

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 18, 2022**

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 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

At the 2022 Annual Meeting of Stockholders (the “Annual Meeting”) of Avid Bioservices, Inc. (the “Company”) held on October 18, 2022 in a virtual-only format, the stockholders of the Company approved an amendment to the Company’s Restated Certificate of Incorporation which limits the liability of specified executive officers of the Company (the “Certificate of Amendment”). The Certificate of Amendment became effective upon filing with the Secretary of State of the State of Delaware on October 19, 2022. A copy of the Certificate of Amendment is attached as Exhibit 3.1 hereto and is incorporated into this Item 5.03 by reference.

Item 5.07 Submission of Matters to a Vote of Security Holders.

At the Annual Meeting, of the 62,167,454 shares of the Company’s common stock outstanding (as of the record date of August 22, 2022) and entitled to vote, 52,330,069 shares were present in-person virtually or represented by proxy, representing approximately 84% of the total outstanding shares entitled to vote. The final voting results of each proposal voted on at the Annual Meeting are set forth below. For more information about the proposals set forth below, please refer to the Company’s Definitive Proxy Statement filed with the Securities and Exchange Commission on August 29, 2022.

Proposal No. 1: Election of Directors

The Company’s stockholders elected each of the seven nominees named below to serve on the Company’s Board of Directors until the Company’s 2023 Annual Meeting of Stockholders. Election of each director required approval by a plurality of the votes cast and thus votes against were not applicable. The votes were as follows:

| Nominee | Votes For | Votes Withheld | Broker Non-Votes |
|----------------------------|------------------|-----------------------|-------------------------|
| Esther M. Alegria, Ph.D. | 46,250,807 | 1,064,951 | 5,014,311 |
| Joseph Carleone, Ph.D. | 46,409,928 | 905,830 | 5,014,311 |
| Nicholas S. Green | 46,532,784 | 782,974 | 5,014,311 |
| Richard B. Hancock | 46,527,189 | 788,569 | 5,014,311 |
| Catherine J. Mackey, Ph.D. | 46,237,408 | 1,078,350 | 5,014,311 |
| Gregory P. Sargen | 46,376,294 | 939,464 | 5,014,311 |
| Jeanne A. Thoma | 46,307,438 | 1,008,320 | 5,014,311 |

Proposal No. 2: Ratification of Independent Registered Public Accounting Firm

The Company’s stockholders ratified the appointment of Ernst & Young LLP as the Company’s independent registered public accounting firm for the fiscal year ending April 30, 2023. The votes were as follows:

| Votes For | Votes Against | Abstain |
|------------------|----------------------|----------------|
| 51,688,206 | 629,797 | 12,066 |

Proposal No. 3: To Approve, On an Advisory Basis, the Compensation of the Named Executive Officers

The Company's stockholders approved, on an advisory basis, a non-binding resolution approving the compensation of the named executive officers as disclosed in the Company's Definitive Proxy Statement for its 2022 Annual Meeting of Stockholders. The votes were as follows:

| Votes For | Votes Against | Abstain | Broker Non-Votes |
|------------------|----------------------|----------------|-------------------------|
| 46,714,906 | 405,730 | 195,122 | 5,014,311 |

Proposal No. 4: To Approve an Amendment to the Company's Restated Certificate of Incorporation

The Company's stockholders approved an amendment to the Company's Restated Certificate of Incorporation to limit the liability of specified executive officers of the Company. The votes were as follows:

| Votes For | Votes Against | Abstain | Broker Non-Votes |
|------------------|----------------------|----------------|-------------------------|
| 46,124,286 | 840,228 | 351,244 | 5,014,311 |

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 |
|-----------------------|---|
| 3.1 | Certificate of Amendment to Restated Certificate of Incorporation of Avid Bioservices, Inc., as filed on October 19, 2022 with the Secretary of State of the State of Delaware. |
| 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: October 21, 2022

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

EXHIBIT INDEX

| Exhibit Number | Description |
|---------------------------|--|
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| 104 | Cover Page Interactive Data File (embedded within the Inline XBRL document). |

**CERTIFICATE OF AMENDMENT
OF
RESTATED CERTIFICATE OF INCORPORATION
OF
AVID BIOSERVICES, INC.**

AVID BIOSERVICES, INC., a corporation duly organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify that:

1. The Restated Certificate of Incorporation of the Corporation, as amended to date, is hereby further amended by striking out Article VI in its entirety and by substituting the following in lieu thereof:

"VI.

LIMITATION OF LIABILITY

Section 6.01. Limitation on Liability. A director or officer of this Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director or officer, provided that this provision shall not eliminate or limit the liability of a director or an officer (i) for any breach of his duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law, (iii) under Section 174 of the General Corporation Law of the State of Delaware, (iv) for any transaction from which the director or officer derives and improper personal benefit, or (v) an officer in any action by or in the right of the Corporation. If the General Corporation Law of the State of Delaware is hereafter amended to authorize corporate action further limiting or eliminating the personal liability of directors or officers, then the liability of the directors or officers of the Corporation shall be limited or eliminated to the fullest extent permitted by the General Corporation Law of the State of Delaware, as so amended from time to time. Any repeal or modification of this Article 6 by the stockholders of the Corporation shall be prospective only, and shall not adversely affect any limitation on the personal liability of a director or officer of the Corporation existing at the time of such repeal or modification. All references in this paragraph to an officer shall mean only a person who at the time of an act or omission as to which liability is asserted is deemed to have consented to service by the delivery of process to the registered agent of the Corporation pursuant to § 3114(b) of Title 10 (for purposes of this sentence only, treating residents of the State of Delaware as if they were nonresidents to apply of § 3114(b) of Title 10 to this sentence)."

2. The foregoing amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, AVID BIOSERVICES, INC. has caused this Certificate to be executed by its duly authorized officer on this 18th day of October, 2022.

By: /s/ Nicholas S. Green

Name: Nicholas S. Green

Title: President and Chief Executive Officer