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

Form 10-Q

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

For the quarterly period ended September 30, 2024

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: 1-37897

RESHAPE LIFESCIENCES INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation or organization)

26-1828101
(IRS Employer
Identification No.)

18 Technology Dr, Suite 110, Irvine, California 92618

(Address of principal executive offices) (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	The Nasdaq Capital Market

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 is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

As of November 12, 2024, 712,680 shares of the registrant's Common Stock were outstanding.

INDEX

PART I – FINANCIAL INFORMATION

Item 1.	Condensed Consolidated Financial Statements (unaudited)	3
	Condensed Consolidated Balance Sheets as of September 30, 2024 and December 31, 2023	3
	Condensed Consolidated Statements of Operations for the three and nine months ended September 30, 2024 and 2023	4
	Condensed Consolidated Statements of Comprehensive Loss for the three and nine months ended September 30, 2024 and 2023	5
	Condensed Consolidated Statements of Stockholders' Equity for the three and nine months ended September 30, 2024 and 2023	6
	Condensed Consolidated Statements of Cash Flows for the nine months ended September 30, 2024 and 2023	8
	Notes to Condensed Consolidated Financial Statements	9
Item 2.	Management's Discussion and Analysis of Financial Condition and Results of Operations	20
Item 3.	Quantitative and Qualitative Disclosures About Market Risk	27
Item 4.	Controls and Procedures	27

PART II – OTHER INFORMATION

Item 1.	Legal Proceedings	28
Item 1A.	Risk Factors	29
Item 2.	Unregistered Sales of Equity Securities and Use of Proceeds	30
Item 3.	Defaults Upon Senior Securities	31
Item 4.	Mine Safety Disclosures	31
Item 5.	Other Information	31
Item 6.	Exhibits	32
	SIGNATURES	33

PART I – FINANCIAL INFORMATION

ITEM 1. CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Unaudited)

RESHAPE LIFESCIENCES INC. **Condensed Consolidated Balance Sheets** **(unaudited)** **(dollars in thousands, except per share amounts)**

	September 30, 2024	December 31, 2023
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 743	\$ 4,459
Restricted cash	100	100
Accounts and other receivables (net of allowance for doubtful accounts of \$866 and \$804, respectively)	1,344	1,659
Inventory	2,934	3,741
Prepaid expenses and other current assets	217	337
Total current assets	5,338	10,296
Property and equipment, net	43	60
Operating lease right-of-use assets	177	250
Deferred tax asset, net	28	28
Other assets	29	29
Total assets	<u>\$ 5,615</u>	<u>\$ 10,663</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 2,105	\$ 1,689
Accrued and other liabilities	1,643	1,814
Warranty liability, current	163	163
Operating lease liabilities, current	114	111
Total current liabilities	4,025	3,777
Operating lease liabilities, noncurrent	77	151
Common stock warrant liabilities	26	72
Total liabilities	<u>4,128</u>	<u>4,000</u>
Commitments and contingencies (Note 10)		
Stockholders' equity:		
Preferred stock, 10,000,000 shares authorized:		
Series C convertible preferred stock, \$0.001 par value; 95,388 shares issued and outstanding at September 30, 2024 and December 31, 2023	—	—
Common stock, \$0.001 par value; 300,000,000 shares authorized at September 30, 2024 and December 31, 2023; 704,697 and 404,437 shares issued and outstanding at September 30, 2024 and December 31, 2023, respectively	—	—
Additional paid-in capital	642,518	642,325
Accumulated deficit	(640,943)	(635,574)
Accumulated other comprehensive loss	(88)	(88)
Total stockholders' equity	1,487	6,663
Total liabilities and stockholders' equity	<u>\$ 5,615</u>	<u>\$ 10,663</u>

See accompanying notes to Condensed Consolidated Financial Statements.

RESHAPE LIFESCIENCES INC.
Condensed Consolidated Statements of Operations
(unaudited)
(dollars in thousands, except per share amounts)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Revenue	\$ 2,292	\$ 2,155	\$ 6,201	\$ 6,696
Cost of revenue	853	867	2,463	2,990
Gross profit	1,439	1,288	3,738	3,706
Operating expenses:				
Sales and marketing	719	1,791	2,408	6,150
General and administrative	2,082	2,058	6,074	8,724
Research and development	399	542	1,282	1,576
Impairment of long-lived assets	—	777	—	777
Gain on disposal of assets, net	—	—	—	(33)
Total operating expenses	3,200	5,168	9,764	17,194
Operating loss	(1,761)	(3,880)	(6,026)	(13,488)
Other expense (income), net:				
Interest income, net	—	(5)	(13)	(9)
Gain on changes in fair value of liability warrants	(27)	(412)	(46)	(3,850)
Gain on extinguishment of debt	—	—	(429)	—
Loss (gain) on foreign currency exchange, net	(50)	68	(10)	47
Other	(109)	—	(193)	(8)
Loss before income tax provision	(1,575)	(3,531)	(5,335)	(9,668)
Income tax expense	6	3	34	21
Net loss	\$ (1,581)	\$ (3,534)	\$ (5,369)	\$ (9,689)
Net loss per share - basic and diluted:				
Net loss per share - basic and diluted	\$ (3.11)	\$ (59.36)	\$ (11.94)	\$ (199.98)
Shares used to compute basic and diluted net loss per share	508,851	59,538	449,614	48,451

See accompanying notes to Condensed Consolidated Financial Statements.

RESHAPE LIFESCIENCES INC.
Condensed Consolidated Statements of Comprehensive Loss
(unaudited)
(dollars in thousands)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Net loss	\$ (1,581)	\$ (3,534)	\$ (5,369)	\$ (9,689)
Foreign currency translation adjustments	1	1	—	(6)
Other comprehensive income (loss), net of tax	1	1	—	(6)
Comprehensive loss	<u>\$ (1,580)</u>	<u>\$ (3,533)</u>	<u>\$ (5,369)</u>	<u>\$ (9,695)</u>

See accompanying notes to Condensed Consolidated Financial Statements.

RESHAPE LIFESCIENCES INC.
Condensed Consolidated Statements of Stockholders' Equity
(unaudited)
(dollars in thousands)

	Three Months Ended September 30, 2024							Total Stockholders' Equity
	Series C Convertible Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	
	Shares	Amount	Shares	Amount				
Balance June 30, 2024	95,388	\$ —	506,680	\$ —	\$ 642,486	\$ (639,362)	\$ (89)	\$ 3,035
Net loss	—	—	—	—	—	(1,581)	—	(1,581)
Other comprehensive income, net of tax	—	—	—	—	—	—	1	1
Issuance of common stock pursuant to reverse stock split	—	—	198,014	—	—	—	—	—
Stock compensation	—	—	—	—	32	—	—	32
Issuance of stock from RSUs	—	—	3	—	—	—	—	—
Balance September 30, 2024	<u>95,388</u>	<u>\$ —</u>	<u>704,697</u>	<u>\$ —</u>	<u>\$ 642,518</u>	<u>\$ (640,943)</u>	<u>\$ (88)</u>	<u>\$ 1,487</u>

	Nine Months Ended September 30, 2024							Total Stockholders' Equity
	Series C Convertible Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	
	Shares	Amount	Shares	Amount				
Balance December 31, 2023	95,388	\$ —	404,437	\$ —	\$ 642,325	\$ (635,574)	\$ (88)	\$ 6,663
Net loss	—	—	—	—	—	(5,369)	—	(5,369)
Issuance of common stock pursuant to reverse stock split	—	—	198,014	—	—	—	—	—
Stock compensation	—	—	—	—	169	—	—	169
Issuance of stock from RSUs	—	—	5	—	—	—	—	—
Exercise of warrants	—	—	102,241	—	24	—	—	24
Balance September 30, 2024	<u>95,388</u>	<u>\$ —</u>	<u>704,697</u>	<u>\$ —</u>	<u>\$ 642,518</u>	<u>\$ (640,943)</u>	<u>\$ (88)</u>	<u>\$ 1,487</u>

See accompanying Notes to Condensed Consolidated Financial Statements.

RESHAPE LIFESCIENCES INC.
Condensed Consolidated Statements of Stockholders' Equity (Continued)
(unaudited)
(dollars in thousands)

Three Months Ended September 30, 2023								
	Series C Convertible Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated Deficit	Accumulated Comprehensive Income (Loss)	Total Stockholders' Equity
	Shares	Amount	Shares	Amount				
Balance June 30, 2023	95,388	\$ —	59,526	\$ —	\$ 637,175	\$ (630,342)	\$ (95)	\$ 6,738
Net loss	—	—	—	—	—	(3,534)	—	(3,534)
Other comprehensive income, net of tax	—	—	—	—	—	—	1	1
Stock compensation	—	—	—	—	216	—	—	216
Equity issuance costs	—	—	—	—	(338)	—	—	(338)
Issuance of stock from RSUs	—	—	12	—	—	—	—	—
Balance September 30, 2023	<u>95,388</u>	<u>\$ —</u>	<u>59,538</u>	<u>\$ —</u>	<u>\$ 637,053</u>	<u>\$ (633,876)</u>	<u>\$ (94)</u>	<u>\$ 3,083</u>

Nine Months Ended September 30, 2023								
	Series C Convertible Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Total Stockholders' Equity
	Shares	Amount	Shares	Amount				
Balance December 31, 2022	95,388	\$ —	8,955	\$ —	\$ 627,936	\$ (624,187)	\$ (88)	\$ 3,661
Net loss	—	—	—	—	—	(9,689)	—	(9,689)
Other comprehensive income, net of tax	—	—	—	—	—	—	(6)	(6)
Issuance of common stock pursuant to reverse stock split	—	—	318	—	—	—	—	—
Stock compensation	—	—	—	—	656	—	—	656
Common stock purchased	—	—	25,456	—	895	—	—	895
Equity issuance costs	—	—	—	—	(247)	—	—	(247)
Issuance of stock from RSUs	—	—	41	—	—	—	—	—
Exercise of warrants	—	—	24,768	—	7,813	—	—	7,813
Balance September 30, 2023	<u>95,388</u>	<u>\$ —</u>	<u>59,538</u>	<u>\$ —</u>	<u>\$ 637,053</u>	<u>\$ (633,876)</u>	<u>\$ (94)</u>	<u>\$ 3,083</u>

See accompanying Notes to Condensed Consolidated Financial Statements.

RESHAPE LIFESCIENCES INC.
Condensed Consolidated Statements of Cash Flows
(unaudited)
(dollars in thousands)

	Nine Months Ended September 30,	
	2024	2023
Cash flows from operating activities:		
Net loss	\$ (5,369)	\$ (9,689)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation expense	17	114
Amortization of intangible assets	—	33
Impairment of long-lived assets	—	777
Gain on extinguishment of debt	(429)	—
Gain on disposal of assets, net	—	(33)
Stock-based compensation	169	656
Bad debt expense	61	450
Provision for inventory excess and obsolescence	140	101
Deferred income tax	—	1
Gain on changes in fair value of liability warrants	(46)	(3,850)
Offering cost	—	298
Other noncash items	2	12
Change in operating assets and liabilities:		
Accounts and other receivables	256	(422)
Inventory	667	307
Prepaid expenses and other current assets	119	(329)
Accounts payable and accrued liabilities	673	(2,764)
Warranty liability	—	(182)
Other	—	17
Net cash used in operating activities	(3,740)	(14,503)
Cash flows from investing activities:		
Capital expenditures	—	(43)
Proceeds from sale of capital assets	—	33
Cash used in investing activities:	—	(10)
Cash flows from financing activities:		
Proceeds from sale and issuance of securities	—	12,451
Exercise of warrants	24	—
Payments of equity issuance costs	—	(338)
Net cash provided by financing activities	24	12,113
Effect of currency exchange rate changes on cash and cash equivalents	—	(6)
Net change in cash, cash equivalents and restricted cash	(3,716)	(2,406)
Cash, cash equivalents and restricted cash at beginning of period	4,559	3,955
Cash, cash equivalents and restricted cash at end of period	\$ 843	\$ 1,549
Supplemental disclosure:		
Cash paid for income taxes	\$ 12	\$ 2

See accompanying notes to Condensed Consolidated Financial Statements.

ReShape Lifesciences Inc.

Notes to Condensed Consolidated Financial Statements
(dollars in thousands, except per share amounts; unaudited)

(1) Basis of Presentation

The accompanying interim condensed consolidated financial statements and related disclosures of Reshape Lifesciences Inc. (the "Company" or "ReShape") have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission ("SEC") and should be read in conjunction with the consolidated financial statements and notes included in the Company's Annual Report on Form 10-K for the year ended December 31, 2023, filed on April 1, 2024. Certain information and footnote disclosures normally included in financial statements prepared in accordance with generally accepted accounting principles in the United States of America ("GAAP") have been condensed or omitted.

In the opinion of management, the interim consolidated condensed financial statements reflect all adjustments considered necessary for a fair statement of the interim periods. All such adjustments are of a normal, recurring nature. The results of operations for the interim periods are not necessarily indicative of the results of operations to be expected for the full year.

Reverse Stock Split

On September 23, 2024, at the commencement of trading, the Company effected a 1-for-58 reverse stock split. Accordingly, all share and per share amounts for the periods presented in the accompanying consolidated financial statements and notes thereto have been adjusted retroactively, where applicable, to reflect the reverse stock split. No fractional shares were issued in connection with the reverse stock split.

Summary of Significant Accounting Policies

The Company's significant accounting policies are described in Note 2 to its audited consolidated financial statements for the year ended December 31, 2023, which are included in the Company's 2023 Annual Report on Form 10-K which was filed with the SEC on April 1, 2024.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and judgments that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities as of the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. The Company bases its estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances. Actual results may materially differ from these estimates. The Company reviews its estimates on an ongoing basis or as new information becomes available to ensure that these estimates appropriately reflect changes in its business.

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.

Long-Lived Assets

We assess the potential impairment of long-lived assets, principally property and equipment, whenever events or changes in circumstances indicate that the carrying value of the asset group may not be fully recoverable. If an indicator of impairment exists for any of its asset groups, an estimate of undiscounted future cash flows over the life of the primary asset for each asset group is compared to that long-lived asset group's carrying value. If the carrying value of the asset group is greater than the estimated future undiscounted cash flow, the Company then determines the fair value of the assets, and if an asset is determined to be impaired, the impairment loss is measured by the excess of the carrying amount of the asset over its fair value.

Fair Value of Financial Instruments

The carrying amounts of cash equivalents, accounts receivable, accounts payable and certain accrued and other liabilities approximate fair value due to their short-term maturities. Refer to Note 6 regarding fair value measurements and inputs of warrants.

Net Loss Per Share

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

	September 30,	
	2024	2023
Stock options	144	305
Unvested restricted stock units	8	45
Convertible preferred stock	10	10
Warrants	81,432	28,147

Recent Accounting Pronouncements

New accounting standards not yet adopted are discussed below.

In November 2024, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2024-03, *Income Statement Reporting Comprehensive Income Expense Disaggregation Disclosures (Subtopic 220-40): Disaggregation of Income Statement Expenses*, which requires companies to provide more detailed and organized disclosures of their expenses in their income statements. The standard requires breaking down expenses into specific categories, such as employee compensation and costs related to depreciation and amortization. This amendment is effective for annual reporting periods beginning after December 15, 2026, and interim reporting periods beginning after December 15, 2027, on a prospective basis and early adoption and retrospective application is permitted. The Company is currently evaluating this new guidance and its impact on its Consolidated Financial Statements and related disclosures.

In December 2023, the FASB issued ASU 2023-09, *Income Taxes (Topic 740): Improvements to Income Tax Disclosures*, which requires entities to provide additional information in the rate reconciliation and additional disaggregated disclosures about income taxes paid. This guidance requires public entities to disclose in their rate reconciliation table additional categories of information about federal, state, and foreign income taxes and to provide more details about the reconciling items in some categories if the items meet a quantitative threshold. The guidance is effective for annual periods beginning after December 15, 2024. The Company does not expect the adoption of this guidance to impact its consolidated financial statements, but the guidance will impact its income tax disclosures.

In November 2023, the FASB issued ASU 2023-07, *Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosures*. The amendments require disclosure of significant segment expenses and other segment items and requires entities to provide in interim periods all disclosures about a reportable segment's profit or loss and assets that are currently required annually. The amendment also requires disclosure of the title and position of the chief operating decision maker ("CODM") and an explanation of how the CODM uses the reported measure(s) of segment profit or loss in assessing segment performance and deciding how to allocate resources. This guidance is effective for fiscal years beginning after December 15, 2023, and interim periods within fiscal years beginning after December 15, 2024. Retrospective application is required, and early adoption is permitted. The Company is currently evaluating the impact the guidance will have on its consolidated financial statements.

(2) Liquidity and Management's Plans

The Company currently does not generate revenue sufficient to offset operating costs and anticipates such shortfalls to continue as the Company has modified its strategy to a metrics-driven approach through a sustainable and scalable business model, via a digital lead generation and re-engagement strategy. As of September 30, 2024, the Company had net working capital of approximately \$1.3 million, primarily due to cash and cash equivalents and restricted cash of \$0.8 million, and \$1.3 million of net accounts receivable. The Company has raised gross proceeds of \$0.7 million from the issuance of a senior secured convertible note on October 16, 2024, for further details see Note 11. Based on its available cash resources, the Company will not have sufficient cash on hand to fund its current operations for more than twelve months from the date of filing this Quarterly Report on Form 10-Q. This condition raises substantial doubt about the Company's ability to continue as a going concern.

The Company's anticipated operations include plans to (i) merge with Vyome Therapeutics, Inc and sell certain assets to Biorad, which will continue the operations, (ii) grow sales and operations of the Company with the Lap-Band product line both domestically and internationally as well as to obtain cost savings synergies, (iii) introduce to the market Lap-Band 2.0 FLEX, (iv) continue development of the Diabetes Bloc-Stim Neuromodulation ("DBSN") device, and (v) prior to such merger and sale, 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 and product development activities.

There can be no assurance as to whether the Company will close the planned transactions or whether additional financing will be available on terms acceptable to the Company, if at all. If sufficient funds on acceptable terms are not available when needed, it would have a negative impact on the Company's financial condition and could force the Company to delay, limit, reduce, or terminate product development or future commercialization efforts or grant rights to develop and market product candidates or testing products that the Company would otherwise plan to develop.

Therefore, the plans cannot be deemed probable of being implemented. As a result, the Company's plans do not alleviate substantial doubt about our ability to continue as a going concern.

The accompanying financial statements have been prepared on a going concern basis, which contemplates the realization of assets and satisfaction of liabilities in the ordinary course of business. The financial statements do not include any adjustments relating to the recoverability and classification of recorded asset amounts or the amounts and classification of liabilities that might result from the outcome of the uncertainties described above.

(3) Supplemental Balance Sheet Information

Components of selected captions in the condensed consolidated balance sheets consisted of the following:

Inventory:

	<u>September 30,</u> <u>2024</u>	<u>December 31,</u> <u>2023</u>
Raw materials	\$ 965	\$ 1,020
Sub-assemblies	1,163	1,379
Finished goods	806	1,342
Total inventory	<u>\$ 2,934</u>	<u>\$ 3,741</u>

Prepaid expenses and other current assets:

	<u>September 30,</u> <u>2024</u>	<u>December 31,</u> <u>2023</u>
Prepaid insurance	\$ 95	\$ 110
Professional services	29	—
Patents	5	13
Prepaid advertising and marketing	21	41
Taxes	16	47
Other current assets	51	126
Total prepaid expenses and other current assets	<u>\$ 217</u>	<u>\$ 337</u>

Accrued and other liabilities:

	<u>September 30,</u> <u>2024</u>	<u>December 31,</u> <u>2023</u>
Payroll and benefits	\$ 702	\$ 701
Accrued legal settlements	—	200
Customer deposits	683	639
Taxes	44	61
Accrued professional	169	155
Other liabilities	45	58
Total accrued and other liabilities	<u>\$ 1,643</u>	<u>\$ 1,814</u>

Accounts payable:

During the second quarter of 2024, management requested outside legal counsel to provide guidance with respect to various accounts payables carried on the books from 2020 and prior. Based on the review of the statute of limitations for the various states these vendors were located, legal counsel provided a conclusion regarding whether the laws per the respective states provided that the statute of limitations has expired. The statute of limitations is an affirmative defense in which the defendant introduces evidence, which, if found to be credible, will negate criminal or civil liability, even if it is proven the defendant committed the alleged acts. The party raising the affirmative defense has the burden of proof on establishing that it applies. In a civil action in which a creditor demands payment on a written instrument evidencing a debt, the successful assertion of the statute of limitations defense will bar collection of the debt. In order to assert the statute of limitations as a defense, a defendant must specifically assert the defense is the answer. If a defendant fails to specifically plead the defense, it will be deemed to be waived. Since no action to enforce such liabilities was brought before September 30, 2024, it is our opinion that the liability is time-barred from collection under the respective state laws and should be removed from the Company's balance sheet.

Therefore, the Company made the decision to write-off the payables totaling \$429 thousand. As of September 30, 2024, the write-off of \$429 thousand resulted in a gain on extinguishment of debt which was reported on the statement of operations for the nine months ended September 30, 2024.

(4) Leases

The Company had a noncancelable operating lease for office and warehouse space in San Clemente, which expired June 30, 2023. On March 13, 2023, the Company entered into a lease for approximately 5,038 square feet of office and warehouse space at 18 Technology Drive, Suite 110, Irvine, California 92618 and relocated its principal executive offices from our former San Clemente, California location to the Irvine, California location. The Irvine lease has a term of 36 months, commencing on May 1, 2023.

The Company does not have any short-term leases or financing lease arrangements. Lease and non-lease components are accounted for separately.

Operating lease costs were \$0.1 million and \$16 thousand for the three months ended September 30, 2024 and 2023, respectively, and \$0.1 million and \$0.3 million for the nine months ended September 30, 2024 and 2023, respectively. Variable lease costs were not material.

Supplemental information related to operating leases is as follows:

Balance Sheet information	September 30, 2024	December 31, 2023
Operating lease ROU assets	\$ 177	\$ 250
Operating lease liabilities, current portion	\$ 114	\$ 111
Operating lease liabilities, long-term portion	77	151
Total operating lease liabilities	\$ 191	\$ 262
Cash flow information for the nine months ended September 30.	2024	2023
Cash paid for amounts included in the measurement of operating leases liabilities	\$ 83	\$ 174
Maturities of operating lease liabilities were as follows as of September 30, 2024:		
2024 (balance of year)	\$ 28	
2025		115
2026		59
Total lease payments		202
Less: imputed interest		11
Total lease liabilities	\$ 191	
Weighted-average remaining lease term at end of period (in years)		1.9
Weighted-average discount rate at end of period		6.9 %

(5) Equity

Common Stock Issued Related to Restricted Stock Units

During the three months ended September 30, 2024 and 2023, the Company issued 3 shares of common stock and 12 shares of common stock, respectively, subject to vesting of the restricted stock units. During the nine months ended September 30, 2024 and 2023, the Company issued 5 shares of common stock and 41 shares of common stock, respectively, subject to vesting of restricted stock units. For further details see Note 9.

May 2024 Exercise of Warrants for Common Stock

On May 30, 2024, an accredited investor exercised outstanding warrants, of which 1,811 shares of common stock were issued in accordance with the terms of the warrant agreement. The Company received approximately \$24 thousand of cash.

June 2024 Exercise of Warrants for Common Stock

On June 4, 2024, the Company issued 100,430 shares of common stock in exchange for 185,604 common stock purchase warrants. These warrants were exercised using the cashless mechanism within the warrant agreement.

February 2023 Public Offering of Common Stock and Warrants

On February 8, 2023, the Company closed a public offering of 21,983 units, with each consisting of one share of its common stock, or one pre-funded warrant to purchase one share of its common stock, and one warrant to purchase one and one-half shares of its common stock. Each unit was sold at the public offering price of \$464.00. The warrants in the units are immediately exercisable at a price of \$464.00 per share and expire five years from the date of issuance. Alternatively, each warrant can be exercised pursuant to the “alternative cashless exercise” provision, to which the holders would receive an aggregate number of shares of common stock equal the product of (x) the aggregate number of shares of common stock that would be issuable upon a cash exercise and (y) 0.50. For purposes of clarity, one common warrant to purchase one and one-half shares would be exercisable for 0.75 shares under this alternative cashless exercise provision. The shares of common stock (or pre-funded warrants in lieu thereof) and accompanying warrants were only purchasable together in this offering but were issued separately and immediately separable upon issuance. As of September 30, 2024 warrants to purchase 28,869 shares of common stock have been exercised under the alternative cashless exercise for a total of 14,402 shares of common stock.

Net proceeds, after deducting underwriting discounts and commissions and estimated offering expenses, were approximately \$10.2 million. The Company has been using the net proceeds of this offering to continue implementation of its growth strategies, for working capital and general corporate purposes.

The Company also granted the underwriters an option to purchase an additional 3,298 shares of common stock and/or additional warrants to purchase up to 4,947 shares of common stock, to cover over-allotments, of which Maxim Group LLC exercised its option to purchase additional warrants to purchase 4,947 shares of common stock.

(6) Warrants

The Company's grants of warrants to purchase common stock are primarily in connection with equity financing. See Note 5 for additional information about equity financings and the related issuance of warrants. Warrant activity for the nine months ended September 30, 2024 is as follows:

	Shares
Balance December 31, 2023	268,937
Issued	—
Exercised	(187,415)
Cancelled	(90)
Balance September 30, 2024	<u>81,432</u>

On February 8, 2023, the Company completed a public offering in which three classes of warrants were issued. There were 37,921 common stock purchase warrants issued with an alternative cashless exercise provision. The alternative cashless exercise allows the holder to exercise one warrant share for 0.5 shares of common stock or exercise via the cash exercise price of \$464.00 per share of common stock per warrant. The Company classifies these warrants as a liability, and the Company utilized a bifurcated Black-Scholes option pricing model to consider the cash exercise option and cashless exercise option. The bifurcated Black-Scholes option pricing model used an exercise price where the two exercise methods would be indifferent with market inputs of the stock price on the issuance, risk free interest rate, expected share price volatility and dividend yield. The Company calculates the fair value of the warrants at each reporting period and when a warrant is exercised, with the changes in fair value recognized in the statement of operations.

Below is a summary of the initial inputs used in the bifurcated Black-Scholes option pricing model.

	Cash Exercise	Cashless Exercise
Stock Price	\$ 5.905	\$ 5.905
Exercise Price	\$ 16.00	\$ 0.00
Term (years)	5.00	5.00
Volatility	96.50%	96.50%
Risk Free Rate	3.784%	3.784%
Dividend Yield	0%	0%

The following table presents the changes in the fair value of warrant liabilities:

	Common Stock Purchase Warrants
Fair value as of December 31, 2023	\$ 72
Gain on changes in fair value of liability warrants	(46)
Fair value as of September 30, 2024	<u>\$ 26</u>

In addition, one of the investors purchased 1,552 pre-funded warrants at a price of \$463.94 per warrant. These warrants have an exercise price of \$0.01 per share and do not expire. The pre-funded warrants were valued at \$0.5 million using the fair value approach at the time of issuance. The fair value of the pre-funded warrants was determined using a Black Scholes option pricing model using a risk-free rate of 3.784%, an expected term of 5.0 years, expected dividends of zero and expected volatility of 96.5%.

As part of the terms of the offering, the Company issued 1,265 representative's warrants with an exercise price of \$510.40 per share and expiration date on February 3, 2028. The representative's warrants were valued at \$0.3 million using the fair value approach at the time of issuance. The fair value of the representative's warrants was determined using a Black Scholes option pricing model using a risk-free rate of 3.786%, an expected term of 4.99 years, expected dividends of zero and expected volatility of 96.5%.

(7) Revenue Disaggregation and Operating Segments

The Company conducts operations worldwide and has sales in the following regions: United States, Australia, Europe and Rest of World. For the three and nine months ended September 30, 2024 and 2023, the Company primarily sold the Lap-Band system and accessories. The following table presents the Company's revenue disaggregated by geography:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
United States	\$ 2,009	\$ 1,732	\$ 5,290	\$ 5,473
Australia	111	139	316	419
Europe	168	258	564	756
Rest of World	4	26	31	48
Total revenue	<u>\$ 2,292</u>	<u>\$ 2,155</u>	<u>\$ 6,201</u>	<u>\$ 6,696</u>

Operating Segments

The Company conducts operations worldwide and is managed in the following geographical regions: United States, Australia, Europe and the Rest of World (primarily in the Middle East). All regions sell the Lap-Band system, which consisted of nearly all our revenue and gross profit for the three and nine months ended September 30, 2024 and 2023. There was no revenue or gross profit recorded for the DBSN device for the three and nine months ended September 30, 2024 and 2023, as this product is still in the development stage. Additionally, there was no revenue recorded for the Obalon Balloon system during the three months and nine months ended September 30, 2024 and 2023.

(8) Income Taxes

During the three months ended September 30, 2024 and 2023, the Company recorded income tax expense of \$6 thousand and \$3 thousand, respectively. During the nine months ended September 30, 2024 and 2023, the Company recorded income tax expense of \$34 thousand and \$21 thousand, respectively. The income tax expense is related to minimum state taxes and projected Australian and Netherlands income, respectively. The income tax provisions for the three and nine months ended September 30, 2024 were calculated using the discrete year-to-date method. The effective tax rate differs from the statutory tax rate of 21% primarily due to the existence of valuation allowances against net deferred tax assets and current liabilities resulting from the estimated state income tax liabilities and foreign tax liabilities.

In assessing the realization of deferred tax assets, the Company 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 Section 382, the Company provided a full valuation allowance at both September 30, 2024 and December 31, 2023.

(9) Stock-based Compensation

Stock-based compensation expense related to stock options and RSUs issued under the ReShape Lifesciences Inc. 2022 Stock Incentive Plan (the “Plan”) for the three months and nine months ended September 30, 2024 and 2023 were as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Sales and marketing	\$ 4	\$ 30	\$ 19	\$ 89
General and administrative	13	128	83	384
Research and development	15	58	67	183
Total stock-based compensation expense	<u>\$ 32</u>	<u>\$ 216</u>	<u>\$ 169</u>	<u>\$ 656</u>

Stock Options

A summary of the status of the Company’s stock options as of September 30, 2024, and changes during the nine months ended September 30, 2024, are as follows:

	Shares	Weighted Average Exercise Price Per Share	Weighted Average Remaining Contractual Life (years)	Aggregate Intrinsic Value (in thousands)
Outstanding at December 31, 2023	263	\$ 21,909.50		\$ —
Options granted	—	—		
Options exercised	—	—		
Options cancelled	(105)	7,629.90		
Outstanding at September 30, 2024	<u>158</u>	<u>\$ 31,381.48</u>	<u>6.10</u>	<u>\$ —</u>
Exercisable at September 30, 2024	<u>144</u>	<u>\$ 34,101.10</u>	<u>5.97</u>	<u>\$ —</u>
Vested and expected to vest at September 30, 2024	<u>158</u>	<u>\$ 31,381.48</u>	<u>6.10</u>	<u>\$ —</u>

There was no intrinsic value to outstanding stock options at September 30, 2024. The unrecognized share-based expense at September 30, 2024 was \$34 thousand and will be recognized over a weighted average period of 1.05 years.

Stock option awards outstanding under the Company’s incentive plans have been granted at exercise prices that are equal to the market value of its common stock on the date of grant. Such options generally vest over a period of four years and expire at ten years after the grant date. The Company recognized compensation expense ratably over the vesting period. The Company uses a Black-Scholes option-pricing model to estimate the fair value of stock options granted, which requires the input of both subjective and objective assumptions as follows:

Expected Term – The estimate of expected term is based on the historical exercise behavior of grantees, as well as the contractual life of the options granted.

Expected Volatility – The expected volatility factor is based on the volatility of the Company’s common stock for a period equal to the term of the stock options.

Risk-free Interest Rate – The risk-free interest rate is determined using the implied yield for a traded zero-coupon U.S. Treasury bond with a term equal to the expected term of the stock options.

Expected Dividend Yield – The expected dividend yield is based on the Company’s historical practice of paying dividends on its common stock.

Restricted Stock Units

A summary of the Company's unvested RSUs award activity for the nine months ended September 30, 2024, is as follows:

	Shares	Weighted Average Grant Date Fair Value
Unvested RSUs at December 31, 2023	25	\$ 7,505.04
Granted	—	—
Vested ⁽¹⁾	(17)	\$ (9,333.94)
Cancelled/Forfeited	—	—
Non-vested RSUs at September 30, 2024	<u>8</u>	<u>\$ 3,847.14</u>

⁽¹⁾ At September 30, 2024, there were 2 shares of common stock related to RSU awards that had vested and the shares were not distributed to the participants.

The fair value of each RSU is the closing stock price on the Nasdaq of the Company's common stock on the date of grant. Upon vesting, a portion of the RSU award may be withheld to satisfy the statutory income tax withholding obligation. The remaining RSUs will be settled in shares of the Company's common stock after the vesting period. The unrecognized compensation cost related to the RSUs at September 30, 2024 was \$25 thousand and expected to be recognized over a period of 0.92 years.

(10) Commitment and Contingencies

Litigation

On August 6, 2021, Cowen and Company, LLC filed a complaint against ReShape, as successor in interest to Obalon Therapeutics, in the Supreme Court of the State of New York based on an alleged breach of contract arising out of Cowen's prior engagement as Obalon's financial advisor. The complaint alleges that Cowen is entitled to be paid a \$1.35 million fee in connection with ReShape's merger with Obalon under the terms of Cowen's engagement agreement with Obalon. The complaint also sought reimbursement of Cowen's attorneys' fees and interest in connection with its claim. On May 11, 2023, the Supreme Court of the State of New York issued the final judgement in favor of Cowen & Company in the amount of \$1.35 million, plus interest at the statutory rate of 9% per annum from June 16, 2021 until judgement is paid in full, and reimbursement of \$675,000 of Cowen's attorneys' fees, with \$275,000 to be paid upfront, \$200,000 paid after six months and \$200,000 paid after 12 months. As of September 30, 2024, the Company has paid the judgement, interest and legal fees in full.

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, other than what was disclosed above. 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 is reasonably possible to have a material adverse effect on the Company's business, operating results or financial condition.

(11) Subsequent Events

In a private transaction, on October 16, 2024, the Company entered into a securities purchase agreement (the “SPA”) with an institutional investor (the “Investor”). Pursuant to the SPA, the Company agreed to issue the Investor a senior secured convertible note in the aggregate original principal amount of \$833,333.34 (the “Note”), and also issue to the Investor 7,983 shares of common stock, par value \$0.001, of the Company (“Common Stock”) as “commitment shares” to the Investor.

The Company is the issuer of the Note, and its respective subsidiaries will guaranty the obligations under the Note pursuant to a Guaranty, dated October 16, 2024 (the “Guaranty”). The Note is fully secured by collateral of the Company and its subsidiaries. The security interest in favor of the Investor, as collateral agent, covers substantially all assets of the Company including, without limitation, the intellectual property, trademark, and patent rights of the Company. The parties entered into a Security Agreement (the “Security Agreement”) and certain intellectual property security agreements granting such security interest in favor of the Investor.

In connection with the SPA, the Company issued to the Investor the Note on October 16, 2024, which bears an interest rate of 10% per annum and is due and payable on the earlier of (i) January 16, 2025 and (ii) the date of consummation or termination of the Company’s previously announced merger with Vyome Therapeutics, Inc. The initial conversion price of the Note is \$5.22 per share of Common Stock. The Note may not be converted by the Investor into shares of Common Stock if such conversion would result in the Investor and its affiliates owning in excess of 4.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of all shares issuable upon conversion of the Note. The Note provides for certain events of default that are typical for a transaction of this type, including, among other things, any breach of the representations or warranties made by the Company or its subsidiaries. In connection with any event of default that results in the acceleration of payment of the Note and while it is continuing, the interest rate on the Note shall accrue at an interest rate equal to the lesser of 24% per annum or the maximum rate permitted under applicable law.

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

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

Except for the historical information contained herein, the matters discussed in this “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” are forward-looking statements that involve risks and uncertainties. In some cases, these statements may be identified by terminology such as “may,” “will,” “should,” “expects,” “could,” “intends,” “might,” “plans,” “anticipates,” “believes,” “estimates,” “predicts,” “potential,” or “continue,” or the negative of such terms and other comparable terminology. These statements involve known and unknown risks and uncertainties that may cause our results, level of activity, performance or achievements to be materially different from those expressed or implied by the forward-looking statements. Factors that may cause or contribute to such differences include, among others, those discussed in the “Risk Factors” section included in Item 1A of our most recent Annual Report on Form 10-K.

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 physician-led weight loss and metabolic health-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, the Obalon Balloon System, and the 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 Obalon Balloon System, and there has been no revenue recorded for the Diabetes Bloc-Stim Neuromodulation as this product is still in the development stage.

On July 8, 2024, ReShape, Vyome Therapeutics, Inc., a Delaware corporation (“Vyome”), and Raider Lifesciences Inc., a Delaware corporation, and a direct, wholly owned subsidiary of ReShape (“Merger Sub”), entered into an Agreement and Plan of Merger (the “Merger Agreement”). Simultaneously with the execution of the Merger Agreement, ReShape entered into an Asset Purchase Agreement (the “Asset Purchase Agreement”) with Ninjour Health International Limited, a company incorporated under the laws of the United Kingdom (“Ninjour”), an affiliate of Biorad.

Results of Operations

The following table sets forth certain data from our unaudited consolidated statements of operations expressed as percentages of revenue (in thousands):

	Three Months Ended September 30,				Nine Months Ended September 30,			
	2024		2023		2024		2023	
Revenue	\$ 2,292	100.0 %	\$ 2,155	100.0 %	\$ 6,201	100.0 %	\$ 6,696	100.0 %
Cost of revenue	853	37.2 %	867	40.2 %	2,463	39.7 %	2,990	44.7 %
Gross profit	1,439	62.8 %	1,288	59.8 %	3,738	60.3 %	3,706	55.3 %
Operating expenses:								
Sales and marketing	719	31.4 %	1,791	83.1 %	2,408	38.8 %	6,150	91.8 %
General and administrative	2,082	90.8 %	2,058	95.5 %	6,074	98.0 %	8,724	130.3 %
Research and development	399	17.4 %	542	25.2 %	1,282	20.7 %	1,576	23.5 %
Impairment of long-lived assets			777	36.1			777	11.6 %
Gain on disposal of assets, net	—	— %	—	— %	—	— %	(33)	(0.5) %
Total operating expenses	3,200	139.6 %	5,168	239.9 %	9,764	157.5 %	17,194	256.7 %
Operating loss	(1,761)	(76.8) %	(3,880)	(180.1) %	(6,026)	(97.2) %	(13,488)	(201.4) %
Other expense (income), net:								
Interest income, net	—	— %	(5)	(0.2) %	(13)	(0.2) %	(9)	(0.1) %
Gain on changes in fair value of liability warrants	(27)	(1.2) %	(412)	(19) %	(46)	(0.7) %	(3,850)	(57.5) %
Gain on extinguishment of debt	—	— %	—	— %	(429)	(6.9) %	—	— %
Loss (gain) on foreign currency exchange, net	(50)	(2.2) %	68	3.2 %	(10)	(0.2) %	47	0.7 %
Other	(109)	(4.8) %	—	— %	(193)	(3.1) %	(8)	(0.1) %
Loss before income tax provision	(1,575)	(68.6) %	(3,531)	(164.0) %	(5,335)	(86.1) %	(9,668)	(144.4) %
Income tax expense	6	0.3 %	3	0.1 %	34	0.5 %	21	0.3 %
Net loss	\$ (1,581)	(68.9) %	\$ (3,534)	(164.0) %	\$ (5,369)	(86.6) %	\$ (9,689)	(144.7) %

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.

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, 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 Form 10-Q 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 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.

[Table of Contents](#)

The following table contains a reconciliation of GAAP net loss to Adjusted EBITDA attributable to common stockholders for the three and nine months ended September 30, 2024 and 2023 (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
GAAP net loss	\$ (1,581)	\$ (3,534)	\$ (5,369)	\$ (9,689)
Adjustments:				
Interest (income) expense, net	—	(5)	(13)	(9)
Income tax expense (benefit)	6	3	34	21
Depreciation and amortization	6	50	17	147
Stock-based compensation expense	32	216	169	656
Gain on disposal of assets, net	—	—	—	(33)
Impairment of long-lived assets	—	777	—	777
Gain on changes in fair value of liability warrants	(27)	(412)	(46)	(3,850)
Gain on extinguishment of debt	—	—	(429)	—
Adjusted EBITDA	<u>\$ (1,564)</u>	<u>\$ (2,905)</u>	<u>\$ (5,637)</u>	<u>\$ (11,980)</u>

Comparison of Results of Operations

Three months ended September 30, 2024 and September 30, 2023

Revenue. The following table summarizes our unaudited revenue by geographic location based on the location of customers for the three months ended September 30, 2024 and 2023, as well as the percentage of each location to total revenue and the amount of change and percentage of change (dollars in thousands):

	Three Months Ended September 30,				Amount	Percentage
	2024		2023		Change	Change
United States	\$ 2,009	87.8 %	\$ 1,732	80.4 %	\$ 277	16.0 %
Australia	111	4.8 %	139	6.5 %	(28)	(20.1)%
Europe	168	7.3 %	258	12.0 %	(90)	(34.9)%
Rest of World	4	0.2 %	26	1.1 %	(22)	(84.6)%
Total revenue	\$ 2,292	100.1 %	\$ 2,155	100.0 %	\$ 137	6.4 %

Revenue totaled \$2.3 million for the three months ended September 30, 2024, which represents an increase of 6.4%, or \$0.1 million compared to the same period in 2023. This primarily resulted from a small increase in sales volume offset by continued pressure primarily from GLP-1 pharmaceutical weight-loss alternatives.

Cost of Goods Sold and Gross Profit. The following table summarizes our unaudited cost of revenue and gross profit for the three months ended September 30, 2024 and 2023, as well as the percentage compared to total revenue and amount of change and percentage of change (dollars in thousands):

	Three Months Ended September 30,				Amount	Percentage
	2024		2023		Change	Change
Revenue	\$ 2,292	100.0 %	\$ 2,155	100.0 %	\$ 137	6.4 %
Cost of revenue	853	37.2 %	867	40.2 %	(14)	(1.6)%
Gross profit	\$ 1,439	62.8 %	\$ 1,288	59.8 %	\$ 151	11.7 %

Gross Profit. Gross profit for the three months ended September 30, 2024, was \$1.4 million, which was slightly above \$1.3 million for the same period in 2023. Gross profit as a percentage of total revenue for the three months ended September 30, 2024, was 62.8% compared to 59.8% for the same period in 2023. The increase in gross profit percentage is due to the reduction in overhead related costs, primarily payroll, as we had a reduction of employees late in 2023.

[Table of Contents](#)

Operating Expense. The following table summarizes our unaudited operating expenses for the three months ended September 30, 2024 and 2023, as well as the percentage of total revenue and the amount of change and percentage of change (dollars in thousands):

	Three Months Ended September 30,				Amount	Percentage
	2024		2023		Change	Change
Sales and marketing	\$ 719	31.4 %	\$ 1,791	83.1 %	\$ (1,072)	(59.9)%
General and administrative	2,082	90.8 %	2,058	95.5 %	24	1.2 %
Research and development	399	17.4 %	542	25.2 %	(143)	(26.4)%
Impairment of long-lived assets	—	— %	777	36.1 %	(777)	(100.0)%
Total operating expenses	\$ 3,200	139.6 %	\$ 5,168	239.9 %	\$ (1,968)	(38.1)%

Sales and Marketing Expense. Sales and marketing expenses for the three months ended September 30, 2024, decreased by \$1.1 million, or 59.9%, to \$0.7 million, compared to \$1.8 million for the same period in 2023. The decrease is primarily due to a decrease of \$0.5 million in advertising and marketing expenses, including consulting and professional marketing services, as the Company has reevaluated its marketing approach and has moved to a targeted digital marketing campaign, resulting in a reduction of costs. Additionally, there was a decrease of \$0.5 million in payroll-related expenditures, including commissions, stock compensation expense and travel, due to changes in sales personnel and a reduction in sales, and a reduction of \$0.1 million in other expenses.

General and Administrative Expense. General and administrative expenses for the three months ended September 30, 2024, increased by \$24 thousand, or 1.2%, to approximately \$2.1 million, compared to \$2.1 million for the same period in 2023. The increase is primarily due a \$0.4 million increase in professional services primarily related to the merger and asset sale transaction that was entered into during July 2024, offset by a \$0.2 million reduction in employee related expenses, \$0.1 million in bad debt expense, and \$0.1 million in other expenses.

Research and Development Expense. Research and development expenses for the three months ended September 30, 2024, decreased by \$0.1 million, or 26.4% to \$0.4 million, compared to the same period in the prior year. The primary reason for the decrease is due to a reduction in payroll, consulting and clinical trials, as the Company has paused all clinical work to preserve cash.

Impairment of Long-Lived Assets. Impairment of long-lived assets decreased by \$0.8 million for the three months ended September 30, 2024, compared to the same period in the prior year. During the three months ended September 30, 2023, the Company impaired approximately \$0.8 million, consisting of fixed assets and intangible assets. During the three months ended September 30, 2024, no impairment was recorded.

Nine months ended September 30, 2024 and September 30, 2023

Revenue. The following table summarizes our unaudited revenue by geographic location based on the location of customers for the nine months ended September 30, 2024 and 2023, as well as the percentage of each location to total revenue and the amount of change and percentage of change (dollars in thousands):

	Nine Months Ended September 30,				Amount	Percentage
	2024		2023		Change	Change
United States	\$ 5,290	85.3 %	\$ 5,473	81.8 %	\$ (183)	(3.3)%
Australia	316	5.1 %	419	6.3 %	(103)	(24.6)%
Europe	564	9.1 %	756	11.3 %	(192)	(25.4)%
Rest of world	31	0.5 %	48	0.7 %	(17)	(35.4)%
Total revenue	\$ 6,201	100.0 %	\$ 6,696	100.1 %	\$ (495)	(7.4)%

Revenue totaled \$6.2 million for the nine months ended September 30, 2024, which represents a contraction of 7.4%, or \$0.5 million compared to the same period in 2023. This primarily resulted from a decrease in sales volume primarily due to GLP-1 pharmaceutical weight-loss alternatives.

[Table of Contents](#)

Cost of Goods Sold and Gross Profit. The following table summarizes our unaudited cost of revenue and gross profit for the nine months ended September 30, 2024 and 2023, as well as the percentage compared to total revenue and amount of change and percentage of change (dollars in thousands):

	Nine Months Ended September 30,				Amount	Percentage
	2024		2023		Change	Change
Revenue	\$ 6,201	100.0 %	\$ 6,696	100.0 %	\$ (495)	(7.4)%
Cost of revenue	2,463	39.7 %	2,990	44.7 %	(527)	(17.6)%
Gross profit	\$ 3,738	60.3 %	\$ 3,706	55.3 %	\$ 32	0.9 %

Gross Profit. Gross profit for both the nine months ended September 30, 2024 and 2023, was \$3.7 million, respectively. Gross profit as a percentage of total revenue for the nine months ended September 30, 2024, was 60.3% compared to 55.3% for the same period in 2023. The increase in gross profit percentage is due to the reduction in overhead related costs, primarily payroll, as we had a reduction of employees late in 2023.

Operating Expense. The following table summarizes our unaudited operating expenses for the nine months ended September 30, 2024 and 2023, as well as the percentage of total revenue and the amount of change and percentage of change (dollars in thousands):

	Nine Months Ended September 30,				Amount	Percentage
	2024		2023		Change	Change
Sales and marketing	\$ 2,408	38.8 %	\$ 6,150	91.8 %	\$ (3,742)	(60.8)%
General and administrative	6,074	98.0 %	8,724	130.3 %	(2,650)	(30.4)%
Research and development	1,282	20.7 %	1,576	23.5 %	(294)	(18.7)%
Impairment of long-lived assets	—	— %	777	11.6 %	(777)	(100.0)%
Gain on disposal of assets, net	—	— %	(33)	(0.5)%	33	(100.0)%
Total operating expenses	\$ 9,764	157.5 %	\$ 17,194	256.8 %	\$ (7,430)	(43.2)%

Sales and Marketing Expense. Sales and marketing expenses for the nine months ended September 30, 2024, decreased by \$3.7 million, or 60.8%, to \$2.4 million, compared to \$6.2 million for the same period in 2023. The decrease is primarily due to a decrease of approximately \$2.0 million in advertising and marketing expenses, including consulting and professional marketing services, as the Company has reevaluated its marketing approach and has moved to a targeted digital marketing campaign, resulting in a reduction of costs. Additionally, there was a decrease of \$1.6 million in payroll-related expenditures, including commissions, stock compensation expense and travel, due to changes in sales personnel and a reduction in sales, and a \$0.1 million reduction in other expenses.

General and Administrative Expense. General and administrative expenses for the nine months ended September 30, 2024, decreased by \$2.7 million, or 30.4%, to \$6.1 million, compared to \$8.7 million for the same period in 2023. The decrease is primarily due to a reduction in professional services, such as audit and legal fees of \$1.1 million primarily due to the Company incurring one-time adjustments for professional services related to the February 2023 public offering, and a reduction in payroll-related expenditures, including stock-based compensation expense, of \$1.0 million due to decline in staffing levels, and a reduction in rent expense of \$0.1 million, as we moved our headquarters at the end of the second quarter of 2023 to a smaller facility to reduce costs. Additionally, there was a reduction in bad debt expense of \$0.4 million, and a reduction in other miscellaneous expenses of \$0.1 million.

Research and Development Expense. Research and development expenses for the nine months ended September 30, 2024, decreased by \$0.3 million, or 18.7% to \$1.3 million, compared to approximately \$1.6 million for the same period in the prior year. The primary reason for the decrease is due to a reduction in consulting and clinical trials, as the Company has paused all clinical work to preserve cash.

[Table of Contents](#)

Impairment of Long-Lived Assets. Impairment of long-lived assets decreased by \$0.8 million for the nine months ended September 30, 2024, compared to the same period in the prior year. During the nine months ended September 30, 2023, the Company impaired approximately \$0.8 million, consisting of fixed assets and intangible assets. During the nine months ended September 30, 2024, no impairment was recorded.

Gain loss on disposal of assets, net. During the nine months ended September 30, 2023, the Company had a gain of approximately \$33 thousand related to the sale of fully depreciated assets. During the nine months ended September 30, 2024, no disposals were recorded.

Liquidity and Capital Resources

The accompanying condensed consolidated financial statements have been prepared assuming the Company will continue as a going concern. The Company currently does not generate revenue sufficient to offset operating costs and anticipates such shortfalls to continue as the Company has modified its strategy to a metrics-driven approach through a sustainable and scalable business model, via a digital lead generation and re-engagement strategy. As of September 30, 2024, the Company had net working capital of approximately \$1.3 million, primarily due to cash and cash equivalents and restricted cash of \$0.8 million. The Company's principal source of liquidity as of September 30, 2024, consisted of approximately \$0.8 million of cash and cash equivalents and restricted cash, and \$1.3 million of accounts receivable. Additionally, the Company has raised gross proceeds of \$0.7 million from the issuance of a senior secured convertible note on October 16, 2024. Based on its available cash resources, the Company will not have sufficient cash on hand to fund its current operations for more than twelve months from the date of filing this Quarterly Report on Form 10-Q. This condition raises substantial doubt about the Company's ability to continue as a going concern. The Company believes in the viability of its business strategy, which includes a merger and asset sale, and in its ability to raise additional funds, however, there can be no assurance to that effect. Management's plans are assuming the merger with Vyome and the asset purchase with Biorad, announced in July of 2024 occur.

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

	Nine Months Ended	
	September 30,	
	2024	2023
Net cash used in operating activities	\$ (3,740)	\$ (14,503)
Net cash used in investing activities	—	(10)
Net cash provided by financing activities	24	12,113
Effect of exchange rate changes	—	(6)
Net change in cash and cash equivalents and restricted cash	<u>\$ (3,716)</u>	<u>\$ (2,406)</u>

Net Cash Used in Operating Activities

Net cash used in operating activities from operations was \$3.7 million and \$14.5 million for the nine months ended September 30, 2024 and 2023, respectively. For the nine months ended September 30, 2024, net cash used in operating activities was primarily the result of our net loss of \$5.4 million, partially offset by non-cash adjustments for stock-based compensation expense of \$0.2 million and inventory reserve of \$0.1 million, offset by a negative cash impact of \$0.4 million related to old accounts payable that have passed their statute of limitations. We show a positive cash impact on accounts payable of \$0.7 million, inventory of approximately \$0.7 million, accounts receivable of \$0.3 million, and prepaid expenses of \$0.1 million.

For the nine months ended September 30, 2023, net cash used in operating activities was primarily the result of our net loss of \$9.7 million, partially offset by non-cash adjustments for stock-based compensation expense of \$0.7 million, non-cash offering cost of \$0.3 million and bad debt expense of approximately \$0.5 million, offset by a negative cash impact related to gains recognized for changes in fair value of liability warrants of \$3.9 million. We show a negative cash impact on accounts payable and accrued liabilities of \$2.8 million, accounts receivable of \$0.4 million, and prepaid expenses of \$0.3 million. This was offset by a positive cash impact on inventory of \$0.3 million.

Net Cash Used in Investing Activities

There was no cash used in investing activities for the nine months ended September 30, 2024, and net cash used in investing activities for the nine months ended September 30, 2023, was minimal.

Net Cash Provided by Financing Activities

Financing activities provided \$24 thousand related to exercise of warrants for the nine months ended September 30, 2024. Net cash provided by financing activities was \$12.1 million for the nine months ended September 30, 2023, due to the proceeds received from the public offering completed during February 2023 and April 2023, less costs to complete the transaction and costs paid related to the October 2023 offering.

Operating Capital and Capital Expenditure Requirements

The Company's anticipated operations include plans to (i) merge with Vyome Therapeutics, Inc and sell certain assets to Biorad, which will continue the operations, (ii) grow sales and operations of the Company with the Lap-Band product line both domestically and internationally as well as to obtain cost savings synergies, (iii) introduce to the market Lap-Band 2.0 FLEX, (iv) continue development of the Diabetes Bloc-Stim Neuromodulation ("DBSN") device, and (v) prior to such merger, 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 and product development activities. If management's plans do not develop, and the Company does not raise additional cash in addition to the funds raised in October 2024, at the current burn rate, management expects to run out of cash during the fourth quarter of 2024.

Because of the numerous risks and uncertainties associated with the development of medical devices, such as our 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 Diabetes Bloc-Stim Neuromodulation or other additional products and successfully deliver a commercial product to the market. Future capital requirements will depend on many factors and will be decided by Biorad, once the pending asset sale is complete.

Critical Accounting Policies and Estimates

The condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States which require us to make estimates and assumptions that affect the reported amounts of assets and liabilities at the date of the condensed consolidated financial statements and revenues and expenses during the periods reported. Actual results could differ from those estimates. Information with respect to our critical accounting policies and estimates which we believe could have the most significant effect on our reported results and require subjective or complex judgments by management is contained in Item 7, "*Management's Discussion and Analysis of Financial Condition and Results of Operations*," of our Annual Report on Form 10-K for the year ended December 31, 2023. There have been no significant changes from the information discussed therein.

During the nine months ended September 30, 2024, there were no material changes to our significant accounting policies, which are fully described in Note 2 to our consolidated financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2023.

Recent Accounting Pronouncements

See Note 1 to our condensed consolidated financial statements for a discussion of recent accounting pronouncements.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

As a smaller reporting company, we are not required to provide disclosure pursuant to this item.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Rule 13a-15(e) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), defines the term “disclosure controls and procedures” as those controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms and that such information is accumulated and communicated to the company’s management, including its principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure. Our internal control system was designed to provide reasonable assurance to our management and board of directors regarding the preparation and fair presentation of published financial statements. All internal control systems, no matter how well designed, have inherent limitations. Therefore, even those systems determined to be effective can provide only reasonable assurance with respect to financial statement preparation and presentation. An internal control material weakness is a significant deficiency, or aggregation of deficiencies, that does not reduce to a relatively low level the risk that material misstatements in financial statements will be prevented or detected on a timely basis by employees in the normal course of their work. An internal control significant deficiency, or aggregation of deficiencies, is one that could result in a misstatement of the financial statements that is more than inconsequential. In making its assessment of internal control over financial reporting management used the criteria issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in Internal Control - Integrated Framework (2013). Our management assessed the effectiveness of our internal control over financial reporting as of September 30, 2024, and determined that our internal control over financial reporting was not effective at a reasonable assurance level due to the following material weaknesses in our internal control over financial reporting:

Control Environment: The Company has insufficient internal resources with appropriate accounting and finance knowledge and expertise to design, implement, document and operate effective internal controls over the financial reporting process. As a result, there was a lack of management review over several areas of the consolidated financial statements, including errors which were individually assessed as significant deficiencies that, when aggregated, resulted in a material weakness related to: 1) insufficient review of obsolete and scrap inventory; 2) insufficient reviews of accounts payable; and 3) inappropriate application of accounting standards related to functional currency. In addition to these identified errors, there were other areas of the consolidated financial statements that were impacted by certain deficiencies. During the prior year, there were deficiencies identified that have not yet been remediated including misstatements of inaccurate reporting of earnings per share due to formula errors over the weighted average share calculation spreadsheet and errors to the stock-based compensation expense. The root cause of all of the deficiencies identified above was related to insufficient internal resources with appropriate accounting and finance knowledge, which aggregated into this material weakness.

Journal Entry Access and Review: The Company did not have effective processes to ensure that all journal entries were properly approved prior to being posted to the general ledger. Furthermore, a segregation of duties conflict is present as the Sr. Accounting Manager has the ability to both prepare and post journal entries to the general ledger. As a result, it was concluded that there is material weakness in the design and operating effectiveness of internal controls over access and reviews of journal entries.

Information Technology (“IT”) Access Change and IT Security: A segregation of duties conflict is present as access, change management and other IT security risks to the Company’s information technology systems are not monitored or reviewed on a timely basis. This material weakness resulted from the aggregation of various control deficiencies.

Financial Reporting:

Inventory Capitalization – The Company’s controls were not designed effectively as the Company did not have a process in place to evaluate the amount of inventory, cost of goods sold, general and administrative expenses, and research and development expenses.

Income Taxes – The Company did not design and maintain effective management review controls at a sufficient level of precision over the accounting for income taxes. Management’s controls surrounding the evaluation of income tax provision and related disclosures were not operating effectively as the disclosure was not updated to reflect the appropriate tax amortization related to the accrued settlement account. While this did not have an impact on the financial statements due to the full valuation allowance recorded on the deferred tax assets, this did have an impact on the presentation of the prior year footnote disclosure. Additionally, there were errors identified within the tax provision during the prior year related to cost of goods sold for the Company’s foreign entities. This material weakness resulted in certain material corrections to the financial statements including the establishment of a FIN 48 liability, the tax benefit related to impairment charges recorded for the IPR&D in the prior year, the overstatement of the deferred tax asset and valuation allowance related to depreciable assets in the prior year, a return to provision adjustment in 2022 related to Obalon net operating losses generated in 2021 as a result of inaccurate stock compensation recorded within the tax provision and a difference in pretax book income that was unaccounted for in the disclosure.

Purchase Accounting – The Company did not design and maintain effective management review controls at a sufficient level of precision over the accounting for transactions related to the prepaid D&O insurance policy purchased in connection with the merger transaction in June 2021. This material weakness resulted in certain material corrections to the financial statements and in the restatement of the consolidated financial statements.

We are currently implementing our remediation plan to address the material weaknesses identified above. Such measures include:

- Designing and implementing controls to formalize roles and review responsibilities to align with our team's skills and experience and designing and implementing formalized controls.
- Designing and implementing formal processes, policies and procedures supporting our financial close process.
- Designing a formal review of a monthly journal entry report to ensure journal entries are appropriately approved within a timely manner.

Changes in Internal Control over Financial Reporting

Other than in connection with executing upon the continued implementation of the remediation measures referenced above, there have been no changes in our internal controls over financial reporting during the quarter ended September 30, 2024, that have materially affected, or are reasonably likely to materially affect, our internal controls over financial reporting.

PART II – OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

On August 6, 2021, Cowen and Company, LLC filed a complaint against ReShape, as successor in interest to Obalon Therapeutics, in the Supreme Court of the State of New York based on an alleged breach of contract arising out of Cowen’s prior engagement as Obalon’s financial advisor. The complaint alleges that Cowen is entitled to be paid a \$1.35 million fee in connection with ReShape’s merger with Obalon under the terms of Cowen’s engagement agreement with Obalon. The complaint also sought reimbursement of Cowen’s attorneys’ fees and interest in connection with its claim. On May 11, 2023, the Supreme Court of the State of New York issued the final judgement in favor of Cowen & Company in the amount of \$1.35 million, plus interest at the statutory rate of 9% per annum from June 16, 2021 until judgement is paid in full, and reimbursement of \$675,000 of Cowen’s attorneys’ fees, with \$275,000 to be paid upfront, \$200,000 paid after six months and \$200,000 paid after 12 months. As of September 30, 2024, the Company has paid the judgement, interest and legal fees in full.

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, other than what was disclosed above. The medical device industry in which the Company operates is characterized by frequent claims and litigation, including claims regarding patent and other intellectual property rights as well as improper hiring practices. As a result, the Company may be involved in various legal proceedings from time to time.

ITEM 1A. RISK FACTORS

Except for the additional risk factors set forth below, there have been no material changes to the risk factors set forth in Item 1A. "Risk Factors" of our 2023 Annual Report on Form 10-K filed on April 1, 2024.

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:

- approval of the proposal to issue shares of our common stock pursuant to the Merger Agreement and approval of the proposal to sell our assets pursuant to the Asset Purchase Agreement by our stockholders;
- approval of the proposal to complete the Merger by Vyome's 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 under the Securities Act of 1933, as amended, and the absence of any stop order issued by the SEC suspending the use of such registration statement;
- the shares of our common stock 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;
- subject to certain materiality exceptions, the accuracy of certain representations and warranties of each of Vyome 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 Vyome 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, we or Vyome may elect to terminate the Merger Agreement in certain other circumstances.

Failure to consummate the Merger could negatively impact our future operations and financial results and our future stock price.

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

- a decline in the market price of the shares of our common stock to the extent that the current market prices reflect a market assumption that the Merger will be consummated and will be beneficial to the value of our business after the closing date of the Merger;
- 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 our 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 on a standalone basis, without any of the benefits expected to have been provided by the consummation of the Merger; and

- negative reactions from our stockholders, suppliers, employees, and the medical community.

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

If the Merger is not consummated, we cannot assure our stockholders that these risks will not materialize and will not materially adversely affect our business, financial results and stock price.

The Merger may disrupt attention of our management from ongoing business operations.

We have expended, and expect to continue to expend, significant management resources to consummate the Merger. The attention of our management may be diverted away from the day-to-day operations of our businesses, 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 our operations and may have an adverse effect on our business, financial conditions, results of operations and cash flows or the combined company after the closing date of the Merger.

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

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

- approval of the proposal to sell our assets pursuant to the Asset Purchase Agreement by our stockholders;
- satisfaction of conditions regarding the accuracy of representations and warranties and compliance with covenants in the Asset Purchase Agreement; and
- 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 Asset Sale or the other transactions contemplated by the Asset Purchase Agreement.

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

Unregistered Sales of Equity Securities

In a private transaction, on October 16, 2024, the Company entered into a securities purchase agreement (the “SPA”) with an institutional investor (the “Investor”). Pursuant to the SPA, the Company agreed to issue the Investor a senior secured convertible note in the aggregate original principal amount of \$833,333.34 (the “Note”), and also issue to the Investor 7,983 shares of common stock, par value \$0.001, of the Company (“Common Stock”) as “commitment shares” to the Investor.

In connection with the SPA, the Company issued to the Investor the Note on October 16, 2024, which bears an interest rate of 10% per annum and is due and payable on the earlier of (i) January 16, 2025 and (ii) the date of consummation or termination of the Company’s previously announced merger with Vyome Therapeutics, Inc. The initial conversion price of the Note is \$5.22 per share of Common Stock. The Note may not be converted by the Investor into shares of Common Stock if such conversion would result in the Investor and its affiliates owning in excess of 4.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of all shares issuable upon conversion of the Note. The Note provides for certain events of default that are typical for a transaction of this type, including, among other things, any breach of the representations or warranties made by the Company or its subsidiaries. In connection with any event of default that results in the acceleration of payment of the Note and while it is continuing, the interest rate on the Note shall accrue at an interest rate equal to the lesser of 24% per annum or the maximum rate permitted under applicable law.

In connection with the SPA, the Company entered into a Registration Rights Agreement with the Investor, dated October 16, 2024 (the “RRA”). The RRA provides that the Company will file a registration statement to register the shares of Common Stock underlying the Note and the commitment shares within 30 days after the date of the SPA and will use its best efforts to cause the registration statement to be declared effective within 30 days after the filing date.

Other than equity securities issued in transactions disclosed above and on our Current Report on Form 8-K filed with the SEC on October 17, 2024, there were no unregistered sales of equity securities during the period.

Uses of Proceeds from Sale of Registered Securities

None.

Purchases of Equity Securities

None.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

ITEM 5. OTHER INFORMATION

Rule 10b5-1 Plan and Non-Rule 10b5-1 Trading Arrangement Adoptions, Terminations, and Modifications

During the three months ended September 30, 2024, none of our directors or “officers” (as defined in Rule 16a-1(f) under the Exchange Act) adopted or terminated a “Rule 10b5-1 trading arrangement” or “non-Rule 10b5-1 trading arrangement,” as each term is defined in Item 408(a) and Item 408(c) of SEC Regulation S-K, respectively.

ITEM 6. EXHIBITS

Exhibit No.	Description
2.1	<u>Agreement and Plan of Merger, dated as of July 8, 2024, by and among ReShape Lifesciences Inc., Vyome Therapeutics, Inc., and Raider Lifesciences 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 July 9, 2024).</u>
2.2	<u>Asset Purchase Agreement, dated as of July 8, 2024, by and between ReShape Lifesciences Inc. and Ninjour Health International Limited (incorporated by reference to Exhibit 2.2 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on July 9, 2024).</u>
10.1	<u>Agreement to Amend Series C Convertible Preferred Stock, dated as of July 8, 2024, by and among ReShape Lifesciences Inc. and holders of Series C Convertible Preferred Stock (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 July 9, 2024).</u>
10.2	<u>Form of Subscription Agreement by and between ReShape Lifesciences Inc. and the investors party thereto (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 July 9, 2024).</u>
10.3	<u>Form of Voting and Support Agreement by and among ReShape Lifesciences Inc. and certain stockholders of Vyome Therapeutics, Inc. (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 July 9, 2024).</u>
10.4	<u>Amendment to Employment Agreement, dated July 8, 2024, by and between ReShape Lifesciences Inc. and Paul F. Hickey (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 July 9, 2024).</u>
31.1**	<u>Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</u>
31.2**	<u>Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</u>
32.1**	<u>Certification of Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</u>
32.2**	<u>Certification of Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</u>
101**	Financial statements from the Quarterly Report on Form 10-Q of the Company for the quarter ended September 30, 2024, formatted in Inline XBRL: (i) the Condensed Consolidated Balance Sheets, (ii) the Condensed Consolidated Statements of Operations, (iii) the Condensed Consolidated Statements of Stockholders' Equity, (iv) the Condensed Consolidated Statements of Cash Flows and (v) the Notes to Condensed Consolidated Financial Statements.
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)

** Filed herewith.

SIGNATURES

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

RESHAPE LIFESCIENCES INC.

By: /s/ PAUL F. HICKEY
Paul F. Hickey
President and Chief Executive Officer
(principal executive officer)

By: /s/ THOMAS STANKOVICH
Thomas Stankovich
Senior Vice President and
Chief Financial Officer
(principal financial and accounting officer)

Dated: November 14, 2024

CERTIFICATION

I, Paul F. Hickey, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of ReShape Lifesciences Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the consolidated financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ PAUL F. HICKEY

Paul F. Hickey
President and Chief Executive Officer

Date: November 14, 2024

CERTIFICATION

I, Thomas Stankovich certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of ReShape Lifesciences Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the consolidated financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ THOMAS STANKOVICH

Thomas Stankovich
Chief Financial Officer, Senior Vice President,
Finance

Date: November 14, 2024

CERTIFICATION

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

1. The Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2024 to which this Certification is attached as Exhibit 32.1 (the Report) fully complies with the requirements of Section 13(a) or 15(d) of the Exchange Act; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and the results of operations of ReShape Lifesciences Inc. as of, and for, the periods covered by the Report.

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

Date: November 14, 2024

CERTIFICATION

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

1. The Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2024 to which this Certification is attached as Exhibit 32.2 (the Report) fully complies with the requirements of Section 13(a) or 15(d) of the Exchange Act; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and the results of operations of ReShape Lifesciences Inc. as of, and for, the periods covered by the Report.

By: /s/ THOMAS STANKOVICH
Thomas Stankovich
Chief Financial Officer, Senior Vice President,
Finance

Date: November 14, 2024
