

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

Amendment No. 2
to
FORM S-1
REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

RESHAPE LIFESCIENCES INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

3841
(Primary Standard Industrial
Classification Code Number)

26-1828101
(I.R.S. Employer
Identification Number)

**1001 Calle Amanecer
San Clemente, California 92673
(949) 429-6680**
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

**Paul F. Hickey
President and Chief Executive Officer
ReShape Lifesciences Inc.
1001 Calle Amanecer
San Clemente, California 92673
(949) 429-6680**
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

**Brett Hanson
Emily Humbert
Fox Rothschild LLP
33 South Sixth Street, Suite 3600
Minneapolis, Minnesota 55402
(612) 607-7000**

**Barry I. Grossman
Sarah Williams
Matthew Bernstein
Ellenoff Grossman & Schole LLP
1345 Avenue of the Americas
New York, New York 10105
(212) 370-1300 (telephone number)
(212) 370-7889 (facsimile number)**

Approximate date of commencement of proposed sale to the public: As soon as practicable after the effective date of this registration statement.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box. ☒ x

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. "

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. "

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. "

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	☒ x	Smaller reporting company	☒ x
		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 7(a)(2)(B) of the Securities Act.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with section 8(a) of the Securities Act or until the registration statement shall become effective on such date as the Commission, acting pursuant to said section 8(a), may determine.

EXPLANATORY NOTE

This Amendment No. 2 is being filed for the purpose of filing an updated Exhibit 5.1 to the Registration Statement (Registration No. 333-269207). No changes or additions are being made hereby to the prospectus constituting Part I of the Registration Statement or to Item 13, 14, 15, 16(b) or 17 of Part II of the Registration Statement. Accordingly, such prospectus and Items 13, 14, 15, 16(b) and 17 of Part II have not been included in this Amendment No. 2.

PART II — INFORMATION NOT REQUIRED IN PROSPECTUS

Item 16. Exhibits and Financial Statement Schedules

(a) Exhibits

Exhibit	Description
<u>1.1**</u>	<u>Form of Underwriting Agreement</u>
<u>3.1</u>	<u>Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.2 to Obalon’s Registration Statement on Form S-1, filed with the SEC on September 26, 2016).</u>
<u>3.2</u>	<u>Certificate of Amendment to the Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to Obalon’s Current Report on Form 8-K, filed with the SEC on June 14, 2018).</u>
<u>3.3</u>	<u>Certificate of Second Amendment to the Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to Obalon’s Current Report on Form 8-K, filed with the SEC on July 24, 2019).</u>
<u>3.4</u>	<u>Third Amendment to the Amended and Restated Certificate of Incorporation of ReShape (incorporated by reference to Exhibit 3.1 to the Current Report on Form 8-K filed by ReShape on June 15, 2021).</u>
<u>3.5</u>	<u>Fourth Amendment to the Amended and Restated Certificate of Incorporation of ReShape (incorporated by reference to Exhibit 3.2 to the Current Report on Form 8-K filed by ReShape on June 15, 2021).</u>
<u>3.6</u>	<u>Fifth Amendment to the Amended and Restated Certificate of Incorporation of ReShape (incorporated by reference to Exhibit 3.1 to the Current Report on Form 8-K filed by ReShape on December 28, 2022).</u>
<u>3.7</u>	<u>Certificate of Designation of Preferences, Rights and Limitations of Series C Convertible Preferred Stock (incorporated by reference to Exhibit 3.3 to the Current Report on Form 8-K filed by ReShape on June 15, 2021).</u>
<u>3.8</u>	<u>Restated Bylaws (incorporated by reference to Exhibit 3.4 to Obalon’s Registration Statement on Form S-1, filed with the SEC on September 26, 2016).</u>
<u>4.1**</u>	<u>Form of Common Warrant</u>
<u>4.2**</u>	<u>Form of Pre-Funded Warrant</u>
<u>4.3**</u>	<u>Form of Underwriters’ Warrant</u>
<u>4.4**</u>	<u>Form of Warrant Agency Agreement between ReShape and American Stock Transfer & Trust Company, LLC</u>
<u>5.1*</u>	<u>Opinion of Fox Rothschild LLP as to the validity of the securities being registered.</u>
<u>10.1</u>	<u>Second Amended and Restated 2003 Stock Incentive Plan, as amended on May 23, 2018 (incorporated by reference to Exhibit 10.2 to ReShape’s Current Report on Form 8-K filed with the Securities and Exchange Commission on May 25, 2018).</u>
<u>10.2</u>	<u>2022 Equity Incentive Plan (incorporated herein by reference to Exhibit 10.1 to ReShape’s Current Report on Form 8-K filed on December 20, 2022).</u>
<u>10.3</u>	<u>Form of Indemnification Agreement entered into by and between ReShape and each of its executive officers and directors. (Incorporated herein by reference to Exhibit 10.17 to Amendment No. 1 to ReShape’s Registration Statement on Form S-1 filed on July 6, 2007 (File No. 333-143265)).</u>
<u>10.4</u>	<u>Employment Agreement, dated November 1, 2022, by and between ReShape and Paul F. Hickey (incorporated by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q filed by ReShape on November 14, 2022).</u>
<u>10.5</u>	<u>Executive Employment Agreement, dated October 29, 2019, by and between ReShape and Thomas Stankovich (incorporated by reference to Exhibit 10.5 to the Annual Report on Form 10-K filed by ReShape on April 8, 2022).</u>

Exhibit	Description
<u>10.6</u>	<u>Retention Bonus Agreement, dated August 2, 2022, between ReShape and Thomas Stankovich (incorporated by reference to Exhibit 10.2 to the Current Report on Form 8-K filed by ReShape on August 2, 2022).</u>
<u>10.7</u>	<u>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 ReShape's Annual Report on Form 10-K filed on April 2, 2018).</u>
<u>10.8</u>	<u>Fourth Amendment to Lease dated May 31, 2018 between Gildred Development Company, DBA Ocean Point and Obalon Therapeutics, Inc. (incorporated by reference to Exhibit 10.1 to ReShape's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 5, 2018).</u>
<u>10.9</u>	<u>Clinical Trial Agreement by and between ReShape and Southern California Permanente Medical Group effective as of June 1, 2017 (Incorporated herein by reference to Exhibit 10.1 to ReShape's Quarterly Report on Form 10-Q filed on May 15, 2017 (File No. 1-33818)).</u>
<u>10.10</u>	<u>Warrant Exercise Agreement, dated June 16, 2022, by and among ReShape Lifesciences Inc. and the investor party thereto (incorporated by reference to Exhibit 10.1 to ReShape's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 23, 2022).</u>
<u>10.11</u>	<u>Form of Warrant Amendment Agreement, dated November 8, 2022, by and between ReShape Lifesciences Inc. and the investor party thereto (incorporated by reference to Exhibit 10.1 to ReShape's Current Report on Form 8-K filed with the Securities and Exchange Commission on November 14, 2022).</u>
<u>21.1</u>	<u>Subsidiaries of ReShape Lifesciences Inc. (incorporated by reference to Exhibit 21.1 to the Annual Report on Form 10-K filed by ReShape on April 8, 2022).</u>
<u>23.1*</u>	<u>Consent of Fox Rothschild LLP relating to opinion as to validity of the securities being registered (included in Exhibit 5.1 hereto).</u>
<u>23.2**</u>	<u>Consent of BDO USA LLP.</u>
<u>24.1**</u>	<u>Power of Attorney (included on the signature page to this registration statement) on Form S-1 filed on January 12, 2023.</u>
101.SCH	Inline XBRL Taxonomy Extension Schema Document.
101.CAL	Inline XBRL Taxonomy Calculation Linkbase Document.
101.DEF	Inline XBRL Taxonomy Definition Linkbase Document.
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document.
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document.
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101).
<u>107**</u>	<u>Calculation of Filing Fee Table</u>

* Filed herewith.

** Previously filed

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant has duly caused this Amendment No. 2 to registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Clemente, State of California, on February 1, 2023.

RESHAPE LIFESCIENCES INC.

By: /s/ Paul F. Hickey

Name: Paul F. Hickey

Title: President and Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, as amended, this Amendment No. 2 to registration statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Capacity	Date
/s/ Paul F. Hickey Paul F. Hickey	President and Chief Executive Officer and Director (Principal Executive Officer)	February 1, 2023
/s/ Thomas Stankovich Thomas Stankovich	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	February 1, 2023
* Dan W. Gladney	Director	February 1, 2023
* Gary D. Blackford	Director	February 1, 2023
* Lori C. McDougal	Director	February 1, 2023
* Arda M. Minocherhomjee, Ph.D.	Director	February 1, 2023
* By Paul F. Hickey as attorney-in-fact		
/s/ Paul F. Hickey Paul F. Hickey		



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www.foxrothschild.com

February 1, 2023

ReShape Lifesciences Inc.
1001 Calle Amanecer
San Clemente, CA 92673

RE: ReShape Lifesciences Inc. Registration Statement on Form S-1

Ladies and Gentlemen:

We have acted as counsel to ReShape Lifesciences Inc., a Delaware corporation (the “**Company**”), in connection with its filing with the Securities and Exchange Commission (the “**Commission**”) of a registration statement on Form S-1 (Registration No. 333-269207, as amended or supplemented from time to time, the “**Registration Statement**”), relating to the public offering by the Company (the “**Offering**”) of up to 1,274,444 units (the “**Units**”) of the Company, with each Unit consisting of: (i) either one share of the Company’s common stock, par value \$0.001 per share (the “**Common Stock**” and such shares, the “**Shares**”), or one pre-funded warrant to purchase one share of Common Stock at an exercise price equal to \$0.0001 per share of Common Stock (the “**Pre-Funded Warrants**” and the shares of Common Stock issuable upon exercise thereof, the “**Pre-Funded Warrant Shares**”) and (ii) one warrant to purchase one and one-half shares of Common Stock (the “**Common Warrants**” and the 1,911,666 shares of Common Stock issuable upon exercise of the Common Warrants, the “**Common Warrant Shares**”). The Units are to be sold by the Company pursuant to an underwriting agreement (the “**Underwriting Agreement**”) to be entered into by and between the Company and Maxim Group, LLC, as underwriter (the “**Underwriter**”), the form of which has been filed as Exhibit 1.1 to the Registration Statement. As noted in the Registration Statement, for each Pre-Funded Warrant sold, the number of Shares sold will be decreased on a one-for-one basis.

The Units, including the Shares, Common Warrants and Pre-Funded Warrants included in the Units, and the Common Warrant Shares and Pre-Funded Warrants Shares are collectively referred to herein as the “**Securities**.” The term “**Shares**” includes any additional shares of Common Stock, or shares of Common Stock underlying Common Warrants and Pre-Funded Warrants, issued or issuable pursuant to the exercise of the over-allotment option granted to the Underwriter in the Underwriting Agreement in connection with the offering contemplated by the Registration Statement.

A Pennsylvania Limited Liability Partnership

California Colorado Delaware District of Columbia Florida Georgia Illinois Minnesota Nevada
New Jersey New York North Carolina Pennsylvania South Carolina Texas Virginia Washington

February 1, 2023

Page 2

This opinion is being furnished in connection with the requirements of Item 601(b)(5) of Regulation S-K under the Securities Act of 1933, as amended (the “**Securities Act**”), and no opinion is expressed herein as to any matter pertaining to the contents of the Registration Statement other than as expressly stated herein.

In connection with this opinion, we have examined the Company’s Restated Certificate of Incorporation and all amendments thereto; the Company’s Restated Bylaws, as currently in effect; the Registration Statement and the exhibits thereto; the prospectus contained in the Registration Statement; the form of Underwriting Agreement; the form of Common Warrant; the form of Warrant Agency Agreement; the form of Pre-Funded Warrant; and such other documents, records, certificates, memoranda and instruments as we have deemed necessary as a basis for this opinion. We have also examined the resolutions of the Board of Directors of the Company authorizing the filing of the Registration Statement by the Company and the issuance of the Securities by the Company (the “**Resolutions**”).

Based upon, subject to and limited by the foregoing, we are of the opinion that following (i) execution and delivery by the Company and the Underwriter of the Underwriting Agreement, (ii) effectiveness of the Registration Statement, and (iii) receipt by the Company of the consideration for the Securities:

1. The Shares will be validly issued, fully paid and non-assessable.
2. The Warrants will constitute the valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, under the laws of the State of New York.
3. The Pre-Funded Warrants will constitute the valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, under the laws of the State of New York.
4. The Common Warrant Shares issuable upon exercise of the Common Warrants and the Pre-Funded Warrant Shares issuable upon exercise of the Pre-Funded Warrants have been duly authorized and, when issued upon exercise of the Common Warrants and the Pre-Funded Warrants upon payment of the applicable exercise price therefor in accordance with the terms thereof, will be validly issued, fully paid and non-assessable

Our opinion herein is expressed solely with respect to the General Corporation Law of the State of Delaware (including the statutory provisions, all applicable provisions of the Delaware Constitution and reported judicial decisions interpreting the foregoing) and, solely for purposes of paragraphs 2 and 3 above, the laws of the State of New York and is based on these laws as in effect on the date hereof. We express no opinion herein as to any other statutes, rules or regulations. We express no opinion herein as to whether the laws of any jurisdiction are applicable to the subject matter hereof. We are not rendering any opinion as to compliance with any federal or other state law, rule or regulation relating to securities, or to the sale or issuance thereof.



February 1, 2023

Page 3

This opinion letter has been prepared for your use in connection with the Offering. This opinion is expressed as of the date hereof, and we disclaim any undertaking to advise you of any subsequent changes in the facts stated or assumed herein or of any subsequent changes in applicable law.

We consent to the filing of this opinion letter as an exhibit to the Registration Statement and to the reference to this firm under the caption "Legal Matters" in the prospectus contained therein. In giving this consent, we do not hereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission thereunder.

Very truly yours,

/s/ Fox Rothschild LLP
