant.

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

Outstanding Equity Awards at Fiscal Year-End

ReShape's named executive officers did not hold any outstanding equity award at December 31, 2020.

Option Exercises and Stock Vested

There were no option exercises or restricted stock awards that vested during ReShape's fiscal year ended December 31, 2020.

Pension Benefits

None of ReShape's named executive officers participate in or have account balances in qualified or non-qualified defined benefit plans sponsored by ReShape.

Non-Qualified Deferred Compensation

ReShape currently does not have any non-qualified defined contribution plans or other deferred compensation plans.

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

(a) Equity Compensation Plans

The following table sets forth information as of December 31, 2020 with respect to our equity compensation plans:

Plan Category	Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants and Rights	Weighted-Average Exercise Price of Outstanding Options, Warrants and Rights	Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (Excluding Securities Reflected in Second Column)
Equity compensation plans approved by security holders	25 (1)	$ 3,264,298.08	— (2)
Equity compensation plans not approved by security holders	15 (3)	316,897.88	—
Total	40	$ 2,130,682.62	—

(1) Consists of options awarded under the Second Amended and Restated 2003 Stock Incentive Plan, which was amended (the "Plan), as amended.

(2) Represents the maximum number of shares of common stock available to be awarded under the Plan as of December 31, 2020. Pursuant to an automatic share increase provision in the Plan that provides for an annual increase on the first day of each year beginning in 2020 such that the number of shares of common stock available under the Plan equals 15% of the total shares of common stock outstanding as of the last day of the immediately preceding fiscal year, an additional 997,679 shares of common stock became available for issuance under the Plan on January 1, 2021.

(3) Consists of the inducement grants awarded to executives and other employees, see Note 13 to our consolidated financial statements included in Part II, Item 8 of this Annual Report on Form 10-K.

(b) Security Ownership

The following table shows the beneficial ownership of ReShape Shares by each person or group who beneficially owned 5% or more of the outstanding ReShape Shares, each of ReShape's directors, each of ReShape's executive officers named in the Summary Compensation Table in this joint proxy statement/prospectus and ReShape's directors and executive officers as a group, as of March 1, 2021. Percentage ownership calculations for beneficial ownership are based on 6,166,554 shares outstanding as of March 1, 2021. However, for purposes of computing the percentage of outstanding shares of common stock held by each person or group of persons named above, any shares which that person or persons has or have the right to acquire within 60 days following March 1, 2021 is deemed to be outstanding for that person's calculation, but is not deemed to be outstanding for the purpose of computing the percentage ownership of any other person. For example, the percent of outstanding common stock reported for Armistice Capital, LLC assumes that it exercised all of its warrants reported below (all of which are currently exercisable), but that Bigger Capital Fund, LP did not exercise of any of its warrants (all of which are currently exercisable), and the percent of outstanding common stock reported for Bigger Capital assumes that it exercised all of its warrants reported below, but that Armistice Capital did not exercise any of its warrants. Therefore, the total percent of outstanding common stock reported for Armistice Capital and Bigger Capital exceeds 100%. The information regarding the beneficial owners of more than 5% of the outstanding ReShape Shares is based upon information supplied to us by ReShape's directors, officers and principal stockholders or on Schedules 13D or 13G filed with the SEC. Unless otherwise noted, the directors and executive officers listed in the table have sole voting and investment power with respect to the shares of common stock owned by them and their address is c/o ReShape Lifesciences Inc., 1001 Calle Amanecer, San Clemente, California 92673.

Name and Address of Beneficial Owner	Number of Shares of Common Stock	Percent of Outstanding Common Stock
5% Stockholders		
Armistice Capital, LLC(1)		
510 Madison Avenue, 7th Floor		
New York, New York 10022	17,980,277	95.6%
Bigger Capital Fund, LP(2)		
175 W. Carver Street		
Huntington, NY 11743	2,833,340	33.8%
Directors and Executive Officers		*
Bart Bandy	0	*
Tom Stankovich	4,635	*
Dan Gladney(3)	22	*
Gary Blackford	0	*
Arda Minocherhomjee	0	*
Lori McDougal	0	*
All directors and executive officers as a group (6 persons)(3)	4,657	*

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

(1) Consists of (i) 5,330,277 shares of common stock, which represents 86.4% of ReShape's common stock outstanding as of March 1, 2021, (ii) 2,652,000 shares of common stock issuable upon exercise of series A warrants at an initial exercise price of $2.64 per share, (iii) 2,652,000 shares of common stock issuable upon exercise of series E warrants at an initial exercise price of $6.00 per share, (iv) 1,200,000 shares of common stock issuable upon exercise of series G warrants at an initial exercise price of $3.70 per share, (v) 1,200,000 shares of common stock issuable upon exercise of series G warrants at an initial exercise price of $3.25 per share, and (vi) 5,000,000 shares of common stock issuable upon exercise of series G warrants at an initial exercise price of $3.50 per share. The shares of common stock and warrants are held directly by Armistice Capital Master Fund Ltd. (the "Master Fund"), whose principal business address is c/o dms Corporate Services Ltd., 20 Genesis Close, P.O. Box 314, Grand Cayman KY1-1104, Cayman Islands. Armistice is an investment adviser registered with the SEC that is principally engaged in the business of providing investment management services to private investment vehicles, including the Master Fund. Steven Boyd is the managing member of Armistice Capital and a director of the Master Fund. Mr. Boyd's principal business address is 510 Madison Avenue, 7th Floor, New York, New York 10022. Armistice Capital and Mr. Boyd may be deemed to be the beneficial owners of the shares reported as beneficially owned by the Master Fund. Each of the Master Fund, Armistice Capital and Mr. Boyd has the sole power to dispose or direct the disposition of 0 shares and the shared power to dispose or direct the disposition of all of the shares.

(2) Consists of (i) 310,590 shares of common stock owned by District 2 Capital Fund LP ("District 2 CF") and 304,413 shares of common stock owned by Bigger Capital Fund, LP ("Bigger Capital"), which collectively represents 9.9% of ReShape's common stock outstanding as of March 1, 2021 (ii) 416,667 shares of common stock issuable upon exercise of series A warrants held by District 2 CF and 291,667 shares of common stock issuable upon exercise of series A warrants held by Bigger Capital at an initial exercise price of $2.64 per share (iii) 522,746 shares of common stock issuable upon exercise of prefunded warrants held by District 2 CF and 278,923 shares of common stock issuable upon exercise of prefunded warrants held by Bigger Capital at an exercise price of $0.12 per share, and (iv) 416,667 shares of common stock issuable upon exercise of series E warrants held by District 2 CF and 291,667 shares of common stock issuable upon exercise of series E warrants held by Bigger Capital at an exercise price of $6.00 per share. Bigger Capital Fund GP, LLC ("Bigger GP") is a general partner of Bigger Capital and District 2 Capital LP ("District 2") is the investment manager of District 2 CF. Michael Bigger is the managing member of Bigger GP and District and District 2 Holdings LLC ("District 2 Holdings"), which is the managing member of District 2 GP LLC ("District 2 GP"), the general partner of District 2 CF. Therefore, Mr. Bigger, District 2, District 2 Holdings and District 2 CF may be deemed to be the beneficial owner, and have the shared power to dispose of or direct the disposition, of the shares reported as beneficially owned by District 2 CF and Mr. Bigger and Bigger GP may be deemed to be the beneficial owner, and have the shared power to dispose of or direct the disposition, of the shares reported as beneficially owned by Bigger Capital.

(3) Includes 18 shares subject to options exercisable by Mr. Gladney currently or within 60 days of March 1, 2021.

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

Review of Related Person Transactions

In accordance with its written charter, our Audit Committee is responsible for reviewing all related party transactions as they are presented, and the approval of the Audit Committee is required for all such transactions. The term "related party transactions" refers to transactions required to be disclosed in our filings with the SEC pursuant to Item 404 of Regulation S-K. As a smaller reporting company, we are also required to review and approve any transaction, arrangement or relationship in which our company is a participant, the amount involved exceeds the lesser of $120,000 or one percent of the average of our total assets at year-end for the last two completed fiscal years, and a

related person has a direct or indirect material interest. In considering related party transactions, our Audit Committee is guided by its fiduciary duty to our stockholders. Our Audit Committee does not have any written or oral policies or procedures regarding the review, approval and ratification of transactions with related parties. Additionally, each of our directors and executive officers are required to annually complete a directors' and officers' questionnaire that elicits information about related party transactions. Our Nominating and Governance Committee and Board of Directors annually review all transactions and relationships disclosed in the director and officer questionnaires, and the Board makes a formal determination regarding each director's independence.

Director Independence

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

ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES

During 2020 and October 2019 through December 2019, BDO was retained as the Company's independent auditor. January through September 2019, Deloitte & Touche was the Company's independent auditor. The table below represents aggregate fees billed to provide audit services in the following categories by BDO (in thousands):

	Year Ended December 31,	
	2020	2019
Audit fees (1)	$ 246	$ 61
Audit-related fees (2)	—	—
Tax fees (3)	—	—
All other fees (4)	—	—
Total	$ 246	$ 61

The table below represents aggregate fees billed to provide audit services in the following categories by Deloitte & Touche (in thousands):

	Year Ended December 31,	
	2020	2019
Audit fees (1)	$ —	$ 530
Audit-related fees (2)	20	111
Tax fees (3)	—	—
All other fees (4)	—	—
Total	$ 20	$ 641

(1) Include aggregate fees for the audit of our consolidated financial statements and the three quarterly reviews of the Company's reports on Form 10-Q and other SEC filings.
(2) Fees for miscellaneous audit and consulting services.
(3) Primarily for professional services rendered in connection with consultation on financial accounting and reporting standards.
(4) For other permitted professional services.

PART IV.

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

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

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

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

3. Exhibits

ITEM 16. FORM 10-K SUMMARY

Not applicable

EXHIBIT INDEX

Exhibit Number	Description of Document
2.1	Asset Purchase Agreement, dated December 17, 2018, by and between the Company and Apollo Endosurgery, Inc. (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 December 19, 2018).
2.2	Agreement and Plan of Merger, dated as of January 19, 2021, by and among Obalon Therapeutics, Inc. Optimus Merger Sub, Inc., and the Company (incorporated by reference to Exhibit 2.1 to the Company's Current report on Form 8-K filed with the Securities and Exchange Commission on January 20, 2021).
3.1	Sixth Amended and Restated Certificate of Incorporation of the Company. (Incorporated herein by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed on December 28, 2016 (File No. 1-33818)).
3.2	Amended and Restated Bylaws of the Company, as currently in effect. (Incorporated herein by reference to Exhibit 3.4 to Amendment No. 1 to the Company's Registration Statement on Form S-1 filed on July 6, 2007 (File No. 333-143265)).
3.3	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).
3.4	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).
3.5	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).
3.6	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).
3.7	Certificate of Amendment to Sixth Amended and Restated Certificate of Incorporation, dated June 1, 2018 (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 1, 2018).
3.8*	Certificate of Amendment to Sixth Amended and Restated Certificate of Incorporation, dated November 7, 2018 (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 November 7, 2018).
3.9	Certificate of Amendment to Sixth Amended and Restated Certificate of Incorporation of the Company, dated November 8, 2019 (incorporated by reference to Exhibit 3.1 to the Company's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 14, 2019).
4.1*	Description of Registrant's Securities
4.2	Form of Series A Common Stock Purchase Warrant issued November 28, 2018 (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on November 28, 2018).
4.3	Form of Pre-Funded Common Stock Purchase Warrant issued November 28, 2018 (incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on November 28, 2018).
4.4	Form of Placement Agent's Common Stock Purchase Warrant issued November 28, 2018 (incorporated by reference to Exhibit 4.3 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on November 28, 2018).

Exhibit Number	Description of Document
4.5	Form of Common Stock Purchase Warrant issued September 20, 2018 (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on September 20, 2018).
4.6	Form of Placement Agent's Common Stock Purchase Warrant issued September 20, 2018 (incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on September 20, 2018).
4.7	Form of Common Stock Purchase Warrant issued August 3, 2018 (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on August 2, 2018).
4.8	Form of Placement Agent's Common Stock Purchase Warrant issued August 3, 2018 (incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on August 2, 2018).
4.9	Form of Common Stock Purchase Warrant issued July 12, 2018 (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on July 12, 2018).
4.10	Form of Placement Agent's Common Stock Purchase Warrant issued July 12, 2018 (incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on July 12, 2018).
4.11	Form of Common Stock Purchase Warrant issued June 21, 2018 (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 21, 2018).
4.12	Form of Placement Agent's Common Stock Purchase Warrant issued June 21, 2018 (incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 21, 2018).
4.13	Form of Common Stock Purchase Warrant issued June 8, 2018 (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 8, 2018).
4.14	Form of Placement Agent's Common Stock Purchase Warrant issued June 8, 2018 (incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 8, 2018).
4.15	Form of Common Stock Purchase Warrant issued April 3, 2018 (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on April 3, 2018).
4.16	Form of Warrant, dated August 16, 2017 (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on August 16, 2017).
4.17	Form of Series C Warrant, dated as of July 8, 2015, by and between the Company and several accredited investors. (Incorporated herein by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed on July 7, 2015 (File No. 1-33818)).
4.18	Form of Warrant. (Incorporated herein by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed on November 5, 2015 (File No. 1-33818)).
4.19	Form of Warrant to purchase shares of Common Stock. (Incorporated herein by reference to Exhibit 4.3 to the Company's Registration Statement on Form S-1 filed on January 11, 2017 (File No. 333-213704)).
10.1†	Second Amended and Restated 2003 Stock Incentive Plan, as amended on May 23, 2018 (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on May 25, 2018).

Exhibit Number	Description of Document
10.2†	Form of Stock Option Grant Notice and Stock Option Agreement under Second Amended and Restated 2003 Stock Incentive Plan (Incorporated herein by reference to Exhibit 10.6 to the Company's Quarterly Report on Form 10-Q filed on November 14, 2017).
10.3	Form of Indemnification Agreement entered into by and between the Company and each of its executive officers and directors. (Incorporated herein by reference to Exhibit 10.17 to Amendment No. 1 to the Company's Registration Statement on Form S-1 filed on July 6, 2007 (File No. 333-143265)).
10.4†*	Executive Employment Agreement, dated August 26, 2019, by and between the Company and Barton P. Bandy.
10.5†*	Executive Employment Agreement, dated October 29, 2019, by and between the Company and Thomas Stankovich.
10.6†	Executive Employment Agreement, dated as of May 22, 2017, by and between the Company and Dr. Raj Nihalani (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on May 23, 2017).
10.7	Non-Competition and Non-Solicitation Agreement, dated as of May 22, 2017, by and between the Company and Dr. Raj Nihalani (incorporated by reference to Exhibit 10.4 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on May 23, 2017).
10.8†	2017 Employment Inducement Incentive Award Plan (incorporated by reference to Exhibit 10.4 to the Company's Quarterly Report on Form 10-Q filed on November 14, 2017).
10.9†	Form of Stock Option Grant Notice and Stock Option Agreement under 2017 Employment Inducement Incentive Award Plan (incorporated by reference to Exhibit 10.5 to the Company's Quarterly Report on Form 10-Q filed on November 14, 2017 (File No. 1-33818)).
10.10†	Management Incentive Plan. (Incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on February 12, 2008 (File No. 1-33818)).
10.11†	Amendments to the Management Incentive Plan described in Item 5.02(e). (Incorporated herein by reference to Item 5.02(e) of the Company's Current Report on Form 8-K filed on May 10, 2016 (File No. 1-33818)).
10.12†	Amendments to the Management Incentive Plan described in Item 5.02(e). (Incorporated herein by reference to Item 5.02(e) of the Company's Current Report on Form 8-K filed on September 20, 2016 (File No. 1-33818)).
10.13	Lease agreement, entered into January 20, 2017, by and between ReShape Medical, Inc. and San Clemente Holdings, LLC (incorporated by reference to Exhibit 10.38 to the Company's Annual Report on Form 10-K filed on April 2, 2018).
10.14	Clinical Trial Agreement by and between the Company and Southern California Permanente Medical Group effective as of June 1, 2017 (Incorporated herein by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q filed on May 15, 2017 (File No. 1-33818)).
10.15	Form of Securities Purchase Agreement, dated June 13, 2019, by and between the Company and the purchasers party thereto (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 19, 2019).
10.16	Form of Series A Warrant issued June 18, 2019 (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 June 19, 2019).
10.17	Form of Series B Warrant issued June 18, 2019 (incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 19, 2019).
10.18	Form of Series C Pre-Funded Warrant issued June 18, 2019 (incorporated by reference to Exhibit 10.4 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 19, 2019).

Exhibit Number	Description of Document
10.19	Form of Registration Rights Agreement, dated June 18, 2019 (incorporated by reference to Exhibit 10.5 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 19, 2019).
10.20	Form of Warrant Exercise Agreement dated September 23, 2019 (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 September 30, 2019).
10.21	Form of Series E Warrant (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K files with the Securities and Exchange Commission on September 30, 2019).
10.22	Form of Series F Warrant (incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on September 30, 2019).
10.23	Form of Amended and Restated Registration Rights agreement (incorporated by reference to Exhibit 10.4 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on September 30, 2019.
10.24†	ReShape Lifesciences Inc. Change in Control Plan, dated as of February 28, 2020 (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 March 5, 2020).
10.25	Credit Agreement, dated March 25, 2020, by and between the Company and Armistice Capital Master Fund Ltd. (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 March 31, 2020).
10.26	First Amendment to Credit Agreement, dated March 31, 2020 by and between the Company and Armistice Capital Master Fund Ltd. (incorporated by reference to Exhibit 10.5 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on March 31, 2020).
10.27	Second Amendment to Credit Agreement, dated September 14, 2020, by and between the Company and Armistice Capital Master Fund Ltd. (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 March 31, 2020).
10.28	Third Amendment to Cred Agreement, dated December 16, 2020, by and between the Company and Armistice Capital Master Fund Ltd. (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 September 15, 2020).
10.29	Fourth Amendment to Credit Agreement, dated January 19, 2021, by and between the Company and Armistice Capital Master Fund Ltd. (incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K file with the Securities and Exchange Commission on January 20, 2021).
10.30	Guarantee and Collateral Agreement, dated March 25, 2020, by and between the Company, ReShape Medical LLC and Armistice Capital Master Fund Ltd. (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 March 31, 2020
10.31	Registration Rights Agreement, dated March 25, 2020, by and between the Company and Armistice Capital Master Fund Ltd. (incorporated by reference to Exhibit 10.4 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on March 31, 2020).
10.32	Form of Series G Common Stock Purchase Warrant issued by the Company to Armistice Capital Master Fund Ltd. (incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K filed with the Securities Exchange Commission on March 31, 2020).
10.33	Form of Voting and Support Agreement by and among the Company and certain stockholders of Obalon Therapeutics, Inc. (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 January 20, 2021).
10.34	Credit Facility Agreement, dated as of January 19, 2021, by and between the Company and Armistice Capital Master Fund Ltd. (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 January 20, 2021).

Exhibit Number	Description of Document
14.1	Code of Conduct and Ethics of the Company. (Incorporated herein by reference to Exhibit 14.1 to the Company's Registration Statement on Form S-1 filed on May 25, 2007 (File No. 333-143265)).
21.1*	Subsidiaries of ReShape Lifesciences Inc.
23.1*	Consent of BDO USA LLP, Independent Registered Public Accounting Firm.
24.1*	Power of Attorney (included on signature page to this Form 10-K).
31.1*	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2*	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1*	Certification of Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2*	Certification of Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101*	Financial statements from the Annual Report on Form 10-K of the Company for the year ended December 31, 2020, formatted in Extensible Business Reporting Language: (i) the Consolidated Statements of Operations, (ii) the Consolidated Balance Sheets, (iii) the Consolidated Statements of Stockholders' Equity; (iv) the Consolidated Statements of Cash Flows and (v) the Notes to Consolidated Financial Statements.

* Filed herewith.

† Indicates management contract or compensation plan or agreement.

SIGNATURES

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

RESHAPE LIFESCIENCES INC.

By: /S/ BARTON P. BANDY
Barton P. Bandy
President and Chief Executive Officer

Dated: March 10, 2021

POWERS OF ATTORNEY

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

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

Signature	Title	Date
/S/ BARTON P. BANDY **Barton P. Bandy**	President, and Chief Executive Officer (principal executive officer)	March 10, 2021
/S/ THOMAS STANKOVICH **Thomas Stankovich**	Senior Vice President and Chief Financial Officer (principal financial and accounting officer)	March 10, 2021
/S/ DAN W. GLADNEY **Dan W. Gladney**	Chairman of the Board	March 10, 2021
/S/ GARY D. BLACKFORD **Gary D. Blackford**	Director	March 10, 2021
/S/ LORI C. MCDOUGAL **Lori McDougal**	Director	March 10, 2021
/S/ ARDA MINOCHERHOMJEE **Arda Minocherhomjee**	Director	March 10, 2021

RESHAPE LIFESCIENCES INC.
DESCRIPTION OF SECURITIES REGISTERED PURSUANT TO SECTION 12 OF THE SECURITIES EXCHANGE ACT OF 1934

ReShape Lifesciences Inc., a Delaware corporation ("ReShape," "we," "us" and "our"), has only one class of securities registered under Section 12 of the Securities Exchange Act of 1934, as amended: our common stock, par value $0.001 per share ("common stock").

The following description of our common stock is a summary and does not purport to be complete. It is subject to and qualified in its entirety by reference to our Sixth Amended and Restated Certificate of Incorporation, as amended (the "Certificate of Incorporation"), and our Amended and Restated Bylaws (the "Bylaws"), which are filed as exhibits to our Annual Report on Form 10-K for the fiscal year ended December 31, 2019 and are incorporated by reference herein. We encourage you to read our Certificate of Incorporation, our Bylaws and the applicable provisions of the General Corporation Law of the State of Delaware (the "DGCL") for additional information.

Authorized Shares

Our Certificate of Incorporation authorizes the issuance of up to 280,000,000 shares of capital stock, consisting of 275,000,000 shares of common stock and 5,000,000 shares of preferred stock, par value $0.001 per share ("preferred stock"). As of December 31, 2020, we had 6,166,554 shares of common stock outstanding.

In accordance with a certificate of designation filed on August 16, 2017, which has been filed as an exhibit to our Annual Report on Form 10-K for the fiscal year ended December 31, 2020, we designated shares of preferred stock as Series B Convertible Preferred Stock, 3 shares of which remained issued and outstanding as of December 31, 2020, which are convertible into 1,250 shares of common stock. Additionally, in accordance with a certificate of designation filed on October 3, 2017, which has been filed as an exhibit to our Annual Report on Form 10-K for the fiscal year ended December 31, 2020, we designated shares of preferred stock as Series C Convertible Preferred Stock, 95,388 shares of which remained issued and outstanding as of December 31, 2020, which are convertible into 38 shares of common stock.

Our Board of Directors is authorized, subject to limitations prescribed by law, to provide by resolution or resolutions for the issuance of shares of preferred stock from time to time in one or more series, and, by filing a certificate pursuant to the applicable law of the State of Delaware, to establish the number of shares to be included in each such series, and to fix the voting powers, if any, designations, powers, preferences, and relative, participating, optional or other rights, if any, of the shares of each such series, and any qualifications, limitations and restrictions thereof.

We may amend from time to time our Certificate of Incorporation to increase the number of authorized shares of common stock or preferred stock. Any such amendment would require the approval of the holders of a majority of the voting power of the shares entitled to vote thereon.

Voting Rights

The holders of shares of our common stock are entitled to vote on all matters to be voted on by the stockholders of ReShape; provided, however, that, except as otherwise required by law, holders of common stock shall not be entitled to vote on certain amendments to our Certificate of Incorporation that relate only to the terms of one or more outstanding series of preferred stock. On all matters to be voted on by the holders of the common stock, the holders are entitled to one vote per share. Our common stock does not have cumulative voting rights.

Our Certificate of Incorporation provides that our Board of Directors is divided into three classes. All elections of directors are determined by a plurality of the votes cast. Except as otherwise required by law, our Certificate of Incorporation or our Bylaws, all other matters are decided by the vote of the holders of stock having a majority of the votes cast by the holders of all stock entitled to vote on such question that are present in person or by proxy at a meeting of stockholders.

Dividend Rights

Subject to the rights of the holders of any series of preferred stock, and subject to any other provisions of our Certificate of Incorporation, holders of common stock are entitled to receive such dividends and other distributions in cash, stock of any corporation or property of ReShape as may be declared thereon by our Board of Directors from time to time out of our assets or funds legally available for that purpose. When and as dividends are declared on the common stock, holders of our common stock are entitled to share equally, share for share, in such dividends.

Liquidation Rights

In the event of any liquidation, dissolution or winding-up of our affairs, holders of our common stock will be entitled to share ratably in our assets that are remaining after payment or provision for payment of all of our debts and obligations and after liquidation payments to holders of outstanding shares of preferred stock, if any.

Other Rights and Preferences

The holders of common stock have no preferences or rights of conversion, exchange, pre-emption or other subscription rights. There are no redemption or sinking fund provisions applicable to our common stock. The rights, preferences and privileges of the holders of our common stock are subject to, and may be adversely affected by, the rights of the holders of shares of any series of preferred stock that our Board of Directors may designate and issue in the future. Our Certificate of Incorporation and Bylaws do not restrict the ability of a holder of our common stock to transfer his, her or its shares of common stock. All currently outstanding shares of our common stock are fully paid and non-assessable.

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is EQ Shareowner Services.

Listing

Our common stock is listed on the OTCQB under the symbol “RSLS.”

Anti-Takeover Effects of Certain Provisions of our Certificate of Incorporation and Bylaws and the DGCL

Our Certificate of Incorporation and Bylaws and the DGCL contain provisions that may have the anti-takeover effect of delaying, deferring or preventing a change in control of ReShape.

Anti-Takeover Provisions in our Certificate of Incorporation and Bylaws

Our Certificate of Incorporation and Bylaws contain the following anti-takeover provisions that may have the anti-takeover effect of delaying, deferring or preventing a change in control of ReShape:

- We have shares of common stock and preferred stock available for future issuance without stockholder approval. The existence of unissued and unreserved common stock and preferred stock may enable our Board of Directors to issue shares to persons friendly to current management or to issue preferred stock with terms that could render more difficult or discourage a third-party attempt to obtain control of us by means of a merger, tender offer, proxy contest or otherwise, thereby protecting the continuity of our management.

- Subject to the rights of the holders of any series of preferred stock to elect additional directors under specified circumstances, our Board of Directors is classified into three classes, each of which serves for three years, with one class being elected each year.

- Subject to the rights of the holders of any series of preferred stock then outstanding, directors may be removed from office at any time, only for cause, and only by the affirmative vote of the holders of at least a majority of the voting power of the then outstanding shares of stock of ReShape entitled to vote generally in the election of directors, voting together as a single class.

- Subject to the rights of the holders of any series of preferred stock then outstanding, newly created directorships resulting from any increase in the authorized number of directors or any vacancies in our Board of Directors resulting from death, resignation, retirement, disqualification or other cause may be filled only by a majority vote of the directors then in office, even if less than a quorum.

- Stockholders may only take action at annual or special meetings of the stockholders, and stockholders may not act by written consent.

- Special meetings of the stockholders may be called only by our Board of Directors or the Chairman of the Board. Business transacted at special meetings shall be confined to the purpose or purposes stated in the notice.

- Our Board of Directors may adopt, amend, repeal or otherwise alter, from time to time, our Bylaws without any action on the part of the stockholders in accordance with our Bylaws; provided, however, that any bylaws made by our Board of Directors and any and all powers conferred by any of said bylaws may be amended, altered or repealed by the affirmative vote of the holders of at least a majority of the voting power of the then outstanding shares of capital stock of ReShape entitled to vote generally in the election of directors, voting together as a single class.

- Stockholders must follow advance notice procedures to submit nominations of candidates for election to our Board of Directors at an annual or special meeting of the stockholders. Stockholders must also follow advance notice procedures to submit proposals of business to be brought before an annual or special meeting of the stockholders.

Delaware Business Combination Statute

We are a Delaware corporation, and we are subject to Section 203 of the DGCL, known as the Delaware Business Combination Statute. In general, Section 203 of the DGCL prohibits a publicly-held Delaware corporation from engaging in a "business combination" with an "interested stockholder" for a period of three years following the time the person became an interested stockholder, unless:

- Prior to the time the stockholder became an interested stockholder, the board of directors of the corporation approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder;

- Upon consummation of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, exclusive of shares owned by directors who are also officers and by certain employee stock plans; or

- At or subsequent to such time, the business combination is approved by the board of directors and authorized at an annual or special meeting of the stockholders by the affirmative vote of at least two-thirds of the outstanding voting stock that is not owned by the interested stockholder.

Generally, a "business combination" includes a merger, asset or stock sale, or other transaction resulting in a financial benefit to the interested stockholder. Generally, an "interested stockholder" is a person who, together with affiliates and associates, owns 15% or more of a corporation's voting stock or is the corporation's affiliate or associate and was the owner of 15% or more of the corporation's outstanding voting stock at any time within the three-year period immediately before the date of determination.

EXECUTIVE EMPLOYMENT AGREEMENT

This Employment Agreement (the "***Agreement***") is made and entered as of August 26, 2019 (the "***Agreement Date***"), between ReShape Lifesciences Inc. ("***Company***"), a Delaware corporation with its principal place of business at 1001 Calle Amanecer, San Clemente, CA 92673; and Barton P. Bandy ("***Employee***"), a California resident whose address is 23 Calle Pacifica, San Clemente, CA 92673, for the purpose of setting forth the terms and conditions of Employee's employment by Company.

A. The Company desires to employ Employee as the President and Chief Executive Officerof Company, and for Employee to hold such position, on the terms and conditions, and for the consideration, hereinafter set forth, and Employee desires to be employed by Company and hold such position on such terms and conditions and for such consideration.

B. Employee has executed an Employee Proprietary Information Agreement with Company as of April 1, 2019 (the "***Proprietary Information Agreement***"), which is attached as **Exhibit A**to this Agreement and is fully incorporated herein.

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

ARTICLE 1. EMPLOYMENT, TERM AND DUTIES

1.1 Employment. Company hereby employs Employee as its President and Chief Executive Officer, and Employee accepts such employment and agrees to perform services for Company pursuant to the terms and conditions set forth in this Agreement.

1.2 Term. The term of this Agreement shall commence effective as of April 1, 2019 (the "***Start Date***") and, unless earlier terminated in accordance with **Article 3** of this Agreement, shall terminate one year from the Start Date (the "***Term***"); *provided*, *however*, that the Term of this Agreement shall automatically renew for successive one-year terms thereafter unless, at least90 days before the expiration of the initial Term or any additional Term, either party provides written notice to the other of its or his desire to terminate this Agreement.

1.3 Position and Duties.

1.3.1 Service with Company. During the Term, Employee agrees to perform such duties and responsibilities, consistent with the duties normally performed by chief executive officers of similarly-sized publicly-held companies, as are assigned to him from time to time by Company's Board of Directors (the "***Board***").

1.3.2 Performance of Duties. During the Term, Employee agrees to serve Company inan executive capacity as its President and Chief Executive Officer, and shall perform such duties as are required by the Board, as set forth in **Section 1.3.1**.

ARTICLE 2. COMPENSATION, BENEFITS AND EXPENSES

2.1 Base Salary.

2.1.1 Amount; Adjustments. Subject to the provisions of **Article 3** of this Agreement, during the Term Company shall pay Employee a "***Base Salary***" of $390,000 on an annualized basis or such higher annual rate as may from time to time be approved by the Board. Upon the achievement of certain performance measures, and subject to review and approval by the Compensation Committee of the Board, the Base Salary shall increase as follows:

(A) $25,000 increase if the Company has two consecutive quarters of sales revenue each totaling at least $10 million;

(B) $25,000 increase if the Company achieves net breakeven cash flow over a 12-month period; and

(C) $35,000 increase upon the effectiveness of the listing of the Company on The Nasdaq Global Select Market, The Nasdaq Global Market or The Nasdaq Capital Market.

The Base Salary shall be reviewed by the Board annually for potential additional adjustment on the basis of performance; and Employee shall be eligible, at the Board's sole discretion, for annual merit and incentive-based salary increases consistent with Company's procedures, policies and practices. If Employee's Base Salary is increased from time to time during the Term, the increased amount shall become the Base Salary for the remainder of the Term and any extensions of the Term and for as long thereafter as required pursuant to **Article 3**as applicable, subject to any subsequent increases.

2.1.2 Payment. The Base Salary shall be paid in substantially equal regular periodic payments, less deductions and withholdings, in accordance with Company's regular payroll procedures, policies and practices for executive officers, as such may be modified from time to time.

2.2 Incentive Compensation. In addition to Base Salary, Company shall make Employee eligible for such cash and equity awards pursuant to Company's incentive compensation plan, if any, as may be applicable and adopted by Company. Except to the extent as otherwise provided in **Article 3** in connection with a termination of Employee's employment, payment of incentive compensation will be subject to Employee achieving certain objectives set annually by Employee and the Compensation Committee of the Board, with the target amount of any cash incentive compensation for any calendar year to be approved by the Compensation Committee of the Board, which target in no event shall be more than 50% (subject to performance of the specified objectives) of Employee's Base Salary in effect from time to time (such bonus to be pro-rated for any partial year of employment). Employee and the Compensation Committee will meet and review the objectives set by the Compensation Committee for each upcoming calendar year before March 31 of such year. Company shall pay any such incentive compensation for which Employee may be eligible for a calendar year on or before March 15 of the following year (provided that Employee is employed on such date). Employee will not be entitled to receive incentive compensation for any calendar year in which Employee's employment is terminated, except as may be provided in **Article 3**.

2.3 Stock Options. Within six months of the Agreement Date, Executive will be granted an option to purchase a number of shares equal to 4% of Company's outstanding common stock pursuant to Company's Second Amended and Restated Stock Incentive Plan, as amended (the "***Stock Plan***"). The Company will register the exercise of the stock option under the Securities Act of 1933, as amended, on a Form S-8 Registration Statement within 60 days of the date of grant, and the exercise price of such option will be equal to the fair market value of Company's Common Stock as of the date of option grant, as determined by the Board. Such option will havea ten-year term and will be subject to vesting as follows: 25% will vest as of one year from the Start Date, and the remaining 75% of the shares will then vest in equal installments each month thereafter over the following 36 months. The total amount of granted options to purchase shares shall be reviewed by the Board annually for potential adjustment on the basis of performance; and Employee shall be eligible, at the Board's sole discretion, for merit increases consistent with Company's procedures, policies and practices.

2.4 Participation in Benefits. During the Term of Employee's employment by Company, Employee shall be entitled to participate in the Company's employee benefits plans, as governedby the terms of the official plan documents. Employee may take time off for vacation and sick leave as necessary and consistent with his job duties. Employee's participation in such benefits shall be subject to the terms of the applicable plans, as the same may be amended from time to time. Company does not guarantee the adoption or continuance of any particular employee benefit plan during Employee's employment; and nothing in this Agreement is intended to, or shall in any way restrict the right of Company to amend, modify or terminate any of its employeebenefit plans at any time, including during the Term of this Agreement.

ARTICLE 3. TERMINATION AND COMPENSATION FOLLOWING TERMINATION

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

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

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

3.1.3 Termination Due to Employee's Disability. If Employee becomes Disabled, the Separation Date shall be the effective date of his resignation or his discharge by Company because of the Disability, whichever occurs first. For purposes of this Agreement, "***Disabled***" or "***Disability***" means the incapacity or inability of Employee, whether due to accident, sickness or otherwise (with the exception of the illegal use of drugs), to perform the essential functions of Employee's position under this Agreement, with or without reasonable accommodation (provided that no accommodation that imposes undue hardship on Company will be required) foran aggregate of 90 days during any period of 180 consecutive days, or such longer period as maybe required under applicable law.

If Employee (or his legal representative, if applicable) does not agree with Company's decision to terminate his employment hereunder because of Disability, the question of Employee's Disability shall be subject to the certification of a qualified medical doctor mutuallyagreed to by Company and Employee (or, in the event of Employee's incapacity to designate a doctor, Employee's legal representative). In the absence of such agreement, each such party shall nominate a qualified medical doctor and the two doctors shall select a third doctor, who shall make the determination as to Employee's Disability. The decision of the designated physician shall be binding upon the parties in the same manner as the decision of an arbitrator under **Section 4.5**.

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

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

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

3.1.6 Termination by Company without Cause. Company may terminate Employee's employment under this Agreement at any time for any reason or no reason with 30days' written notice to Employee, except that no notice shall be required for a termination of employment without Cause following a "***Change in Control***" as defined in the Stock Plan.

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

For purposes of this Agreement, "***Good Reason***" means, at any time: (a) the assignmentby Company to Employee of employment duties, functions or responsibilities that are significantly different from, and result in a material diminution of, Employee's duties, functionsor responsibilities, including without limitation any requirement that Employee report to another officer of Company, rather than directly to the Board; (b) a material reduction in Employee's Base Salary or the minimum target amount provided under **Section 2.2** for his cash incentive compensation for any calendar year; (c) a Company requirement that Employee be based at any office or location more than 35 miles from Employee's primary work location before the date of this Agreement; or (d) any other action or inaction that constitutes a material breach of this Agreement by Company.

3.1.8 Termination at End of Term. The termination of this Agreement and Employee's employment, as of the end of the initial Term or any additional Term, pursuant to the operation of the provisions of **Section 1.2**, shall entitle Employee only to the compensation and benefits provided in **Section 3.2.1, Section 3.2.3** and **Section 3.3.**

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

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

If a termination occurs pursuant to **Section 3.l.5** (by Employee without Good Reason), when Company receives Employee's notice Company shall have the option, at itsdiscretion (a) to continue to engage Employee's services through the 30-day notice period until the Separation Date, or (b) terminate the use of Employee's services during the 30-day notice period before the Separation Date but treat Employee as if he were providing services

through the 30-day notice period until the Separation Date for purposes of determiningEmployee's compensation due him pursuant to this **Section 3.2.1**.

3.2.2 Payment of Severance for Termination by Company without Cause or by Employee for Good Reason. If (a) Employee's employment is terminated pursuant to either of **Section 3.1.6** (by Company without Cause) or **Section 3.1.7** (by Employee for Good Reason), or **Section 3.1.8** (Termination at End of Term), as a result of Company giving notice to Employee of Company's desire to terminate this Agreement, (b) Employee has executed and delivered to Company, within 60 days after the effective date of that termination, a written release in substantially the same form attached hereto as **Exhibit B** (the "***Release***"), and (c) the rescission period specified therein has expired without the Employee's rescission or attempted rescission of the Release, (i) Company shall, subject to any payment delay required by **Section 3.2.5**, continueto pay, as severance pay, Employee's Base Salary (at the rate in effect on the Separation Date), for a period of 12 months following the Separation Date (for a period of 18 months following three years of employment from the Start Date); *provided*, *however*, that any severance payments accruing after the Separation Date and prior to the Employee's execution and delivery to the Company of the Release and expiration of any rescission period shall be suspended and paid on the pay date following the effective date of such Release, (ii) 100% of any unvested shares under any options to purchase shares of Company Common Stock then held by Employee ("***Options***") shall immediately vest, and (iii) Employee shall be permitted to exercise all shares under his Options immediately or at any time during the five-year period (but not after the end of each Option's original term) following the Separation Date. Such payments of Base Salary will be at the usual and customary pay intervals of Company and will be subject to all appropriate deductions and withholdings. For purposes of Employee's qualification for severance pay, his right to any series of such payments due under this Agreement is treated as the right to a series ofseparate payments, each of which is subject to all of the requirements of this **Section 3.2.2**.

3.2.3 Effects of Change in Control. Upon the occurrence of a Change in Control (as defined in **Section 3.1.6**), Company agrees that, notwithstanding any contrary provisions of the Stock Plan or any agreements pursuant to which Options have been granted to Employee ("***Option Agreements***"), the vesting schedule of Employee's Options shall accelerate such that on the date the Change in Control is completed, 100% of any then unvested shares subject to the Options held by Employee shall immediately vest; *provided*, *however*, that if, in connection withthe consummation of the transaction resulting in the Change in Control, Employee receives a cash payment with respect to each Option (after they become fully vested) equal to the differenceor "spread'' between (a) the per share amount paid to holders of Company's common stock in such transaction and (b) the per share exercise price under the applicable Option Agreement, his Options shall be cancelled upon the consummation of the Change in Control in exchange for such cash payment; *provided*, *further*, that if in connection with or within the first two years afterthe Change in Control (as defined in **Section 3.1.6**), Employee's employment is terminated pursuant to either of **Section 3.1.6** (by Company without Cause) or **Section 3.1.7** (by Employee for Good Reason), and (a) Employee has executed and delivered to Company, within 60 days after the effective date of that termination, the Release and (b) the rescission period specified therein has expired without the Employee's rescission or attempted rescission of the Release, then, in addition to the payments under **Section 3.2.2**:

(A) within 14 calendar days following the Separation Date, Company shall also pay to Employee, or Employee's surviving spouse (or, if none, Employee's estate), as the case may be, any amounts to which Employee is entitled as of the Separation Date, as a pro rata portion of any unpaid cash incentive compensation determined under **Section 2.2** for the calendar year in which the Separation Date occurs. That pro-rated cash incentive compensation shall be based on whether Employee's objectives were achieved (also pro-rated to the extent possible) during the portion of the year before the Separation Date; and the pro-rated amount shall be based on the number of days in that portion, as compared with the entire year; and

(B) the vesting schedule of Options held by Employee shall accelerate such that on the Separation Date connected with or after a Change in Control, 100% of any unvested shares under the Options shall immediately vest and shall be exercisable immediately or at any time during the five year period (but not after the end of each Option's original term) following the Separation Date, notwithstanding any contrary provisions of the Option Agreements or the StockPlan; *provided*, *however*, that if, in connection with the consummation of the transaction resulting in the Change in Control, Employee receives a cash payment with respect to each Option (after they become fully vested under this paragraph) equal to the difference or "spread" between (a) the per share amount paid to holders of Company's common stock in such transaction and (b) the per share exercise price under the applicable Option Agreement, his Options shall be cancelled upon the consummation of the Change in Control in exchange for such cash payment. The parties hereto agree and acknowledge that, with respect to any Options previously granted to Employee that were intended by the parties to be treated as "incentive stock options" within the meaning of Section 422 of the Internal Revenue Code of 1986, as amended (the "***Code***")("***Code Section 422***), such Options, to the extent they may be exercised byEmployee more than 90 days following the Separation Date, shall be treated as non-qualified Options, notwithstanding any contrary provisions of the Option Agreements.

3.2.4 General Provision Regarding Treatment of Options. Except as otherwise specified in **Section 3.2.2** and **Section 3.2.3** of this Agreement, the terms of the Stock Plan and Option Agreements, as applicable, shall govern the treatment of the Options following the Separation Date.

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

defined pursuant to Code Section 409A. Each payment under this Agreement shall be treated as a separate payment for purposes of Code Section 409A.

3.3 COBRA Reimbursements Following Certain Employment Terminations. If Employee's employment is terminated pursuant to any of **Section 3.1.2**, **Section 3.1.3**, **Section 3.1.6**, **Section 3.l.7** or **Section 3.1.8**, subject to Employee's execution and non-revocation of the Release, if Employee timely and effectively elects continuation coverage under Company's group health plans pursuant to section 4980B of the Code, as amended ("***COBRA***")or similar state law, Company will pay or reimburse the premiums for such coverage of Employee (and Employee's dependents, as applicable) at the same rate it pays for active employees for a period of 12 months from the Separation Date (for a period of 18 months following three years of employment from the Start Date); *provided*, *however*, that Company's obligation to make such payments shall immediately expire if Employee ceases to be eligible forcontinuation coverage under COBRA or similar state law or otherwise terminates such coverageor, if earlier, the date Employee becomes eligible for group health plan coverage with a new employer of Employee.

3.4 Surrender of Records and Property. Upon termination of Employee's employment with Company, Employee shall deliver promptly to Company all Confidential Information as described in Section 1.1 of the Proprietary Information Agreement and all Company property including, but not necessarily limited to records, manuals, books, blank forms, documents, letters, memoranda, business plans, minutes, notes, notebooks, reports, computer disks, computersoftware, computer programs (including source code, object code, on line files, documentation, testing materials and plans and reports), computer print outs, member or customer lists, credit cards, keys, identification, products, access cards, designs, drawings, sketches, devices, specifications, formulae, data, tables or calculations or copies thereof, and all other tangible or intangible property relating in any way to the business of Company that are the property of Company or any subsidiary or affiliate, if any, or which relate in any way to the business, products, practices or techniques of Company or any subsidiary or affiliate.

ARTICLE 4. MISCELLANEOUS PROVISIONS

4.1 Company Remedies. Employee acknowledges and agrees that the restrictions and agreements contained in this Agreement and in the Proprietary Information Agreement that is attached as **Exhibit A** to this Agreement are reasonable and necessary to protect legitimate interests of Company; that the services to be rendered by Employee are of a special, unique and extraordinary character; that it would be difficult to replace such services; that any violation of the Proprietary Information Agreement would be highly injurious to Company; that Employee's violation of the Proprietary Information Agreement would cause Company irreparable harm that would not be adequately compensated by monetary damages; and that the remedy at law for any breach of any of the provisions of the Proprietary Information Agreement will be inadequate. Accordingly, Employee specifically agrees that Company shall be entitled, in addition to any remedy at law, to preliminary and permanent injunctive relief and specific performance for any actual or threatened violation of this Agreement and to enforce the provisions of the Proprietary Information Agreement.

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

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

If to Company, at:	ReShape Lifesciences Inc. 1001 Calle Amanecer San Clemente, CA 92673
If to Employee, at:	Barton P. Bandy 23 Calle Pacifica San Clemente, CA 92673

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

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

4.5 Arbitration. The parties irrevocably consent that, except to the extent provided in this section and **Section 4.4**, any litigation or other dispute arising between the parties, in connection with the interpretation or enforcement of this Agreement, that has not been settled through negotiation within a period of thirty (30) days after the date on which either party shall first have notified the other party in writing of the existence of the dispute, shall be settled by final and binding arbitration under the then-applicable Employment Arbitration Rules of JAMS ("***JAMS***"); and a court judgment on the award may be entered in any court having competent jurisdiction. Notwithstanding the foregoing, neither party shall be entitled or required to seek arbitration regarding any cause of action that would entitle such party to injunctive relief.

Any such arbitration shall be conducted by one neutral arbitrator appointed by mutual agreementof the parties or, failing such agreement, in accordance with the JAMS Rules then in effect, a copy of which is available on the JAMS website (https://www.jamsadr.com/rules-employment-arbitration/english). The arbitrator shall be an experienced attorney with a background in employment law. Any arbitration shall be conducted in Orange County, California. An arbitration award may be enforced in any court of competent jurisdiction.

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

To the extent any provision of this Agreement may be deemed to provide a benefit to Employee that is treated as non-qualified deferred compensation pursuant to Code Section 409A, such provision shall be interpreted and administered in a manner that qualifies for any applicable exemption from compliance with Code Section 409 or, if such interpretation would cause any reduction of benefit(s), such provision shall be interpreted (if reasonably possible) in a manner that complies with Code Section 409A and does not cause any such reduction. Any payment under this Agreement that is payable upon a termination of employment of the Executive shall only be made upon the Employee's "separation from service" with the Company within the meaning of Section 409A, and any reference to Separation Date shall similarly mean the date of such "separation from service" with the Company. If any payment under this Agreement is contingent upon the execution and delivery of a release and if the Separation Date with respect towhich such payment is being made occurs during the last 60 days of the calendar year, the payment shall in no event be made earlier than the first business day of the succeeding calendar year.

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

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

4.9 Survival. The parties expressly acknowledge and agree that the provisions of this Agreement that by their express or implied terms extend beyond the expiration of this Agreement

or the termination of Employee's employment under this Agreement, shall continue in full force and effect, notwithstanding Employee's termination of employment under this Agreement or the expiration of this Agreement.

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

4.11 Attorneys' Fees for Negotiating Agreement. Upon receipt by Company of a statement for legal services from the attorneys representing Employee, Company shall reimburse Employeeor pay on behalf of Employee the reasonable and necessary attorneys' fees and associated expenses incurred by Employee in connection with the negotiation of this Agreement, *provided*, *however*, that such fees and expenses shall not exceed $5,000.00.

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

[*Signature page follows*]

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

RESHAPE LIFESCIENCES INC.

By: _____

Name: Dan W. Gladney
Its: Chairman of the Board

_____
Barton P. Bandy

EXHIBIT A

Proprietary Information Agreement

(attached)

RESHAPE LIFESCIENCES, INC.

EMPLOYEE PROPRIETARY INFORMATION AGREEMENT

In consideration and as a condition of my employment, or continued employment, by ReShape Lifesciences, Inc. and/or by companies which it owns, controls, or is affiliated with or their successors in business ("the Company"), and the compensation paid therefor:

1. Confidentiality.

1.1 I agree to keep confidential, except as the Company may otherwise consent in writing, and not to disclose or make any use of except for the benefit of the Company, at any time, either during or subsequent to my employment, any trade secrets, confidential information, knowledge, data or other information of the Company relating to products, processes, know-how, designs, formulas, test data, customer lists, business plans, marketing plans and strategies, pricing strategies or other subject matter pertaining to any business of the Company or any of its clients, customers, consultants, licensees or affiliates, which I may produce, obtain or otherwise acquire during the course of my employment, except as herein provided. I further agree not to deliver, reproduce or in any way allow any such trade secrets, confidential information, knowledge, data or other information, or any documentation relating thereto, to be delivered or used by any third parties without prior written consent of a duly authorized representative of the Company. The foregoing obligations of confidentiality shall not apply to (a) any knowledge or information which is now or subsequently becomes generally and publicly known, other than as a direct or indirect result of the breach of this Agreement by me or a breach of a confidentiality obligation owed to the Company by another, or (b) any knowledge or information which is not proprietary to the Company that I acquired prior to becoming its employee. I acknowledge that I have been informed that I have rights under 18
U.S.C. Section 1833(6) which states in part: "An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that - (A) is made (i) in confidence to a Federal, State, or local gover11111ent official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal." Nothing in this Agreement is intended by Company to conflict with or create liability for actions taken that are permitted under 18 U.S.C. Section 1833(6).

2. Conflicting Employment/Return of Confidential Material.

I agree that during my engagement with the Company, I will not engage in any other employment, occupation, consulting or other activity relating to the business in which the Company is now or may hereafter become engaged or which would otherwise conflict with my obligations to the Company. In the event of my termination of engagement with the Company for any reason whatsoever or upon the request of the Company, I agree to promptly surrender and deliver to the Company all records, materials, equipment, drawings, documents and data, including any reproductions thereof, of any nature pertaining to any invention, trade secret or confidential information of the Company or to my engagement, and I will not take with me any description containing or pertaining to any confidential information, knowledge or data of the Company which I may produce or obtain during the course of my engagement. The foregoing shall not apply to my address book, or to any information or documentation I acquired prior to becoming an employee of the Company. In the event of the termination of my engagement for any reason whatsoever, I agree to sign and deliver the "Termination Certificate" attached hereto as Exhibit A.

3. Assignment of lnventions.

I agree that all medical devices and processes, documentation and other copyrightable materials to which I contribute during my engagement shall be considered "works made for hire" and shall be the sole property of the Company. I hereby assign and transfer to the Company my entire right, title and interest in and to all inventions (as used in the Agreement, "inventions" shall include but not be limited to ideas, improvements, designs and discoveries) whether or not patentable and whether or not reduced to practice, made or conceived by me (whether made solely by me or jointly with others) during the period of my engagement with the Company, which relate in any manner to the actual or demonstrably anticipated business, work or research and development of the Company or its subsidiaries, or result from or are suggested by any task assigned to me or any work performed by me for or on behalf of the Company or its subsidiaries or result from use of premises owned, leased or contracted for the Company. I agree that all such inventions are the sole property of the Company provided, however, that this Agreement does not require assignment of an invention for which no equipment, supplies, facility, or trade secret information of the Company was used, and which was developed entirely on my own time as provided in California Labor Code Section 2870 a copy of which is attached hereto as Exhibit B, and:

(a) which does not relate to the business of the Company or to the Company's actual or demonstrably anticipated research or development; or

(b) which does not result from any work performed by me for the Company.

4. Disclosure of lnventions and Patents.

I agree that in connection with any "invention" as defined in Paragraph 3 above:

(a) I will disclose such invention promptly in writing to my immediate superior at the Company, with a copy to the Chief Executive Officer, regardless of whether I believe the invention is protected by Paragraph 3 above, in order to permit the Company to claim rights to which it may be entitled under this Agreement. Such disclosure shall be received in confidence by the Company.

(b) I will, at the Company's request, promptly execute a written assignment of title to the Company for any invention required to be assigned by Paragraph 3 ("assignable invention"), and I will preserve any such assignable invention as confidential information of the Company.

(c) Upon request, I agree to assist the Company or its nominee (at its expense) during and at any time subsequent to my engagement in every reasonable way to obtain for its own benefit patents and copyrights for such assignable inventions in any and all countries, which inventions shall be and remain the sole and exclusive property of the Company or its nominee whether or not patented or copyrighted. I agree to execute such papers and perform such lawful acts as the Company deems to be necessary to allow it to exercise all right, title, and interest in such patents and copyrights.

5. Execution of Documents.

In connection with Paragraph 4(c), I further agree to execute, acknowledge and deliver to the Company or its nominee upon request and at its expense all such documents, including applications for patents and copyrights and assignments of inventions, patents and copyrights to be issued

therefore, as the Company may determine necessary or desirable to apply for and obtain letters, patents and copyrights on such assignable inventions in any and all countries and/or to protect the interest of the Company or its nominee in such inventions, patents and copyrights, and to vest title thereto in the Company or its nominee. In the event that the Company is unable for any reason whatsoever to secure my signature to any lawful and necessary document required to apply for or execute any patent application with respect to inventions (including renewals, extension, continuations, divisions or continuations, divisions or continuations in part thereof), I hereby irrevocably designate and appoint the Company and its duly authorized officers and agents, as my agents and attorneys-in-fact to act for and in my behalf and instead of me, to execute and file any such application and to do all other lawfully permitted acts to further the prosecution and issuance of patents thereon with the same legal force and effect as if executed by me.

6. Maintenance of Records.

I agree to keep and maintain adequate and current written or printed records of all inventions made by me (in the form of notes, sketches, drawings and as may be specified by the Company), which records shall be available to and remain the sole property of the Company at all times.

7. Prior Inventions.

It is understood that all inventions if any, patented or unpatented, which I made prior to my engagement by the Company are excluded from the scope of this Agreement. To preclude any possible uncertainty, I have set forth on Exhibit C attached hereto a complete list of all my prior inventions excluded from the assignment of rights, including numbers of all patents and patent applications, and a brief description of all unpatented inventions which are not the prope1ty of a previous employer. I represent and covenant that the list is complete and that, if no items are on the list, I have no such prior inventions. During my engagement with the Company, I agree to notify the Company in writing before I make any disclosure or perform any work on behalf of the Company which appears to threaten or conflict with proprietary rights I claim in any invention or idea. In the event of my failure to give such notice, I agree that I will make no claim against the Company with respect to any such inventions or ideas. In addition, if any invention made or conceived by me during the period of my employment is based on, or incorporates, or is an improvement or derivative of, or cannot reasonably be made, used, reproduced and distributed without violating other technology or rights owned by me, I hereby grant to the Company a perpetual, worldwide, royalty free, non-exclusive, sublicensable right and license to exploit and exercise all such technology in suppo1t of the Company's exercise or exploitation of its rights to such invention.

8. Trade Secrets of Others.

I represent that my performance of all the terms of this Agreement and as an employee of the Company does not and will not breach any agreement to keep in confidence proprietary information, knowledge or data acquired by me in confidence or in trust prior to my employment with the Company, and I will not disclose to the Company or induce the Company to use any confidential or proprietary information or material belonging to any previous employer or others. I agree not to enter into any agreement either written or oral in conflict herewith.

9. Performance.

I understand, as part of the consideration for the offer of employment extended to me by the Company and of my employment or continued employment by the Company, that I have not brought and will not bring with me to the Company or use in the performance of my responsibilities at the Company any equipment, supplies, facility or trade secret information of any former employer which are not generally available to the public, unless I have obtained written authorization for their possession and use.

10. Remedies.

I agree that in addition to any other rights and remedies available to the Company for any breach by me of my obligations hereunder, the Company shall be entitled to enforcement of my obligations hereunder by court injunction.

11. Non Solicitation.

I agree that during my employment and for the two-year period following my employment I will not solicit or induce any employee or consultant of the Company to quit their employment, cease doing business with the Company or accept employment with any entity that I am then involved with, unless I am specifically authorized to do so by the Company. In addition, during my engagement and for the two-year period following my engagement I will not solicit or induce any customer of the Company to cease doing business with the Company.

12. Modification.

This Agreement may not be changed, modified, released, discharged, abandoned or otherwise amended, in whole or in part, except by an instrument in writing, signed by me and the Company. I agree that any subsequent change or changes in my duties or compensation shall not affect the validity or scope of this Agreement.

13. Entire Agreement.

I acknowledge receipt of this Agreement and agree that with respect to the subject matter thereof it is my entire agreement with the Company, superseding any previous oral or written communications, representations, understandings or agreements with the Company or any officers or representative thereof.

14. Severability.

In the event that any paragraph or provision of this Agreement shall be held to be illegal or unenforceable in any jurisdiction, such paragraph or provision shall, as to that jurisdiction, be adjusted and reformed, if possible, in order to achieve the intent of the parties, and if such paragraph or provision cannot be adjusted and reformed, such paragraph or provision shall, for the purposes of that jurisdiction be voided and severed from this Agreement, and the entire Agreement shall not fail on account thereof but shall otherwise remain in full force and effect.

15. Successors and Assigns.

This Agreement shall be binding upon my heirs, executors, administrators or other legal representative and is for the benefit of the Company, its successors and assigns. This Agreement may be assigned by the Company to any purchaser or successor in interest to the business of the Company.

16. Governing Law.

This Agreement shall be governed by the laws of the location of the Company's corporate headquarters, which is presently located in the State of California; provided, however, that in the event this provision is deemed to be unenforceable by a local judicial authority or governmental agency, then the laws of the location of my employment shall apply.

17. Counterparts.

This Agreement may be signed in two counterparts, each shall be deemed an original andboth of which shall together constitute one agreement.

Dated: _____ EMPLOYEE

Sign _____
Print _____

RESHAPE LIFESCIENCES, INC.
a Delaware corporation

By: _____

EXHIBIT B

CONFIDENTIAL SEPARATION AGREEMENT AND GENERAL RELEASE

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

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

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

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

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

1. Separation from Employment. Effective_____(your "***date of separation***"), your employment with ReShape terminates. Except as provided in this Agreement, all benefits and privileges of employment end as of your date of separation.

2. Separation Benefits. As consideration for your promises and obligations under this Agreement and the Employment Agreement, and subject to the terms and conditions of this Agreement and the Employment Agreement, including the release of claims set forth below, ReShape agrees to pay you, as separation pay, the gross amount of_____, less applicable deductions and withholdings for state and federal taxes, which amount represents 12 months of your Base Salary as of your date of separation. The separation pay will be divided and paid to you in substantially equal periodic payments at the usual and customary pay intervals of ReShape, less deductions and withholdings and at the time described in Section 3.2.2 or Section 3.2.3 of the Employment Agreement. You agree that you are not entitled to the separation benefits provided to you in this Agreement if you do not sign this Agreement or if you rescind or attempt to rescind your release of claims under this Agreement.

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

4. COBRA Premium Payments/Reimbursements. Subject to the terms of Section 3.3 of the Employment Agreement, ReShape agrees to pay you certain COBRA premium reimbursements. You agree that any COBRA premium paid on your behalf and/or any reimbursement made to you for COBRA premiums paid by you will be treated as taxable by ReShape. Except as otherwise provided in this Section 4, the benefits to which you (or, as applicable, your spouse and eligible dependents) may be entitled upon termination of your

employment shall be determined and paid in accordance with such plans, policies and applicable laws.

5. Stock Options. All options to purchase shares of common stock of ReShape held by you (the "***Options***") are subject to the terms of one or more stock option agreements between you and Company (each, an "***Option Agreement***") and were granted pursuant to the ReShape Inc. Amended and Restated 2003 Stock Incentive Plan, as amended (the "***Stock Plan***"). Pursuant to the terms and conditions set forth in the Option Agreements, ReShape agrees that, notwithstanding anything to the contrary set forth in such Option Agreements or the Stock Plan, during the two-year period following your date of separation, you shall be permitted to exercise any Option immediately to the extent that such Option was vested as of your date of separation or would have vested within one year of your date of separation had your employment with Company not terminated. Notwithstanding anything to the contrary set forth in such Option Agreements or the Stock Plan, ReShape shall have a right, following your date of separation, to buy back all such Options based on the per share exercise price under the applicable Option Agreement. The parties agree and acknowledge that, with respect to any Options that were intended by the parties to be treated as "incentive stock options" within the meaning of
Section 422 of the Internal Revenue Code of 1986, as amended, such Options, to the extent they may be exercised by you more than 90 days following your date of separation, shall be treated as non-qualified options, notwithstanding any provision in the Option Agreements to the contrary.

6. Confidential Information. You executed an Executive Employment Agreement with ReShape, a copy of which is attached hereto as **Exhibit A**. All provisions of the Employment Agreement that, by their terms, survive the termination of your employment will continue in full force and effect and are not negated or otherwise affected by this Agreement, including but not limited to Section 4.1: Company Remedies; Section 4.4: Governing Law/Venue; Section 4.5: Arbitration; and the Employee Proprietary Information Agreement attached to the Employment Agreement as **Exhibit A** and fully incorporated therein.

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

8. Duty to Cooperate. You agree that, beginning on the date you are presented with this Agreement, you will cooperate with ReShape with respect to the transition of your duties, the preservation of effective operations and customer service, and ReShape's strategic and commercial initiatives. As part of your agreement to cooperate, you will provide a list identifying the status of major projects under way, pending customer interactions, the status of sale cycles with customers, the names and contact information of key contacts at customers, and any other information reasonably requested by ReShape regarding your duties and responsibilities. You further agree that, in the 30-day period following your acceptance of this Agreement you will

periodically make yourself accessible and available during normal business hours for consultation with ReShape representatives in connection with the transition of your duties and responsibilities. You agree that such consultation may include appearing from time to time at the office of ReShape for conferences.

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

10. Release. By this Agreement, you intend to settle any and all claims that you have or may have against ReShape as a result of ReShape hiring you, your employment with ReShape, and the decision to terminate your employment with ReShape. You agree that, in exchange for ReShape's promises in this Agreement, and in exchange for the consideration provided to you by ReShape, described above in Section 2, you, on behalf of your heirs, successors and assigns, hereby release and discharge ReShape, its predecessors, successors, assigns, parents, affiliates, subsidiaries, and related companies, and their officers, directors, shareholders, agents, servants, employees, and insurers (collectively, the "***Released Parties***") from all liability for damages and from all claims that you may have against the Released Parties occurring up through the date you sign this Agreement. You understand and agree that your release of claims in this Agreement includes, but is not limited to, any claims you may have under: Title VII of the Federal Civil Rights Act of 1964, as amended; the Americans with Disabilities Act; the Equal Pay Act; the Employee Retirement Income Security Act; the Age Discrimination in Employment Act of 1967, as amended; the Older Workers Benefit Protection Act; the Family and Medical Leave Act; the Worker Adjustment and Retraining Notification Act of 1988; the False Claims Act; the California Constitution; the California Labor Code (including but not limited to Sections 132a and 4553); the California Fair Employment & Housing Act; the California Government Code; the California Civil Code; the California Penal Code; Title VII of the Civil Rights Act; the Employee Retirement Income Security Act; the Civil Rights Act; the Equal Pay Act; the Americans with Disabilities Act; the United States Constitution; or any other federal, state, or local statute, ordinance, or law.

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

slander, discharge defamation and self-publication defamation; discharge in violation of public policy; whistleblower; qui tam actions; intentional or negligent infliction of emotional distress; or any other theory, whether legal or equitable.

You understand that nothing contained in this Agreement, including but not limited to this Section 10, will be interpreted to prevent you from filing a charge with the Equal Employment Opportunity Commission ("***EEOC***"), or any other governmental agency, or from participating in or cooperating with an EEOC or other governmental agency investigation or proceeding. However, you agree that you are waiving the right to monetary damages or other individual legal or equitable relief awarded as a result of any such proceeding.

Nothing in this Agreement prohibits or restricts you from (i) making any disclosure of information required by law; (ii) filing a charge with, providing truthful information to, or testifying or otherwise cooperating or assisting in any investigation or proceeding brought by, any governmental agency, such as the Department of Labor, EEOC, or similar state or federal agency, or any designated legal, compliance or human resources officer designated by ReShape; or (iii) reporting an illegal act to any duly authorized law enforcement agency. However, to the maximum extent allowed by applicable law, if you file such a charge or complaint, you waive your right to recover damages or obtain personal relief of any kind with respect to the matters released by this Agreement, and you agree to assign any such monetary recovery that you may obtain despite this waiver, to ReShape.

You are not aware of any other facts, evidence, allegations, claims, liabilities, or demands relating to alleged or potential violations of law that may give rise to any claim or liability on the part of any Released Party under the Securities Exchange Act of 1934, the Sarbanes–Oxley Act of 2002, the Dodd-Frank Wall Street Reform and Consumer Protection Act, the False Claims Act, the Anti-kickback Statute. You understand that nothing in this Agreement interferes with your right to file a complaint, charge or report with any law enforcement agency, with the Securities and Exchange Commission ("***SEC***") or other regulatory body, or to participate in any manner in an SEC or other governmental investigation or proceeding under any such law, statute or regulation, or to require notification or prior approval by ReShape of any such a complaint, charge or report. You understand and agree, however, that you waive your right to recover any whistleblower award under the Securities Exchange Act of 1934, the Sarbanes–Oxley Act of 2002, the Dodd-Frank Wall Street Reform and Consumer Protection Act, or other individual relief in any administrative or legal action whether brought by the SEC or other governmental or law enforcement agency, you, or any other party, unless and to the extent that such waiver is contrary to law. You agree that the Released Parties reserve any and all defenses which they might have against any such allegations or claims brought by you or on your behalf. You understand that ReShape is relying on your representations in this Agreement.

You agree that ReShape reserves any and all defenses, which it has or might have against any claims brought by you. This includes, but is not limited to ReShape's right to seek available costs and attorneys' fees as allowed by law, and to have any monetary award granted to you, if any, reduced by the amount of money that you received in consideration for this Agreement.

You understand and for valuable consideration hereby expressly waive all of the rights and benefits of Section 1542 of the California Civil Code, which section reads as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

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

12. Older Workers Benefit Protection Act. You understand and have been advised that the above release of your claims is subject to the terms of the Older Workers Benefit Protection Act ("***OWBPA***"). The OWBPA provides that an individual cannot waive a right or claim under the Age Discrimination in Employment Act ("***ADEA***") unless the waiver is knowing and voluntary. [IF A GROUP IS BEING TERMINATED UNDER THE ADEA: At the same time that you received Agreement, ReShape also provided you with information required under the OWBPA, which tells you information about the ages of other employees who were, or were not, selected to receive enhanced separation benefits. This information is set forth in Attachments A and B to this Agreement]. You agree that you have been advised of the OWBPA and agree that you are signing this Agreement voluntarily, and with full knowledge of its consequences. You understand that ReShape is giving you at least [21] [45] days from the date you received a copy of this Agreement to decide whether you want to sign it. You acknowledge that you have been advised to use this time to consult with an attorney about the effect of this Agreement. If you sign this Agreement before the end of the [21] [45] day period it will be your personal, voluntary decision to do so, and will be done with full knowledge of your legal rights. You agree that material and/or immaterial changes to this Agreement will not restart the running of this consideration period.

13. Right to Revoke and Rescind. You are hereby informed of your right to revoke your release of claims, insofar as it extends to potential claims under the ADEA, by informing ReShape of your intent to revoke your release of claims within seven (7) calendar days following your signing of this Agreement. You understand that any such revocation or rescission must be made in writing and delivered by hand or by certified mail, return receipt requested, postmarked on or before the last day within the applicable revocation period to: Chief Financial Officer, ReShape Lifesciences Inc., 1001 Calle Amanecer, San Clemente, CA 92673.

If you exercise your right to revoke or rescind this Agreement, ReShape may, at its option, either nullify this Agreement in its entirety, or keep it in effect in all respects other than as to that portion of your release of claims that you have revoked or rescinded. You agree and understand that if ReShape chooses to nullify the Agreement in its entirety, ReShape will have no obligations under this Agreement or the Employment Agreement to you or to others whose rights derive from you.

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

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

16. **Remedies**. To the extent that the ReShape wishes to pursue remedies against you under Section 7.1 of the Employment Agreement, you and ReShape agree that such action shall be venued in Orange County, California. For any other dispute, you and ReShape irrevocably consent that any litigation commenced or arising in connection with the interpretation or enforcement of this Agreement that has not been settled through negotiation within a period of thirty (30) days after the date on which either party shall first have notified the other party in writing of the existence of a dispute shall be settled by final and binding arbitration under the then-applicable Employment Arbitration Rules of JAMS ("***JAMS***"); and a court judgment on the award may be entered in any court having competent jurisdiction. Notwithstanding the foregoing, neither party shall be entitled or required to seek arbitration regarding any cause of action that would entitle such party to injunctive relief.

Any such arbitration shall be conducted by one neutral arbitrator appointed by mutual agreement of the parties or, failing such agreement, in accordance with the JAMS Rules then in effect, a copy of which is available on the JAMS website (https://www.jamsadr.com/rules-employment-arbitration/english). The arbitrator shall be an experienced attorney with a background in employment law. Any arbitration shall be conducted in Orange County, California or as otherwise agreed by the Parties. An arbitration award may be enforced in any court of competent jurisdiction.

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

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

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

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

Dated: _____

_____
Barton P. Bandy

RESHAPE LIFESCIENCES INC.

Dated: _____

By: _____
Its: _____

Exhibit 10.5

RESHAPE LIFESCIENCES
EMPLOYMENT AGREEMENT

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

WITNESETH:

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

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

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

ARTICLE I EMPLOYMENT, TERM AND DUTIES

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

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

1.3 Position and Duties.

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

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

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

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

ARTICLE II
COMPENSATION, BENEFITS AND EXPENSES

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

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

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

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

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

ARTICLE III
TERMINATION AND COMPENSATION FOLLOWING TERMINATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE IV
MISCELLANEOUS PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Signature Page Follows]

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

ReShape Lifesciences

By _____
Its: _____

_____
Thomas Stanokvich

Exhibit A
ReShape Lifesciences Inc.

Nondisclosure and Non-Solicitation Agreement

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

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

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

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

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

II. Assignment of Inventions

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

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

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

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

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

III. Non-Solicitation of Employees

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

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

IV. Employer Remedies

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

V. Governing Law/Venue

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

VI. Construction

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

VII. Severability

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

VIII. Waiver

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

IX. Entire Agreement and Amendment

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

X. At Will Employment

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

XI. Succession and Survival

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

Executed this _____day of _____ 20___.

EMPLOYEE

By: _____

Printed Name: _____

RESHAPE LIFESCIENCES INC.

By: _____

Printed Name: _____
Its: _____

To: **ReShape Lifesciences Inc.**

From: _____

Date: _____

Subject: **Prior Inventions**

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

   No inventions or improvements.

☐ See below:

_____

_____

_____

_____

_____

☐ Additional sheets attached

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

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

☐ Additional sheets attached

EXHIBIT B

CONFIDENTIAL SEPARATION AGREEMENT AND GENERAL RELEASE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated: _____

_____
Thomas Stankovich

RESHAPE LIFESCIENCES INC.

Dated: _____

By: _____
Its: _____

Exhibit 21.1

Subsidiaries

Reshape Lifesciences, Inc. (Delaware)
ReShape Lifesciences Netherlands B.V. (Netherlands)
ReShape Lifesciences Australia Pty Ltd (Australia)
ReShape Costa Rica Sociedad de Responsabilidad Limited (Costa Rica)

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

ReShape Lifesciences Inc.
San Clemente, California

We hereby consent to the incorporation by reference in Registration Statements on Form S-8 (File Nos. 333-211940, 333-196646, 333-184181, 333-176174, 333-171244, 333-159592, and 333-149662), Form S-3 (File Nos. 333-216600, 333-205353, 333-195855, 333-183313, 333-171944, 333-170503, 333-171052, 333-166011, 333-158516, 333-224066, and 333-225083) and Form S-1 (Nos. 333-215590 and 333-213704), of ReShape Lifesciences Inc. of our report dated March 10, 2021, relating to the consolidated financial statements which appears in this Form 10-K.

/s/ BDO USA, LLP
Costa Mesa, California
March 10, 2021

EXHIBIT 31.1

CERTIFICATIONS

I, Barton P. Bandy, certify that:

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

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

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

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

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

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

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

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

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

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

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

/s/BARTON P. BANDY

Barton P. Bandy
President and Chief Executive Officer

Date: March 10, 2021

EXHIBIT 31.2

CERTIFICATIONS

I, Thomas Stankovich, certify that:

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

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

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

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

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

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

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

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

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

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

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

/S/ THOMAS STANKOVICH

Thomas Stankovich
Chief Financial Officer
and Senior Vice President, Finance

Date: March 10, 2021

EXHIBIT 32.1

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

In connection with the Annual Report of ReShape Lifesciences Inc. (the Company) on Form 10-K for the period ended December 31, 2020 as filed with the Securities and Exchange Commission on the date hereof (the Report), I, Barton P. Bandy, President and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. §1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

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

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

/S/BARTON P. BANDY
Barton P. Bandy
President and Chief Executive Officer

March 10, 2021

EXHIBIT 32.2

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

In connection with the Annual Report of ReShape Lifesciences (the Company) on Form 10-K for the period ended December 31, 2020 as filed with the Securities and Exchange Commission on the date hereof (the Report), I, Thomas Stankovich, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. §1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

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

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

/S/ THOMAS STANKOVICH

Thomas Stankovich
Chief Financial Officer
and Senior Vice President, Finance

March 10, 2021