

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

**Pre-Effective Amendment No. 1
to
FORM S-3
REGISTRATION STATEMENT
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 Number)

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

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

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

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

Copies to:

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

From time to time after the effective date of this Registration Statement
(Approximate date of commencement of proposed sale to the public)

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.

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 post-effective amendment to a registration statement filed 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 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 7(a)(2)(B) of the Securities Act.

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

Explanatory Note

This Amendment No. 1, or the Amendment, is being filed to amend the Registration Statement on Form S-3 (File No. 333-280918), originally filed by the registrant on July 19, 2024, or the Registration Statement, to (i) modify the amount of remaining unsold securities to be included on the Registration Statement pursuant to Rule 415(a)(6) that were registered on a previously filed registration statement, as indicated in Exhibit 107 to this Amendment; (ii) to file an updated consent of Ernst & Young LLP, the registrant's independent registered public accounting firm; and (iii) to update the exhibit listing set forth in Item 16. Accordingly, this Amendment No. 1 consists only of the facing page, this explanatory note, Part II of the Registration Statement, the signature page to the Registration Statement, and the exhibits being filed with this Amendment. The remainder of the Registration Statement, including the prospectus, is unchanged and has been omitted.

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 14. Other Expenses of Issuance and Distribution

The following table sets forth the estimated costs and expenses, other than underwriting discounts and commissions, payable by us in connection with the offering of the securities being registered. All the amounts shown are estimates, except for the SEC registration fee and the FINRA filing fee.

SEC registration fee	\$45,930
Accounting fees and expenses	(1)
Legal fees and expenses	(1)
Transfer agent fees and expenses	(1)
Trustee fees and expenses	(1)
Printing and miscellaneous expenses	(1)
Total	<u>\$ (1)</u>

(1) These fees are calculated based on the securities offered and the number of issuances and accordingly cannot be estimated at this time.

Item 15. Indemnification of Officers and Directors

Section 145 of the Delaware General Corporate Law, or the DGCL, provides that a corporation may indemnify directors and officers as well as other employees and individuals against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with any threatened, pending or completed actions, suits or proceedings in which such person is made a party by reason of such person being or having been a director, officer, employee or agent of the registrant. The DGCL provides that Section 145 is not exclusive of other rights to which those seeking indemnification may be entitled under any bylaws, agreement, vote of stockholders or disinterested directors or otherwise. The registrant's amended certificate of incorporation and amended and restated bylaws provide for indemnification by the registrant of its directors and officers to the fullest extent permitted by the DGCL.

Section 102(b)(7) of the DGCL permits a corporation to provide in its certificate of incorporation that a director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (1) for any breach of the director's duty of loyalty to the corporation or its stockholders, (2) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (3) for unlawful payments of dividends or unlawful stock repurchases redemptions or other distributions or (4) for any transaction from which the director derived an improper personal benefit. The registrant's amended certificate of incorporation provides for such limitation of liability to the fullest extent permitted by the DGCL.

The registrant has entered into indemnification agreements with each of its directors and executive officers to provide contractual indemnification in addition to the indemnification provided in its restated certificate of incorporation. Each indemnification agreement provides for indemnification and advancements by the registrant of certain expenses and costs relating to claims, suits or proceedings arising from his or her service to the registrant or, at our request, service to other entities, as officers or directors to the maximum extent permitted by applicable law. The registrant believes that these provisions and agreements are necessary to attract qualified directors.

The registrant also maintains standard policies of insurance under which coverage is provided (1) to its directors and officers against loss arising from claims made by reason of breach of duty or other wrongful act, while acting in their capacity as directors and officers of the registrant and (2) to the registrant with respect to

payments which may be made by the registrant to such officers and directors pursuant to any indemnification provision contained in the registrant's amended certificate of incorporation and amended and restated bylaws or otherwise as a matter of law.

Item 16. Exhibits and Financial Statement Schedules

<u>Exhibit Number</u>	<u>Description of Document</u>
1.1*	Form of Underwriting Agreement.
1.2	<u>Sales Agreement, dated June 20, 2024, between the Company and Jefferies LLC (incorporated by reference to Exhibit 1.1 of the Registrant's Current Report on Form 8-K (File No. 001-35890), filed with the SEC on June 20, 2024).</u>
2.1	<u>Agreement and Plan of Merger, dated as of March 29, 2021, by and among Tempest Therapeutics, Inc., Mars Merger Corp. and Tempest Therapeutics, Inc. (incorporated by reference to Exhibit 2.1 of the Registrant's Current Report on Form 8-K (File No. 001-35890), filed with the SEC on March 29, 2021).</u>
3.1	<u>Restated Certificate of Incorporation of the Registrant (incorporated by reference to Exhibit 3.1 to the Registrant's Quarterly Report on Form 10-Q (File No. 001-35890), filed with the SEC on May 15, 2019).</u>
3.2	<u>Certificate of Amendment to the Restated Certificate of Incorporation of the Registrant (incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K (File No. 001-35890), filed with the SEC on June 28, 2021).</u>
3.3	<u>Certificate of Amendment to the Restated Certificate of Incorporation of the Registrant (incorporated by reference to Exhibit 3.2 to the Registrant's Current Report on Form 8-K (File No. 001-35890), filed with the SEC on June 28, 2021).</u>
3.5	<u>Certificate of Designation of Series A Junior Participating Preferred Stock filed with the Secretary of State of the State of Delaware on October 10, 2023 (incorporated by reference to Exhibit 3.1 of the Registrant's Current Report on Form 8-K (File No. 35890), filed with the SEC on October 11, 2023).</u>
3.6	<u>Amended and Restated Bylaws of the Registrant (incorporated by reference to Exhibit 3.1 of the Registrant's Current Report on Form 8-K (File No. 35890), filed with the SEC on September 24, 2021).</u>
4.1	<u>Form of Tempest Therapeutics, Inc. Warrant to Purchase Stock (incorporated by reference to Exhibit 4.2 to the Registration Statement on Form S-4/A (File No. 333-255198) filed with the SEC on May 4, 2021).</u>
4.2	<u>Registration Rights Agreement, dated April 26, 2022, by and among Tempest Therapeutics, Inc. and the persons party thereto (incorporated by reference to Exhibit 10.2 to Registrant's Current Report on Form 8-K (File No. 001-35890) filed with the SEC on May 2, 2022).</u>
4.3	<u>Rights Agreement, dated as of October 10, 2023, between Tempest Therapeutics, Inc. and Computershare Trust Company, N.A., which includes the form of Certificate of Designation as Exhibit A, the form of Right Certificate as Exhibit B and the Summary of Rights to Purchase Preferred Shares as Exhibit C (incorporated by reference to Exhibit 4.1 of Registrant's Current Report on Form 8-K (File No. 001-35890), filed with the SEC on October 11, 2023).</u>
4.4	<u>Amendment No. 1, dated as of October 9, 2024, to Rights Agreement, dated as of October 10, 2023, by and between Tempest Therapeutics, Inc. and Computershare Trust Company, N.A., as rights agent (incorporated by reference to Exhibit 4.1 of Registrant's Current Report on Form 8-K (File No. 001-35890), filed with the SEC on October 10, 2024).</u>

4.5	Amendment No. 2, dated as of December 5, 2024, to Rights Agreement, dated as of October 10, 2023, by and between Tempest Therapeutics, Inc. and Computershare Trust Company, N.A., as rights agent (incorporated by reference to Exhibit 4.1 of Registrant’s Current Report on Form 8-K (File No. 001-35890), filed with the SEC on December 6, 2024).
4.6#	Form of Debt Indenture.
4.7*	Form of Debt Securities.
4.8*	Form of Common Stock Warrant Agreement and Warrant Certificate.
4.9*	Form of Preferred Stock Warrant Agreement and Warrant Certificate.
4.10*	Form of Debt Securities Warrant Agreement and Warrant Certificate.
4.11*	Form of Specimen Preferred Stock Certificate and Certificate of Designations of Preferred Stock.
4.12*	Form of Rights Agreement.
4.13*	Form of Unit Agreement.
5.1#	Opinion of Cooley LLP.
23.1**	Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm to Tempest Therapeutics, Inc.
23.3#	Consent of Cooley LLP (included in Exhibit 5.1).
24.1#	Power of Attorney (included on signature page).
25.1*	Statement of Eligibility of Trustee under the Indenture.
107**	Filing Fee Table.

* To be filed by amendment or by a report filed under the Exchange Act and incorporated herein by reference, if applicable.

** Filed herewith.

Previously filed.

Item 17. Undertakings

The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the “Calculation of Registration Fee” table in the effective registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

provided, however, that the undertakings set forth in paragraphs (1)(i), (1)(ii) and (1)(iii) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the SEC by the registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934, as amended, or the Exchange Act, that are incorporated by reference in this registration statement or are contained in a form of prospectus filed pursuant to Rule 424(b) that is part of this registration statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) That, for the purpose of determining liability under the Securities Act to any purchaser:

(i) Each prospectus filed by the registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(ii) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii), or (x) for the purpose of providing the information required by Section 10(a) of the Securities Act shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof. *Provided, however*, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

(5) That, for the purpose of determining liability of the registrant under the Securities Act to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser: (i) any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424; (ii) any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant; (iii) the portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and (iv) any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

(6) That, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(7) That, for purposes of determining any liability under the Securities Act of 1933, (i) the information omitted from the form of prospectus filed as part of the registration statement in reliance upon Rule 430A and contained in the form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be a part of the registration statement as of the time it was declared effective; and (ii) each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(8) To file an application for the purpose of determining the eligibility of the trustee to act under subsection (a) of Section 310 of the Trust Indenture Act in accordance with the rules and regulations prescribed by the Commission under Section 305(b)(2) of the Trust Indenture Act.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

Consent of Independent Registered Public Accounting Firm

We consent to the reference of our firm under the caption “Experts” in the Registration Statement (Form S-3 No. 333-280918) and related Prospectus of Tempest Therapeutics, Inc. for the registration of its common stock, preferred stock, debt securities, warrants, units and rights to purchase common stock, preferred stock, debt securities or units, and to the incorporation by reference therein of our report dated March 19, 2024, 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, 2023, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

Chicago, Illinois
January 24, 2025

Calculation of Filing Fee Tables

Form S-3
(Form Type)

Tempest Therapeutics, Inc.
(Exact Name of Registrant as Specified in its Charter)

Table 1: Newly Registered and Carry Forward Securities

	Security Type	Security Class Title	Fee Calculation or Carry Forward Rule	Amount Registered	Proposed Maximum Offering Price Per Unit	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee	Carry Forward Form Type	Carry Forward File Number	Carry Forward Initial effective date	Filing Fee Previously Paid In Connection with Unsold Securities to be Carried Forward
Newly Registered Securities												
Fees to Be Paid	Equity	Common Stock, par value \$0.001 per share ⁽¹⁾⁽²⁾										
	Equity	Preferred Stock, par value \$0.001 per share ⁽¹⁾										
	Debt	Debt Securities ⁽¹⁾										
	Other	Warrants ⁽¹⁾										
	Other	Units ⁽¹⁾										
	Other	Rights to purchase common stock, preferred stock, debt securities or units ⁽¹⁾										
	Unallocated (Universal) Shelf	—	Rule 457(o)	(3)	(4)	\$300,000,000	\$0.00015310	\$45,930				
Fees Previously Paid	—	—	—	—	—	—	—	—				
Carryforward Securities												
Carry Forward Securities	Equity	Common Stock, par value \$0.001 per share										
	Equity	Preferred Stock, par value \$0.001 per share										
	Debt	Debt Securities										
	Other	Warrants										
	Other	Units										
	Other	Rights to purchase common stock, preferred stock, debt securities or units										
	Unallocated (Universal) Shelf	Unallocated (Universal) Shelf										
	Total Offering Amounts					\$300,000,000		\$45,930				
	Total Fees Previously Paid							\$14,602.19				

		Total Fee Offsets								\$19,391.99				
		Net Fee Due								\$11,935.82				

Table 2: Fee Offset Claims and Sources

	Registrant or Filer Name	Form or Filing Type	File Number	Initial Filing Date	Filing Date	Fee Offset Claimed	Security Type Associated with Fee Offset Claimed	Security Title Associated with Fee Offset Claimed	Unsold Securities Associated with Fee Offset Claimed	Unsold Aggregate Offering Amount Associated with Fee Offset Claimed	Fee Paid with Fee Offset Source
Rules 457(p)											
Fee Offset Claims	Tempest Therapeutics, Inc.	Form S-3 ⁽⁵⁾	333-257990	July 16, 2021		\$7,277.00	Unallocated (Universal Shelf)			\$66,700,274.98	
Fee Offset Claims	Tempest Therapeutics, Inc.	Form S-3 ⁽⁵⁾	333-230749	April 5, 2019		\$3,252.59	Unallocated (Universal Shelf)			\$26,836,564.55	
Fee Offset Claims	Tempest Therapeutics, Inc.	Form S-3 ⁽⁵⁾	333-230749	April 5, 2019		\$8,862.40	Equity	Common Stock, par value \$0.001 per share		\$73,122,098.82	
Fee Offset Sources	Tempest Therapeutics, Inc.	Form S-3 ⁽⁵⁾	333-257990		July 16, 2021						\$7,277.00
Fee Offset Sources	Tempest Therapeutics, Inc.	Form S-3 ⁽⁵⁾	333-230749		April 5, 2019						\$24,240

- (1) Separate consideration may or may not be received for securities that are issuable upon the conversion or exercise of, or in exchange for, other securities offered hereby.
- (2) Each share of common stock registered hereunder includes an associated right (the "Rights") as set forth in the Rights Agreement, dated as of October 10, 2023, between the registrant and Computershare Trust Company, N.A., as rights agent, as amended by the Amendment No. 1 to Rights Agreement, dated October 9, 2024 and the Amendment No. 2, dated December 5, 2024. Rights are attached to the shares of common stock, will not be offered separately, and are not exercisable until the occurrence of certain events specified in the Rights Agreement. The value attributable to the Rights, if any, is reflected in the value of the common stock.
- (3) The registrant is registering hereunder such indeterminate number of shares of common stock and preferred stock, such indeterminate principal amount of debt securities, such indeterminate number of warrants to purchase common stock, preferred stock and/or debt securities, such indeterminate amount of units and such indeterminate amount of rights to purchase common stock, preferred stock and/or debt securities to be sold by the registrant from time to time at unspecified prices which shall have an aggregate initial offering price not to exceed \$300,000,000. If any debt securities are issued at an original issue discount, then the principal amount of such debt securities shall be in such greater amount as shall result in an aggregate initial offering price not to exceed \$300,000,000, less the aggregate dollar amount of all securities previously issued hereunder. The securities registered for sale also include such indeterminate number of shares of common stock and preferred stock as may be issued upon conversion of debt securities, such indeterminate number of shares of common stock that may be issued upon conversion of preferred stock and such indeterminate number of shares of common stock, preferred stock and warrants and principal amount of debt securities that may be issued upon exercise of warrants or rights. In addition, pursuant to Rule 416 under the Securities Act of 1933, as amended (the "Securities Act"), the shares being registered hereunder include such indeterminate number of shares of common stock and preferred stock as may be issuable with respect to the shares being registered hereunder as a result of stock splits, stock dividends or similar transactions.
- (4) The proposed maximum offering price per share will be determined, from time to time, by the registrant in connection with the issuance by the registrant of the securities registered hereunder and is not specified as to each class of security pursuant to Instruction 2.A.iii.b. to the Calculation of Filing Fee Tables and Related Disclosure on Item 16(b) of Form S-3 under the Securities Act.
- (5) The Registrant previously registered securities having an aggregate offering price up to \$250,000,000 on a Registration Statement on Form S-3 (File No. 333-257990), filed with the Securities and Exchange Commission on July 16, 2021 (the "2021 Registration Statement"). The 2021 Registration Statement included a base prospectus registering the offering, issuance and sale by the Company an indeterminate amount of common stock and preferred stock, such indeterminate principal amount of debt securities and such indeterminate number of warrants to purchase common stock, preferred stock or debt securities, as may from time to time be offered pursuant to the 2021 Registration Statement at indeterminate prices, along with an indeterminate number of securities that may be issued upon exercise, settlement, exchange or conversion of securities offered or sold thereunder. In connection with the filing of the 2021 Registration Statement, the Company owed a total fee of \$27,275 and made a contemporaneous fee payment in the amount of \$7,277 based on the fee rate then in effect and carried forward \$19,998 from a Registration Statement on Form S-3 (File No. 333-230749), filed with the Securities and Exchange Commission on April 15, 2019 (the "2019 Registration Statement"). Upon expiration of the 2021 Registration Statement, the Registrant had \$175,416,376 allocated securities and \$2,328,678 unallocated securities unsold.

The Registrant also previously registered securities having an aggregate offering price up to \$200,000,000 the 2019 Registration Statement. The 2019 Registration Statement included (i) a base prospectus registering the offering, issuance and sale by the Company an indeterminate amount of common stock and preferred stock, such indeterminate principal amount of debt securities and such indeterminate number of warrants to purchase common stock, preferred stock or debt securities, as may from time to time be offered pursuant to the 2019 Registration Statement at indeterminate prices, along with an indeterminate number of securities that may be issued upon exercise, settlement, exchange or conversion of securities offered or sold thereunder, and (ii) an equity distribution agreement prospectus covering the offering, issuance and sale by the registrant of up to a maximum aggregate offering price of \$50,000,000 of the Registrant's common stock. In connection with the filing of the 2019 Registration Statement, the Company made a contemporaneous fee payment in the amount of \$24,240 based on the fee rate then in effect.

Pursuant to Rule 457(p), the Registrant is offsetting \$7,277 of the fees associated with this current registration statement from the filing fee previously paid in connection with the 2021 Registration Statement and \$12,144.99 of the fees associated with this current registration statement from the filing fee previously paid in connection with the 2019 Registration Statement and carried forward to the 2021 Registration Statement.

The Registrant hereby confirms that the 2021 Registration Statement and the 2019 Registration Statement have expired and that all offerings thereunder have terminated.