

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): **October 27, 2023**

AVID BIOSERVICES, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State of other jurisdiction
of incorporation)

001-32839
(Commission
File Number)

95-3698422
(IRS Employer
Identification No.)

14191 Myford Road, Tustin, California 92780
(Address of Principal Executive Offices)

Registrant's telephone number, including area code: **(714) 508-6100**

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425).
- Soliciting material pursuant to Rule 14A-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each Class	Trading Symbol	Name of each exchange on which registered
Common Stock, \$0.001 par value per share	CDMO	The NASDAQ Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

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 13(a) of the Exchange Act.

ITEM 1.01 ENTRY INTO A MATERIAL DEFINITIVE AGREEMENT

On October 27, 2023, Avid Bioservices, Inc. (the “Borrower” and “Company”), entered into Amendment No. 1 to the Credit Agreement (the “Amendment”) among the Borrower, the Lenders (as defined in the Credit Agreement), and Bank of America, N.A., as administrative agent, which amends the Credit Agreement dated as of March 14, 2023 (the “Credit Agreement”) among the Borrower, the guarantors, the lenders, and Bank of America, N.A., as administrative agent and letter of credit issuer. The Amendment, among other things, (a) extends the maturity date of the revolving credit facility (“Credit Facility”) to October 25, 2024, (b) amends the applicable interest rate applied to loans under the Credit Facility as described below, and (c) increases the aggregate amount of indebtedness the Company can incur at any one time for fixed or capital assets. Other than the foregoing, the material terms of the Credit Agreement remain unchanged.

Loans under the Credit Facility will bear interest on the outstanding principal amount thereof, at either (1) a term SOFR rate for a specified interest period plus a SOFR adjustment (equal to 0.10%) plus a margin of 1.60% or (2) base rate plus a margin of 0.60% at the option of the Borrower.

This summary of the Amendment does not purport to be complete and is qualified in its entirety by reference to the text of the Amendment, a copy of which is filed as Exhibit 10.1 hereto and incorporated herein by reference.

ITEM 2.03 CREATION OF A DIRECT FINANCIAL OBLIGATION OR AN OBLIGATION UNDER AN OFF-BALANCE SHEET ARRANGEMENT OF A REGISTRANT

The information set forth under Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference.

ITEM 9.01 FINANCIAL STATEMENTS AND EXHIBITS

(d) Exhibits. The following material is filed as an exhibit to this Current Report on Form 8-K:

Exhibit Number	Description
10.1	<u>Amendment No. 1 to Credit Agreement, dated as of October 27, 2023, among Avid Bioservices, Inc., as the Borrower, the Lenders party hereto, and Bank of America, N.A., as Administrative Agent.</u>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

AVID BIOSERVICES, INC.

Date: November 2, 2023

By: /s/ Daniel R. Hart
Daniel R. Hart
Chief Financial Officer

AMENDMENT NO. 1 TO CREDIT AGREEMENT

THIS AMENDMENT NO. 1 TO CREDIT AGREEMENT, dated as of October 27, 2023 (this "Amendment"), is by and among AVID BIOSERVICES, INC. (the "Borrower"), the Lenders party hereto, and **BANK OF AMERICA, N.A.**, as administrative agent (in such capacity, the "Administrative Agent"). Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement.

WITNESSETH

WHEREAS, the Borrower, certain of its Affiliates from time to time party thereto, certain banks and financial institutions from time to time party thereto (the "Lenders") and the Administrative Agent are parties to that certain Credit Agreement dated as of March 14, 2023 (as amended, modified, extended, restated, replaced, or supplemented from time to time, the "Credit Agreement");

WHEREAS, the Borrower has requested that the Lenders amend certain provisions of the Credit Agreement; and

WHEREAS, the Lenders are willing to make such amendments to the Credit Agreement, in accordance with and subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the agreements hereinafter set forth, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I
AMENDMENTS TO CREDIT AGREEMENT

1.1 The definition of "Applicable Rate" set forth in Section 1.01 of the Credit Agreement is hereby amended in its entirety as follows:

"Applicable Rate" means a per annum rate equal to (x) 1.60% for Term SOFR Loans and the Letter of Credit Fee, (y) 0.60% for Base Rate Loans, and (z) .25% for the commitment fee described in Section 2.09(a).

1.2 The definition of "Maturity Date" set forth in Section 1.01 of the Credit Agreement is hereby amended in its entirety as follows:

"Maturity Date" means October 25, 2024; *provided, however*, that, if such date is not a Business Day, the Maturity Date shall be the next preceding Business Day.

1.3 Section 7.02(c) of the Credit Agreement is hereby amended in its entirety as follows:

(c) Indebtedness in respect of Capitalized Leases, Synthetic Lease Obligations and purchase money obligations for fixed or capital assets within the limitations set forth in Section 7.01(i); *provided, however*, that the aggregate amount of all such Indebtedness at any one time outstanding shall not exceed \$10,000,000;

**ARTICLE II
CONDITIONS TO EFFECTIVENESS**

2.1 Closing Conditions. This Amendment shall become effective as of the day and year first set forth above (the "Amendment Effective Date") upon satisfaction (or waiver) of the following conditions (in each case, in form and substance reasonably acceptable to the Administrative Agent):

- (a) Executed Amendment. The Administrative Agent shall have received a copy of this Amendment duly executed by each of the Borrower, the Lenders and the Administrative Agent.
- (b) Default. After giving effect to this Amendment, no Default or Event of Default shall exist.
- (c) Fees and Expenses. The Administrative Agent shall have received from the Borrower such fees and expenses that are payable in connection with the consummation of the transactions contemplated hereby and counsel for the Administrative Agent shall have received from the Borrower payment of all outstanding fees and expenses previously incurred and all fees and expenses incurred in connection with this Amendment.
- (d) Miscellaneous. All other documents and legal matters in connection with the transactions contemplated by this Amendment shall be reasonably satisfactory in form and substance to the Administrative Agent and its counsel.

**ARTICLE III
MISCELLANEOUS**

3.1 Amended Terms. On and after the Amendment Effective Date, all references to the Credit Agreement in each of the Loan Documents shall hereafter mean the Credit Agreement as amended by this Amendment. Except as specifically amended hereby or otherwise agreed, the Credit Agreement is hereby ratified and confirmed and shall remain in full force and effect according to its terms.

3.2 Representations and Warranties of the Borrower. The Borrower represents and warrants as follows:

- (a) It has taken all necessary action to authorize the execution, delivery and performance of this Amendment.
- (b) This Amendment has been duly executed and delivered by such Person and constitutes such Person's legal, valid and binding obligation, enforceable in accordance with its terms, except as such enforceability may be subject to (i) bankruptcy, insolvency, reorganization, fraudulent conveyance or transfer, moratorium or similar laws affecting creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).
- (c) No consent, approval, authorization or order of, or filing, registration or qualification with, any court or governmental authority or third party is required in connection with the execution, delivery or performance by such Person of this Amendment.
- (d) The representations and warranties set forth in Article V of the Credit Agreement are true and correct as of the date hereof (except for those which expressly relate to an earlier date).
- (e) After giving effect to this Amendment, no event has occurred and is continuing which constitutes a Default or an Event of Default.
- (f) The Collateral Documents continue to create a valid security interest in, and Lien upon, the Collateral, in favor of the Administrative Agent, for the benefit of the Lenders, which security interests and Liens are perfected in accordance with the terms of the Collateral Documents and prior to all Liens other than Permitted Liens.
- (g) The Obligations are not reduced or modified by this Amendment and are not subject to any offsets, defenses or counterclaims.

3.3 Reaffirmation of Obligations. The Borrower hereby ratifies the Credit Agreement and acknowledges and reaffirms (a) that it is bound by all terms of the Credit Agreement applicable to it and (b) that it is responsible for the observance and full performance of its respective Obligations.

3.4 Loan Document. This Amendment shall constitute a Loan Document under the terms of the Credit Agreement.

3.5 Expenses. The Borrower agrees to pay all reasonable costs and expenses of the Administrative Agent in connection with the preparation, execution and delivery of this Amendment, including without limitation the reasonable fees and expenses of the Administrative Agent's legal counsel.

3.6 Further Assurances. The Loan Parties agree to promptly take such action, upon the request of the Administrative Agent, as is necessary to carry out the intent of this Amendment.

3.7 Entirety. This Amendment and the other Loan Documents embody the entire agreement among the parties hereto and supersede all prior agreements and understandings, oral or written, if any, relating to the subject matter hereof.

3.8 Counterparts; Electronic Signatures. This Amendment may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Amendment or any other document required to be delivered hereunder, by fax transmission or e-mail transmission (e.g. "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Agreement. Without limiting the foregoing, upon the request of any party, such fax transmission or e-mail transmission shall be promptly followed by such manually executed counterpart. Section 11.18 of the Credit Agreement is hereby incorporated by reference herein and is made a part hereof.

3.9 No Actions, Claims, Etc. As of the date hereof, the Borrower hereby acknowledges and confirms that it has no knowledge of any actions, causes of action, claims, demands, damages and liabilities of whatever kind or nature, in law or in equity, against the Administrative Agent, the Lenders, or the Administrative Agent's or the Lenders' respective officers, employees, representatives, agents, counsel or directors arising from any action by such Persons, or failure of such Persons to act under the Credit Agreement on or prior to the date hereof.

3.10 GOVERNING LAW. THIS AMENDMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

3.11 Successors and Assigns. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

3.12 Consent to Jurisdiction; Service of Process; Waiver of Jury Trial. The jurisdiction, service of process and waiver of jury trial provisions set forth in Sections 11.14 and 11.15 of the Credit Agreement are hereby incorporated by reference, *mutatis mutandis*.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF the parties hereto have caused this Amendment to be duly executed on the date first above written.

BORROWER:

AVID BIOSERVICES, INC.

By: /s/ Daniel Hart

Name: Daniel Hart

Title: Chief Financial Officer

ADMINISTRATIVE AGENT AND LENDER:

BANK OF AMERICA, N.A.,

By: /s/ Kenneth Wong

Name: Kenneth Wong

Title: Senior Vice President