

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): **July 2, 2021**

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.)

2642 Michelle Drive, Suite 200, 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 AMENDMENT TO THE ARTICLES OF INCORPORATION OR BYLAWS; CHANGE IN FISCAL YEAR

On July 2, 2021, Avid Bioservices, Inc. (the “Company”) filed with the Delaware Secretary of State a Restated Certificate of Incorporation that combined into one document the Company’s Certificate of Incorporation as amended and supplemented to date. The Restated Certificate of Incorporation only restates and integrates, and does not further amend the provisions of the Certificate of Incorporation of the Company. The filing of the Restated Certificate of Incorporation on July 2, 2021 was authorized by the Board of Directors of the Company, in accordance with Section 245 of the Delaware General Corporation Law. A copy of the Restated Certificate of Incorporation is attached to this Current Report on Form 8-K as Exhibit 3.1.

Prior to filing the above-referenced Restated Certificate of Incorporation, on July 1, 2021, the Company filed a Certificate of Elimination with the Delaware Secretary of State, pursuant to Section 151(g) of the Delaware General Corporation Law. The Certificate of Elimination eliminated the Class B Preferred Stock from the Certificate of Incorporation and eliminated the certificates of designation for the Class C Preferred Stock, Series D Preferred Stock, and Series E Preferred Stock. No shares of such securities were outstanding or will be issued. A copy of the Certificate of Elimination is attached to this Current Report on Form 8-K as Exhibit 3.2.

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**

- | | |
|-----|---|
| 3.1 | <u>Restated Certificate of Incorporation, as filed with the Delaware Secretary of State on July 2, 2021.</u> |
| 3.2 | <u>Certificate of Elimination of Class B Preferred Stock, Class C Preferred Stock, Series D Preferred Stock, and Series E Preferred Stock, as filed with the Delaware Secretary of State on July 1, 2021.</u> |

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: July 7, 2021

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

EXHIBIT INDEX

Exhibit Number	Description
3.1	<u>Restated Certificate of Incorporation, as filed with the Delaware Secretary of State on July 2, 2021.</u>
3.2	<u>Certificate of Elimination of Class B Preferred Stock, Class C Preferred Stock, Series D Preferred Stock, and Series E Preferred Stock, as filed with the Delaware Secretary of State on July 1, 2021.</u>

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

Pursuant to Section 245 of the
General Corporation Law of the State of Delaware

Avid Bioservices, Inc. (the “Corporation”), a corporation organized and existing under the General Corporation Law of the State of Delaware (the “DGCL”), hereby certifies as follows:

FIRST: The name of the Corporation is Avid Bioservices, Inc. The Corporation was originally incorporated under the name Techniclone Corporation. The original Certificate of Incorporation of the Corporation was filed with the office of the Secretary of State of the State of Delaware on September 25, 1996, and it was amended by a Certificate of Amendment to the Certificate of Incorporation filed with the office of the Secretary of State of the State of Delaware on October 25, 2000 (as amended, the “Amended COI”), changing the Corporation’s name from Techniclone Corporation to Peregrine Pharmaceuticals, Inc., and the Amended COI was further amended by a Certificate of Amendment to the Amended COI filed with the office of the Secretary of State of the State of Delaware on January 3, 2018, changing the Corporation’s name from Peregrine Pharmaceuticals, Inc. to Avid Bioservices, Inc.

SECOND: This Restated Certificate of Incorporation, which only restates and integrates and does not further amend the provisions of the Certificate of Incorporation of the Corporation, as amended, has been duly adopted in accordance with the provisions of Section 245 of the DGCL, by the board of directors of the Corporation.

THIRD: The Certificate of Incorporation of the Corporation is hereby integrated and restated in its entirety to read as follows:

I.

NAME

Section 1.01 Name. The name of the corporation is Avid Bioservices, Inc. (the “Corporation”).

II.

REGISTERED OFFICE AND REGISTERED AGENT

Section 2.01 Registered Address. The address of the registered office of the Corporation in the State of Delaware is 1209 Orange Street, Wilmington, New Castle County, Delaware 19801. The name of the registered agent of the Corporation is National Registered Agents, Inc.

III.

CORPORATE PURPOSE

Section 3.01 Corporate Purpose. The purpose of the Corporation is to engage in any lawful activity for which corporations may be organized under the General Corporation Law of the State of Delaware, as amended from time to time.

IV.

CAPITAL STOCK

Section 4.01 Authorized Capital Stock. The total number of shares of all classes of stock which the Corporation shall have authority to issue is 155,000,000, of which (i) 150,000,000 shares shall be designated "Common Stock" and shall have a par value of \$0.001 per share (the "Common Stock"); and (ii) 5,000,000 shares shall be designated "Preferred Stock" and shall have a par value of \$0.001 (the "Preferred Stock"). The Board of Directors is authorized, subject to limitations prescribed by law, to provide for the issuance of the shares of the remaining authorized shares of Preferred Stock in one or more series, and by filling a certificate pursuant to the applicable law of the State of Delaware, to establish from time to time the number of shares to be included in each of such series, and to fix the designation, powers, preferences and rights of the shares of each such series and the qualifications, limitations or restrictions thereof. The authority of the Board with respect to each series shall include, but not limited to, determination of the following:

- (a) The number of shares constituting that series and the distinctive designation of that series;
- (b) The dividend rate on the shares of that series, whether dividends shall be cumulative and, if so, from which date or dates, and the relative rights of priority, if any, of payment of dividends on shares of that series;
- (c) Whether that series shall have voting rights, in addition to the voting rights provided by law and, if so, the terms of such voting rights;
- (d) Whether that series shall have conversion privileges and, if so, the terms and conditions of such conversion, including provision for adjustment of the conversion rate in such events as the Board of Directors shall determine;
- (e) Whether or not the shares of that series shall be redeemable and, if so, the terms and conditions of such redemption, including the date or dates upon or after which they shall be redeemable and the amount per share payable in case of redemption, which amount may vary under different conditions and at different redemption dates;
- (f) Whether that series shall have sinking fund for the redemption or purchase of shares of that series and, if so, the terms and amount of such sinking fund; and
- (g) The rights of the shares of that series in the event of voluntary or involuntary liquidation, dissolution or winding up of the Corporation, and the relative rights of priority, if any, of payment of shares of that series.

V.

BOARD OF DIRECTORS

Section 5.01 Board of Directors. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors and elections of directors need not be by and by written ballot unless otherwise provided in the Bylaws. The number of directors of the Corporation shall be fixed from time to time by the Board of Directors either by a resolution or Bylaw adopted by the affirmative vote or a majority of the entire Board of Directors.

VI.

LIMITATION OF DIRECTORS' LIABILITY

Section 6.01. Limitation on Liability. A director 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, provided that this provision shall not eliminate or limit the liability of a director (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, or (iv) for any transaction from which the director derives and improper personal benefit. 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, then the liability of the directors 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 of the Corporation existing at the time of such repeal or modification.

VII.

STOCKHOLDERS

Section 7.01 Meetings of Stockholders. Meetings of the Stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the Corporation may be kept (subject to any provision contained in the Delaware Statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or by the Bylaws of the Corporation.

Section 7.02 No Stockholder Action by Written Consent. Subject to the terms of any series of Preferred Stock, any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of the stockholders of the Corporation and may not be effected by any consent in writing by such stockholders.

VIII.

AMENDMENT OF BYLAWS

Section 8.01 Amendment of Bylaws. The Board of Directors of the Corporation shall have the power to make, alter, amend, change, add to or repeal the Bylaws of the Corporation.

IN WITNESS WHEREOF, the undersigned has executed this Restated Certificate of Incorporation as of this 1st day of July, 2021.

AVID BIOSERVICES, INC.

By: /s/Mark R. Ziebell
Name: Mark R. Ziebell
Title: Secretary

CERTIFICATE OF ELIMINATION
OF
CLASS B PREFERRED STOCK
AND
CLASS C PREFERRED STOCK
AND
SERIES D PREFERRED STOCK
AND
SERIES E PREFERRED STOCK
OF
AVID BIOSERVICES, INC.

Pursuant to Section 151 (g) of the
General Corporation Law of the State of Delaware

Avid Bioservices, Inc., a Delaware Corporation (the “Corporation”), does hereby certify as follows:

First: Pursuant to the authority vested in the Board of Directors of the Corporation (the “Board”) by the Certificate of Incorporation, as amended (the “Certificate of Incorporation”), the Board previously adopted resolutions creating and authorizing the following series of preferred stock:

- (i) 5,000 shares of Class B Convertible Preferred Stock (the “Class B Convertible Preferred Stock”), as evidenced by the Certification of Incorporation which sets forth the designation and terms for the Class B Convertible Preferred Stock, as filed with the Secretary of State of the State of Delaware on September 25, 1996.
- (ii) 17,200 shares of Class C Convertible Preferred Stock (the “Class C Convertible Preferred Stock”), as evidenced by the Certificate of Designation for Series C Convertible Preferred Stock (the “Class C Certificate of Designation”), as filed with the Secretary of State of the State of Delaware on April 23, 1997.
- (iii) 500,000 shares of Series D Preferred Stock (the “Series D Preferred Stock”), as evidenced by the Certification of Designation for Series D Preferred Stock (the “Series D Certificate of Designation”), as filed with the Secretary of State of the State of Delaware on March 16, 2006.
- (iv) 2,000,000 shares of Series E Convertible Preferred Stock (the “Series E Convertible Preferred Stock” and, collectively with the Class B Convertible Preferred Stock, the Class C Convertible Preferred Stock, the Series D Preferred Stock and the Series E Convertible Preferred Stock, the “Designated Preferred Stock”), as evidenced by the Certificate of Designation for Series E Convertible Preferred Stock (the “Series E Certificate of Designation”), as filed with the Secretary of State of the State of Delaware on February 12, 2014.

Second: None of the authorized shares of the Designated Preferred Stock are outstanding and none will be issued pursuant to the Certificate of Incorporation or respective Certificate of Designation.

Third: Pursuant to the authority conferred upon the Board pursuant to the Certificate of Incorporation, the Board adopted resolutions on June 28, 2021, approving the elimination of each of the Class B Convertible Preferred Stock, Class C Convertible Preferred Stock, Series D Preferred Stock, and Series E Convertible Preferred Stock as set forth herein:

RESOLVED, that none of the authorized shares of each of the Class B Convertible Preferred Stock, Class C Convertible Preferred Stock, Series D Preferred Stock, and Series E Convertible Preferred Stock are outstanding and none will be issued pursuant to the Certificate of Incorporation or respective Certificate of Designations

RESOLVED, that upon filing the Certificate of Elimination with the Secretary of State of Delaware, all matters set forth in the Certificate of Incorporation and Certificate of Designations shall be eliminated from the Certificate of Incorporation with respect to each of the Class B Convertible Preferred Stock, Class C Convertible Preferred Stock, Series D Preferred Stock, and Series E Convertible Preferred Stock; and

RESOLVED, that the officers of the Corporation be, and each of them hereby is, authorized and directed, in the name and on behalf of the Corporation, to prepare, execute and deliver to the Secretary of State of the State of Delaware the Certificate of Elimination as required by the General Corporation Law of the State of Delaware (the "DGCL") in order to effect the cancellation and elimination of each of the Class B Convertible Preferred Stock, Class C Convertible Preferred Stock, Series D Preferred Stock, and Series E Convertible Preferred Stock, and any and all documents required to be filed therewith.

Fourth: In accordance with Section 151(g) of the DGCL, the Certificate of Incorporation as effective immediately prior to the filing of this Certificate of Elimination is hereby amended to eliminate all reference to each of the Class B Convertible Preferred Stock, Class C Convertible Preferred Stock, Series D Preferred Stock, and Series E Convertible Preferred Stock.

IN WITNESS WHEREOF, the Corporation has caused this Certificate to be signed by its duly authorized officer this 1st day of July, 2021.

AVID BIOSERVICES, INC.

By: /s/ Mark R. Ziebell
Name: Mark R. Ziebell
Title: Secretary