

RESHAPE LIFESCIENCES INC.

FORM S-3MEF

(Registration of Additional Securities (up to 20%))

Filed 04/02/18

Address	1001 CALLE AMANECER SAN CLEMENTE, CA, 92673
Telephone	9494296680
CIK	0001371217
Symbol	RSLS
SIC Code	3845 - Electromedical and Electrotherapeutic Apparatus
Industry	Advanced Medical Equipment & Technology
Sector	Healthcare
Fiscal Year	12/31

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

Form S-3
**REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

RESHAPE LIFESCIENCES INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

48-1293684
(I.R.S. Employer
Identification No.)

**1001 Calle Amanecer
San Clemente, CA
(949) 429-6680**

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Dan W. Gladney
President and Chief Executive Officer
ReShape Lifesciences Inc.
1001 Calle Amanecer
San Clemente, CA
(949) 429-6680

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copy to:

Bruce A. Machmeier
Brett R. Hanson
Fox Rothschild LLP
222 South Ninth Street, Suite 2000
Minneapolis, Minnesota 55402
(612) 607-7000

Approximate date of commencement of proposed sale to the public: From time to time after the effective date of this registration statement.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. 333-216600

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

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a registration statement pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

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	<input type="checkbox"/>		Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	(Do not check if a smaller reporting company)	Smaller reporting company	<input checked="" type="checkbox"/>
			Emerging growth company	<input type="checkbox"/>

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a) (2)(B) of the Securities Act.

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Proposed maximum aggregate offering price (1)	Amount of registration fee (2)
Common Stock, par value \$0.01 per share		
Preferred stock, par value \$0.01 per share		
Securities Warrants		
Units		
Total	\$ 5,813,500	\$ 724

(1) The Registrant previously registered the securities at an aggregate initial offering price not to exceed \$75,000,000 on Registration Statement Form S-3 (File No. 333-216600), which was declared effective on July 21, 2017. In accordance with Rule 462(b) promulgated under the Securities Act of 1933, as amended, and certain interpretations by the U.S. Securities and Exchange Commission, an additional amount of securities (\$5,813,500) having a proposed maximum aggregate offering price of no more than 20% of the remaining amount (\$29,067,500) of the offering price of the securities eligible to be sold under the above referenced Registration Statement is hereby registered.

(2) The registration fee has been calculated in accordance with Rule 457(o) under the Securities Act.

This registration statement shall become effective upon filing with the U.S. Securities and Exchange Commission in accordance with Rule 462(b) under the Securities Act .



EXPLANATORY NOTE

This registration statement is being filed pursuant to Rule 462(b) and General Instruction IV to Form S-3, both as promulgated under the Securities Act of 1933, as amended, to register additional shares of our common stock, par value \$0.01 per share, preferred stock, par value \$0.01 per share, securities warrants and units with an aggregate public offering price not to exceed \$5,813,500. This registration statement relates to our registration statement on Form S-3 (File No. 333-216600), which was originally filed with the Securities and Exchange Commission on March 10, 2017, as amended on July 18, 2017 and declared effective by the Securities and Exchange Commission on July 21, 2017. In accordance with Rule 462(b), this registration statement incorporates by reference the contents of our registration statement on Form S-3 (File No. 333-216600), including all amendments, supplements and exhibits thereto and all information incorporated by reference therein, other than the exhibits included herein. The required opinion and consents are listed on the Exhibit Index attached to and filed with this registration statement.

EXHIBIT INDEX

Exhibit No.	Description
5.1*	Opinion of Fox Rothschild LLP
23.1*	Consent of Deloitte & Touche LLP, Independent Registered Public Accounting Firm.
23.2*	Consent of Fox Rothschild LLP (included in Exhibit 5.1 to this registration statement).
24.1**	Power of Attorney (included on signature page to the Company's Registration Statement on Form S-3 filed with the Securities and Exchange Commission on March 10, 2017 (File No. 333-216600)).

* Filed herewith.

** Previously filed with the Registration Statement on Form S-3 (File No. 333-216600) filed with the Securities and Exchange Commission on March 10, 2017.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Clemente, State of California, on April 2, 2018.

RESHAPE LIFESCIENCES INC.

By: /s/ Dan W. Gladney
Dan W. Gladney
President and Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the date indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Dan W. Gladney</u> Dan W. Gladney	President and Chief Executive Officer, Chairman and Director (principal executive officer)	April 2, 2018
<u>/s/ Scott P. Youngstrom</u> Scott P. Youngstrom	Chief Financial Officer (principal financial and accounting officer)	April 2, 2018
<u>*</u> Gary D. Blackford	Director	April 2, 2018
<u>*</u> Bobby I. Griffin	Director	April 2, 2018
<u>*</u> Michael Y. Mashaal, M.D.	Director	April 2, 2018
<u>*</u> Lori S. McDougal	Director	April 2, 2018
<u>*</u> Jon T. Tremmel	Director	April 2, 2018

By: /s/ Dan W. Gladney
Dan W. Gladney
Attorney-in-Fact



Fox Rothschild LLP
ATTORNEYS AT LAW

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April 2, 2018

ReShape Lifesciences Inc.
1001 Calle Amanecer
San Clemente, CA

Re: Registration Statement on Form S-3 filed pursuant to Rule 462(b) under the Securities Act of 1933, as amended

Ladies and Gentlemen:

We have acted as counsel to ReShape Lifesciences Inc., a Delaware corporation (the "Company"), in connection with (i) a Registration Statement on Form S-3 (No. 333-216600), the prospectus included therein (the "Prospectus") and the related prospectus supplement(s) (each, a "Prospectus Supplement") (collectively, the "Initial Registration Statement") filed by the Company with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Securities Act"), relating to the offer and sale by the Company from time to time for an aggregate initial offering price of up to \$75,000,000 of (a) shares of its common stock, par value \$0.01 per share (the "Common Stock"); (b) shares of its preferred stock, par value \$0.01 per share (the "Preferred Stock"), (c) securities warrants (the "Warrants") and (d) units consisting of any combination of Common Stock, Preferred Stock and Warrants, offered and sold together (the "Units"); and (ii) a second Registration Statement on Form S-3 (the "Rule 462(b) Registration Statement" and together with the Initial Registration Statement, the "Registration Statement") filed by the Company with the Commission pursuant to Rule 462(b) of the Securities Act, relating to the offer and sale by the Company of (a) shares of its Common Stock; (b) shares of its Preferred Stock; (c) Warrants and (d) Units for an aggregate offering price of up to \$5,813,500. In connection with the filing of a Prospectus Supplement, the Company will offer and sell units (the "Offering Units"), consisting of one share of series D convertible preferred stock and warrants to purchase shares of Common Stock. The Offering Units will be sold pursuant to a securities purchase agreement to be entered into on or about the date hereof between the Company and the purchasers to be named therein (the "Purchase Agreement").

We have examined such documents and have reviewed such questions of law as we have considered necessary and appropriate for the purposes of our opinions set forth below. In rendering our opinions, set forth below, we have assumed the authenticity of all documents submitted to us as originals, the genuineness of all signatures and the conformity to authentic originals of all documents submitted to us as copies. We have also assumed the legal capacity for all purposes relevant hereto of all natural persons and, with respect to all parties to agreements and instruments relevant hereto other than the Company, that such parties had the requisite power and authority (corporate or otherwise) to execute, deliver and perform such agreements or

instruments, that such agreements and instruments have been duly authorized by all requisite action (corporate or otherwise), executed and delivered by such parties and that such agreements or instruments are the valid, binding and enforceable obligations of such parties. As to questions of fact material to our opinions, we have relied upon certificates of officers of the Company and of public officials.

Based on the foregoing, we are of the opinion that:

1. The shares of Preferred Stock, when issued and delivered against payment of the consideration therefor specified in the Purchase Agreement, will be validly issued, fully paid and non-assessable.
2. The shares of Common Stock, when issued and delivered upon the valid exercise of the Warrants, will be validly issued, fully paid and non-assessable.
3. When the Warrants have been duly executed and delivered by the Company against payment of the consideration therefor specified in the Purchase Agreement, such Warrants will constitute binding obligations of the Company.
4. When the Units have been duly executed and delivered by the Company against payment of the consideration therefor specified in the Purchase Agreement, such Units will constitute binding obligations of the Company.

In addition to the qualifications and limitations set forth above, the opinions expressed herein are subject to the following qualifications and limitations:

- (a) We express no opinion with respect to laws other than those of the State of New York, the Delaware General Corporation Law and the federal laws of the United States of America, and we assume no responsibility as to the applicability thereto, or the effect thereon, of the laws of any other jurisdiction.
- (b) To the extent that the opinions given above relate to the enforceability of any agreement or other document referred to herein, the opinions are subject to, and we give no opinion with respect to, the effect of applicable bankruptcy, insolvency, fraudulent conveyance, fraudulent transfer, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally and by general equitable principles (regardless of whether enforcement is sought in equity or at law), including, without limitation, principles regarding good faith and fair dealing.
- (c) We express no opinion as to the enforceability of (i) provisions relating to the availability of specific remedies or relief, including indemnification and contribution, or the release or waiver of any remedies or rights or time periods in which claims are required to be asserted, (ii) provisions that allow cumulative remedies, late charges or default interest, (iii) provisions stating that amendments, waivers or modifications may only be in writing, to the extent that an oral agreement or an implied agreement by course of conduct may be created that modifies such a provision or (iv) provisions relating to choice of law or forum.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the reference to our firm under the caption "Legal Matters" contained in the Prospectus constituting part of the Registration Statement. In giving this consent, we do not admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission thereunder. This opinion speaks only as of the date above written, and we hereby expressly disclaim any duty to update any of the statements made herein or to advise you of any subsequent changes in the facts stated or assumed herein or of any subsequent changes in applicable law.

Very truly yours,

/s/ Fox Rothschild LLP

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in this Registration Statement on Form S-3 of our report dated March 8, 2017, relating to the financial statements of ReShape Lifesciences, Inc. (formerly EnteroMedics Inc.) and subsidiary appearing in the Annual Report on Form 10-K of ReShape Lifesciences Inc. for the year ended December 31, 2016 and incorporated by reference in the Prospectus included in Registration Statement No. 333-216600.

/s/ DELOITTE & TOUCHE LLP

Minneapolis, Minnesota

April 2, 2018
