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

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

BIORA THERAPEUTICS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

27-3950390
(I.R.S. Employer
Identification No.)

4330 La Jolla Village Drive, Suite 300
San Diego, CA 92122
(833) 727-2841

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

Aditya P. Mohanty
Chief Executive Officer
Biora Therapeutics, Inc.
4330 La Jolla Village Drive, Suite 300
San Diego, CA 92122
(833) 727-2841

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

Copies to:

Ryan A. Murr
Stewart L. McDowell
Gibson, Dunn & Crutcher LLP
One Embarcadero Center, Suite 2600
San Francisco, CA 94111
(415) 393-8200

Clarke Neumann
General Counsel
Biora Therapeutics, Inc.
4330 La Jolla Village Drive, Suite 300
San Diego, CA 92122
(833) 727-2841

Approximate date of commencement of proposed sale to the public: From time to time after the effective date of this registration statement becomes effective, as determined by market conditions and other factors.

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 which specifically states that this registration statement shall thereafter become effective in accordance with section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Commission acting pursuant to said section 8(a), may determine.

The information in this prospectus is not complete and may be changed. The Selling Stockholders may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting offers to buy these securities in any jurisdiction where the offer or sale is not permitted.

SUBJECT TO COMPLETION, DATED AUGUST 23, 2024

Prospectus



BIORA THERAPEUTICS, INC.

96,661,836 Shares of Common Stock

This prospectus relates to the offer and resale from time to time by the selling stockholders named herein (the "Selling Stockholders") of up to an aggregate of 96,661,836 shares (the "Shares") of common stock, par value \$0.001 per share, of Biora Therapeutics, Inc., a Delaware corporation ("Biora" or the "Company"). The Shares consist of up to: (i) 5,286,284 shares of common stock issuable upon conversion of \$4,000,000 principal amount of a new tranche (the "New Money Payment Priority Notes") of the Company's 11.00%/13.00% Convertible Senior Secured Notes due 2028 (the "2028 Convertible Notes") with payment priority over the existing 2028 Convertible Notes; (ii) 5,207,437 shares of common stock that may be issuable (A) in respect of interest payments or make-whole amounts on the New Money Payment Priority Notes that the Company settles in shares of common stock or (B) upon conversion of, or in respect of, interest payments or make-whole amounts on any additional New Money Payment Priority Notes issuable with respect to interest payments on the New Money Payment Priority Notes that are settled in kind (all such shares, the "New Money Interest Payment and Make-Whole Shares"); (iii) 14,220,087 shares of common stock issuable upon conversion of \$10,759,986 principal amount of a new tranche of the 2028 Convertible Notes issued in exchange for existing 2028 Convertible Notes (the "Exchange Payment Priority Notes"); (iv) 14,007,986 shares of common stock that may be issuable (A) in respect of interest payments or make-whole amounts on the Exchange Payment Priority Notes that the Company settles in shares of common stock or (B) upon conversion of, or in respect of, interest payments or make-whole amounts on any additional Exchange Payment Priority Notes issuable with respect to interest payments on the Exchange Payment Priority Notes that are settled in kind (all such shares, the "Exchange Interest Payment and Make-Whole Shares"); (v) 21,793,685 additional shares of common stock issuable upon the conversion of existing 2028 Convertible Notes due to a change in conversion price (the "Amended 2028 Convertible Notes"); (vi) 19,645,148 additional shares of common stock that may be issuable (A) in respect of interest payments or make-whole amounts on the Amended 2028 Convertible Notes that the Company settles in shares of common stock or (B) upon conversion of, or in respect of, interest payments or make-whole amounts on any additional Amended 2028 Convertible Notes issuable with respect to interest payments on the Amended 2028 Convertible Notes that are settled in kind, in each case due to a change in the conversion price (all such shares, the "Amended Notes Interest Payment and Make-Whole Shares"); (vii) 6,677,794 shares of common stock issuable upon the exercise of warrants to purchase common stock with a term of five years that are exercisable any time from the date of issuance (subject to any limitations under the rules of Nasdaq that require stockholder approval of issuance of shares) and an exercise price of \$0.60 per share (the "Commitment Warrants"); (viii) 100,000 shares of common stock issuable upon the exercise of warrants to purchase common stock with a term of five years that are exercisable any time from the date of issuance (subject to any limitations under the rules of Nasdaq that require stockholder approval of issuance of shares) and an exercise price of \$0.60 per share (the "Additional Warrants"); (ix) 3,018,868 shares of common stock issuable upon the exercise of warrants to purchase common stock with a term of five years that are exercisable any time on or after June 5, 2024 and an exercise price of \$1.10 (the "June 2023 Private Placement Warrants"); (x) 4,090,911 shares of common stock issuable upon the exercise of warrants to purchase common stock with a term of five years that are exercisable at any time on or after June 5, 2024 and an exercise price of \$1.10 per share (the "March 2024 Private Placement Warrants"); (xi) 1,363,637 shares of common stock issuable upon the exercise of warrants to

[Table of Contents](#)

purchase common stock with a term of five years that are exercisable any time from the date of issuance (subject to any limitations under the rules of Nasdaq that require stockholder approval of issuance of shares) and an exercise price of \$0.60 per share (the “Amended March 2024 Private Placement Warrants”); and (xii) 1,249,999 shares of common stock issuable upon the exercise of warrants to purchase common stock with a term of five years that are exercisable any time from the date of issuance (subject to any limitations under the rules of Nasdaq that require stockholder approval of issuance of shares) and an exercise price of \$0.60 per share (the “July Warrants” and, together with the Commitment Warrants, the Additional Warrants, the June 2023 Private Placement Warrants, the March 2024 Private Placement Warrants, and the Amended March 2024 Private Placement Warrants, the “Offered Warrants”).

The Shares offered hereby include any shares of common stock that may be issuable upon exercise of any warrants issuable pursuant to the terms of any 2028 Convertible Notes in lieu of shares otherwise issuable pursuant to the terms of the 2028 Convertible Notes.

We will not receive any of the proceeds from the sale or other disposition of the Shares by the Selling Stockholders. However, upon any cash exercise of the Offered Warrants by the Selling Stockholders, we will receive cash proceeds per share equal to the exercise price of the Offered Warrants. If the Offered Warrants are exercised in a cashless exercise, which may occur if we do not have an effective registration statement on file with respect to the exercise of the Offered Warrants, we will not receive any proceeds from the exercise of the Offered Warrants.

The Selling Stockholders may sell or otherwise dispose of the Shares in a number of different ways and at varying prices. We provide more information about how the Selling Stockholders may sell or otherwise dispose of the Shares in the section entitled “Plan of Distribution” on page 12. Discounts, concessions, commissions and similar selling expenses attributable to the sale of the Shares will be borne by the Selling Stockholders. We will pay all expenses (other than discounts, concessions, commissions and similar selling expenses) relating to the registration of the Shares with the Securities and Exchange Commission.

Our common stock is currently quoted on The Nasdaq Global Market under the symbol “BIOR.” On August 21, 2024, the last reported sale price of our common stock on The Nasdaq Global Market was \$0.69 per share. Our principal executive offices are located at 4330 La Jolla Village Drive, Suite 300, San Diego, CA 92122, and our telephone number is (833) 727-2841.

Investing in our securities involves risks. You should carefully consider the [Risk Factors](#) beginning on page 5 of this prospectus before you make an investment in our securities.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.

This prospectus is dated August 23, 2024.

TABLE OF CONTENTS

	<u>Page</u>
Special Note Regarding Forward-Looking Statements	2
Prospectus Summary	3
The Offering	4
Risk Factors	5
Use of Proceeds	6
Selling Stockholders	7
Plan of Distribution	12
Legal Matters	16
Experts	16
Where You Can Find More Information	17
Information Incorporated by Reference	18

ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement that we filed with the Securities and Exchange Commission (the “SEC”), utilizing a shelf registration process. Under the shelf registration process, the Selling Stockholders may, from time to time, offer and sell the Shares described in this prospectus in one or more offerings. Information about the Selling Stockholders may change over time.

This prospectus provides you with a general description of the Shares the Selling Stockholders may offer. Each time the Selling Stockholders sell Shares using this prospectus, to the extent necessary and required by law, we will provide a prospectus supplement that will contain specific information about the terms of that offering, including the number of Shares being offered, the manner of distribution, the identity of any underwriters or other counterparties and other specific terms related to the offering. The prospectus supplement may also add, update or change information contained in this prospectus. To the extent that any statement made in a prospectus supplement is inconsistent with statements made in this prospectus, the statements made in this prospectus will be deemed modified or superseded by those made in the prospectus supplement. You should read this prospectus, any applicable prospectus supplement and the information incorporated by reference in this prospectus before making an investment in Shares of our common stock. See “Where You Can Find More Information” and “Information Incorporated by Reference” for more information.

Neither we nor the Selling Stockholders have authorized anyone to provide any information other than that contained in this prospectus or in any free writing prospectus prepared by or on behalf of us or to which we may have referred you. Neither we nor the Selling Stockholders take any responsibility for, nor can provide assurance as to the reliability of, any other information that others may give you. Neither we nor the Selling Stockholders have authorized any other person to provide you with different or additional information, and neither of us are making an offer to sell the Shares in any jurisdiction where the offer or sale is not permitted. You should assume that the information appearing in this prospectus is accurate only as of the date on the front cover of this prospectus, regardless of the time of delivery of the prospectus or any prospectus supplement or any sale of Shares. Our business, financial condition, results of operations and prospects may have changed since those dates.

For investors outside of the United States, neither we nor the Selling Stockholders have done anything that would permit the offering or possession or distribution of this prospectus in any jurisdiction where action for that purpose is required, other than in the United States. You are required to inform yourselves about and to observe any restrictions relating to the offering and the distribution of this prospectus outside of the United States.

Unless the context otherwise requires, we use the terms “Biora,” “Company,” “we,” “us,” and “our” in this prospectus to refer to Biora Therapeutics, Inc. and, where appropriate, our subsidiaries.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

We make “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended (the “Securities Act”), and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), in this prospectus and any accompanying prospectus supplement, including the documents that we incorporate by reference herein and therein. These forward-looking statements can generally be identified as such because the context of the statement will include words such as “may,” “will,” “intend,” “plan,” “believe,” “anticipate,” “expect,” “estimate,” “predict,” “potential,” “continue,” “likely,” “target,” “forecast,” or “opportunity,” the negative of these words or other similar words. Similarly, statements that describe our plans, strategies, intentions, expectations, objectives, goals or prospects and other statements that are not historical facts are also forward-looking statements. For such statements, we claim the protection of the Private Securities Litigation Reform Act of 1995. Readers of this prospectus are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the time this prospectus was filed with the SEC. These forward-looking statements are based largely on our expectations and projections about future events and future trends affecting our business, and are subject to risks and uncertainties that could cause actual results to differ materially from those anticipated in the forward-looking statements. These risks and uncertainties include, without limitation, the risk factors discussed in the section titled “Risk Factors” and elsewhere and incorporated by reference in this prospectus. Except as required by law, we assume no obligation to update or revise these forward-looking statements for any reason, even if new information becomes available in the future.

Any forward-looking statements in this prospectus reflect our current views with respect to future events or to our future financial performance and involve known and unknown risks, uncertainties, and other factors that may cause our actual results, performance, or achievements to be materially different from any future results, performance, or achievements expressed or implied by these forward-looking statements.

This prospectus also contains or incorporates by reference estimates, projections, and other information concerning our industry, our business, and the markets for certain diseases, including data regarding the estimated size of those markets, and the incidence and prevalence of certain medical conditions. Information that is based on estimates, forecasts, projections, market research, or similar methodologies is inherently subject to uncertainties and actual events or circumstances may differ materially from events and circumstances reflected in this information. Unless otherwise expressly stated, we obtained this industry, business, market, and other data from reports, research surveys, studies, and similar data prepared by market research firms and other third parties, industry, medical and general publications, government data, and similar sources.

PROSPECTUS SUMMARY

This summary highlights selected information contained elsewhere in this prospectus. This summary does not contain all of the information that you should consider before deciding to invest in our common stock. You should read the entire prospectus carefully, including “Risk Factors,” and the consolidated financial statements and related notes and information incorporated by reference into this prospectus, before making an investment decision. Some of the statements in this summary constitute forward-looking statements, see “Special Note Regarding Forward-Looking Statements.”

Our Company

We are a biotechnology company developing oral biotherapeutics that could enable new treatment approaches in the delivery of therapeutics. The Company’s therapeutics pipeline includes two therapeutic delivery platforms:

- **NAVICAP™ Targeted Oral Delivery Platform:** Delivery of therapeutics to the site of disease in the gastrointestinal tract designed to improve outcomes for patients with inflammatory bowel disease; and
- **BIOJET™ Systemic Oral Delivery Platform:** Designed to replace injection with needle-free, oral delivery of large molecules for better management of chronic diseases.

Corporate Information

We were incorporated in Delaware in January 2012 under the name Ascendant MDx, Inc., and we later changed our name in August 2013 to Progenity, Inc. We subsequently changed our name in April 2022 to Biora Therapeutics, Inc. Through our predecessor, Ascendant MDx, a California corporation, we commenced our operations in 2010.

Our principal executive offices are located at 4330 La Jolla Village Drive, Suite 300, San Diego, CA 92122, and our telephone number is (833) 727-2841. Our website is www.bioratherapeutics.com. Information contained on or accessible through our website is not a part of this prospectus supplement, and the inclusion of our website address in this prospectus supplement is an inactive textual reference only.

THE OFFERING

We are registering for resale by the Selling Stockholders named herein the Shares as described below:

Securities Offered	Up to 96,661,836 shares of common stock, which are comprised of (i) 5,286,284 shares of common stock issuable upon conversion of the New Money Payment Priority Notes; (ii) 5,207,437 New Money Interest Payment and Make-Whole Shares; (iii) 14,220,087 shares of common stock issuable upon conversion of the Exchange Payment Priority Notes; (iv) 14,007,986 Exchange Interest Payment and Make-Whole Shares; (v) 21,793,685 additional shares of common stock issuable upon the conversion of the Amended 2028 Convertible Notes; (vi) 19,645,148 Amended Notes Interest Payment and Make-Whole Shares; (vii) 6,677,794 shares of common stock issuable upon the exercise of the Commitment Warrants; (viii) 100,000 shares of common stock issuable upon the exercise of the Additional Warrants; (ix) 3,018,868 shares of common stock issuable upon the exercise of the June 2023 Private Placement Warrants; (x) 4,090,911 shares of common stock issuable upon the exercise of the March 2024 Private Placement Warrants; (xi) 1,363,637 shares of common stock issuable upon the exercise of the Amended March 2024 Private Placement Warrants; and (xii) 1,249,999 shares of common stock issuable upon the exercise of the July Warrants. The Shares offered hereby include any shares of common stock that may be issuable upon exercise of any warrants issuable pursuant to the terms of any 2028 Convertible Notes in lieu of shares otherwise issuable pursuant to the terms of the 2028 Convertible Notes.
Use of Proceeds	We will not receive any of the proceeds from the sale or other disposition of the Shares by the Selling Stockholders, except for the exercise price paid for the Shares issuable upon the exercise of the Offered Warrants. We intend to use any net proceeds from the cash exercise of Offered Warrants for general corporate purposes. See “Use of Proceeds” on page 6 of this prospectus.
Risk Factors	This investment involves a high degree of risk. See “Risk Factors” on page 5 of this prospectus for a discussion of factors you should consider carefully before making an investment decision.
Nasdaq Global Market symbol:	“BIOR”

RISK FACTORS

An investment in our securities involves a significant degree of risk. Before you invest in our securities you should carefully consider those risk factors included in our most recent Annual Report on Form 10-K, any Quarterly Reports on Form 10-Q and any Current Reports on Form 8-K, which are incorporated herein by reference, and those risk factors that may be included in any applicable prospectus supplement, together with all of the other information included in this prospectus, any prospectus supplement and the documents we incorporate by reference, in evaluating an investment in our securities.

If any of the risks discussed in the foregoing documents were to occur, our business, financial condition, results of operations and prospects could be materially adversely affected. Also, please read the cautionary statement in this prospectus under “Special Note Regarding Forward-Looking Statements.”

USE OF PROCEEDS

We are registering the Shares for resale by the Selling Stockholders. We will not receive any proceeds from the sale or other disposition of the Shares offered by this prospectus. However, upon any cash exercise of the Offered Warrants by the Selling Stockholders, we will receive cash proceeds per share equal to the exercise price of the Offered Warrants. The Commitment Warrants, Additional Warrants, Amended March 2024 Private Placement Warrants and July Warrants have a per share exercise price of \$0.60. The June 2023 Private Placement Warrants and the March 2024 Private Placement Warrants have a per share exercise price per share of \$1.10. We intend to use any net proceeds from the cash exercise of Offered Warrants for general corporate purposes. The Offered Warrants may be exercised on a cashless basis to the extent that a registration statement is not in effect with respect to the issuance of Shares upon exercise of the Offered Warrants. If the Offered Warrants are exercised in a cashless exercise, we will not receive any proceeds from the exercise of the Offered Warrants.

SELLING STOCKHOLDERS

This prospectus covers the possible resale by the Selling Stockholders identified in the table below of up to 96,661,836 Shares, including up to (i) 5,286,284 shares of common stock issuable upon conversion of the New Money Payment Priority Notes; (ii) 5,207,437 New Money Interest Payment and Make-Whole Shares; (iii) 14,220,087 shares of common stock issuable upon conversion of the Exchange Payment Priority Notes; (iv) 14,007,986 Exchange Interest Payment and Make-Whole Shares; (v) 21,793,685 additional shares of common stock issuable upon the conversion of the Amended 2028 Convertible Notes; (vi) 19,645,148 Amended Notes Interest Payment and Make-Whole Shares; (vii) 6,677,794 shares of common stock issuable upon the exercise of the Commitment Warrants, (viii) 100,000 shares of common stock issuable upon the exercise of the Additional Warrants, (ix) 3,018,868 shares of common stock issuable upon the exercise of the June 2023 Private Placement Warrants, (x) 4,090,911 shares of common stock issuable upon the exercise of the March 2024 Private Placement Warrants, (xi) 1,363,637 shares of common stock issuable upon the exercise of the Amended March 2024 Private Placement Warrants and (xii) 1,249,999 shares of common stock issuable upon the exercise of the July Warrants. The Shares offered hereby include any shares of common stock that may be issuable upon exercise of any warrants issuable pursuant to the terms of any 2028 Convertible Notes in lieu of shares otherwise issuable pursuant to the terms of the 2028 Convertible Notes.

The Selling Stockholders may sell some, all or none of their Shares. We do not know how long the Selling Stockholders will hold the Offered Warrants or the 2028 Convertible Notes, whether the Selling Stockholders will exercise the Offered Warrants or convert the 2028 Convertible Notes, and upon such exercise or conversion, how long the Selling Stockholders will hold the Shares before selling them, and we currently have no agreements, arrangements or understandings with the Selling Stockholders regarding the sale of any of the Shares.

The following table presents information regarding the Selling Stockholders and the Shares that they may offer and sell from time to time under this prospectus. The table is prepared based on information supplied to us by the Selling Stockholders, and reflects their holdings as of August 15, 2024, unless otherwise noted in the footnotes to the table. Beneficial ownership is determined in accordance with the rules of the SEC, and thus represents voting or investment power with respect to our securities. Under such rules, beneficial ownership includes any shares over which the stockholder has sole or shared voting power or investment power as well as any shares that the stockholder has the right to acquire within 60 days after the date of this table, including the Offered Warrants. To our knowledge and subject to applicable community property rules, the Selling Stockholders named in the table each have sole voting and sole investment power with respect to all equity interests beneficially owned. The percentage of shares beneficially owned before and after the offering is based on 36,469,088 shares of our common stock actually outstanding as of August 15, 2024. We cannot advise as to whether the Selling Stockholders will in fact sell any or all of such shares. In addition, the Selling Stockholders may have sold, transferred or otherwise disposed of, or may sell, transfer or otherwise dispose of, at any time and from time to time, the shares in transactions exempt from the registration requirements of the Securities Act after the date on which they provided the information set forth on the table below:

Selling Stockholders	Shares Beneficially Owned Before this Offering	Percentage of Outstanding Shares Beneficially Owned Before this Offering	Shares to be Sold in this Offering⁽¹⁾	Shares Beneficially Owned After this Offering⁽²⁾	Percentage of Outstanding Shares Beneficially Owned After this Offering⁽³⁾
Funds associated with Athyrium Capital Management ⁽⁴⁾	25,437,371	49.9%	13,631,090	32,239,284	49.9%
Context Partners Master Fund, L.P. ⁽⁵⁾	4,007,147	9.9%	7,939,962	4,879,573	9.9%
Funds associated with Davidson Kempner Capital Management LP ⁽⁶⁾	4,007,147	9.9%	19,597,043	6,160,429	9.9%

Table of Contents

Selling Stockholders	Shares Beneficially Owned Before this Offering	Percentage of Outstanding Shares Beneficially Owned Before this Offering	Shares to be Sold in this Offering⁽¹⁾	Shares Beneficially Owned After this Offering⁽²⁾	Percentage of Outstanding Shares Beneficially Owned After this Offering⁽³⁾
Funds associated with Highbridge Capital Management LLC ⁽⁷⁾	4,047,619	9.99%	9,523,391	5,053,557	9.9%
Funds associated with Anson Investments ⁽⁸⁾	1,915,385	4.99%	2,873,071	—	—
Armistice Capital, LLC ⁽⁹⁾	1,915,385	4.99%	1,363,637	1,074,895	2.76%
Sabby Volatility Warrant Master Fund, Ltd. ⁽¹⁰⁾	1,915,385	4.99%	2,873,071	—	—

- (1) Figures in this column assume exercise of all Offered Warrants held by the holder, without giving effect to any beneficial ownership or other limitations therein, and are also deemed to include an additional indeterminable number of shares of common stock that may be issuable (A) in respect of interest payments or make-whole amounts on the 2028 Convertible Notes that the Company settles in shares of common stock or (B) upon conversion of, or in respect of, interest payments or make-whole amounts on any additional 2028 Convertible Notes issuable with respect to interest payments on the 2028 Convertible Notes that are settled in kind (such shares in clauses (A) and (B), the “Interest Payment and Make-Whole Shares,” in each case with respect to the 2028 Convertible Notes offered hereby.
- (2) Figures in this column are deemed to include an additional indeterminable number of Interest Payment and Make-Whole Shares that may be issued pursuant to the terms of the 2028 Convertible Notes.
- (3) Assumes all Shares offered by each of the Selling Stockholders hereby are sold and that each of the Selling Stockholders buy or sell no additional shares of common stock prior to the completion of this offering.
- (4) Shares beneficially owned before this offering consists of 10,929,763 shares of common stock and 14,507,607 shares of common stock issuable upon exercise of warrants and conversion of 2028 Convertible Notes held by Athyrium Opportunities III Acquisition LP (“Acquisition LP”), Athyrium Opportunities III Acquisition 2 LP (“Acquisition 2 LP”), Athyrium Opportunities III Co-Invest 1 LP (“Co-Invest LP”) and Athyrium Opportunities 2020 LP (“2020 LP”) but excludes 42,248,958 shares of common stock issuable upon the exercise of warrants and conversion of 2028 Convertible Notes held by Acquisition LP, Acquisition 2 LP, Co-Invest LP and 2020 LP, the exercise or conversion of which is subject to certain beneficial ownership limitations as described below. Shares to be sold in this offering consists of (i) 881,279 and 2,766,239 shares of common stock issuable upon conversion of the Exchanged Payment Priority Notes held by Acquisition LP and Co-Invest 1 LP, respectively, together in each case with an additional indeterminable number of Exchange Interest Payment and Make-Whole Shares, (ii) 2,301,661 and 7,224,661 shares of common stock issuable upon conversion of the Amended 2028 Convertible Notes held by Acquisition LP and Co-Invest 1 LP, respectively, together in each case with an additional indeterminable number of Amended Notes Interest Payment and Make-Whole Shares, and (iii) 110,479 and 346,771 shares of common stock issuable upon exercise of July Warrants held by Acquisition 2 LP and Co-Invest 1 LP, respectively. Exercise of substantially all of the warrants and conversion of the 2028 Convertible Notes held by Acquisition LP, Acquisition 2 LP, Co-Invest LP and 2020 LP are subject to beneficial ownership limitations, which limit the ability of the holder to exercise or convert such securities for a number of shares of common stock that would result in such holder (together with its affiliates and certain other persons whose beneficial ownership is combined with such holder or its affiliates) exceeding 49.9% of all shares outstanding following such exercise or conversion. All amounts and percentages of shares beneficially owned in this table (other than the shares to be sold in this offering) give effect to these beneficial ownership limitations. Athyrium Opportunities Associates III GP LLC is the general partner of Athyrium Opportunities Associates III LP, which is the general partner of Acquisition LP, Acquisition 2 LP and 2020 LP. Athyrium Opportunities Associates Co-Invest LLC is the general partner of Co-Invest LP. Jeffrey A. Ferrell, a member of the Company’s board of directors, is President of Athyrium Opportunities Associates Co-Invest LLC and Athyrium Opportunities Associates III GP LLC and the Managing Member of Athyrium

Table of Contents

Funds GP Holdings LLC, which is the Managing Member of Athyrium Opportunities Associates Co-Invest LLC and Athyrium Opportunities Associates III GP LLC, and in his capacity as such may be deemed to exercise shared voting and investment power over the shares owned by Acquisition LP, Acquisition 2 LP, Co-Invest LP and 2020 LP. Jeffrey A. Ferrell and each of the foregoing entities disclaims beneficial ownership of such shares except to the extent of his or its pecuniary interest therein. The business address for each of the foregoing is c/o Athyrium Capital Management, LP, 505 Fifth Avenue, Floor 18, New York, New York 10017.

- (5) Consists of 174,595 shares of common stock issuable upon exercise of July Warrants, 1,470,784 shares of common stock issuable upon exercise of Commitment Warrants, 100,000 shares of common stock issuable upon exercise of Additional Warrants, 1,164,304 shares of common stock issuable upon conversion of New Money Payment Priority Notes, 2,328,608 shares of common stock issuable upon conversion of Exchange Payment Priority Notes, and 2,701,671 additional shares of common stock issuable upon conversion of Amended 2028 Convertible Notes due to a change in conversion price, together with an additional indeterminable number of shares of common stock issuable on the foregoing notes as Interest Payment and Make-Whole Shares, all of which are being offered by this prospectus, as well as 2,000,000 shares of common stock issuable upon the exercise of the warrants issued on March 12, 2024 (the “March Warrants”) and 4,254,807 shares of common stock issuable upon conversion of 2028 Convertible Notes, together with an additional indeterminable number of shares of common stock issuable on such notes as Interest Payment and Make-Whole Shares, not being offered by this prospectus, owned by the Selling Stockholder. Voting and investment power over the securities held by Context Partners Master Fund, L.P. resides with Context Capital Management, LLC, its Investment Adviser. The business address for Context Partners Master Fund, L.P. is 7724 Girard Avenue, Third Floor, La Jolla, CA 92037. Conversion of and receipt of shares of common stock pursuant to the terms of the 2028 Convertible Notes and the exercise of the March Warrants and the Offered Warrants by the Selling Stockholder is subject to a beneficial ownership limitation of 9.9%, which limitation restricts the Selling Stockholder from converting that portion of the 2028 Convertible Notes, receiving shares of common stock pursuant to the terms of the 2028 Convertible Notes, or exercising that portion of the March Warrants or the Offered Warrants that would result in the Selling Stockholder and its affiliates owning, after conversion, receipt or exercise, as applicable, a number of shares of common stock in excess of the applicable beneficial ownership limitation. The amounts and percentages in the table give effect to these beneficial ownership limitations.
- (6) Consists of 436,443 shares of common stock issuable upon the exercise of July Warrants, 3,676,126 shares of common stock issuable upon exercise of Commitment Warrants, 2,910,100 shares of common stock issuable upon conversion of New Money Payment Priority Notes, 5,820,200 shares of common stock issuable upon conversion of Exchange Payment Priority Notes, and 6,754,174 additional shares of common stock issuable upon conversion of Amended 2028 Convertible Notes due to a change in conversion price, together with an additional indeterminable number of shares of common stock issuable on the foregoing notes as Interest Payment and Make-Whole Shares, all of which are being offered by this prospectus, as well as 7,082,963 shares of common stock issuable upon the exercise of the warrants issued on December 19, 2023 (the “December Warrants”) and 10,635,897 shares of common stock issuable upon conversion of 2028 Convertible Notes, together with an additional indeterminable number of shares of common stock issuable on such notes as Interest Payment and Make-Whole Shares, not being offered by this prospectus, held by M.H. Davidson & Co. and Davidson Kempner Arbitrage, Equities and Relative Value LP. Conversion of and receipt of shares of common stock pursuant to the terms of the 2028 Convertible Notes and the exercise of the December Warrants and the Offered Warrants by each of the Selling Stockholders is subject to a beneficial ownership limitation of 9.9%, which limitation restricts the Selling Stockholders from converting that portion of the 2028 Convertible Notes, receiving shares of common stock pursuant to the terms of the 2028 Convertible Notes, or exercising that portion of the December Warrants or the Offered Warrants that would result in the Selling Stockholders and their affiliates owning, after conversion, receipt or exercise, as applicable, a number of shares of common stock in excess of the applicable beneficial ownership limitation. The amounts and percentages in the table give effect to these beneficial ownership limitations. The business address for Davidson Kempner Capital Management LP (“DKCM”) is 520 Madison Avenue, 30th Floor, New York, NY 10022. DKCM is a Delaware limited partnership and a registered investment adviser with

Table of Contents

the SEC and is responsible for the voting and investment decisions of the funds covered hereby. DKCM GP LLC, a Delaware limited liability company, is the general partner of DKCM. The partners of DKCM are Anthony A. Yoseloff, Conor Bastable, Shulamit Leviant, Morgan P. Blackwell, Patrick W. Dennis, Gabriel T. Schwartz, Zachary Z. Altschuler, Joshua D. Morris, Suzanne K. Gibbons, Gregory S. Feldman, Melanie Levine and James Li. Anthony A. Yoseloff, through DKCM, is responsible for the voting and investment decisions relating to the securities reported herein, and each of the foregoing, other than funds covered hereby, disclaims any beneficial ownership of such securities except to the extent of any pecuniary interest therein.

- (7) Consists of 1,363,637 shares of common stock issuable upon exercise of Amended March 2024 Private Placement Warrants, 181,711 shares of common stock issuable upon exercise of July Warrants, 1,530,884 shares of common stock issuable upon exercise of Commitment Warrants, 1,211,880 shares of common stock issuable upon conversion of New Money Payment Priority Notes, 2,423,761 shares of common stock issuable upon conversion of Exchange Payment Priority Notes, and 2,811,518 additional shares of common stock issuable upon conversion of Amended 2028 Convertible Notes due to a change in conversion price, together with an additional indeterminable number of shares of common stock issuable on the foregoing notes as Interest Payment and Make-Whole Shares, all of which are being offered by this prospectus, as well as 3,269,219 shares of common stock issuable upon the exercise of December Warrants and 4,428,205 shares of common stock issuable upon conversion of 2028 Convertible Notes, together with an additional indeterminable number of shares of common stock issuable on such notes as Interest Payment and Make-Whole Shares, not being offered by this prospectus, owned by Highbridge Tactical Credit Master Fund, L.P. and Highbridge Tactical Credit Institutional Fund, Ltd. (the “Highbridge Selling Stockholders”). Conversion of and receipt of shares of common stock pursuant to the terms of the 2028 Convertible Notes and the exercise of the December Warrants and the Offered Warrants by each Highbridge Selling Stockholder is subject to a beneficial ownership limitation of 9.9% or, in the case of the Amended March 2024 Private Placement Warrants, July Warrants, and the Commitment Warrants, 9.99%, which limitation restricts the Highbridge Selling Stockholders from converting that portion of the 2028 Convertible Notes, receiving shares of common stock pursuant to the terms of the 2028 Convertible Notes, or exercising that portion of the December Warrants or the Offered Warrants that would result in a Highbridge Selling Stockholder and its affiliates owning, after conversion, receipt or exercise, a number of shares of common stock in excess of the applicable beneficial ownership limitation. The amounts and percentages in the table give effect to these beneficial ownership limitations. Highbridge Capital Management, LLC is the trading manager of the Highbridge Selling Stockholders. The Highbridge Selling Stockholders disclaim beneficial ownership over these shares. The address of Highbridge Capital Management, LLC is 277 Park Avenue, 23rd floor, New York, NY 10172, and the address of the Highbridge Selling Stockholders is c/o Maples Corporate Services Limited #309 Uglund House, South Church Street, George Town, Grand Cayman KY1-1104, Cayman Islands.
- (8) Anson Investments Master Fund LP (“AIMF”) owns before this offering 1,063,636 shares of common stock issuable upon exercise of March 2024 Private Placement Warrants and 1,207,548 shares of common stock issuable upon the exercise of June 2023 Private Placement Warrants, and Anson East Master Fund LP (“AEMF”) owns before this offering 300,001 shares of common stock issuable upon exercise of March 2024 Private Placement Warrants and 301,886 shares of common stock issuable upon the exercise of June 2023 Private Placement Warrants, all of which are being offered by this prospectus. Exercise of all warrants owned by the Selling Stockholder and its affiliates is subject to a beneficial ownership limitation of 4.99%, which limitation restricts the Selling Stockholder and its affiliates from exercising that portion of its warrants that would result in the Selling Stockholder and its affiliates owning, after exercise, a number of shares of common stock in excess of the applicable beneficial ownership limitation. The amounts and percentages in this table give effect to such beneficial ownership limitation. Anson Advisors Inc. and Anson Funds Management LP, the co-investment advisers of AIMF and AEMF, hold voting and dispositive power over the shares of common stock held by AIMF and AEMF. Tony Moore is the managing member of Anson Management GP LLC, which is the general partner of Anson Funds Management LP. Moez Kassam and Amin Nathoo are directors of Anson Advisors Inc. Mr. Moore, Mr. Kassam and Mr. Nathoo each disclaim beneficial ownership of these shares of common stock except to the extent of their pecuniary interest

Table of Contents

therein. The principal business address of AIMF and AEMF is Maples Corporate Services Limited, PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands.

- (9) Shares Beneficially Owned Before this Offering consists of 1,363,637 shares of common stock issuable upon exercise of March 2024 Private Placement Warrants held by Armistice Capital Master Fund Ltd., a Cayman Islands exempted company (the “Master Fund”), all of which are being offered by this prospectus, as well as 551,748 shares of common stock owned by the Master Fund not being offered by this prospectus. Excludes 523,147 shares of common stock issuable upon the exercise of warrants owned by the Master Fund that are subject to a beneficial ownership limitation of 4.99%, which limitation restricts the Master Fund from exercising that portion of its warrants that would result in the Master Fund and its affiliates owning, after exercise, a number of shares of common stock in excess of the applicable beneficial ownership limitation (the “Beneficial Ownership Limitation”). Exercise of the Warrants offered by this prospectus is also subject to the Beneficial Ownership Limitation. The securities are directly held by the Master Fund and may be deemed to be beneficially owned by: (i) Armistice Capital, LLC (“Armistice Capital”), as the investment manager of the Master Fund; and (ii) Steven Boyd, as the Managing Member of Armistice Capital. The address of Armistice Capital Master Fund Ltd. is c/o Armistice Capital, LLC, 510 Madison Avenue, 7th Floor, New York, NY 10022.
- (10) Sabby Volatility Warrant Master Fund, Ltd. owns before this offering 1,363,637 shares of common stock issuable upon exercise of March 2024 Private Placement Warrants and 1,509,434 shares of common stock issuable upon the exercise of June 2023 Private Placement Warrants, all of which are being offered by this prospectus. Exercise of all warrants owned by the Selling Stockholder and its affiliates is subject to a beneficial ownership limitation of 4.99%, which limitation restricts the Selling Stockholder and its affiliates from exercising that portion of its warrants that would result in the Selling Stockholder and its affiliates owning, after exercise, a number of shares of common stock in excess of the applicable beneficial ownership limitation. The amounts and percentages in this table give effect to such beneficial ownership limitation. Sabby Management, LLC, in its capacity as the investment manager of Sabby Volatility Warrant Master Fund, Ltd., has the power to vote and the power to direct the disposition of all securities held by Sabby Volatility Warrant Master Fund, Ltd. Hal Mintz is the Managing Member of Sabby Management, LLC. Each of Sabby Volatility Warrant Master Fund, Ltd., Sabby Management, LLC and Mr. Mintz disclaim beneficial ownership of these securities, except to the extent of any pecuniary interest therein.

PLAN OF DISTRIBUTION

We are registering the resale by the Selling Stockholders or their permitted transferees of up to 96,661,836 Shares as described in this prospectus.

We will not receive any of the proceeds from the sale of the Shares offered by this prospectus. However, upon any cash exercise of the Offered Warrants by the Selling Stockholders, we will receive cash proceeds per share equal to the exercise price of the Offered Warrants.

We will not pay any brokers' or underwriters' discounts and commissions in connection with the registration and sale of the Shares covered by this prospectus. The Selling Stockholders reserve the right to accept and, together with their respective agents, to reject, any proposed purchases of Shares to be made directly or through agents.

Subject to the limitations set forth in any applicable registration rights agreement, the Shares offered by this prospectus may be sold from time to time to purchasers:

- directly by the Selling Stockholders;
- through underwriters, broker-dealers or agents, who may receive compensation in the form of discounts, commissions or agent's commissions from the Selling Stockholders or the purchasers of the Shares; or
- through a combination of any of these methods of sale.

Any underwriters, broker-dealers or agents who participate in the sale or distribution of the Shares may be deemed to be "underwriters" within the meaning of the Securities Act. As a result, any discounts, commissions or concessions received by any such broker-dealer or agents who are deemed to be underwriters will be deemed to be underwriting discounts and commissions under the Securities Act.

In compliance with the guidelines of the Financial Industry Regulatory Authority ("FINRA"), the aggregate maximum discount, commission, fees or other items constituting underwriting compensation to be paid by the Company and to be received by any FINRA member or independent broker-dealer will not exceed 8% of the gross proceeds of any offering by the Company pursuant to this prospectus and any applicable prospectus supplement. If at the time of any offering made under this prospectus a member of FINRA participating in the offering has a "conflict of interest" as defined in FINRA Rule 5121 ("Rule 5121"), that offering will be conducted in accordance with the relevant provisions of Rule 5121. Underwriters are subject to the prospectus delivery requirements of the Securities Act and may be subject to certain statutory liabilities under the Securities Act and the Exchange Act. We will make copies of this prospectus available to the Selling Stockholders for the purpose of satisfying the prospectus delivery requirements of the Securities Act.

To our knowledge, there are currently no plans, arrangements or understandings between the Selling Stockholders and any underwriter, broker-dealer or agent regarding the sale of the Shares by the Selling Stockholders. Upon our notification by a Selling Stockholder that any material arrangement has been entered into with an underwriter or broker-dealer for the sale of Shares through a block trade, special offering, exchange distribution, secondary distribution or a purchase by an underwriter or broker-dealer, we will file, if required by applicable law or regulation, a supplement to this prospectus pursuant to Rule 424(b) under the Securities Act disclosing certain material information relating to such underwriter or broker-dealer and such offering.

The Shares may be sold in one or more transactions at:

- fixed prices;
- prevailing market prices at the time of sale;

Table of Contents

- prices related to such prevailing market prices;
- varying prices determined at the time of sale; or
- negotiated prices.

These sales may be effected in one or more transactions:

- through one or more underwritten offerings on a firm commitment or best efforts basis;
- settlement of short sales entered into after the date of this prospectus;
- agreements with broker-dealers to sell a specified number of the Shares at a stipulated price per share;
- in “at the market” offerings, as defined in Rule 415 under the Securities Act, at negotiated prices, at prices prevailing at the time of sale or at prices related to such prevailing market prices, including sales made directly on a national securities exchange or sales made through a market maker other than on an exchange or other similar offerings through sales agents;
- in privately negotiated transactions;
- through trading plans entered into by the Selling Stockholders pursuant to Rule 10b5-1 under the Exchange Act that are in place at the time of an offering pursuant to this prospectus and any applicable prospectus supplement hereto that provide for periodic sales of their securities on the basis of parameters described in such trading plans;
- in ordinary brokerage transactions in which the broker solicits purchasers;
- in block trades in which the broker-dealer so engaged will attempt to sell the Shares as agent but may position and resell a portion of the block as principal to facilitate the transaction;
- directly to purchasers, including through a specific bidding, auction or other process;
- through the writing of options (including the issuance by the Selling Stockholders of derivative securities) or other hedging transactions, whether through an options exchange or otherwise;
- in distributions to members, limited partners or stockholders of the Selling Stockholders;
- on any national securities exchange or quotation service on which the Shares may be listed or quoted at the time of sale, including Nasdaq;
- in the over-the-counter market;
- in transactions otherwise than on such exchanges or services or in the over-the-counter market;
- any other method permitted by applicable law; or
- through any combination of the foregoing.

These transactions may include block transactions or crosses. Crosses are transactions in which the same broker acts as an agent on both sides of the trade.

In connection with distributions of the Shares or otherwise, the Selling Stockholders may enter into hedging transactions with broker-dealers or other financial institutions. In connection with such transactions, broker-dealers or other financial institutions may engage in short sales of the securities in the course of hedging transactions, broker-dealers or other financial institutions may engage in short sales of the Shares in the course of hedging the positions they assume with the Selling Stockholders. The Selling Stockholders may also sell the Shares short and redeliver the Shares to close out such short positions. The Selling Stockholders may also enter into option or other transactions with broker-dealers or other financial institutions which require the delivery to such broker-dealer or other financial institution of the Shares offered by this prospectus, which Shares such broker-dealer or other financial institution may resell pursuant to this prospectus (as supplemented or amended to

Table of Contents

reflect such transaction). The Selling Stockholders may also pledge the Shares to a broker-dealer or other financial institution, and, upon a default, such broker-dealer or other financial institution, may effect sales of the pledged Shares pursuant to this prospectus (as supplemented or amended to reflect such transaction).

It is possible that one or more underwriters may make a market in our Shares, but such underwriters will not be obligated to do so and may discontinue any market making at any time without notice. We cannot give any assurance as to the liquidity of the trading market for our Shares.

Our shares are currently listed on the Nasdaq Global Market under the symbol "BIOR."

In effecting sales, broker-dealers or agents engaged by the Selling Stockholders may arrange for other broker-dealers to participate. Broker-dealers or agents may receive commissions, discounts or concessions from the Selling Stockholders in amounts to be negotiated immediately prior to the sale.

The underwriters, broker-dealers and agents that may engage in transactions with us or the Selling Stockholders, may have banking, lending or other relationships with us or perform services for us or the Selling Stockholders, in the ordinary course of business.

In order to comply with the securities laws of certain states, if applicable, the Shares must be sold in such jurisdictions only through registered or licensed brokers or dealers. In addition, in certain states the Shares may not be sold unless they have been registered or qualified for sale in the applicable state or an exemption from the registration or qualification requirement is available and is complied with.

The Selling Stockholders and any other persons participating in the sale or distribution of the Shares will be subject to applicable provisions of the Securities Act and the Exchange Act, and the rules and regulations thereunder, including, without limitation, Regulation M. These provisions may restrict certain activities of, and limit the timing of purchases and sales of any of the Shares by, the Selling Stockholders or any other person, which limitations may affect the marketability of the Shares.

The Selling Stockholders may enter into derivative transactions with third parties, or sell shares not covered by this prospectus to third parties in privately negotiated transactions. If the applicable prospectus supplement indicates, in connection with those derivatives, the third parties may sell the Shares covered by this prospectus and the applicable prospectus supplement, including in short sale transactions. If so, the third party may use Shares pledged by any of the Selling Stockholders or borrowed from any of the Selling Stockholders or others to settle those sales or to close out any related open borrowings of stock, and may use Shares received from any of the Selling Stockholders in settlement of those derivatives to close out any related open borrowings of stock. The third party in such sale transactions will be an underwriter and will be identified in the applicable prospectus supplement (or a post-effective amendment). In addition, any of the Selling Stockholders may otherwise loan or pledge the Shares to a financial institution or other third party that in turn may sell the Shares short using this prospectus. Such financial institution or other third party may transfer its economic short position to investors in our Shares or in connection with a concurrent offering of other securities.

At the time a particular offering of the Shares is made, to the extent required, an accompanying prospectus supplement, or, if appropriate, a post-effective amendment to the registration statement of which this prospectus forms a part, will be prepared and distributed, which will set forth the names of the Selling Stockholders, the aggregate amount of Shares being offered and the terms of the offering, including, to the extent required, (1) the name or names of any underwriters, broker-dealers or agents, (2) any discounts, commissions and other terms constituting compensation from the Selling Stockholders and (3) any discounts, commissions or concessions allowed or reallowed to be paid to broker-dealers. We may suspend the sale of Shares by the Selling Stockholders pursuant to this prospectus for certain periods of time for certain reasons, including if the prospectus is required to be supplemented or amended to include additional material information.

Table of Contents

The Selling Stockholders also may transfer the Shares in other circumstances, in which case the transferees, pledgees or other successors-in-interest will be the selling beneficial owners for purposes of this prospectus. Upon being notified by either of the Selling Stockholders that a donee, pledgee, transferee, other successor- in-interest intends to sell our Shares, we will, to the extent required, promptly file a supplement to this prospectus to name specifically such person as a selling stockholder.

The Selling Stockholders will act independently of us in making decisions with respect to the timing, manner, and size of each resale or other transfer. There can be no assurance that the Selling Stockholders will sell any or all of the Shares under this prospectus. Further, we cannot assure you that the Selling Stockholders will not transfer, distribute, devise or gift the Shares by other means not described in this prospectus. In addition, any Shares covered by this prospectus that qualify for sale under Rule 144 of the Securities Act may be sold under Rule 144 rather than under this prospectus. The Shares may be sold in some states only through registered or licensed brokers or dealers. In addition, in some states the Shares may not be sold unless they have been registered or qualified for sale or an exemption from registration or qualification is available and complied with.

The Selling Stockholders may, from time to time, pledge or grant a security interest in some of the Shares owned by them and, if any of the Selling Stockholders default in their performance of its secured obligations, the pledgees or secured parties may offer and sell such Shares, from time to time, under this prospectus, or under an amendment or supplement to this prospectus amending the list of the Selling Stockholders to include the pledgee, transferee or other successors in interest as the Selling Stockholders under this prospectus. The Selling Stockholders also may transfer the Shares in other circumstances, in which case the transferees, pledgees or other successors in interest will be the selling beneficial owners for purposes of this prospectus.

The Selling Stockholders are each an entity that may elect to make an in-kind distribution of the Shares to its members, partners or shareholders pursuant to this prospectus by delivering a prospectus. To the extent that such members, partners or shareholders are not affiliates of ours, such members, partners or stockholders would thereby receive freely tradable Shares pursuant to the distribution through this prospectus.

For additional information regarding expenses of registration, see the section titled "Use of Proceeds" appearing elsewhere in this prospectus.

We have agreed with the Selling Stockholders to keep the registration statement of which this prospectus constitutes a part effective until such time as all of the Shares covered by this prospectus have been disposed of pursuant to and in accordance with the registration statement or such Shares have been withdrawn.

LEGAL MATTERS

Certain legal matters relating to the validity of the Shares offered by this prospectus will be passed upon for us by Gibson, Dunn & Crutcher LLP, San Francisco, California.

EXPERTS

The consolidated financial statements of Biora Therapeutics, Inc. as of December 31, 2023 and 2022, and for each of the years in the two-year period ended December 31, 2023, have been incorporated by reference herein in reliance upon the report of KPMG LLP, independent registered public accounting firm, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing. The audit report covering the December 31, 2023 consolidated financial statements contains an explanatory paragraph that states that the Company has suffered recurring losses from operations and has a working capital deficit and an accumulated deficit that raise substantial doubt about its ability to continue as a going concern. The consolidated financial statements do not include any adjustments that might result from the outcome of that uncertainty.

WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and current reports, proxy statements and other information with the SEC. Our SEC filings are available to the public over the Internet at the SEC's website at <http://www.sec.gov>. Copies of certain information filed by us with the SEC are also available on our website at www.bioratherapeutics.com. Our website is not a part of this prospectus and is not incorporated by reference in this prospectus.

This prospectus is part of a registration statement that we filed with the SEC. This prospectus omits some information contained in the registration statement in accordance with SEC rules and regulations. You should review the information and exhibits in the registration statement for further information about us and our subsidiaries and the securities we are offering. Statements in this prospectus concerning any document we filed as an exhibit to the registration statement or that we otherwise filed with the SEC are not intended to be comprehensive and are qualified by reference to these filings. You should review the complete document to evaluate these statements.

INFORMATION INCORPORATED BY REFERENCE

The SEC allows us to “incorporate by reference” information from other documents that we file with it, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be part of this prospectus. Information in this prospectus supersedes information incorporated by reference that we filed with the SEC prior to the date of this prospectus.

We incorporate by reference into this prospectus and the registration statement of which this prospectus is a part the information or documents listed below that we have filed with the SEC:

1. Our Annual Report on [Form 10-K](#) for the fiscal year ended December 31, 2023, filed with the SEC on April 1, 2024;
2. Our Quarterly Reports on Form 10-Q for the fiscal quarters ended March 31, 2024 and June 30, 2024, filed with the SEC on [May 15, 2024](#) and [August 12, 2024](#), respectively;
3. Our Current Reports on Form 8-K filed on [January 16, 2024](#) (excluding Item 7.01), [March 11, 2024](#) (excluding Item 7.01), [March 26, 2024](#) (excluding items 2.02 and 9.01), [April 2, 2024](#), [June 7, 2024](#), [June 14, 2024](#), [July 1, 2024](#), [July 1, 2024](#) (excluding items 7.01 and 9.01) [July 18, 2024](#) (excluding items 7.01 and 9.01), [August 12, 2024](#) (excluding item 7.01 and Exhibit 99.1) and [August 21, 2024](#);
4. The description of our common stock contained in our Registration Statement on [Form 8-A](#) filed with the SEC on June 16, 2020, as well as any subsequent amendments or reports filed for the purpose of updating such description.

In addition, all documents (other than current reports furnished under Item 2.02 or Item 7.01 of Form 8-K and exhibits filed on such form that are related to such items) that are filed by us with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of the initial registration statement of which this prospectus is a part and prior to the effectiveness of such registration statement and all documents subsequently filed by us pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act prior to the termination of the offering (excluding any information furnished rather than filed) shall be deemed to be incorporated by reference into this prospectus.

Notwithstanding the statements in the preceding paragraphs, no document, report or exhibit (or portion of any of the foregoing) or any other information that we have “furnished” to the SEC pursuant to the Exchange Act shall be incorporated by reference into this prospectus.

We will furnish without charge to you, on written or oral request, a copy of any or all of the documents incorporated by reference in this prospectus, including exhibits to these documents. You should direct any requests for documents to Biora Therapeutics, Inc., 4330 La Jolla Village Drive, Suite 300, San Diego, CA 92122, telephone: (833) 727-2841. You also may access these filings on our website at www.bioratherapeutics.com. We do not incorporate the information on our website into this prospectus and you should not consider any information on, or that can be accessed through, our website as part of this prospectus (other than those filings with the SEC that we specifically incorporate by reference into this prospectus).

Any statement contained in a document incorporated or deemed to be incorporated by reference in this prospectus will be deemed modified, superseded or replaced for purposes of this prospectus to the extent that a statement contained in this prospectus modifies, supersedes or replaces such statement.

PART II
INFORMATION NOT REQUIRED IN PROSPECTUS

Item 14. Other Expenses of Issuance and Distribution

The following table sets forth an estimate of the fees and expenses, other than the underwriting discounts and commissions, payable by the registrant in connection with the issuance and distribution of the securities being registered. All the amounts shown are estimates, except for the SEC registration fee.

<u>Item</u>	<u>Amount</u>
SEC registration fee	\$ 9,560
Legal fees and expenses	50,000
Accounting fees and expenses	40,000
Printing and miscellaneous expenses	15,440
Total	<u>\$ 115,000</u>

Item 15. Indemnification of Officers and Directors

The Company is a Delaware corporation. Section 145(a) of the Delaware General Corporation Law, or the DGCL, provides that a Delaware corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, other than an action by or in the right of the corporation, by reason of the fact that such person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful.

Section 145(b) of the DGCL provides that a Delaware corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that such person acted in any of the capacities set forth above, against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if the person acted in good faith and in a manner the person reasonably believed to be in, or not opposed to, the best interests of the corporation, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation, unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine, upon application, that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

Further subsections of DGCL Section 145 provide that:

- (1) to the extent a present or former director or officer of a corporation has been successful on the merits or otherwise in the defense of any action, suit or proceeding referred to in subsections (i) and (ii) of Section 145 or in the defense of any claim, issue or matter therein, such person shall be indemnified against expenses, including attorneys' fees, actually and reasonably incurred by such person in connection therewith;
- (2) the indemnification and advancement of expenses provided for pursuant to Section 145 shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise; and

Table of Contents

(3) the corporation shall have the power to purchase and maintain insurance of behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the corporation would have the power to indemnify such person against such liability under Section 145.

As used in this Item 14, the term "proceeding" means any threatened, pending or completed action, suit or proceeding, whether or not by or in the right of the Company, and whether civil, criminal, administrative, investigative or otherwise.

Section 145 of the DGCL makes provision for the indemnification of officers and directors in terms sufficiently broad to indemnify officers and directors of the Company under certain circumstances from liabilities (including reimbursement for expenses incurred) arising under the Securities Act. The Company's organizational documents provide, in effect, that, to the fullest extent and under the circumstances permitted by Section 145 of the DGCL, the Company will indemnify any and all of its officers and directors. The Company has entered into indemnification agreements with its officers and directors. The Company may, in its discretion, similarly indemnify its employees and agents. The Company's certificate of incorporation also relieves its directors from monetary damages to the Company or its stockholders for breach of such director's fiduciary duty as a director to the fullest extent permitted by the DGCL. Under Section 102(b)(7) of the DGCL, a corporation may relieve its directors from personal liability to such corporation or its stockholders for monetary damages for any breach of their fiduciary duty as directors except (i) for a breach of the duty of loyalty, (ii) for failure to act in good faith, (iii) for intentional misconduct or knowing violation of law, (iv) for willful or negligent violations of certain provisions in the DGCL imposing certain requirements with respect to stock repurchases, redemptions and dividends or (v) for any transactions from which the director derived an improper personal benefit.

The Company has purchased insurance policies that, within the limits and subject to the terms and conditions thereof, cover certain expenses and liabilities that may be incurred by directors and officers in connection with proceedings that may be brought against them as a result of an act or omission committed or suffered while acting as a director or officer of the Company.

Item 16. Exhibits

Exhibit Number	Description
3.1	<u>Eighth Amended and Restated Certificate of Incorporation, dated as of June 23, 2020 (incorporated by reference to Exhibit 3.1 to the Company's Form 8-K filed on June 26, 2020).</u>
3.2	<u>Certificate of Amendment of the Eighth Amended and Restated Certificate of Incorporation of Biora Therapeutics, Inc., effective April 26, 2022 (incorporated by reference to Exhibit 3.1 to the Company's Form 8-K filed on April 27, 2022).</u>
3.3	<u>Second Certificate of Amendment of the Eighth Amended and Restated Certificate of Incorporation of Biora Therapeutics, Inc., effective January 3, 2023 (incorporated by reference to Exhibit 3.1 to the Company's Form 8-K filed on December 30, 2022).</u>
3.4	<u>Third Certificate of Amendment of the Eighth Amended and Restated Certificate of Incorporation by Biora Therapeutics, Inc., effective June 5, 2024 (incorporated by reference to Exhibit 3.1 to the Company's Form 8-K filed on June 7, 2024).</u>
3.4	<u>Third Amended and Restated Bylaws of Biora Therapeutics, Inc. (incorporated by reference to Exhibit 3.2 to the Company's Form 8-K filed on November 28, 2022).</u>
4.1	<u>Form of common stock certificate of the registrant (incorporated by reference to Exhibit 4.1 to the Company's Form S-1/A filed on June 4, 2020).</u>

Table of Contents

Exhibit Number	Description
4.2	Amended and Restated Indenture, dated as of August 15, 2024, between the Company and GLAS Trust Company LLC, as trustee and collateral agent (incorporated by reference to Exhibit 4.1 to the Company's Form 8-K filed on August 21, 2024).
4.3	Form of certificate representing the 11.00 / 13.00% Convertible Senior Secured Notes due 2028 (included as Exhibit A to Exhibit 4.2).
4.4	Form of Commitment Warrant (incorporated by reference to Exhibit 4.3 to the Company's Form 8-K filed on August 21, 2024).
4.5	Form of Additional Warrant (incorporated by reference to Exhibit 4.4 to the Company's Form 8-K filed on August 21, 2024).
4.6	Form of June 2023 Private Placement Warrant (incorporated by reference to Exhibit 10.2 to the Company's Form 8-K filed on June 14, 2023).
4.7	Form of March 2024 Private Placement Warrant (incorporated by reference to Exhibit 4.1 of the Company's Form 8-K filed on April 2, 2024).
4.8	Form of Warrant Amendment, dated as of August 15, 2024, by and between the Company and the investors named therein (incorporated by reference to Exhibit 4.6 of the Company's Form 8-K filed on August 21, 2024).
4.9*	Form of July Warrant
5.1*	Opinion of Gibson, Dunn & Crutcher LLP
10.1	Form of Note Purchase Agreement between the Company and the Purchasers named therein (incorporated by reference to the Company's Form 8-K filed on August 12, 2024).
10.2	Form of Note Exchange Agreement between the Company and the Holders named therein (incorporated by reference to the Company's Form 8-K filed on August 12, 2024).
10.3	Form of Registration Rights Agreement between the Company and the Investors named therein (incorporated by reference to the Company's Form 8-K filed on August 21, 2024).
23.1*	Consent of Independent Registered Public Accounting Firm.
23.2*	Consent of Gibson, Dunn & Crutcher LLP (included in Exhibit 5.1).
24.1*	Power of Attorney (included on signature page).
107*	Filing Fee Table.

* Filed herewith.

Item 17. Undertakings

(a) 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 of 1933;

(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% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement;

(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 paragraphs (a)(1)(i), (a)(1)(ii) and (a)(1)(iii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic 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 that are incorporated by reference in the registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, 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 of 1933 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 of 1933 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 the 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 of 1933 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;

Table of Contents

- (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.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) 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.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 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 of 1933 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 of 1933 and will be governed by the final adjudication of such issue.

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 Diego, State of California, on August 23, 2024.

Biora Therapeutics, Inc.

By: /s/ Eric d'Esparbes

Eric d'Esparbes

Chief Financial Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Eric d'Esparbes and Clarke W. Neumann, and each of them, as true and lawful attorneys-in-fact and agents, with full powers of substitution and resubstitution, for them 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 (or any registration statement for the same offering that is to be effective upon filing pursuant to Rule 462(b) under the Securities Act of 1933), and to file the same, with all exhibits thereto, and other documents in connection therewith, with the SEC, and generally to do all such things in their names and behalf in their capacities as officers and directors to enable Biora Therapeutics, Inc. to comply with the provisions of the Securities Act of 1933 and all requirements of the SEC, 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 might or could do in person, ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his substitutes or substitute, may lawfully do or cause to be done by virtue hereof.

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

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Aditya P. Mohanty</u> Aditya P. Mohanty	Chief Executive Officer and Director (<i>principal executive officer</i>)	August 23, 2024
<u>/s/ Eric d'Esparbes</u> Eric d'Esparbes	Chief Financial Officer (<i>principal financial and accounting officer</i>)	August 23, 2024
<u>/s/ Jeffrey Alter</u> Jeffrey Alter	Director and Chairman of the Board	August 23, 2024
<u>/s/ Jeffrey Ferrell</u> Jeffrey Ferrell	Director	August 23, 2024
<u>/s/ Jill Howe</u> Jill Howe	Director	August 23, 2024
<u>/s/ Brian Kotzin, M.D.</u> Brian Kotzin, M.D.	Director	August 23, 2024
<u>/s/ Lynne Powell</u> Lynne Powell	Director	August 23, 2024

NEITHER THIS SECURITY NOR THE SECURITIES FOR WHICH THIS SECURITY IS EXERCISABLE HAVE BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS. THIS SECURITY AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS SECURITY MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN SECURED BY SUCH SECURITIES.

COMMON STOCK PURCHASE WARRANT

BIORA THERAPEUTICS, INC.

Warrant Shares: [•]

Issue Date: July 3, 2024

THIS COMMON STOCK PURCHASE WARRANT (the "Warrant") certifies that, for value received, [•] or its assigns (the "Holder") is entitled, upon the terms and subject to the limitations on exercise and the conditions hereinafter set forth, at any time on or after the date hereof (the "Initial Exercise Date") and on or prior to 5:00 p.m. (New York City time) on the date that is the five (5) year anniversary of the Initial Exercise Date, provided that, if such date is not a Trading Day, the date that is the immediately following Trading Day (the "Termination Date") but not thereafter, to subscribe for and purchase from BIORA THERAPEUTICS, INC., a Delaware corporation (the "Company"), up to [•] shares (as subject to adjustment hereunder, the "Warrant Shares") of the Company's Common Stock. The purchase price of one share of Common Stock under this Warrant shall be equal to the Exercise Price, as defined in Section 2(b).

Section 1. Definitions. In addition to the terms defined elsewhere in this Warrant, the following terms have the meanings indicated in this Section 1:

"Affiliate" means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 under the Securities Act.

“Bid Price” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the bid price of the Common Stock for the time in question (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (“Bloomberg”) (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if the Common Stock is then not listed on a Trading Market and if the Shares are listed or quoted for trading on the OTCQB Venture Market (“OTCQB”) or OTCQX Best Market (“OTCQX”), the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported on The Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holders of a majority in interest of the Warrants then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

“Board of Directors” means the board of directors of the Company.

“Business Day” means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed; provided, however, for clarification, commercial banks shall not be deemed to be authorized or required by law to remain closed due to “stay at home”, “shelter-in-place”, “non-essential employee” or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in The City of New York generally are open for use by customers on such day.

“Commission” means the United States Securities and Exchange Commission.

“Common Stock” means the common stock of the Company, par value \$0.001 per share, and any other class of securities into which such securities may hereafter be reclassified or changed.

“Common Stock Equivalents” means any securities of the Company or the Subsidiaries which would entitle the holder thereof to acquire at any time shares of Common Stock, including, without limitation, any debt, preferred stock, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“Letter Agreement” means that certain Letter Agreement regarding Forbearance, dated July 3, 2024.

“Person” means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

“Rule 144” means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Subsidiary” means the subsidiaries of the Company set forth on Exhibit 21.1 to the Company’s Annual Report on Form 10-K for the year ended December 31, 2023, as filed with the Commission on April 1, 2024, and shall, where applicable, also include any direct or indirect subsidiary of the Company formed or acquired after the date hereof.

“Trading Day” means a day on which the Common Stock is traded on a Trading Market.

“Trading Market” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market or the New York Stock Exchange (or any successors to any of the foregoing).

“Transfer Agent” means American Stock Transfer and Trust Company, LLC, the current transfer agent of the Company, with a mailing address of 6201 15th Ave, Brooklyn, NY 11219, and any successor transfer agent of the Company.

“VWAP” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if the Common Stock is then not listed on a Trading Market and if the Shares are listed or quoted for trading on OTCQB or OTCQX, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported on The Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holders of a majority in interest of the Warrants then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

“Warrants” means this Warrant and the Warrants issued by the Company pursuant to the Letter Agreement.

Section 2. Exercise.

a) Exercise of Warrant. Exercise of the purchase rights represented by this Warrant may be made, in whole or in part, at any time or times on or after the Initial Exercise Date and on or before the Termination Date by delivery to the Company of a duly executed PDF copy submitted by e-mail (or e-mail attachment) of the Notice of Exercise in the form annexed hereto (the “Notice of Exercise”). Within the earlier of (i) two (2) Trading Days and (ii) the number of Trading Days comprising the Standard Settlement Period (as defined in Section 2(d)(i) herein) following the date of exercise as aforesaid, the Holder shall deliver the aggregate Exercise Price for the Warrant Shares specified in the applicable Notice of Exercise by wire transfer or cashier’s check drawn on a United States bank unless the cashless exercise procedure specified in Section 2(c) below is specified in the applicable Notice of Exercise. No ink-original Notice of Exercise shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Exercise be required. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company until the Holder has purchased all of the Warrant Shares available hereunder and the Warrant has been exercised in full, in which case, the Holder shall surrender this Warrant to the Company for cancellation within three (3) Trading Days of the date on which the final Notice of Exercise is delivered to the Company. Partial exercises of this Warrant resulting in purchases of a portion of the total number of Warrant Shares available hereunder shall have the effect of lowering the outstanding number of Warrant Shares purchasable hereunder in an amount equal to the applicable number of Warrant Shares purchased. The Holder and the Company shall maintain records showing the number of Warrant Shares purchased and the date of such purchases. The Company shall deliver any objection to any Notice of Exercise within one (1) Trading Day of receipt of such notice. **The Holder and any assignee, by acceptance of this Warrant, acknowledge and agree that, by reason of the provisions of this paragraph, following the purchase of a portion of the Warrant Shares hereunder, the number of Warrant Shares available for purchase hereunder at any given time may be less than the amount stated on the face hereof.**

b) Exercise Price. The exercise price per share of Common Stock under this Warrant shall be **\$0.63**, subject to adjustment hereunder (the “Exercise Price”).

c) Cashless Exercise. If at the time of exercise hereof there is no effective registration statement registering, or the prospectus contained therein is not available for the resale of the Warrant Shares by the Holder, then this Warrant may also be exercised, in whole or in part, at such time by means of a “cashless exercise” in which the Holder shall be entitled to receive a number of Warrant Shares equal to the quotient obtained by dividing [(A-B) (X)] by (A), where:

(A) = as applicable: (i) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise if such Notice of Exercise is (1) both executed and delivered pursuant to Section 2(a) hereof on a day that is not a Trading Day or (2) both executed and delivered pursuant to Section 2(a) hereof on a Trading Day prior to the opening of “regular trading hours” (as defined in Rule 600(b) of Regulation NMS promulgated under the federal securities laws) on such Trading Day, (ii) at the option of the Holder, either (y) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise or (z) the Bid Price of the Common Stock on the principal Trading Market as reported by Bloomberg

as of the time of the Holder's execution of the applicable Notice of Exercise if such Notice of Exercise is executed during "regular trading hours" on a Trading Day and is delivered within two (2) hours thereafter (including until two (2) hours after the close of "regular trading hours" on a Trading Day) pursuant to Section 2(a) hereof or (iii) the VWAP on the date of the applicable Notice of Exercise if the date of such Notice of Exercise is a Trading Day and such Notice of Exercise is both executed and delivered pursuant to Section 2(a) hereof after the close of "regular trading hours" on such Trading Day;

(B) = the Exercise Price of this Warrant, as adjusted hereunder; and

(X) = the number of Warrant Shares that would be issuable upon exercise of this Warrant in accordance with the terms of this Warrant if such exercise were by means of a cash exercise rather than a cashless exercise.

If Warrant Shares are issued in such a cashless exercise, the parties acknowledge and agree that in accordance with Section 3(a)(9) of the Securities Act, the holding period of the Warrant Shares being issued may be tacked on to the holding period of the Warrant. The Company agrees not to take any position contrary to this Section 2(c).

d) Mechanics of Exercise.

- i. Delivery of Warrant Shares Upon Exercise. The Company shall cause the Warrant Shares purchased hereunder to be transmitted by the Transfer Agent to the Holder by crediting the account of the Holder's or its designee's balance account with The Depository Trust Company through its Deposit or Withdrawal at Custodian system ("DWAC") if the Company is then a participant in such system and either (A) there is an effective registration statement permitting the issuance of the Warrant Shares to or resale of the Warrant Shares by the Holder or (B) the Warrant Shares are eligible for resale by the Holder without volume or manner-of-sale limitations pursuant to Rule 144 (assuming cashless exercise of the Warrants), and otherwise by physical delivery of a certificate, registered in the Company's share register in the name of the Holder or its designee, for the number of Warrant Shares to which the Holder is entitled pursuant to such exercise to the address specified by the Holder in the Notice of Exercise by the date that is the earlier of (A) the earlier of (i) two (2) Trading Days and (ii) the number of days comprising the Standard Settlement Period, in each case after the delivery to the Company of the Notice of Exercise and (B) one (1) Trading Day after delivery of the aggregate Exercise Price to the Company (such date, the "Warrant Share Delivery Date"). Upon delivery of the Notice of Exercise, the Holder shall be deemed for all corporate purposes to have become the holder of record of the Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date of delivery of the Warrant Shares, provided that payment of the aggregate Exercise Price (other than in the

case of a cashless exercise) is received by the Warrant Share Delivery Date. If the Company fails for any reason to deliver to the Holder the Warrant Shares subject to a Notice of Exercise by the Warrant Share Delivery Date, the Company shall pay to the Holder, in cash, as liquidated damages and not as a penalty, for each \$1,000 of Warrant Shares subject to such exercise (based on the VWAP of the Common Stock on the date of the applicable Notice of Exercise), \$10 per Trading Day (increasing to \$20 per Trading Day on the fifth Trading Day after the Warrant Share Delivery Date) for each Trading Day after such Warrant Share Delivery Date until such Warrant Shares are delivered or Holder rescinds such exercise. The Company agrees to maintain a transfer agent that is a participant in the FAST program so long as this Warrant remains outstanding and exercisable. As used herein, “Standard Settlement Period” means the standard settlement period, expressed in a number of Trading Days, on the Company’s primary Trading Market with respect to the Common Stock as in effect on the date of delivery of the Notice of Exercise.

ii. Delivery of New Warrants Upon Exercise. If this Warrant shall have been exercised in part, the Company shall, at the request of a Holder and upon surrender of this Warrant certificate, at the time of delivery of the Warrant Shares, deliver to the Holder a new Warrant evidencing the rights of the Holder to purchase the unpurchased Warrant Shares called for by this Warrant, which new Warrant shall in all other respects be identical with this Warrant.

iii. Rescission Rights. If the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares on a timely basis pursuant to Section 2(d)(i) by the Warrant Share Delivery Date, then the Holder will have the right to rescind such exercise.

iv. Compensation for Buy-In on Failure to Timely Deliver Warrant Shares Upon Exercise. In addition to any other rights available to the Holder, if the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares in accordance with the provisions of Section 2(d)(i) above pursuant to an exercise on or before the Warrant Share Delivery Date (other than any such failure that is solely due to any action by the Holder with respect to such exercise), and if after such date the Holder is required by its broker to purchase (in an open market transaction or otherwise) or the Holder’s brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Warrant Shares which the Holder anticipated receiving upon such exercise (a “Buy-In”), then the Company shall (A) pay in cash to the Holder the amount, if any, by which (x) the Holder’s total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased exceeds (y) the amount obtained by multiplying (1) the number of Warrant Shares that the Company was required to deliver to the Holder in connection with the exercise at issue times (2) the price at

which the sell order giving rise to such purchase obligation was executed, and (B) at the option of the Holder, either reinstate the portion of the Warrant and equivalent number of Warrant Shares for which such exercise was not honored (in which case such exercise shall be deemed rescinded) or deliver to the Holder the number of shares of Common Stock that would have been issued had the Company timely complied with its exercise and delivery obligations hereunder. For example, if the Holder purchases Common Stock having a total purchase price of \$11,000 to cover a Buy-In with respect to an attempted exercise of shares of Common Stock with an aggregate sale price giving rise to such purchase obligation of \$10,000, under clause (A) of the immediately preceding sentence the Company shall be required to pay the Holder \$1,000. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In and, upon request of the Company, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver shares of Common Stock upon exercise of the Warrant as required pursuant to the terms hereof.

v. No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such exercise, the Company shall, at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Exercise Price or round up to the next whole share.

vi. Charges, Taxes and Expenses. Issuance of Warrant Shares shall be made without charge to the Holder for any issue or transfer tax or other incidental expense in respect of the issuance of such Warrant Shares, all of which taxes and expenses shall be paid by the Company, and such Warrant Shares shall be issued in the name of the Holder or in such name or names as may be directed by the Holder; provided, however, that, in the event that Warrant Shares are to be issued in a name other than the name of the Holder, this Warrant when surrendered for exercise shall be accompanied by the Assignment Form attached hereto duly executed by the Holder and the Company may require, as a condition thereto, the payment of a sum sufficient to reimburse it for any transfer tax incidental thereto. The Company shall pay all Transfer Agent fees required for same-day processing of any Notice of Exercise and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Warrant Shares.

vii. Closing of Books. The Company will not close its stockholder books or records in any manner which prevents the timely exercise of this Warrant, pursuant to the terms hereof.

e) Holder's Exercise Limitations. The Company shall not effect any exercise of this Warrant, and a Holder shall not have the right to exercise any portion of this Warrant, pursuant to Section 2 or otherwise, to the extent that after giving effect to such issuance after exercise as set forth on the applicable Notice of Exercise, the Holder (together with the Holder's Affiliates, and any other Persons acting as a group together with the Holder or any of the Holder's Affiliates (such Persons, "Attribution Parties")), would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by the Holder and its Affiliates and Attribution Parties shall include the number of shares of Common Stock issuable upon exercise of this Warrant with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (i) exercise of the remaining, nonexercised portion of this Warrant beneficially owned by the Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any other Common Stock Equivalents) subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by the Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 2(e), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, it being acknowledged by the Holder that the Company is not representing to the Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in accordance therewith. To avoid doubt, the calculation of the Beneficial Ownership Limitations shall take into account the concurrent exercise or conversion, as applicable, of the unexercised or unconverted portion of any other securities of the Company (including, without limitation, any other Common Stock Equivalents) beneficially owned by the Holder or any Attribution Party, as applicable. To the extent that the limitation contained in this Section 2(e) applies, the determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which portion of this Warrant is exercisable shall be in the sole discretion of the Holder, and the submission of a Notice of Exercise shall be deemed to be the Holder's determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which portion of this Warrant is exercisable, in each case subject to the Beneficial Ownership Limitation, and the Company shall have no obligation to verify or confirm the accuracy of such determination (including any determination as to group status pursuant to the next sentence). In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 2(e), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as reflected in (A) the Company's most recent periodic or

annual report filed with the Commission, as the case may be, (B) a more recent public announcement by the Company or (C) a more recent written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Company shall within one (1) Trading Day confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Warrant, by the Holder or its Affiliates or Attribution Parties since the date as of which such number of outstanding shares of Common Stock was reported. The “Beneficial Ownership Limitation” shall be [•]% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon exercise of this Warrant. The Holder, upon notice to the Company, may increase or decrease the Beneficial Ownership Limitation provisions of this Section 2(e), provided that the Beneficial Ownership Limitation in no event exceeds [9.99][49.9%]% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock upon exercise of this Warrant held by the Holder and the provisions of this Section 2(e) shall continue to apply. Any increase in the Beneficial Ownership Limitation will not be effective until the 61st day after such notice is delivered to the Company. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 2(e) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of this Warrant.

Section 3. Certain Adjustments.

a) Stock Dividends and Splits. If the Company, at any time while this Warrant is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions on shares of its Common Stock or any other equity or equity equivalent securities payable in shares of Common Stock (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Company upon exercise of this Warrant), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (iv) issues by reclassification of shares of the Common Stock any shares of capital stock of the Company, then in each case the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding treasury shares, if any) outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event, and the number of shares issuable upon exercise of this Warrant shall be proportionately adjusted such that the aggregate Exercise Price of this Warrant shall remain unchanged. Any adjustment made pursuant to this Section 3(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

b) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 3(a) above, if at any time the Company grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the "Purchase Rights"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, that to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

c) Pro Rata Distributions. During such time as this Warrant is outstanding, if the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "Distribution"), at any time after the issuance of this Warrant, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution (provided, however, that to the extent that the Holder's right to participate in any such Distribution would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Distribution to such extent (or in the beneficial ownership of any shares of Common Stock as a result of such Distribution to such extent) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

d) Fundamental Transaction. If, at any time while this Warrant is outstanding, (i) the Company, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Company with or into another Person, (ii) the Company (and all of its Subsidiaries, taken as a whole), directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or

substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding Common Stock or 50% or more of the voting power of the common equity of the Company, (iv) the Company, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, or (v) the Company, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off, merger or scheme of arrangement) with another Person or group of Persons whereby such other Person or group acquires 50% or more of the outstanding shares of Common Stock or 50% or more of the voting power of the common equity of the Company (each a “Fundamental Transaction”), then, upon any subsequent exercise of this Warrant, the Holder shall have the right to receive, for each Warrant Share that would have been issuable upon such exercise immediately prior to the occurrence of such Fundamental Transaction, at the option of the Holder (without regard to any limitation in Section 2(e) on the exercise of this Warrant), the number of shares of Common Stock of the successor or acquiring corporation or of the Company, if it is the surviving corporation, and any additional consideration (the “Alternate Consideration”) receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Warrant is exercisable immediately prior to such Fundamental Transaction (without regard to any limitation in Section 2(e) on the exercise of this Warrant). For purposes of any such exercise, the determination of the Exercise Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Company shall apportion the Exercise Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any exercise of this Warrant following such Fundamental Transaction. Notwithstanding anything to the contrary, in the event of a Fundamental Transaction, the Company or any Successor Entity (as defined below) shall, at the Holder’s option, exercisable at any time concurrently with, or within 30 days after, the consummation of the Fundamental Transaction (or, if later, the date of the public announcement of the applicable Fundamental Transaction), purchase this Warrant from the Holder by paying to the Holder an amount of cash equal to the Black Scholes Value (as defined below) of the remaining unexercised portion of this Warrant on the date of the consummation of such Fundamental Transaction; provided, however, that, if the Fundamental Transaction is not within the Company’s control, including not approved by the Company’s Board of Directors, Holder shall only be entitled to receive from the Company or any Successor Entity the same type or form of consideration (and in the same proportion), at the Black Scholes Value of the unexercised portion of this Warrant,

that is being offered and paid to the holders of Common Stock of the Company in connection with the Fundamental Transaction, whether that consideration be in the form of cash, stock or any combination thereof, or whether the holders of Common Stock are given the choice to receive from among alternative forms of consideration in connection with the Fundamental Transaction; provided, further, that if holders of Common Stock of the Company are not offered or paid any consideration in such Fundamental Transaction, such holders of Common Stock will be deemed to have received common stock of the Successor Entity (which Successor Entity may be the Company following such Fundamental Transaction) in such Fundamental Transaction. “Black Scholes Value” means the value of this Warrant based on the Black Scholes Option Pricing Model obtained from the “OV” function on Bloomberg determined as of the day of consummation of the applicable Fundamental Transaction for pricing purposes and reflecting (A) a risk-free interest rate corresponding to the U.S. Treasury rate for a period equal to the time between the date of the public announcement of the applicable contemplated Fundamental Transaction and the Termination Date, (B) an expected volatility equal to the greater of 100% and the 100 day volatility obtained from the HVT function on Bloomberg (determined utilizing a 365-day annualization factor) as of the Trading Day immediately following the public announcement of the applicable contemplated Fundamental Transaction, (C) the underlying price per share used in such calculation shall be the greater of (i) the sum of the price per share being offered in cash, if any, plus the value of any non-cash consideration, if any, being offered in such Fundamental Transaction and (ii) the highest VWAP during the period beginning on the Trading Day immediately preceding the announcement of the applicable contemplated Fundamental Transaction (or the consummation of the applicable Fundamental Transaction, if earlier) and ending on the Trading Day of the Holder’s request pursuant to this Section 3(d) and (D) a remaining option time equal to the time between the date of the public announcement of the applicable contemplated Fundamental Transaction and the Termination Date and (E) a zero cost of borrow. The payment of the Black Scholes Value will be made by wire transfer of immediately available funds (or such other consideration) within five (5) Trading Days of the Holder’s election (or, if later, on the effective date of the Fundamental Transaction). The Company shall cause any successor entity in a Fundamental Transaction in which the Company is not the survivor (the “Successor Entity”) to assume in writing all of the obligations of the Company under this Warrant and the Letter Agreement in accordance with the provisions of this Section 3(d) pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder (without unreasonable delay) prior to such Fundamental Transaction and shall, at the option of the Holder, deliver to the Holder in exchange for this Warrant a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Warrant which is exercisable for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon exercise of this Warrant (without regard to any limitations on the exercise of this Warrant) prior to such Fundamental Transaction, and with an exercise price which applies the exercise price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of

shares of capital stock and such exercise price being for the purpose of protecting the economic value of this Warrant immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Warrant and the Letter Agreement referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant and the Letter Agreement with the same effect as if such Successor Entity had been named as the Company herein.

e) Calculations. All calculations under this Section 3 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 3, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding treasury shares, if any) issued and outstanding.

f) Notice to Holder.

i. Adjustment to Exercise Price. Whenever the Exercise Price is adjusted pursuant to any provision of this Section 3, the Company shall promptly deliver to the Holder by email a notice setting forth the Exercise Price after such adjustment and any resulting adjustment to the number of Warrant Shares and setting forth a brief statement of the facts requiring such adjustment.

ii. Notice to Allow Exercise by Holder. If (A) the Company shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Company shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Company shall authorize the granting to all holders of the Common Stock rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Company shall be required in connection with (i) a Fundamental Transaction, and (ii) any reclassification of the Common Stock, any consolidation or merger to which the Company is a party, any sale or transfer of all or substantially all of the assets of the Company, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property, or (E) the Company shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be delivered by email to the Holder at its last email address as it shall appear upon the Warrant Register of the Company, at least 20 calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of

record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange; provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided in this Warrant constitutes, or contains, material, non-public information regarding the Company or any of the Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to exercise this Warrant during the period commencing on the date of such notice to the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

g) Voluntary Adjustment by Company. The Company may at any time during the term of this Warrant reduce the then current Exercise Price to any amount and for any period of time deemed appropriate by the board of directors of the Company, with the consent of the Holder.

Section 4. Transfer of Warrant.

a) Transferability. Subject to compliance with any applicable securities laws, this Warrant and all rights hereunder (including, without limitation, any registration rights) are transferable, in whole or in part, upon surrender of this Warrant at the principal office of the Company or its designated agent, together with a written assignment of this Warrant substantially in the form attached hereto duly executed by the Holder or its agent or attorney and funds sufficient to pay any transfer taxes payable upon the making of such transfer. Upon such surrender and, if required, such payment, the Company shall execute and deliver a new Warrant or Warrants in the name of the assignee or assignees, as applicable, and in the denomination or denominations specified in such instrument of assignment, and shall issue to the assignor a new Warrant evidencing the portion of this Warrant not so assigned, and this Warrant shall promptly be cancelled. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company unless the Holder has assigned this Warrant in full, in which case, the Holder shall surrender this Warrant to the Company within three (3) Trading Days of the date on which the Holder delivers an assignment form to the Company assigning this Warrant in full. The Warrant, if properly assigned in accordance herewith, may be exercised by a new holder for the purchase of Warrant Shares without having a new Warrant issued.

b) New Warrants. This Warrant may be divided or combined with other Warrants upon presentation hereof at the aforesaid office of the Company, together with a written notice specifying the names and denominations in which new Warrants are to be issued, signed by the Holder or its agent or attorney. Subject to compliance with Section 4(a), as to any transfer which may be involved in such division or combination, the Company shall execute and deliver a new Warrant or Warrants in exchange for the Warrant or Warrants to be divided or combined in accordance with such notice. All Warrants issued on transfers or exchanges shall be dated the Issue Date of this Warrant and shall be identical with this Warrant except as to the number of Warrant Shares issuable pursuant thereto.

c) Warrant Register. The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the "Warrant Register"), in the name of the record Holder hereof from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

d) Representation by the Holder. The Holder, by the acceptance hereof, represents and warrants that it is acquiring this Warrant and, upon any exercise hereof, will acquire the Warrant Shares issuable upon such exercise, for its own account and not with a view to or for distributing or reselling such Warrant Shares or any part thereof in violation of the Securities Act or any applicable state securities law, except pursuant to sales registered or exempted under the Securities Act.

Section 5. Miscellaneous.

a) No Rights as Stockholder Until Exercise; No Settlement in Cash. This Warrant does not entitle the Holder to any voting rights, dividends or other rights as a stockholder of the Company prior to the exercise hereof as set forth in Section 2(d)(i), except as expressly set forth in Section 3. Without limiting the rights of a Holder to receive Warrant Shares on a "cashless exercise," and to receive the cash payments contemplated pursuant to Sections 2(d)(i) and 2(d)(iv), in no event will the Company be required to net cash settle an exercise of this Warrant.

b) Loss, Theft, Destruction or Mutilation of Warrant. The Company covenants that upon receipt by the Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant or any stock certificate relating to the Warrant Shares, and in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to it, and upon surrender and cancellation of such Warrant or stock certificate, if mutilated, the Company will make and deliver a new Warrant or stock certificate of like tenor and dated as of such cancellation, in lieu of such Warrant or stock certificate.

c) Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Trading Day, then, such action may be taken or such right may be exercised on the next succeeding Trading Day.

d) Authorized Shares.

The Company covenants that, during the period the Warrant is outstanding, it will reserve from its authorized and unissued Common Stock a sufficient number of shares to provide for the issuance of the Warrant Shares upon the exercise of any purchase rights under this Warrant. The Company further covenants that its issuance of this Warrant shall constitute full authority to its officers who are charged with the duty of issuing the necessary Warrant Shares upon the exercise of the purchase rights under this Warrant. The Company will take all such reasonable action as may be necessary to assure that such Warrant Shares may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of the Trading Market upon which the Common Stock may be listed. The Company covenants that all Warrant Shares which may be issued upon the exercise of the purchase rights represented by this Warrant will, upon exercise of the purchase rights represented by this Warrant and payment for such Warrant Shares in accordance herewith, be duly authorized, validly issued, fully paid and nonassessable and free from all taxes, liens and charges created by the Company in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously with such issue).

Except and to the extent as waived or consented to by the Holder, the Company shall not by any action, including, without limitation, amending its certificate of incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate to protect the rights of Holder as set forth in this Warrant against impairment. Without limiting the generality of the foregoing, the Company will (i) not increase the par value of any Warrant Shares above the amount payable therefor upon such exercise immediately prior to such increase in par value, (ii) take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable Warrant Shares upon the exercise of this Warrant, (iii) use commercially reasonable efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof, as may be, necessary to enable the Company to perform its obligations under this Warrant and (iv) not take any action that would result in the Exercise Price of this Warrant being less than the then-applicable par value of any Warrant Shares.

Before taking any action which would result in an adjustment in the number of Warrant Shares for which this Warrant is exercisable or in the Exercise Price, the Company shall obtain all such authorizations or exemptions thereof, or consents thereto, as may be necessary from any public regulatory body or bodies having jurisdiction thereof.

e) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Warrant shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Each party agrees that all legal proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Warrant (whether brought against a party hereto or their respective affiliates, directors, officers, shareholders, partners, members, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the City of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of New York, Borough of Manhattan for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is improper or is an inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Warrant and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by law. If either party shall commence an action, suit or proceeding to enforce any provisions of this Warrant, the prevailing party in such action, suit or proceeding shall be reimbursed by the other party for their reasonable attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such action or proceeding.

f) Restrictions. The Holder acknowledges that the Warrant Shares acquired upon the exercise of this Warrant, if not registered, and the Holder does not utilize cashless exercise, will have restrictions upon resale imposed by state and federal securities laws.

g) Nonwaiver and Expenses. No course of dealing or any delay or failure to exercise any right hereunder on the part of Holder shall operate as a waiver of such right or otherwise prejudice the Holder's rights, powers or remedies, notwithstanding the fact that the right to exercise this Warrant terminates on the Termination Date. Without limiting any other provision of this Warrant, if the Company willfully and knowingly fails to comply with any provision of this Warrant, which results in any material damages to the Holder, the Company shall pay to the Holder such amounts as shall be sufficient to cover any costs and expenses including, but not limited to, reasonable attorneys' fees, including those of appellate proceedings, incurred by the Holder in collecting any amounts due pursuant hereto or in otherwise enforcing any of its rights, powers or remedies hereunder.

h) Notices. Any and all notices or other communications or deliveries to be provided by the holders hereunder including, without limitation, any Notice of Exercise, shall be in writing and delivered personally, by e-mail, or sent by a nationally recognized overnight courier service, addressed to the Company, at 4330 La Jolla Village Drive, Suite 300, San Diego, CA 92122, Attention: Clarke Neumann, email address: Clarke.Neumann@bioratherapeutics.com, with a copy to legaldeptcontractnotices@bioratherapeutics.com, or such other telephone number, email

address or address as the Company may specify for such purposes by notice to the Holders. Any and all notices or other communications or deliveries to be provided by the Company hereunder shall be in writing and delivered personally, by e-mail, or sent by a nationally recognized overnight courier service addressed to each Holder at the e-mail address or address of such Holder appearing on the books of the Company. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the time of transmission, if such notice or communication is delivered via e-mail at the e-mail address set forth in this Section prior to 5:30 p.m. (New York City time) on any date, (ii) the next Trading Day after the time of transmission, if such notice or communication is delivered via e-mail at the e-mail address set forth in this Section on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (iii) the second Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given. To the extent that any notice provided hereunder constitutes, or contains, material, non-public information regarding the Company or any subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K.

i) Limitation of Liability. No provision hereof, in the absence of any affirmative action by the Holder to exercise this Warrant to purchase Warrant Shares, and no enumeration herein of the rights or privileges of the Holder, shall give rise to any liability of the Holder for the purchase price of any Common Stock or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

j) Remedies. The Holder, in addition to being entitled to exercise all rights granted by law, including recovery of damages, will be entitled to specific performance of its rights under this Warrant. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Warrant and hereby agrees to waive and not to assert the defense in any action for specific performance that a remedy at law would be adequate.

k) Successors and Assigns. Subject to applicable securities laws, this Warrant and the rights and obligations evidenced hereby shall inure to the benefit of and be binding upon the successors and permitted assigns of the Company and the successors and permitted assigns of Holder. The provisions of this Warrant are intended to be for the benefit of any Holder from time to time of this Warrant and shall be enforceable by the Holder or holder of Warrant Shares.

l) Amendment. This Warrant may be modified or amended or the provisions hereof waived with the written consent of the Company, on the one hand, and the Holder of this Warrant, on the other hand.

m) Severability. Wherever possible, each provision of this Warrant shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Warrant shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Warrant.

n) Headings. The headings used in this Warrant are for the convenience of reference only and shall not, for any purpose, be deemed a part of this Warrant.

(Signature Page Follows)

IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by its officer thereunto duly authorized as of the date first above indicated.

BIORA THERAPEUTICS, INC.

By: _____
Name: Eric d'Esparbes
Title: Chief Financial Officer

[Signature Page to Warrant]

NOTICE OF EXERCISE

TO: **BIORA THERAPEUTICS, INC.**

(1) The undersigned hereby elects to purchase _____ Warrant Shares of the Company pursuant to the terms of the attached Warrant (only if exercised in full), and tenders herewith payment of the exercise price in full, together with all applicable transfer taxes, if any.

(2) Payment shall take the form of (check applicable box):

in lawful money of the United States; or

if permitted the cancellation of such number of Warrant Shares as is necessary, in accordance with the formula set forth in subsection 2(c), to exercise this Warrant with respect to the maximum number of Warrant Shares purchasable pursuant to the cashless exercise procedure set forth in subsection 2(c).

(3) Please issue said Warrant Shares in the name of the undersigned or in such other name as is specified below:

The Warrant Shares shall be delivered to the following DWAC Account Number:

(4) Accredited Investor. The undersigned is an “accredited investor” as defined in Regulation D promulgated under the Securities Act of 1933, as amended.

[SIGNATURE OF HOLDER]

Name of Investing Entity: _____

Signature of Authorized Signatory of Investing Entity: _____

Name of Authorized Signatory: _____

Title of Authorized Signatory: _____

Date: _____

ASSIGNMENT FORM

(To assign the foregoing Warrant, execute this form and supply required information. Do not use this form to exercise the Warrant to purchase shares.)

FOR VALUE RECEIVED, the foregoing Warrant and all rights evidenced thereby are hereby assigned to

Name: _____
(Please Print)

Address: _____
(Please Print)

Phone Number: _____

Email Address: _____

Dated: _____, _____

Holder's Signature: _____

Holder's Address: _____

August 23, 2024

Biora Therapeutics, Inc.
4330 La Jolla Village Drive, Suite 300
San Diego, CA 92112

Re: Biora Therapeutics, Inc.
Registration Statement on Form S-3

Ladies and Gentlemen:

We have examined the Registration Statement on Form S-3 (the "Registration Statement") of Biora Therapeutics, Inc., a Delaware corporation (the "Company"), filed with the Securities and Exchange Commission (the "Commission") pursuant to the Securities Act of 1933, as amended (the "Securities Act"), in connection with the registration for offer and resale from time to time by the selling stockholders named in the Registration Statement of up to 96,661,836 shares of the Company's common stock, par value \$0.001 per share (the "Shares").

In arriving at the opinion expressed below, we have examined originals, or copies certified or otherwise identified to our satisfaction as being true and complete copies of the originals, of the specimen common stock certificates and such other documents, corporate records, certificates of officers of the Company and of public officials and other instruments as we have deemed necessary or advisable to enable us to render these opinions. In our examination, we have assumed the genuineness of all signatures, the legal capacity and competency of all natural persons, the authenticity of all documents submitted to us as originals and the conformity to original documents of all documents submitted to us as copies.

Based on the foregoing, and subject to the assumptions, exceptions, qualifications and limitations set forth herein, we are of the opinion that the Shares, when issued against payment therefor as set forth in the Registration Statement, will be validly issued, fully paid and non-assessable.

We consent to the filing of this opinion as an exhibit to the Registration Statement, and we further consent to the use of our name under the caption "Legal Matters" in the Registration Statement and the prospectus that forms a part thereof. In giving these consents, we do not thereby 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.

Very truly yours,

/s/ Gibson, Dunn & Crutcher LLP

Gibson, Dunn & Crutcher LLP

One Embarcadero Center Suite 2600 | San Francisco, CA 94111-3715 | T: 415.393.8200 | F: 415.393.8306 | gibsondunn.com

Consent of Independent Registered Public Accounting Firm

We consent to the use of our report dated April 1, 2024, with respect to the consolidated financial statements of Biora Therapeutics, Inc., incorporated herein by reference, and to the reference to our firm under the heading “Experts” in the prospectus. Our report also contains an explanatory paragraph that states that the Company has suffered recurring losses from operations and has a working capital deficit and an accumulated deficit that raise substantial doubt about its ability to continue as a going concern. The consolidated financial statements do not include any adjustments that might result from the outcome of that uncertainty.

/s/ KPMG LLP

San Diego, California
August 23, 2024

Calculation of Filing Fee Tables
FORM S-3
(Form Type)

Biora 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
Fees to Be Paid	Equity	Common stock, par value \$0.001 per share ⁽¹⁾	457(c)	96,661,836	\$0.67	\$64,763,430.12	0.00014760	\$9,559.08
	Total Offering Amounts					\$64,763,430.12		\$9,559.08
	Total Fees Previously Paid							—
	Total Fee Offsets							—
	Net Fee Due							\$9,559.08

- (1) Pursuant to Rule 416 under the Securities Act of 1933, as amended, this registration statement also covers such an indeterminate amount of shares of common stock as may become issuable to prevent dilution resulting from stock splits, stock dividends and similar events.
- (2) The amount registered consists of up to (i) 5,286,284 shares of common stock issuable upon conversion of \$4,000,000 principal amount of a new tranche (the “New Money Payment Priority Notes”) of the Company’s 11.00%/13.00% Convertible Senior Secured Notes due 2028 (the “2028 Convertible Notes”) with payment priority over the existing 2028 Convertible Notes; (ii) 5,207,437 shares of common stock that may be issuable (A) in respect of interest payments or make-whole amounts on the New Money Payment Priority Notes that the Company settles in shares of common stock or (B) upon conversion of, or in respect of, interest payments or make-whole amounts on any additional New Money Payment Priority Notes issuable with respect to interest payments on the New Money Payment Priority Notes that are settled in kind; (iii) 14,220,087 shares of common stock issuable upon conversion of \$10,759,986 principal amount of a new tranche of the 2028 Convertible Notes issued in exchange for existing 2028 Convertible Notes (the “Exchange Payment Priority Notes”); (iv) 14,007,986 shares of common stock that may be issuable (A) in respect of interest payments or make-whole amounts on the Exchange Payment Priority Notes that the Company settles in shares of common stock or (B) upon conversion of, or in respect of, interest payments or make-whole amounts on any additional Exchange Payment Priority Notes issuable with respect to interest payments on the Exchange Payment Priority Notes that are settled in kind; (v) 21,793,685 additional shares of common stock issuable upon the conversion of existing 2028 Convertible Notes due to a change in conversion price (the “Amended 2028 Convertible Notes”); (vi) 19,645,148 additional shares of common stock that may be issuable (A) in respect of interest payments or make-whole amounts on the Amended 2028 Convertible Notes that the Company settles in shares of common stock or (B) upon conversion of, or in respect of, interest payments or make-whole amounts on any additional Amended 2028 Convertible Notes issuable with respect to interest payments on the Amended 2028 Convertible Notes that are settled in kind, in each case due to a change in the conversion price; (vii) 6,677,794 shares of common stock issuable upon the exercise of warrants to purchase common stock with a term of five years that are exercisable any time from the date of issuance (subject to any limitations under the rules of Nasdaq that require stockholder approval of issuance of shares) and an exercise price of \$0.60 per share; (viii) 100,000 shares of common stock issuable upon the exercise of warrants to purchase common stock with a term of five years that are exercisable any time from the date of issuance (subject to any limitations under the rules of Nasdaq that require stockholder approval of issuance of shares) and an exercise price of \$0.60 per share; (ix) 3,018,868 shares of common stock issuable upon the exercise of warrants to purchase common stock with a term of five years that are exercisable any time on or after June 5, 2024 and an exercise price of \$1.10; (x) 4,090,911 shares of common stock issuable upon the exercise of warrants to purchase common stock with a term of five years that are exercisable at any time on or after June 5, 2024 and an exercise price of \$1.10 per share; (xi) 1,363,637 shares of common stock issuable upon the exercise of warrants to purchase common stock with a term of five years that are exercisable any time from the date of issuance (subject to any limitations under the rules of Nasdaq that require stockholder approval of issuance of shares) and an exercise price of \$0.60 per share; and (xii) 1,249,999 shares of common stock issuable upon the exercise of warrants to purchase common stock with a term of five years that are exercisable any time from the date of issuance (subject to any limitations under the rules of Nasdaq that require stockholder approval of issuance of shares) and an exercise price of \$0.60 per share.
- (3) Estimated solely for the purpose of calculating the registration fee, based on the average of the high and low prices of the shares of common stock on The Nasdaq Global Market on August 16, 2024 (such date being within five business days of the date that this registration statement was first filed with the Securities and Exchange Commission, in accordance with Rule 457(c) under the Securities Act).