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

FORM S-8
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 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 2019 Equity Incentive Plan
Tempest Therapeutics, Inc. Amended and Restated 2023 Equity Incentive Plan
Tempest Therapeutics, Inc. 2023 Inducement Plan
Inducement Stock Options
(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

Pursuant to General Instruction E of Form S-8, Tempest Therapeutics, Inc. (the “**Registrant**”) is filing this Registration Statement with the Securities and Exchange Commission (the “**SEC**”) to register an aggregate of 1,570,742 shares, which consists of (i) 1,703 shares of common stock reserved for future grant under the Registrant’s Amended and Restated 2023 Equity Incentive Plan (the successor plan to the 2019 Plan) (the “**2023 Plan**”), and (ii) 1,569,039 shares of common stock issuable upon the exercise of outstanding options granted pursuant to the 2023 Plan. The 2023 Plan was approved by the Registrant’s stockholders at its annual meeting of stockholders held on June 15, 2023.

In addition, the Registrant is registering 1,150,000 shares of common stock reserved for future grant to eligible persons under the Registrant’s 2023 Inducement Plan (the “**Inducement Plan**”) and 12,600 shares of common stock issuable upon the exercise of outstanding stock options granted to a new employee as an inducement award in connection with the commencement of employment pursuant to Nasdaq Listing Rule 5635(c)(4) (the “**Inducement Award**”). The Inducement Award was approved by the Registrant’s Board of Directors in compliance with and in reliance on Nasdaq Listing Rule 5635(c)(4) and was granted outside of the Inducement Plan.

In accordance with the instructional note to Part I of Form S-8 as promulgated by the SEC, the information specified by Part I of the Form S-8 has been omitted from this Registration Statement.

PART II

Item 3. Incorporation of Certain Documents By Reference

The following documents filed by the Registrant 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](#) and (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

Exhibit Number	Description	Incorporated by Reference			
		Schedule Form	File Number	Exhibit	Filing Date
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	9/4/2021
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. 2023 Inducement Plan.	10-Q	001-35890	10.3	8/10/2023
99.2	Form of Inducement Grant under 2023 Inducement Plan.	10-Q	001-35890	10.4	8/10/2023
99.3	Tempest Therapeutics, Inc. Amended and Restated 2023 Equity Incentive Plan.	10-Q	001-35890	10.1	8/10/2023
99.4	Form of Stock Option Grant Notice under Amended and Restated 2023 Equity Incentive Plan.	10-Q	001-35890	10.2	8/10/2023
107*	Filing Fee Table				

* 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 of a Registration Statement on Form S-8 (the "**Registration Statement**") with the Securities and Exchange Commission (the "**Commission**") covering the offering of up to 2,733,342 shares (the "**Shares**") of the Company's Common Stock, \$0.001 par value, consisting of (a) 1,150,000 shares of Common Stock issuable pursuant to the Company's 2023 Inducement Plan (the "**Inducement Plan**"), (b) 12,600 shares of Common Stock issuable under a new hire inducement stock option award granted by the Company (the "**ISO Award**"), and (c) 1,570,742 shares of Common Stock issuable under the Company's Amended and Restated 2023 Equity Incentive Plan (the "**2023 EIP**"), and together with the Inducement Plan and the ISO Award, the "**Plans**"). 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 Registration Statement and related prospectus, (b) the Plans, (c) the Company's certificate of incorporation and bylaws, each as currently in effect, (d) the Rights Plan and (e) 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 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 against payment therefor in accordance with the Plans, the Registration Statement and the related prospectuses, will be validly issued, and the Shares will be 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 Registration Statement. 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 thereunder.

Sincerely,

COOLEY LLP

By: /s/ Laura Berezin
Laura Berezin

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in this Registration Statement (Form S-8) pertaining to the Tempest Therapeutics, Inc. Amended and Restated 2019 Equity Incentive Plan, Tempest Therapeutics, Inc. Amended and Restated 2023 Equity Incentive Plan, Tempest Therapeutics, Inc. 2023 Inducement Plan, and Inducement Stock Options 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

Calculation of Filing Fee Table

Form S-8

Tempest Therapeutics, Inc.

Table 1 – Newly Registered Securities

	Security Type	Security Class Title	Fee Calculation Rule	Amount Registered ⁽¹⁾	Proposed Maximum Offering Price Per Unit	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
Fees to be Paid	Equity	Amended and Restated 2023 Equity Incentive Plan	Rule 457(c) and Rule 457(h)	1,703 ⁽²⁾	\$3.11 ⁽³⁾	\$5,297	0.00014760	\$0.78
	Equity	Amended and Restated 2023 Equity Incentive Plan (options) Common stock, \$0.001 par value per share	Rule 457(h)	1,569,039 ⁽⁴⁾	\$9.77 ⁽⁵⁾	\$15,329,512	0.00014760	\$2,262.64
	Equity	2023 Inducement Plan Common stock, \$0.001 par value per share	Rule 457(c) and Rule 457(h)	1,150,000 ⁽⁶⁾	\$3.11 ⁽³⁾	\$3,576,500	0.00014760	\$527.89
	Equity	Inducement Stock Option Grant Common stock, \$0.001 par value per share	Rule 457(h)	12,600 ⁽⁷⁾	\$2.18 ⁽⁵⁾	\$27,468	0.00014760	\$4.05
	Total Offering Amounts				—	\$18,938,777	—	\$2,795.36
	Total Fees Previously Paid				—	—	—	—
	Total Fee Offsets				—	—	—	—
	Net Fee Due				—	—	—	\$2,795.36

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the “**Securities Act**”), this Registration Statement shall also cover any additional shares of common stock that become issuable under the above-named plans by reason of any stock dividend, stock split, recapitalization or any other similar transaction effected without receipt of consideration which results in an increase in the number of Tempest Therapeutics, Inc. (the “**Registrant**”) outstanding shares of common stock, par value \$0.001 per share (the “**Common Stock**”).
- (2) Represents 1,703 shares of common stock reserved for issuance under the Amended and Restated 2023 Equity Incentive Plan (the “**2023 Plan**”). The 2023 Plan provides that an additional number of shares will automatically be added annually to the shares authorized for issuance under the 2023 Plan on January 1st of each year, for a period of not more than 10 years, commencing on January 1, 2024 and ending on (and including) January 1, 2033, in an amount equal to the lesser of (a) 4% of the total number of shares of Common Stock outstanding on December 31st of the preceding calendar year and (b) a number of shares of Common Stock designated by action of the Registrant’s board of directors prior to the first day of any calendar year.
- (3) Estimated pursuant to Rules 457(c) and 457(h) solely for the purpose of calculating the registration fee. The proposed maximum offering price per share and proposed maximum aggregate offering price are based on the average of the high and low sale prices of the Common Stock as reported on The Nasdaq Capital Market on November 10, 2023.
- (4) Represents shares of the Common Stock reserved for issuance upon the exercise of outstanding options granted under the 2023 Plan. To the extent that any stock options outstanding under the Registrant’s A&R 2019 Plan expire or are terminated prior to exercise or vesting, the shares Common Stock reserved for issuance pursuant to such stock options will become available for issuance as shares of Common Stock under the 2023 Plan.
- (5) Estimated pursuant to Rule 457(h) solely for the purpose of calculating the registration fee. The proposed maximum offering price per share and proposed maximum aggregate offering price are calculated using a weighted-average exercise price for such shares.
- (6) Represents shares of Common Stock reserved for issuance under the Inducement Plan.
- (7) Represents shares of Common Stock issuable upon the exercise of an outstanding stock option granted to a new employee as an inducement award in connection with the commencement of employment pursuant to Nasdaq Listing Rule 5635(c)(4).