Jaguar Health, Inc.
Form S-3
January 31, 2018
Table of Contents

As filed with the Securities and Exchange Commission on January 31, 2018

Registration No. 333-

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-3

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

JAGUAR HEALTH, INC.

(Exact name of registrant as specified in its charter)

Delaware	**46-2956775**
(State or Other Jurisdiction of Incorporation or Organization)	(I.R.S. Employer Identification No.)

201 Mission Street, Suite 2375

San Francisco, California 94105

(415) 371-8300

(Address, Including Zip Code, and Telephone Number, Including

Area Code, of Registrant s Principal Executive Offices)

Lisa A. Conte

Chief Executive Officer and President

Jaguar Health, Inc.

201 Mission Street, Suite 2375

San Francisco, California 94105

(415) 371-8300

(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent for Service)

Copies of all correspondence to:

Donald C. Reinke, Esq.

Reed Smith LLP

1510 Page Mill Road, Suite 110

Palo Alto, California 94304

(650) 352-0500

Approximate date of commencement of proposed sale of the securities to the public:

From time to time after the effective date of this registration statement.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box: o

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: x

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) 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. o

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. o

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. o

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. o

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, 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 o	Accelerated filer o	Non-accelerated filer o (Do not check if a smaller reporting company)	Smaller reporting company x Emerging growth company x

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. x

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be Registered(1)	Proposed Maximum Offering Price per Share(2)	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, par value $0.0001 per share, issuable upon conversion of First Amended Original Issue Discount Exchangeable Promissory Notes due 2018	6,018,210	$ 0.13	$ 782,367.30	$ 97.40
Total	6,018,210	$ 0.13	$ 782,367.30	$ 97.40

(1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended, this registration statement shall be deemed to cover additional securities that may be offered or issued to prevent dilution resulting from splits, dividends or similar transactions.

(2) Estimated solely for purposes of calculation of the registration fee in accordance with Rule 457(c) of the Securities Act, as amended, based on the average of the high and low prices reported for the shares of common stock as reported on the NASDAQ Capital Market on January 30, 2018.

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 Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

Table of Contents

The information in this prospectus is not complete and may be changed. The selling shareholders 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 an offer to buy these securities in any state where the offer, solicitation or sale is not permitted.

SUBJECT TO COMPLETION, DATED JANUARY 31, 2018

PROSPECTUS

JAGUAR HEALTH, INC.

6,018,210 Shares of Common Stock

This prospectus relates to the proposed resale or other disposition from time to time of up to 6,018,210 shares of Jaguar Health, Inc. voting common stock, $0.0001 par value per share, by the selling shareholders identified in this prospectus. These shares are issuable upon conversion of First Amended Exchangeable Promissory Notes due February 15, 2018 and April 1, 2018. We are not selling any shares of common stock under this prospectus and will not receive any of the proceeds from the sale or other disposition of common stock by the selling shareholders.

The selling shareholders or their pledgees, assignees or successors-in-interest may offer and sell or otherwise dispose of the shares of common stock described in this prospectus from time to time through public or private transactions at prevailing market prices, at prices related to prevailing market prices or at privately negotiated prices. The selling shareholders will bear all commissions and discounts, if any, attributable to the sales of shares. We will bear all other costs, expenses and fees in connection with the registration of the shares. See Plan of Distribution beginning on page 11 for more information about how the selling shareholders may sell or dispose of their shares of common stock.

Our common stock is listed on the NASDAQ Capital Market, under the symbol JAGX. On January 30, 2018, the last reported sale price of our common stock on the NASDAQ Capital Market was $0.13 per share.

Investing in our common stock involves a high degree of risk. Before deciding whether to invest in our securities, you should consider carefully the risks that we have described on page 7 of this prospectus under the caption Risk Factors and in the documents incorporated by reference into this prospectus.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The date of this prospectus is , 2018.

Table of Contents

TABLE OF CONTENTS

Table of Contents

ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement that we have filed with the Securities and Exchange Commission (the SEC) pursuant to which the selling shareholders named herein may, from time to time, offer and sell or otherwise dispose of the securities covered by this prospectus. You should not assume that the information contained in this prospectus is accurate on any date subsequent to the date set forth on the front cover of this prospectus or that any information we have incorporated by reference is correct on any date subsequent to the date of the document incorporated by reference, even though this prospectus is delivered or securities are sold or otherwise disposed of on a later date. It is important for you to read and consider all information contained in this prospectus, including the Information Incorporated by Reference herein, in making your investment decision. You should also read and consider the information in the documents to which we have referred you under the captions Where You Can Find More Information and Incorporation of Information by Reference in this prospectus.

Neither we nor the selling shareholders have authorized any dealer, salesman or other person to give any information or to make any representation other than those contained or incorporated by reference in this prospectus. You must not rely upon any information or representation not contained or incorporated by reference in this prospectus. This prospectus does not constitute an offer to sell or the solicitation of an offer to buy any of our securities other than the securities covered hereby, nor does this prospectus constitute an offer to sell or the solicitation of an offer to buy any securities in any jurisdiction to any person to whom it is unlawful to make such offer or solicitation in such jurisdiction. Persons who come into possession of this prospectus in jurisdictions outside the United States are required to inform themselves about, and to observe, any restrictions as to the offering and the distribution of this prospectus applicable to those jurisdictions.

We further note that the representations, warranties and covenants made in any agreement that is filed as an exhibit to any document that is incorporated by reference in the accompanying prospectus were made solely for the benefit of the parties to such agreement, including, in some cases, for the purpose of allocating risk among the parties to such agreements, and should not be deemed to be a representation, warranty or covenant to you. Moreover, such representations, warranties or covenants were accurate only as of the date when made. Accordingly, such representations, warranties and covenants should not be relied on as accurately representing the current state of our affairs.

Unless the context otherwise requires, references in this prospectus to Jaguar, the Company, we, us, and our refer to Jaguar Health, Inc.

Table of Contents

PROSPECTUS SUMMARY

The following is a summary of what we believe to be the most important aspects of our business and the offering of our securities under this prospectus. We urge you to read this entire prospectus, including the more detailed financial statements, notes to the financial statements and other information incorporated by reference from our other filings with the SEC. Each of the risk factors could adversely affect our business, operating results and financial condition, as well as adversely affect the value of an investment in our securities.

Overview

We are a natural-products pharmaceuticals company focused on the development and commercialization of novel, sustainably derived gastrointestinal products for both human prescription use and animals on a global basis. Our wholly-owned subsidiary, Napo Pharmaceuticals, Inc. (Napo), focuses on the development and commercialization of proprietary human gastrointestinal pharmaceuticals for the global marketplace from plants used traditionally in rainforest areas. Our Mytesi (crofelemer) product is approved by the U.S. Food and Drug Administration (FDA) for the symptomatic relief of noninfectious diarrhea in adults with HIV/AIDS on antiretroviral therapy. In the animal health space, we focus on developing and commercializing first-in-class gastrointestinal products for companion and production animals, foals, and high value horses.

Jaguar was founded in San Francisco, California as a Delaware corporation on June 6, 2013. Napo formed Jaguar to develop and commercialize animal health products. Effective as of December 31, 2013, Jaguar was a wholly-owned subsidiary of Napo, and until May 13, 2015, Jaguar was a majority-owned subsidiary of Napo. On July 31, 2017, the merger of Jaguar Animal Health, Inc. and Napo became effective, at which point Jaguar Animal Health s name changed to Jaguar Health, Inc. and Napo began operating as a wholly-owned subsidiary of Jaguar focused on human health and the ongoing commercialization of, and development of follow-on indications for, Mytesi.

Mytesi is a novel, first-in-class anti-secretory agent which has a basic normalizing effect locally on the gut, and this mechanism of action has the potential to benefit multiple disorders. We believe we control commercial rights for Mytesi for all indications, territories and patient populations globally, and we are pursuing a follow-on indication for Mytesi in cancer related diarrhea (CRD), an important supportive care indication for patients undergoing primary or adjuvant chemotherapy for cancer treatment. Mytesi is also in development for rare disease indications for infants and children with congenital diarrheal disorders and short bowel syndrome (SBS); for irritable bowel syndrome (IBS) (Mytesi has demonstrated benefit to IBS-D patients in published Phase 2 studies); for supportive care for inflammatory bowel disease (IBD); and as a second-generation anti-secretory agent for use in cholera patients. Mytesi has received orphan-drug designation for SBS.

Our management team has significant experience in gastrointestinal product development for both humans and animals. Napo was founded 28 years ago to perform drug discovery and development by leveraging the knowledge of traditional healers working in rainforest areas. Ten members of the Jaguar and Napo team have been together for more than 15 years. Dr. Steven King, our executive vice president of sustainable supply, ethnobotanical research and intellectual property, and Lisa Conte, our founder, president and CEO, have worked together for more than 28 years. Together, these dedicated personnel successfully transformed crofelemer, which is extracted from trees growing in the rainforest, to Mytesi, which is a natural, sustainably harvested, FDA-approved drug.

The active ingredient in Mytesi is the basis for our eleven different animal health products across eight different species, all of which work by the same mechanism of action, which is highly conserved across all mammals. In the animal health space, we focus on developing and commercializing first-in-class gastrointestinal products for companion and production animals, foals, and high value horses. Portfolio planning for the animal health space is of utmost importance to us, given the wide array of potential species-specific products and because we do not want animal-related research and development activities to divert significant financial resources while we are focusing on growing Mytesi sales and seeking to move the company towards profitability. Canalevia is our lead veterinary prescription drug product candidate, intended for treatment of various forms of diarrhea in dogs. We have received minor use in a minor species (MUMS) designation for Canalevia for chemotherapy-induced diarrhea (CID) and EID in dogs. If Canalevia is approved for CID and EID in dogs, we expect to conduct the commercial launch of Canalevia for these indications in the first half of 2018. We have completed the pivotal trial for acute diarrhea in dogs and are in discussions with the CVM with respect to our plans for this indication of Canalevia.

The equine athlete business continues to be a major focus area for the animal health side of our business. The demand, particularly in the Middle East, for a total gut health product for high performance equine athletes appears to be quite strong, and we believe this is indicative of an unmet medical need. Based on this demand, and with support from studies we conducted in horses

Table of Contents

with gastric ulcers a prevalent problem in competing horses and also horses with diarrhea, we have transitioned development of Equilevia to a create a non-prescription, personalized, premium proprietary product for total gut health in equine athletes. Gut health is of critical importance in horses, as conditions such as colic can lead to the death of an otherwise healthy horse in a matter of hours. We continue to assess the size of the opportunity represented by this program and potential partnerships that would increase access to relevant competitive stables and trainers.

We will consider additional animal formulations and additional animal product expenditures from time to time as part of portfolio planning and prioritization in the context of the combined company.

There are significant barriers to entry for Mytesi (crofelemer). Through Napo, we hold an extensive global patent portfolio. At the present time we hold 110 issued worldwide patents, with coverage in many cases that extends until 2031. These issued patents cover multiple indications including HIV-AIDS diarrhea, IBS, IBD, manufacturing, enteric protection from gastric juices, among others. We also have 68 pending patent applications worldwide in the human and animal health areas that are being prosecuted.

Mytesi is the first oral drug approved by the FDA under botanical guidance, which provides another barrier to entry from potential generic competition. The FDA requires that the manufacturer of crofelemer use a validated proprietary bioassay to release the drug substance and drug product of Mytesi. While most generic products are fashioned to meet chemical release specifications that are in the public domain, the specifics of this assay are not publicly available. In addition, Mytesi is not systemically absorbed, so the classic approach of creating a generic drug by matching pharmakinetic blood levels is not possible. A generic player would have to conduct costly and risky clinical trials.

Crofelemer is extracted from the Croton lechleri tree, which we sustainably harvest and manage through programs that we have been developing over the past 28 years. This process has involved working with communities to plant trees, obtaining permits for export, and creating a supply network that is robust and reliable.

We continue to have working relationships with partners that began in the 1990s. Additionally, through the establishment of a nonprofit called the Healing Forest Conservancy (HFC), our team has created a long-term mechanism for benefit sharing that recognizes the intellectual contribution of indigenous populations. This program is intended to contribute to the continued strength and effectiveness of the valued and strategically important relationships we have carefully cultivated over the past 28 years.

We, through Napo, own the intellectual property rights and technology related to our products and product candidates, including rights to a library of over 2,300 medicinal plants, for all veterinary treatment uses and indications for all species of animals. This includes rights to Neonorm, Canalevia, and other distinct prescription drug product candidates in our pipeline along with the corresponding existing preclinical and clinical data packages. We also recently expanded this intellectual property portfolio to include combinations of our proprietary anti-secretory product lines, Canalevia and Neonorm, with the non-absorbed antibiotic, rifaximin, for gastrointestinal indications in all animals.

About Mytesi

Mytesi (crofelemer) is an antidiarrheal indicated for the symptomatic relief of noninfectious diarrhea in adult patients with HIV/AIDS on antiretroviral therapy (ART). Mytesi is not indicated for the treatment of infectious diarrhea. Rule out infectious etiologies of diarrhea before starting Mytesi. If infectious etiologies are not considered, there is a risk that patients with infectious etiologies will not receive the appropriate therapy and their disease may worsen. In clinical studies, the most common adverse reactions occurring at a rate greater than placebo were upper respiratory tract infection (5.7%), bronchitis (3.9%), cough (3.5%), flatulence (3.1%), and increased bilirubin (3.1%).

Crofelemer, the active ingredient in Mytesi, is a botanical (plant-based) drug extracted and purified from the red bark sap of the medicinal *Croton lechleri* tree in the Amazon rainforest. Napo has established a sustainable harvesting program for crofelemer to ensure a high degree of quality and ecological integrity.

Private Placement of Shares and Promissory Notes

On March 1, 2017, Napo Pharmaceuticals, Inc. (Napo) entered into a Note Purchase Agreement (the MEF/Riverside NPA) with MEF I, LP and Riverside Merchant Partners LLC (together, the Purchasers), pursuant to which Napo issued $656,250 in aggregate principal amount of Original Issue Discount Exchangeable Promissory Notes (the Initial Notes) to the Purchasers at a purchase price of $525,000. The Initial Notes accrue interest at a rate of 3% per annum and had an initial maturity date of December 1, 2017. Accrued and unpaid interest on the Initial Notes will be paid on the maturity date, at Napo s election subject to certain exceptions, in either cash or shares of our voting common stock. In the event that Napo elects to pay such interest in shares of our voting common stock, the number of shares issued will be determined by dividing the amount of interest then due on the Initial

Table of Contents

Notes by the volume weighted average of the closing price of a share of our common stock for the 30 consecutive trading days up to and including the trading day on the third trading day prior to the interest payment due date. The holders of the Initial Notes may exchange the principal amount of the Initial Notes for an aggregate of 1,171,875 shares of our voting common stock at any time prior to the maturity date, which constitutes an effective conversion price of $0.56 per share.

Pursuant to the terms of the MEF/Riverside NPA, on April 27, 2017, Napo issued an additional $656,250 in aggregate principal amount of Original Issue Discount Exchangeable Promissory Notes (the Additional Notes and, together with the Initial Notes, the Notes) to such purchasers at a purchase price of $525,000. The Additional Notes had an initial maturity date of January 27, 2018, but otherwise have terms identical to those of the Initial Notes. We agreed to file a registration statement to register the resale of shares of our voting common stock issuable upon exchange of the Notes by October 20, 2017.

On July 31, 2017, we completed the acquisition of Napo pursuant to the Agreement and Plan of Merger, dated March 31, 2017 (the Merger Agreement), by and among the Company, Napo, Napo Acquisition Corporation (Merger Sub), and Napo s representative (the Merger). In accordance with the terms of the Merger Agreement, Merger Sub merged with and into Napo, with Napo surviving as our wholly-owned subsidiary.

On December 29, 2017, Napo and the Purchasers entered into an amendment (the First Amendment) to the MEF/Riverside NPA and Notes to, among other things, (a) increase the principal amount outstanding under the Notes by twelve percent (12%), (b) lower the price at which the Notes are exchangeable for shares (the Exchange Shares) of our voting common stock from $0.56 per share to $0.20 per share, and (c) extend the maturity date of the Initial Notes from December 1, 2017 to February 15, 2018 and the Additional Notes from January 27, 2018 to April 1, 2018.

In connection with the First Amendment, we also issued 2,492,084 shares of our voting common stock to the Purchasers as repayment of $299,050.08 principal amount of the Initial Notes. Following such repayment and the 12% increase to the outstanding balance of the Notes described in the preceding paragraph, $435,949.92 and $735,000.00 principal amount remain outstanding under the Initial Notes and the Additional Notes, respectively.

The First Amendment includes a blocker provision that prevents the issuance of Exchange Shares if such issuance, when aggregated with prior issuances of Exchange Shares under the MEF/Riverside NPA, would violate NASDAQ Listing Rule 5635, unless stockholder approval is first obtained by the Company. Pursuant to the terms of the MEF/Riverside NPA, we are required to file a registration statement to register the resale of the Exchange Shares on or before January 31, 2018.

The description of the Merger Agreement, the MEF/Riverside NPA and the First Amendment, are not complete and are qualified in their entirety by reference to the respective agreements, each of which has been filed as an exhibit to the registration statement of which this prospectus is a part. See Where You Can Find More Information and Incorporation of Information by Reference. The representations, warranties and covenants made in such agreements were made solely for the benefit of the parties to such agreements, including, in some cases, for the purpose of allocating risk among the parties thereto, and should not be deemed to be a representation, warranty or covenant to you. Moreover, such representations, warranties or covenants were made as of an earlier date. Accordingly, such representations, warranties and covenants should not be relied on as accurately representing the current state of our affairs.

Corporate Information

We were incorporated in the State of Delaware on June 6, 2013. Our principal executive offices are located at 201 Mission Street, Suite 2375, San Francisco, CA 94015 and our telephone number is (415) 371-8300. Our website address is https://jaguar.health. The information contained on, or that can be accessed through, our website is not part of this prospectus. Our common stock is listed on the NASDAQ Capital Market and trades under the symbol JAGX.

Jaguar Health, our logo, Canalevia, Neonorm and Mytesi are our trademarks that are used in this prospectus. This prospectus also includes trademarks, tradenames and service marks that are the property of other organizations. Solely for convenience, trademarks and tradenames referred to in this prospectus appear without the ©, ® or symbols, but those references are not intended to indicate that we will not assert, to the fullest extent under applicable law, our rights or that the applicable owner will not assert its rights, to these trademarks and tradenames.

The Offering

This prospectus relates to the resale of 6,018,210 shares of our voting common stock, which shares are issuable upon conversion of the Notes (plus accrued interest) held by the selling shareholders identified in this prospectus, including its transferees, pledgees, donees or successors. See Selling Shareholders.

Table of Contents

The selling shareholders may offer to sell the shares being offered in this prospectus at fixed prices, at prevailing market prices at the time of sale, at varying prices or at negotiated prices. Our common stock is listed on the NASDAQ Capital Market under the symbol JAGX.

We have agreed to register the offer and sale of the common stock to satisfy registration rights we have granted to the selling shareholders. We will not receive any proceeds from the sale of the securities by the selling shareholders.

Table of Contents

RISK FACTORS

Please carefully consider the risk factors described in our periodic reports filed with the SEC, which are incorporated by reference in this prospectus. Before making an investment decision, you should carefully consider these risks as well as other information we include or incorporate by reference in this prospectus. Additional risks and uncertainties not presently known to us or that we deem currently immaterial may also impair our business operations or adversely affect our results of operations or financial condition.

Table of Contents

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus and the documents incorporated by reference into it contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended (the Exchange Act). We have made these statements in reliance on the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. All statements other than statements of historical facts contained in or incorporated by reference into this prospectus, including statements regarding our future results of operations and financial position, business strategy, prospective products, product approvals, research and development costs, timing of receipt of clinical trial, field study and other study data, and likelihood of success, commercialization plans and timing, other plans and objectives of management for future operations, and future results of current and anticipated products are forward-looking statements. These statements involve known and unknown risks, uncertainties and other important 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 the forward-looking statements.

In some cases, you can identify forward-looking statements by terms such as may, will, should, expect, plan, aim, anticipate, could, target, project, contemplate, believe, estimate, predict, potential or continue or the negative of these terms or other similar expressio forward-looking statements in this prospectus are only predictions. We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our business, financial condition and results of operations. These forward-looking statements speak only as of the date of this prospectus and are subject to a number of risks, uncertainties and assumptions including those listed in the Risk Factors incorporated by reference into this prospectus from our Annual Report on Form 10-K, as updated by subsequent reports. Forward-looking statements are subject to inherent risks and uncertainties, some of which cannot be predicted or quantified and some of which are beyond our control. The events and circumstances reflected in our forward-looking statements may not be achieved or occur and actual results could differ materially from those projected in the forward-looking statements. Moreover, we operate in a dynamic industry and economy. New risk factors and uncertainties may emerge from time to time, and it is not possible for management to predict all risk factors and uncertainties that we may face. Except as required by applicable law, we do not plan to publicly update or revise any forward-looking statements contained herein, whether as a result of any new information, future events, changed circumstances or otherwise.

Table of Contents

USE OF PROCEEDS

We will not receive any of the proceeds from the sale of shares of our common stock in this offering. The selling shareholders will receive all of the proceeds from this offering.

The selling shareholders will pay any underwriting discounts and commissions and expenses incurred by the selling shareholders for brokerage, accounting, tax or legal services or any other expenses incurred by the selling shareholders in disposing of the shares. We will bear all other costs, fees and expenses incurred in effecting the registration of the shares covered by this prospectus, including, without limitation, all registration and filing fees, fees and expenses of our counsel, and certain expenses of counsel to the selling shareholders and our independent registered public accountants.

Table of Contents

SELLING SHAREHOLDERS

The shares of voting common stock being offered by the selling shareholders are those issuable to the selling shareholders upon conversion of the Notes. For additional information regarding the issuances of the Notes and the relationship between the selling shareholders and us, see Prospectus Summary Private Placement of Shares and Promissory Notes above. We are registering the shares of voting common stock in order to permit the selling shareholders to offer the shares for resale from time to time.

The following table sets forth:

- the selling shareholders and other information regarding the beneficial ownership of the shares of common stock by the selling shareholders;

- the number of shares of common stock beneficially owned by the selling shareholders, based on their respective ownership of the shares of common stock as of January 23, 2018, assuming the conversion of the Notes, without regard to any limitations on conversions prior to the sale of the shares covered by this prospectus;

- the number of shares that may be offered by the selling shareholders pursuant to this prospectus;

- the number of shares to be beneficially owned by the selling shareholders and their respective affiliates following the sale of any shares covered by this prospectus; and

- the percentage of our issued and outstanding voting common stock to be beneficially owned by the selling shareholders and their respective affiliates following the sale of all shares covered by this prospectus.

This prospectus generally covers the resale of all shares received by the selling shareholders in connection with the transactions contemplated by the MEF/Riverside NPA and First Amendment, including any shares of voting common stock issued or issuable upon the exchange of the Notes received by the selling shareholders.

The selling shareholders may sell all, some or none of their shares in this offering. See Plan of Distribution.

Name of Selling Shareholders	Number of shares of Common Stock Owned Prior to Offering	Maximum Number of shares of Common Stock to be Sold Pursuant to this Prospectus(1)	Number of shares of Common Stock Owned After Offering(2)(3)	
			Number	Percent
Riverside Merchant Partners LLC (4)	3,009,105	3,009,105	0	
MEF I, LP (5)	3,009,105	3,009,105	0	

(1) Assumes the exchange of all exchangeable notes held by the selling shareholders into shares of voting common stock.

(2) Assumes that the selling shareholders sell all shares of voting common stock registered under this prospectus held by such selling shareholders.

(3) Based upon 78,888,163 shares of voting common stock outstanding as of January 23, 2018. For purposes of computing the percentage of outstanding shares of the common stock held by the selling shareholders named above, any shares which any selling shareholder has the right to acquire within 60 days of January 23, 2018 are deemed to be outstanding.

(4) Represents 2,927,375 shares of voting common stock issuable upon conversion of the Notes owned by Riverside Merchant Partners LLC and 81,730 shares of voting common stock issuable upon payment of interest on the Notes in lieu of cash convertible at $0.20 per share.

(5) Represents 2,927,375 shares of voting common stock issuable upon conversion of the Notes owned by MEF I, LP and 81,730 shares of voting common stock issuable upon payment of interest on the Notes in lieu of cash convertible at $0.20 per share.

Table of Contents

PLAN OF DISTRIBUTION

The selling shareholders of the securities and any of their pledgees, assignees and successors-in-interest may, from time to time, sell any or all of their securities covered hereby on the Nasdaq Stock Market or any other stock exchange, market or trading facility on which the securities are traded or in private transactions. These sales may be at fixed or negotiated prices. A selling shareholder may use any one or more of the following methods when selling securities:

- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;
- block trades in which the broker-dealer will attempt to sell the securities as agent but may position and resell a portion of the block as principal to facilitate the transaction;
- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
- an exchange distribution in accordance with the rules of the applicable exchange;
- privately negotiated transactions;
- settlement of short sales;
- in transactions through broker-dealers that agree with the selling shareholders to sell a specified number of such securities at a stipulated price per security;
- through the writing or settlement of options or other hedging transactions, whether through an options exchange or otherwise;
- a combination of any such methods of sale; or