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

**Post-Effective Amendment No. 1 to Form S-8 Registration No. 333-265718
Post-Effective Amendment No. 1 to Form S-8 Registration No. 333-264943
Post-Effective Amendment No. 1 to Form S-8 Registration No. 333-255261
Post-Effective Amendment No. 1 to Form S-8 Registration No. 333-249993
Post-Effective Amendment No. 1 to Form S-8 Registration No. 333-235515**

**UNDER
THE SECURITIES ACT OF 1933**

Tempest Therapeutics, Inc.

(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of
Incorporation or organization)

45-1472564
(I.R.S. Employer
Identification No.)

**2000 Sierra Point Parkway, Suite 400
Brisbane, California 94005
(415) 798-8589**

(Address of principal executive offices) (Zip code)

**Tempest Therapeutics, Inc. Amended and Restated 2023 Equity Incentive Plan
Tempest Amended and Restated 2019 Equity Incentive Plan
Millendo 2019 Equity Incentive Plan**
(Full titles of the plans)

**Stephen Brady
Chief Executive Officer
Tempest Therapeutics, Inc.
2000 Sierra Point Parkway, Suite 400
Brisbane, California 94005
(415) 798-8589**

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

Copies to:

**Laura Berezin
Jaime Chase
Julia Stark
Cooley LLP
1700 Seventh Avenue, Suite 1900
Seattle, Washington 98101
(206) 452-8756**

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
Non-accelerated filer

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 7(a)(2)(B) of the Securities Act.

EXPLANATORY NOTE

Tempest Therapeutics, Inc. (the “**Registrant**”) is filing this Post-Effective Amendment No. 1 to each of the Registrant’s registration statements on Form S-8 (File Nos. 333-265718, 333-264943, 333-255261, 333-249993 and 333-235515), as filed with the Securities and Exchange Commission (the “**SEC**”) on [June 21, 2022](#), [May 13, 2022](#), [April 15, 2021](#), [November 10, 2020](#), and [December 16, 2019](#), respectively (such registration statements, collectively, the “**Prior Registration Statements**,” and the post-effective amendment to each of the Prior Registration Statements, collectively, the “**Post-Effective Amendments**”). Pursuant to the Prior Registration Statements, shares of common stock, par value \$0.001 per share, of the Registrant (“**Common Stock**”) were registered for issuance under, the Registrant’s Amended and Restated 2019 Equity Incentive Plan (the “**A&R 2019 Plan**”) and its 2019 Equity Incentive Plan (the “**2019 Plan**” and, together with the A&R 2019 Plan, the “**Prior Plans**”).

On April 29, 2019, the Board of Directors (the “**Board**”) of Millendo Therapeutics, Inc. (“**Millendo**”) adopted 2019 Plan, subject to approval by the Company’s stockholders, and became effective with such stockholder approval on June 11, 2019. On June 17, 2022, the Company’s stockholders approved the A&R 2019 Plan, which amended and restated the 2019 Plan and became a successor to, and replacement of, the 2019 Plan.

On April 30, 2023, the Board approved the Registrant’s Amended and Restated 2023 Equity Incentive Plan (the “**2023 Plan**”), subject to stockholder approval of the 2023 Plan. On June 15, 2023, the Registrant’s stockholders approved the 2023 Plan. The 2023 Plan amended and restated the A&R 2019 Plan became a successor to, and replacement of, the A&R 2019 Plan. Upon effectiveness of the 2023 Plan immediately following the close of business on June 15, 2023 (the “**Effective Time**”), no new grants could be made under the A&R 2019 Plan, but the terms of such plan continue to govern all outstanding awards granted thereunder.

As provided in the 2023 EIP, from and after the Effective Time, all shares of Common Stock that become Prior Plan’s Returning Shares (as defined below) will be available for grants of new awards under the 2023 Plan. The term “Prior Plan’s Returning Shares” refers to the following shares of the Registrant’s Common Stock that will become available again for issuance under the 2023 EIP: (i) any shares under the 2023 EIP and the Prior Plans subject to a stock award that are not issued because such stock award expires or otherwise terminates without all of the shares covered by such stock award having been issued; (ii) any shares under the 2023 EIP and the Prior Plans subject to a stock award that are not issued because such stock award is settled in cash; (iii) any shares under the 2023 EIP and the Prior Plans issued pursuant to a stock award that are forfeited back to or repurchased by us because of the failure to meet a contingency or condition required for the vesting of such shares; and (iv) any shares under the 2023 EIP and the Prior Plans reacquired by us in satisfaction of tax withholding obligations on a stock award or as consideration for the exercise or purchase price of a stock award. As of the Effective Time, a total of 1,490,125 shares of Common Stock were subject to awards then-outstanding under the A&R 2019 Plan. The Prior Plan’s Returning Shares are collectively referred to herein as the “Transferred Shares.”

The Company is filing the Post-Effective Amendments pursuant to SEC Compliance and Disclosure Interpretation 126.43 to amend the Prior Registration Statements to register the offer of the Transferred Shares under the 2023 EIP (as such Transferred Shares would no longer be issuable under the A&R 2019 Plan as described above). As of the date of the filing of the Post-Effective Amendments, the maximum number of shares of Common Stock initially registered for offer pursuant to the A&R 2019 Plan that may become Transferred Shares available for offer under the 2023 Plan is 202,914 shares. No additional securities are being registered by the Post-Effective Amendments.

PART I INFORMATION REQUIRED IN SECTION 10(a) PROSPECTUS

Item 1. Plan Information

Not required to be filed with this Post-Effective Amendment.

Item 2. Registrant Information and Employee Plan Annual Information

Not required to be filed with this Post-Effective Amendment.

PART II
INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents, which have been filed with the SEC, are incorporated by reference into this Registration Statement:

(a) the contents of the Registrant's Registration Statements on Form S-8, previously filed with the SEC on [December 16, 2019](#) (File No. 333-235515), [November 10, 2020](#) (File No. 333-249993), [April 15, 2021](#) (File No. 333-255261), [May 13, 2022](#) (File No. 333-264943) and [June 21, 2022](#) (File No. 333-265718);

(b) the Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2022, filed with the SEC on [March 22, 2023](#) (File No. 001-35890);

(c) the Registrant's Quarterly Reports on Form 10-Q for the quarters ended March 31, 2023, June 30, 2023 and September 30, 2023, filed with the SEC on [May 10, 2023](#), [August 10, 2023](#) and [November 8, 2023](#), respectively (File No. 001-35890);

(d) the Registrant's Current Reports on Form 8-K filed with the SEC on [March 31, 2023](#), [April 28, 2023](#), [June 16, 2023](#), [September 7, 2023](#), [September 8, 2023](#), [October 11, 2023](#) and [October 30, 2023](#) (File No. 001-35890); and

(e) the description of the Common Stock set forth in the Registrant's registration statement on Form 8-A (File No. 001-35890), filed with the Commission on [April 25, 2013](#), including any amendments thereto or reports filed for the purposes of updating this description, including Exhibit 4.1 to the Registrant's Annual Report on Form 10-K/A for the fiscal year ended December 31, 2021 filed with the SEC on [April 1, 2022](#).

All reports and documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act (other than Current Reports furnished under Item 2.02 or Item 7.01 of Form 8-K and exhibits furnished on such form that relate to such items) on or after the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part of this Registration Statement from the date of the filing of such reports and documents. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any subsequently filed document that also is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 8. Exhibits.

| <u>Exhibit Number</u> | <u>Description</u> | <u>Schedule Form</u> | <u>File Number</u> | <u>Exhibit</u> | <u>Filing Date</u> |
|-----------------------|--|----------------------|--------------------|----------------|--------------------|
| 4.1 | Restated Certificate of Incorporation of the Registrant, as amended | 10-Q | 001-35890 | 3.1 | 5/15/2019 |
| 4.2 | Certificate of Amendment to the Restated Certificate of Incorporation of the Company, as filed with the Secretary of State of the State of Delaware on June 24, 2021 | 8-K | 001-35890 | 3.1 | 6/28/2021 |

| | | | | | |
|-------|--|------|-----------|------|------------|
| 4.3 | Certificate of Amendment to the Restated Certificate of Incorporation of the Company, as filed with the Secretary of State of the State of Delaware on June 25, 2021 | 8-K | 001-35890 | 3.2 | 6/28/2021 |
| 4.4 | Certificate of Designation of Series A Junior Participating Preferred Stock, as filed with the Secretary of State of the State of Delaware on October 10, 2023 | 8-K | 001-35890 | 3.1 | 10/11/2023 |
| 4.5 | Amended and Restated Bylaws of the Registrant | 8-K | 001-35890 | 3.1 | 9/24/2021 |
| 5.1* | Opinion of Cooley LLP | | | | |
| 23.1* | Consent of Cooley LLP (included in Exhibit 5.1). | | | | |
| 23.2* | Consent of Ernst & Young LLP, independent registered public accounting firm. | | | | |
| 24.1* | Power of Attorney (included on the signature page of this Form S-8). | | | | |
| 99.1 | Tempest Therapeutics, Inc. Amended and Restated 2023 Equity Incentive Plan. | 10-Q | 001-35890 | 10.1 | 8/10/2023 |
| 99.2 | Form of Stock Option Grant Notice under Amended and Restated 2023 Equity Incentive Plan. | 10-Q | 001-35890 | 10.2 | 8/10/2023 |

* Filed herewith.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Brisbane, State of California, on November 17, 2023.

Tempest Therapeutics, Inc.

By: /s/ Stephen Brady

Name: Stephen Brady

Title: President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Stephen Brady and Nicholas Maestas, and each one of them, as his or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him or her and in their name, place, and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement, and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

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

| Signature | Title | Date |
|---|--|-------------------|
| <u>/s/ Stephen Brady</u> Stephen Brady | President, Chief Executive Officer and Director <i>(Principal Executive Officer)</i> | November 17, 2023 |
| <u>/s/ Nicholas Maestas</u> Nicholas Maestas | Vice President, Strategy and Finance and Secretary <i>(Principal Financial Officer)</i> | November 17, 2023 |
| <u>/s/ Justin Trojanowski</u> Justin Trojanowski | Corporate Controller, Treasurer <i>(Principal Accounting Officer)</i> | November 17, 2023 |
| <u>/s/ Michael Raab</u> Michael Raab | Chairman of the Board of Directors | November 17, 2023 |
| <u>/s/ Geoff Nichol, M.B., Ch.B., M.B.A.</u> Geoff Nichol, M.B., Ch.B., M.B.A. | Director | November 17, 2023 |
| <u>/s/ Christine Pellizzari</u> Christine Pellizzari | Director | November 17, 2023 |
| <u>/s/ Ronit Simantov</u> Ronit Simantov | Director | November 17, 2023 |



November 17, 2023

Laura Berezin
T: +1 650 843 5128
lberezin@cooley.com

Tempest Therapeutics, Inc.
2000 Sierra Point Parkway, Suite 400
Brisbane, California 94005

Ladies and Gentlemen:

We have acted as counsel to Tempest Therapeutics, Inc., a Delaware corporation (the "**Company**"), in connection with the filing by the Company with the Securities and Exchange Commission (the "**Commission**") of a Post-Effective Amendment No. 1 to each of the Company's registration statements on Form S-8 (File Nos. 333-265718, 333-264943, 333-255261, 333-249993 and 333-235515), as filed with the Commission on June 21, 2022, May 13, 2022, July 7, 2021, April 15, 2021, November 10, 2020, and December 16, 2019, respectively (such registration statements, collectively, the "**Prior Registration Statements**," and the post-effective amendment to each of the Prior Registration Statements, collectively, the "**Post-Effective Amendments**").

The Prior Registration Statements covered the offering of shares of the Company's common stock, par value \$0.001 per share ("**Common Stock**"), previously available for issuance under the Company's 2019 Equity Incentive Plan (including such plan as amended and restated, the "**Prior Plan**"). For purposes of this opinion, the "**Shares**" means up to 202,914 shares of Common Stock, which is the number of shares of Common Stock subject to outstanding stock awards granted under the Prior Plans, that from and after June 15, 2023, may become available for grant under the Company's Amended and Restated 2023 Equity Incentive Plan (the "**2023 Plan**") as described in the Post-Effective Amendments. Each share of Common Stock includes a preferred share purchase right (each, a "**Right**," collectively, the "**Rights**") as set forth in Rights Agreement (the "**Rights Plan**"), dated as October 10, 2023, between the Company and Computershare Trust Company, N.A., as rights agent (the "**Rights Agent**").

In connection with this opinion, we have examined and relied upon (a) the Prior Registration Statements, the Post-Effective Amendments and related prospectus, (b) the Company's certificate of incorporation and bylaws, each as currently in effect, (c) the Prior Plan, (d) the 2023 Plan, (e) the Rights Plan, and (f) such other records, documents, certificates, memoranda and other instruments as in our judgment are necessary or appropriate to enable us to render the opinion expressed below. We have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as copies, the accuracy, completeness and authenticity of certificates of public officials and the due authorization, execution and delivery of all documents by all persons other than the Company where authorization, execution and delivery are prerequisites to the effectiveness thereof. As to certain factual matters, we have relied upon a certificate of an officer of the Company and have not independently verified such matters.

With respect to our opinion concerning the Rights:

(i) Our opinion does not address the determination a court of competent jurisdiction may make regarding whether the Company's board of directors (the "**Board**") may be required to redeem or terminate, or take other action with respect to, the Rights or Rights Plan in the future based on the facts and circumstances then existing.

(ii) Our opinion assumes that the Rights Plan has been duly authorized, executed and delivered by the Rights Agent and that members of the Board have acted in a manner consistent with their fiduciary duties as required under applicable law in adopting the Rights Plan. With respect to Rights associated with Shares to be offered in the future under the Registration Statement, our opinion assumes the Rights Plan has not been terminated by the Company or expired by its terms and the Rights have not expired or been redeemed or exchanged by the Company, in each case, prior to the issuance of such Shares.

(iii) Our opinion addresses corporate procedures in connection with the issuance of the Rights associated with shares of Common Stock of the Company, and not any particular provision of the Rights or the Rights Plan. It should be understood that it is not settled whether the invalidity of any particular provision of a rights agreement or purchase rights issued thereunder would invalidate such rights in their entirety.

Our opinion is expressed only with respect to the General Corporation Law of the State of Delaware. We express no opinion to the extent that any other laws are applicable to the subject matter hereof and express no opinion and provide no assurance as to compliance with any federal or state securities law, rule or regulation.

On the basis of the foregoing, and in reliance thereon, and subject to the qualifications herein stated, we are of the opinion that the Shares and associated Rights, when sold and issued in accordance with the 2023 Plan, the Post-Effective Amendments and related prospectus, will be validly issued, fully paid, and nonassessable (except as to shares issued pursuant to deferred payment arrangements which will be fully paid and nonassessable when such deferred payments are made in full).

This opinion is limited to the matters expressly set forth in this letter, and no opinion should be implied, or may be inferred, beyond the matters expressly stated. This opinion speaks only as to law and facts in effect or existing as of the date hereof and we undertake no obligation or responsibility to update or supplement this letter to reflect any facts or circumstances that may hereafter come to our attention or any changes in law that may hereafter occur.

We consent to the filing of this opinion as an exhibit to the Post-Effective Amendments. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act of 1933, as amended, or the rules and regulations of the Commission.

Sincerely,

COOLEY LLP

By: /s/ Laura Berezin
Laura Berezin

Cooley LLP 1700 Seventh Avenue, Suite 1900 Seattle, WA 98101-1355
t: (206) 452-8700 f: (206) 452-8800 cooley.com

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statements (Post-Effective Amendment No. 1 on Form S-8 Nos. 333-265718, 333-264943, 333-255261, 333-249993, and 333-235515) pertaining to the Tempest Therapeutics, Inc. Amended and Restated 2023 Equity Incentive Plan, Tempest Amended and Restated 2019 Equity Incentive Plan, and Millendo 2019 Equity Incentive Plan of our report dated March 22, 2023, with respect to the consolidated financial statements of Tempest Therapeutics, Inc. included in its Annual Report (Form 10-K) for the year ended December 31, 2022, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP
Chicago, Illinois
November 17, 2023