

Item 3.03 Material Modification to Rights of Security Holders.

The information contained in Item 5.03 below is incorporated by reference into this Item 3.03.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

On December 21, 2022, ReShape Lifesciences Inc. (the “Company”) filed a Certificate of Amendment (the “Certificate of Amendment”) to its Restated Certificate of Incorporation, as amended (the “Certificate of Incorporation”), with the Secretary of State of the State of Delaware to effect a 1-for-50 reverse split of the Company’s outstanding common stock, \$0.001 par value per share (the “Reverse Stock Split”). The Reverse Stock Split became effective for trading purposes upon the commencement of trading on December 23, 2022, at which point the Company’s common stock began trading on a split adjusted basis on the Nasdaq Capital Market. As a result of the Reverse Stock Split, each 50 shares of issued and outstanding common stock and equivalents will be converted into one share of common stock. Any fractional shares of common stock resulting from the Reverse Stock Split will be rounded up to the nearest whole share.

As a result of the Reverse Stock Split, proportional adjustments will be made to the number of shares of common stock issuable upon exercise or conversion, and the per share exercise or conversion price, of the Company’s outstanding warrants, stock options and convertible preferred stock, in each case in accordance with their terms.

The Certificate of Amendment also increased the number of shares of common stock that the Company is authorized to issue under the Certificate of Incorporation from 100,000,000 to 300,000,000 shares. The Reverse Stock Split does not reduce the number of authorized shares of common stock and preferred stock under the Certificate of Incorporation. Therefore, the effect of the Reverse Stock Split is to increase the number of shares of common stock and preferred stock available for issuance relative to the number of shares issued and outstanding. The Reverse Stock Split will not alter the par value of the common stock or preferred stock or modify any voting rights or other terms of the common stock or any series of preferred stock. The Reverse Stock Split and increase in authorized shares of common stock were approved by the Company’s stockholders at its annual meeting of stockholders held on December 14, 2022.

As set forth in the Certificate of Designation of Preferences, Rights and Limitations of Series D Mirroring Preferred Stock of the Company, the Series D Mirroring Preferred Stock will automatically terminate effective concurrently with the Reverse Stock Split and such shares will resume the status of authorized but unissued shares of preferred stock and shall no longer be designated as Series D Mirroring Preferred Stock.

A copy of the Certificate of Amendment is attached as Exhibit 3.1 to this Current Report on Form 8-K and incorporated herein by reference.

Item 8.01 Other Events.

On December 22, 2022, the Company issued a press release announcing the Reverse Stock Split and increase in authorized shares of common stock. A copy of such press release is attached to this Current Report on Form 8-K as Exhibit 99.1.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
3.1	Fifth Amendment to Restated Certificate of Incorporation, as amended, of ReShape Lifesciences Inc.
99.1	Press release dated December 22, 2022
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

SIGNATURES

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

RESHAPE LIFESCIENCES INC.

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

Dated: December 28, 2022

**CERTIFICATE OF FIFTH AMENDMENT
TO THE
RESTATED CERTIFICATE OF INCORPORATION
OF
RESHAPE LIFESCIENCES INC.**

ReShape Lifesciences Inc. (the “Corporation”), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the “DGCL”), does hereby certify that:

A. The name of this corporation is ReShape Lifesciences Inc. and the date on which the Restated Certificate of Incorporation of this corporation was originally filed with the Secretary of State of the State of Delaware was October 12, 2016 (the “Restated Certificate of Incorporation”).

B. The date on which the first amendment to the Restated Certificate of Incorporation was originally filed with the Secretary of State of the State of Delaware was June 14, 2018.

C. The date on which the second amendment to the Restated Certificate of Incorporation was originally filed with the Secretary of State of the State of Delaware was July 24, 2019.

D. The date on which the third amendment to the Restated Certificate of Incorporation was originally filed with the Secretary of State of the State of Delaware was June 15, 2021.

E. The date on which the fourth amendment to the Restated Certificate of Incorporation was originally filed with the Secretary of State of the State of Delaware was June 15, 2021.

F. On November 9, 2022, the Board of Directors of the Corporation has duly adopted resolutions proposing and declaring advisable that the Restated Certificate of Incorporation be further amended as set forth herein and calling for the consideration and approval thereof at a meeting of the stockholders of the Corporation and the stockholders of the Corporation approved the amendments set forth herein at a meeting duly called and held on December 14, 2022.

G. This certificate of fifth amendment (the “Certificate of Fifth Amendment”) to the Restated Certificate of Incorporation herein certified was duly adopted in accordance with the applicable provisions of Section 242 of the DGCL.

H. This Certificate of Fifth Amendment to the Restated Certificate of Incorporation shall be effective at 4:01 p.m. Eastern Time on December 22, 2022.

I. The Restated Certificate of Incorporation is hereby further amended to amend and restate ARTICLE IV, Section 1 in the form below:

“**1. Total Authorized.** The total number of shares of all classes of stock that the Corporation has authority to issue is Three Hundred and Ten Million (310,000,000) shares, consisting of two classes: Three Hundred Million (300,000,000) shares of Common Stock, \$0.001 par value per share (“**Common Stock**”), and Ten Million (10,000,000) shares of Preferred Stock, \$0.001 par value per share (“**Preferred Stock**”).”

J. The Restated Certificate of Incorporation is hereby further amended to amend and restate paragraph 3 of ARTICLE IV in the form below:

“3. Reverse Stock Split.

Upon the effectiveness of the filing of this Certificate of Fifth Amendment (the “*Effective Time*”), each share of the Corporation’s common stock, \$0.001 par value per share (the “*Old Common Stock*”), either issued or outstanding or held by the Corporation as treasury stock, immediately prior to the Effective Time, will be automatically reclassified (without any further act) into a smaller number of shares such that each fifty (50) shares of Old Common Stock issued and outstanding or held by the Company as treasury stock immediately prior to the Effective Time is reclassified into one share of Common Stock, \$0.001 par value per share, of the Corporation (the “*New Common Stock*”). The Corporation shall not issue fractional shares of New Common Stock. The reverse stock split shall not increase or decrease the amount of stated capital or paid-in surplus of the Corporation, provided that any fractional share that would otherwise be issuable as a result of the reverse stock split shall be rounded up to the nearest whole share of New Common Stock. The reverse stock split shall also not increase or decrease the authorized shares of Common Stock or Preferred Stock as set forth in ARTICLE IV, Section 1 hereof. As soon as practicable following the Effective Time, the Corporation will cause the Corporation’s exchange agent and registrar to issue new book entries representing the number of shares of the New Common Stock into which such shares of Old Common Stock shall have been reclassified.”

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, ReShape Lifesciences Inc. has caused this Certificate of Fifth Amendment to be executed by its duly authorized officer on this 21st day of December, 2022.

RESHAPE LIFESCIENCES INC.

By: /s/ Paul F. Hickey

Name: Paul F. Hickey

Title: President and Chief Executive Officer



ReShape Lifesciences Announces 1-for-50 Reverse Stock Split

Effective as of Commencement of Trading on December 23, 2022

SAN CLEMENTE, CA – December 22, 2022– ReShape Lifesciences Inc. (Nasdaq: RSL5), the premier physician-led weight loss and metabolic health solutions company, today announced that its Board of Directors has declared a 1-for-50 reverse stock split of the company’s common stock, which will be effective for trading purposes upon the commencement of trading on December 23, 2022. At that time, each 50 shares of issued and outstanding common stock and equivalents will be converted into one share of common stock. As a result of the reverse stock split, proportional adjustments will be made to the number of shares of common stock issuable upon exercise or conversion, and the per share exercise or conversion price of the company’s outstanding warrants, stock options and convertible preferred stock, in each case in accordance with their terms. Any fractional shares of common stock resulting from the reverse stock split will be rounded up to the nearest whole share. In connection with the reverse stock split, the company also increased the number of shares of common stock that it is authorized to issue under its certificate of incorporation to 300 million shares. The number of authorized shares of common stock and preferred stock under the company’s certificate of incorporation will not be reduced in connection with the reverse stock split.

The reverse stock split and increase in authorized shares of common stock were approved by ReShape Lifesciences’ stockholders at the company’s annual meeting of stockholders held on December 14, 2022. ReShape Lifesciences stockholders will receive instructions from the company’s transfer agent, American Stock Transfer & Trust Company, LLC, as to procedures for exchanging existing stock certificates for new certificates or book-entry shares. The new CUSIP number for the company’s common stock following the reverse stock split will be 76090R200.

About ReShape Lifesciences Inc.

ReShape Lifesciences® is America's premier weight loss and metabolic health-solutions company, offering an integrated portfolio of proven products and services that manage and treat obesity and metabolic disease. The FDA-approved Lap-Band® Program provides minimally invasive, long-term treatment of obesity and is an alternative to more invasive surgical stapling procedures such as the gastric bypass or sleeve gastrectomy. ReShapeCare™ is a virtual weight-management program that supports lifestyle changes for all weight loss patients led by board-certified health coaches to help them keep the weight off over time. The recently launched ReShape Marketplace™ is an online collection of quality wellness products curated for all consumers to help them achieve their health goals. The investigational Diabetes Bloc-Stim Neuromodulation™ (DBSN™) system utilizes a proprietary vagus nerve block and stimulation technology platform for the treatment of Type 2 diabetes and metabolic disorders. The Obalon® balloon technology is a non-surgical, swallowable, gas-filled intra-gastric balloon that is designed to provide long-lasting weight loss. The ReShape Vest™ System is an investigational 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 persons with obesity without permanently changing patient anatomy. For more information, please visit www.reshapelifesciences.com.

Contacts

ReShape Lifesciences Investor Contact:

Thomas Stankovich
Chief Financial Officer
949-276-6042
ir@ReShapeLifesci.com

Investor Relations Contact:

Rx Communications Group
Michael Miller
917-633-6086
mmiller@rxir.com
