

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

**FORM S-8**  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933

**NUWELLIS, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of incorporation or organization)

**68-0533453**

(I.R.S. Employer Identification No.)

**12988 Valley View Road  
Eden Prairie, Minnesota**

(Address of Principal Executive Offices)

**55344**

(Zip Code)

**Nuwellis, Inc. 2017 Equity Incentive Plan  
Nuwellis, Inc. 2013 Non-Employee Directors' Equity Incentive Plan  
Nuwellis, Inc. 2021 Inducement Plan**

(Full title of the plan)

**Nestor Jaramillo  
Chief Executive Officer  
Nuwellis, Inc.  
12988 Valley View Road  
Eden Prairie, MN 55344  
(952) 345-4200**

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

**Copy to:**

**Phillip D. Torrence, Esq.  
Honigman LLP**

650 Trade Center Way, Ste 200  
Kalamazoo, MI 49002  
(269) 337-7700

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.

## EXPLANATORY NOTE

This Registration Statement on Form S-8 (the “**Registration Statement**”) is being filed by Nuwellis, Inc., a Delaware corporation (the “**Registrant**”) to register (i) an additional 1,457,853 shares of common stock, par value \$0.0001 per share (the “**Common Stock**”), reserved for grant pursuant to an “evergreen provision” of the Registrant’s 2017 Equity Incentive Plan, as amended, (ii) an additional 259,495 shares of Common Stock reserved for grant pursuant to an “evergreen provision” of the Registrant’s 2013 Non-Employee Directors’ Equity Incentive Plan, and (iii) an additional 35,000 shares of Common Stock reserved for grant pursuant to the Registrant’s 2021 Inducement Plan, as amended.

The contents of the Registration Statements on Form S-8 previously filed with the Securities and Exchange Commission (the “**Commission**”) on May 30, 2013 (File No. 333-188935), March 18, 2014 (File No. 333-194642), March 20, 2015 (File No. 333-202904), March 15, 2016 (File No. 333-210215), June 2, 2017 (File No. 333-218464), March 23, 2018 (File No. 333-223879), August 8, 2019 (File No. 333-233152), May 15, 2020 (File No. 333-238276), March 25, 2021 (File No. 333-254708), and May 24, 2021 (File No. 333-256432) are incorporated by reference herein (“**Prior Registration Statements**”).

This Registration Statement relates to securities of the same class as that to which the Prior Registration Statements relate, and is submitted in accordance with General Instruction E to Form S-8 regarding the registration of additional securities. Pursuant to such instruction, the contents of the Prior Registration Statements are incorporated herein by reference and made part of this Registration Statement, except as amended hereby.

### PART I

#### INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The information specified in Part I of Form S-8 is omitted from this Registration Statement in accordance with the provisions of Rule 428 under the Securities Act of 1933, as amended (the “**Securities Act**”), and the introductory note to Part I of Form S-8. The documents containing the information specified in Part I of Form S-8 will be delivered to the participants in the plan covered by this Registration Statement as specified by Rule 428(b)(1) under the Securities Act.

### PART II

#### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

##### Item 3. Incorporation of Documents by Reference.

The following documents filed with the Commission by the Registrant are hereby incorporated by reference in this Registration Statement:

- (a) The Registrant’s [Annual Report on Form 10-K](#) for the year ended December 31, 2021, filed with the Commission on March 3, 2022;
- (b) The Registrant’s Current Report on Form 8-K filed with the Commission on [April 21, 2022](#).
- (c) The description of the Registrant’s Common Stock contained in the Registration Statement on [Form 10 \(File No. 001-35312\)](#) filed pursuant to Section 12(b) on September 30, 2011 and all amendments thereto.

In addition, all documents the Registrant subsequently files pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), after the filing of this Registration Statement and prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities covered hereby then remaining unsold are incorporated by reference in this Registration Statement and are a part hereof from the date of filing of such documents. Notwithstanding anything herein, the Registrant is not incorporating by reference any information furnished under Item 2.02 or Item 7.01 of any Current Report on Form 8-K, unless, and to the extent, specified in any such Current Report on Form 8-K.

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Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein, or in any subsequently filed document, which also is or is deemed to be incorporated by reference herein, modifies or supersedes such prior statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute part of this Registration Statement.

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**Item 4. Description of Securities.**

Not applicable.

**Item 5. Interests of Named Experts and Counsel.**

Not applicable.

**Item 6. Indemnification of Directors and Officers.**

The Registrant's Fourth Amended and Restated Certificate of Incorporation, as amended, limits the liability of the Registrant's directors to the fullest extent permitted by Delaware law. Delaware law provides that directors of a corporation will not be personally liable for monetary damages for breach of their fiduciary duties as directors, except for liability for any:

- breach of their duty of loyalty to the Registrant or the Registrant's stockholders;
- act or omission not in good faith or that involves intentional misconduct or a knowing violation of law;
- unlawful payment of dividends or redemption of shares as provided in Section 174 of the Delaware General Corporation Law (the "**DGCL**");
- or
- transaction from which the directors derived an improper personal benefit.

These limitations of liability do not apply to liabilities arising under federal securities laws and do not affect the availability of equitable remedies such as injunctive relief or rescission.

The Registrant's Second Amended and Restated Bylaws (the "**Bylaws**") provide that it will indemnify and advance expenses to its directors and officers to the fullest extent permitted by law or, if applicable, pursuant to indemnification agreements. The Bylaws further provide that the Registrant may choose to indemnify its other employees or agents from time to time. Subject to certain exceptions and procedures, the Bylaws also require it to advance to any person who was or is a party, or is threatened to be made a party, to any proceeding by reason of the person's service as one of the Registrant's directors or officers all expenses incurred by the person in connection with such proceeding.

The Bylaws and Section 145(g) of the DGCL also permit it to secure insurance on behalf of any officer, director, employee or other agent for any liability arising out of his or her actions in connection with their services to us, regardless of whether the Bylaws permit indemnification. The Registrant maintains a directors' and officers' liability insurance policy.

The Registrant entered into indemnification agreements with each of its directors and executive officers that provide, in general, that the Registrant will indemnify them to the fullest extent permitted by law in connection with their service to the Registrant or on its behalf and, subject to certain exceptions and procedures, that the Registrant will advance to them all expenses that they incur in connection with any proceeding to which they are, or are threatened to be, a party.

At present, there is no pending litigation or proceeding involving any of the Registrant's directors or officers as to which indemnification is required or permitted, and the Registrant is not aware of any threatened litigation or proceeding that may result in a claim for indemnification.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission this indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

**Item 7. Exemption from Registration Claimed.**

Not applicable.

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Item 8. Exhibits.

**EXHIBIT INDEX**

The following exhibits are filed as part of this registration statement.

| Exhibit Number       | Exhibit Description   | Incorporated By Reference |             |                      | Exhibit Number | Filed Herewith          |
|----------------------|---|---------------------------|-------------|----------------------|----------------|-------------------------|
|                      |   | Form                      | File Number | Date of First Filing |                |                         |
| 4.1                  | <a href="#">Fourth Amended and Restated Certificate of Incorporation</a>  | 10                        | 001-35312   | February 1, 2012     | 3.1            |                         |
| 4.2                  | <a href="#">Certificate of Amendment to the Fourth Amended and Restated Certificate of Incorporation</a>                          | 8-K                       | 001-35312   | January 13, 2017     | 3.1            |                         |
| 4.3                  | <a href="#">Certificate of Amendment to Fourth Amended and Restated Certificate of Incorporation</a>                              | 8-K                       | 001-35312   | May 23, 2017         | 3.1            |                         |
| 4.4                  | <a href="#">Certificate of Amendment to Fourth Amended and Restated Certificate of Incorporation</a>                              | 8-K                       | 001-35312   | October 12, 2017     | 3.1            |                         |
| 4.5                  | <a href="#">Certificate of Amendment to Fourth Amended and Restated Certificate of Incorporation</a>                              | 8-K                       | 001-35312   | January 2, 2019      | 3.1            |                         |
| 4.6                  | <a href="#">Certificate of Amendment to Fourth Amended and Restated Certificate of Incorporation</a>                              | 8-K/A                     | 001-35312   | October 16, 2020     | 3.1            |                         |
| 4.7                  | <a href="#">Certificate of Amendment to Fourth Amended and Restated Certificate of Incorporation</a>                              | 8-K                       | 001-35312   | April 27, 2021       | 3.1            |                         |
| 4.8                  | <a href="#">Second Amended and Restated Bylaws</a>  | 8-K                       | 001-35312   | April 27, 2021       | 3.2            |                         |
| 4.9                  | <a href="#">Form of Certificate of Designation of Series A Junior Participating Preferred Stock</a>                               | 8-K                       | 001-35312   | June 14, 2013        | 3.1            |                         |
| 4.10                 | <a href="#">Form of Certificate of Designation of Preferences, Rights and Limitations of Series F Convertible Preferred Stock</a> | S-1/A                     | 333-221010  | November 17, 2017    | 3.7            |                         |
| 4.11                 | <a href="#">Registration Rights Agreement between Sunshine Heart, Inc. and Gambro UF Solutions, Inc. dated August 5, 2016</a>     | 8-K                       | 001-35312   | August 8, 2016       | 4.1            |                         |
| 4.12                 | <a href="#">2013 Non-Employee Directors' Equity Incentive Plan†</a>   | 14A                       | 001-35312   | April 5, 2013        | App. A         |                         |
| 4.22                 | <a href="#">2017 Equity Incentive Plan†</a>   | 8-K                       | 001-35312   | May 30, 2017         | 10.1           |                         |
| 4.23                 | <a href="#">First Amendment to the CHF Solutions, Inc. 2017 Equity Incentive Plan†</a>  | 14A                       | 001-35312   | September 11, 2020   | App. A         |                         |
| 4.24                 | <a href="#">Nuwellis, Inc. 2021 Inducement Plan†</a>  | 8-K                       | 001-35312   | May 20, 2021         | 10.1           |                         |
| 4.25                 | <a href="#">First Amendment to the Nuwellis, Inc. 2021 Inducement Plan†</a>   | 8-K                       | 001-35312   | April 21, 2022       | 10.1           |                         |
| <a href="#">5.1</a>  | Opinion of Honigman LLP   |                           |             |                      |                | X                       |
| <a href="#">23.1</a> | Consent of Baker Tilly US, LLP  |                           |             |                      |                | X                       |
| <a href="#">23.2</a> | Consent of Honigman LLP   |                           |             |                      |                | Included in Exhibit 5.1 |
| <a href="#">24</a>   | Power of Attorney (included on signature page)  |                           |             |                      |                | X                       |
| <a href="#">107</a>  | Filing Fee Table  |                           |             |                      |                | X                       |

† Indicates management compensatory plan, contract or arrangement.

**Item 9. Undertakings.**

(a) The 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 Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective Registration Statement;
  - (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) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the Registration Statement; and

- (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.

(b) The Registrant hereby undertakes that, for the 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 Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

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## 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-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Eden Prairie, State of Minnesota, April 21, 2022.

NUWELLIS, INC.

By: /s/ NESTOR JARAMILLO

Name: Nestor Jaramillo

Title: President and Chief Executive Officer

We, the undersigned officers and directors of Nuwellis, Inc., hereby constitute Nestor Jaramillo, as the true and lawful attorney with full power to sign for us and in our names, in the capacities indicated below the Registration Statement filed herewith and any amendments to said Registration Statement (including post-effective amendments thereto), and generally to do all such things in our name and behalf in our capacities as officers and directors to enable Nuwellis, Inc. to comply with the provisions of the Securities Act of 1933 and all requirements of the Securities and Exchange Commission, hereby ratifying and confirming our signatures as they may be signed by our said attorneys, or any of them, to said Registration Statement and any and all amendments thereto. Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

| <u>SIGNATURE</u>  | <u>TITLE</u>  | <u>DATE</u>    |
|---|---|----------------|
| <u>/s/ NESTOR JARAMILLO</u><br>Nestor Jaramillo               | President, CEO, and Director<br>(principal executive officer) | April 21, 2022 |
| <u>/s/ GEORGE MONTAGUE</u><br>George Montague                 | Chief Financial Officer<br>(principal financial officer)      | April 21, 2022 |
| <u>/s/ JOHN L. ERB</u><br>John L. Erb                         | Chairman of the Board and Director                            | April 21, 2022 |
| <u>/s/ STEVE BRANDT</u><br>Steve Brandt                       | Director  | April 21, 2022 |
| <u>/s/ MARIA ROSA COSTANZO, MD</u><br>Maria Rosa Costanzo, MD | Director  | April 21, 2022 |
| <u>/s/ JON W. SALVESON</u><br>Jon W. Salvesson                | Director  | April 21, 2022 |
| <u>/s/ GREGORY D. WALLER</u><br>Gregory D. Waller             | Director  | April 21, 2022 |
| <u>/s/ WARREN S. WATSON</u><br>Warren S. Watson               | Director  | April 21, 2022 |

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HONIGMAN

(269) 337-7700

Honigman LLP  
Attorneys and CounselorsFax: (269) 337-7701

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April 21, 2022

Nuwellis, Inc.  
12988 Valley View Road  
Eden Prairie, MN 55344**RE: Registration Statement on Form S-8**

Ladies and Gentlemen:

We have acted as counsel to Nuwellis, Inc., a Delaware corporation (the “**Company**”), in connection with preparing and filing with the Securities and Exchange Commission (the “**Commission**”) pursuant to the Securities Act of 1933, as amended (the “**Securities Act**”) of a Registration Statement on Form S-8 (the “**Registration Statement**”). The Registration Statement relates to the registration under the Securities Act of a maximum of 1,752,348 shares (the “**Shares**”) of the Company’s common stock, \$0.0001 par value per share (the “**Common Stock**”), that may be issued pursuant to awards under the Company’s 2017 Equity Incentive Plan, 2013 Non-Employee Directors’ Equity Incentive Plan, and 2021 Inducement Plan (as such plans are amended from time to time, collectively, the “**Plans**”).

In connection with this opinion letter, we have examined and relied upon originals or copies of such records, documents, certificates, opinions, memoranda and other instruments as in our judgment are necessary or appropriate to enable us to render the opinions expressed below.

In rendering the opinions in this opinion letter, we have assumed the genuineness and authenticity of all signatures on original documents; the authenticity of all documents submitted to us as originals; the conformity to originals of all documents submitted to us as copies; the accuracy, completeness and authenticity of certificates of public officials; and the due authorization, execution and delivery of all documents where authorization, execution and delivery are prerequisites to the effectiveness of such documents.

Our opinions herein are expressed solely with respect to the General Corporation Law of the State of Delaware, as amended. Our opinions are based on these laws as in effect on the date hereof. We express no opinion as to whether the laws of any jurisdiction are applicable to the subject matter hereof. We are not rendering any opinion as to compliance with any federal or state antifraud law, rule or regulation relating to securities, or to the sale or issuance thereof. It is understood that this opinion letter is to be used only in connection with the offer and sale of the Shares while the Registration Statement is in effect and only speaks as of the date of this opinion letter.

On the basis of the foregoing and in reliance thereon, and subject to the qualifications herein stated, we are of the opinion that the Shares are duly authorized and, when issued and sold by the Company in accordance with the Plan, the awards thereunder, the Registration Statement and the related prospectus, will be validly issued, fully paid and non-assessable.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement. In giving this consent, we do not admit that we are within the category of persons whose consent is required by Section 7 of the Securities Act or the rules and regulations promulgated thereunder by the Commission. This opinion is expressed as of the date hereof, and we disclaim any undertaking to advise you of any subsequent changes in the facts stated or assumed herein or of any subsequent changes in applicable law.

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Very truly yours,

/s/ HONIGMAN LLP

HONIGMAN LLP

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Honigman LLP • 650 Trade Centre Way • Suite 200 • Kalamazoo, Michigan 49002-0402

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CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in the Registration Statement on Form S-8 of Nuwellis, Inc. and subsidiary of our report dated March 3, 2022, relating to the consolidated financial statements of Nuwellis, Inc. and subsidiary in the Annual Report on Form 10-K for the year ended December 31, 2021.

/s/ BAKER TILLY US, LLP  
Minneapolis, Minnesota  
April 21, 2022

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## CALCULATION OF FILING FEE TABLE

## Form S-8

(Form Type)

## Nuwellis, Inc.

(Exact Name of Registrant as Specified in its Charter)

**Table I: Newly Registered Securities**

| Security Type                 | Security Class Title  | Fee Calculation Rule        | Amount Registered           | Proposed Maximum Offering Price Per Unit | Maximum Aggregate Offering Price | Fee Rate   | Amount of Registration Fee |
|-------------------------------|---|-----------------------------|-----------------------------|--|----------------------------------|------------|----------------------------|
| Equity                        | Common stock, par value \$0.001 per share, reserved for issuance under the 2017 Equity Incentive Plan                         | Rule 457(c) and Rule 457(h) | 1,457,853 <sup>(1)(4)</sup> | \$0.93 <sup>(2)</sup>                    | \$1,355,803.29 <sup>(2)</sup>    | \$0.000927 | \$125.68                   |
| Equity                        | Common stock, par value \$0.001 per share, reserved for issuance under the 2013 Non-Employee Directors' Equity Incentive Plan | Rule 457(c) and Rule 457(h) | 259,495 <sup>(1)(5)</sup>   | \$0.93 <sup>(2)</sup>                    | \$241,330.35 <sup>(2)</sup>      | \$0.000927 | \$22.37                    |
| Equity                        | Common stock, par value \$0.001 per share, reserved for issuance under the 2021 Inducement Plan                               | Rule 457(c) and Rule 457(h) | 35,000 <sup>(1)(6)</sup>    | \$0.93 <sup>(2)</sup>                    | \$32,550 <sup>(2)</sup>          | \$0.000927 | \$3.02                     |
| <b>Total Offering Amounts</b> |   |                             |                             |  | \$1,629,683.64 <sup>(2)</sup>    |            | \$151.07                   |
| <b>Total Fee Offsets</b>      |   |                             |                             |  |                                  |            | — <sup>(3)</sup>           |
| <b>Net Fee Due</b>            |   |                             |                             |  |                                  |            | \$151.07                   |

(1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the "*Securities Act*"), this Registration Statement shall also cover any additional shares of the Registrant's common stock ("*Common Stock*") that become issuable under the Plans (as defined below) herein by reason of any stock dividend, stock split, recapitalization, or other similar transaction effected without receipt of consideration that increases the number of outstanding shares of the Registrant's outstanding common stock, as applicable.

- (2) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(c) and Rule 457(h) under the Securities Act. The offering price per share and aggregate offering price are based on the average of the high and low prices of the Registrant's Common Stock as reported on the Nasdaq Capital Market on April 20, 2022, a date within five business days prior to the date of filing of this Registration Statement, for: (i) shares reserved for grant pursuant to the Registrant's 2017 Equity Incentive Plan (as amended, the "**2017 EIP**"); (ii) shares reserved for grant pursuant to the Registrant's 2013 Non-Employee Directors' Equity Incentive Plan (the "**Directors' EIP**"); and (iii) shares reserved for grant pursuant to the Registrant's 2021 Inducement Plan (as amended, the "**2021 Inducement Plan**"; and collectively, with the 2017 EIP and the Directors' EIP, the "**Plans**").
  - (3) The Registrant does not have any fee offsets.
  - (4) Consists of shares that were automatically added to the shares authorized for issuance under the 2017 EIP on January 1, 2021 pursuant to an "evergreen" provision contained in the 2017 EIP. Pursuant to the 2017 EIP, the share reserve will automatically increase on January 1st of each year, for a period of not more than ten years, commencing on January 1, 2018 and ending on (and including) January 1, 2020, to an amount equal to thirteen percent (13%) of the fully diluted shares outstanding on December 31st of the preceding calendar year and commencing on January 1, 2021 and on January 1st of each year thereafter and ending on (and including) January 1, 2027, to an amount equal to seventeen percent (17%) of the fully diluted as of December 31st of the preceding calendar year; provided that the Registrant's Board of Directors (the "**Board**") may act prior to January 1st of a given year to provide that there will be no January 1st increase in the share reserve for such year or that the increase in the share reserve for such year will be a lesser number of shares than would otherwise occur.
  - (5) Consists of shares that were automatically added to the shares authorized for issuance under the Directors' EIP on January 1, 2021 pursuant to an "evergreen" provision contained in the Directors' EIP. Pursuant to the Directors' EIP, the share reserve will automatically increase on January 1st of each year, for a period of not more than ten years, commencing on January 1, 2014 and ending on (and including) January 1, 2023, by an amount equal to two percent (2%) of the fully diluted shares outstanding on December 31st of the preceding calendar year; provided that the Board may act prior to January 1st of a given year to provide that there will be no January 1st increase in the share reserve for such year or that the increase in the share reserve for such year will be a lesser number of shares than would otherwise occur.
  - (6) Consists of shares reserved for grant under the 2021 Inducement Plan pursuant to a First Amendment to the 2021 Inducement Plan that was approved by the Board on April 11, 2022.
-