

CLEVELAND BIOLABS INC
Form 8-K
August 14, 2018

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 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): August 10, 2018

Cleveland BioLabs, Inc.
(Exact Name of Registrant as Specified in Charter)

DELAWARE 001-32954 20-0077155
(State or Other Jurisdiction of Incorporation) (Commission File Number) (I.R.S. Employer Identification Number)
73 High Street
Buffalo, NY 14203
(Address of Principal Executive Offices and zip code)

(716) 849-6810
(Registrant's Telephone Number, Including Area Code)

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 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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.

As previously reported, on August 6, 2018, Cleveland BioLabs, Inc. (the “Company”), Genome Protection, Inc. (“GPI”), a Delaware corporation, and Everon BioSciences, Inc. (“Everon”), a New York corporation, entered into a series of related transactions under which the Company and Everon licensed and assigned certain intellectual property to GPI, a corporation formed by the Company for the purpose of creating a joint venture between the Company and Everon that will be focused on developing anti-aging medications. On August 10, 2018, the Company, GPI and Everon entered into agreements with a third-party investor for the purpose of providing GPI with capital.

Investment in GPI by Norma Investments Limited

On August 10, 2018, GPI, Norma Investments Limited, a British Virgin Islands company (“Norma”), the Company and Everon entered into that certain Simple Agreement for Future Equity (the “SAFE”). Norma is controlled by investor Roman Abramovich, who also controls Millhouse Capital, LLC, the employer of three members of the Company’s board of directors, Anna Evdokimova, Alexei Nechaev and Ivan Persiyanov, and of which the Company’s majority stockholder is chief executive officer. Under the SAFE, GPI granted Norma the right to purchase shares of GPI’s capital stock in exchange for the payment of up to \$30,000,000, of which \$10,500,000 was paid shortly after the execution of the SAFE and the remainder may be paid, if at all, in tranches over time.

Under the terms of the SAFE, upon the closing of a transaction in which GPI raises \$3,000,000 or more in equity capital from a third party, Norma has the right to require GPI to issue to it the number of shares obtained by dividing the purchase price paid for the SAFE through such date by 50% of the price per share of the equity securities sold to the third party. If GPI experiences a change of control event or completes a firm commitment initial public offering of securities registered under the Securities Act of 1933, as amended, then GPI will, at Norma’s option, either (i) pay to Norma an amount equal to the purchase price paid by Norma through such date under the SAFE plus interest accrued at a rate of 6.33% per year or (ii) issue to Norma shares of its common stock in the number obtained by dividing the purchase price paid by Norma through such date under the SAFE by 50% of the price per share of GPI’s common stock based on GPI’s valuation immediately preceding the consummation of either the change-of-control event or initial public offering. If GPI is dissolved, terminates its operations, makes a general assignment for the benefit of its creditors or liquidates or winds up its affairs, then GPI must pay Norma an amount equal to the purchase price paid by Norma through such date under the SAFE, prior to any distributions are made to any holders of GPI’s capital stock, including the Company. The term of the SAFE is perpetual, terminating only upon the full repayment or conversion of the purchase price paid by Norma to GPI in connection with the events described above.

Under the SAFE, the parties agree that GPI’s board of directors (the “GPI Board”) will consist of four members, two of whom will be selected by Norma, one of whom will be selected by the Company and one of whom will be selected by Everon. The SAFE also provides that the parties will agree that a quorum of the GPI Board will require that at least one of the directors selected by Norma be present. Additionally, the SAFE sets forth a number of actions that GPI will be prohibited from taking without the unanimous consent of all of the members of the GPI Board, including, among other things, effecting a change of control transaction, terminating its operations, dissolving or liquidating, amending its organizational documents, transferring or licensing its intellectual property or issuing any shares of capital stock. The SAFE sets forth other matters that must be approved by a majority of the members of the GPI Board, including the incurrence of indebtedness exceeding \$100,000, granting a lien or other encumbrance on GPI’s assets, entering into a related party transaction and hiring, terminating or setting the compensation of executive officers. The SAFE contains customary representations and warranties made regarding GPI and Norma, including Norma’s status as an

accredited investor. The Company and Everon have each guaranteed, to the extent of their powers as stockholders of GPI, the due and punctual performance by GPI of all of its obligations under the SAFE, and have also agreed to indemnify, on a joint and several basis, Norma for any losses arising out of any misrepresentation or any material breach of the SAFE, up to the amount of the purchase price paid by Norma under the SAFE.

Director Designation Agreement

In connection with the execution of the SAFE, the Company, Everon, GPI and Norma entered into that certain Director Designation Agreement, dated as of August 10, 2018 (the “Director Designation Agreement”), pursuant to which the parties made certain commitments as to voting and transfer of their shares of GPI and GPI’s governance. Under the terms of the Director Designation Agreement, the parties agree that the GPI Board will consist of four members, two of whom will be selected by Norma, one of whom will be selected by the Company and one of whom will be selected by Everon. Each party to the Director Designation Agreement also commits to (i) vote its GPI capital stock for the selected designees of the other parties, (ii) cause the director(s) appointed by it to nominate for election the selected designees of the other parties, (iii) vote its GPI capital stock for the removal of a member of the GPI Board if the party that originally selected such person so requests and (iv)

to cause the director(s) appointed by it to vote to fill any vacancy created by the death, resignation or removal of a party's designee director with the replacement designee selected by such party.

Similar to the SAFE, the Director Designation Agreement sets forth a number of actions that GPI will be prohibited from taking without the unanimous consent of all of the members of the GPI Board, including, among other things, effecting a change of control transaction, terminating its operations, dissolving or liquidating, amending its organizational documents, transferring or licensing its intellectual property or issuing any shares of capital stock. The Director Designation Agreement sets forth other matters that must be approved by a majority of the members of the GPI Board, including the incurrence of indebtedness exceeding \$100,000, granting a lien or other encumbrance on GPI's assets, entering into a related party transaction and hiring, terminating or setting the compensation of executive officers.

The Director Designation Agreement also contains a right of first refusal in favor of Norma under which if either the Company or Everon desires to sell its shares in GPI to a third party, it must first give notice to Norma, which then has the right to purchase some or all of such shares on the same terms and conditions as the selling stockholder had proposed to sell the shares to a third party. If Norma does not elect to purchase all of the shares that either the Company or Everon proposed to sell, then the Company or Everon, respectively, may sell such shares to the third party. Norma is not, however, required to first offer any shares of GPI it proposes to sell to the Company or Everon before selling such shares to a third party.

The foregoing descriptions of the SAFE and the Director Designation Agreement do not purport to be complete and are qualified in its entirety by reference to the terms of the SAFE and the Director Designation Agreement, which are attached hereto as Exhibit 10.1 and 10.2, respectively, and incorporated herein by this reference.

Item 8.01. Other Events.

On August 14, 2018, the Company issued a press release titled "Cleveland BioLabs, Inc. Announces formation and Financing of Anti-Aging Joint Venture." A copy of the press release is attached hereto as Exhibit 99.1, and incorporated herein by reference.

Item 9.01. Financial Statement and Exhibits.

(d) Exhibits

Exhibit No.	Description
10.1	<u>Simple Agreement for Future Equity, dated as of August 10, 2018, among Genome Protection, Inc., Norma Investments Limited, Cleveland BioLabs, Inc. and Everon Biosciences, Inc.</u>
10.2	<u>Director Designation Agreement, dated as of August 10, 2018, among Genome Protection, Inc., Everon Biosciences, Inc., Cleveland BioLabs, Inc. and Norma Investments Limited</u>
99.1	<u>Press Release titled "Cleveland BioLabs, Inc. Announces formation and Financing of Anti-Aging Joint Venture.", dated August 14, 2018</u>

Forward-Looking Statements

This Current Report contains certain forward-looking information about the Company that is intended to be covered by the safe harbor for "forward-looking statements" provided by the Private Securities Litigation Reform Act of 1995, as amended. Forward-looking statements are statements that do not relate strictly to historical or current facts. Words and phrases such as "potential," "may," "future," "will," "would," "plan," "anticipate," "believe," "intend" and similar expressions

intended to identify forward-looking statements. These statements include, but are not limited to, statements regarding the Company's future financial position, business strategy, new products, budgets, liquidity, cash flows, projected costs, regulatory approvals or the impact of any laws or regulations applicable to the Company, and plans and objectives of management for future operations. All of such statements are subject to certain risks and uncertainties, many of which are difficult to predict and generally beyond the control of the Company, that could cause actual results to differ materially from those expressed in, or implied or projected by, the forward-looking information and statements.

Factors that could constitute to such differences include, among others, our need for additional financing to meet our business obligations, the risks inherent in the early stages of drug development and in conducting clinical trials; the Company's plans

and expectations with respect to future clinical trials and commercial scale-up activities; the Company's ability to attract collaborators with development, regulatory and commercialization expertise and the financial risks related to those relationships; the Company's ability to comply with its obligations under license agreements; the Company's inability to obtain regulatory approval in a timely manner or at all; the commercialization of the Company's product candidates, if approved; the Company's plans to research, develop and commercialize its product candidates; future agreements with third parties in connection with the commercialization of any approved product; the size and growth potential of the markets for the Company's product candidates, and its ability to serve those markets; the rate and degree of market acceptance of the Company's product candidates; the Company's history of operating losses and the potential for future losses, which may lead the Company to not be able to continue as a going concern; regulatory developments in the United States and foreign countries; the performance of the Company's third-party suppliers and manufacturers; the exercise of control by the Company's majority stockholder; the operation and performance of our joint ventures over which we have limited control; and the success of competing therapies that are or may become available. Any forward-looking statements speak only as of the date on which such statements are made, and the Company undertakes no obligation to update any forward-looking statement to reflect events or circumstances occurring or arising after the date on which such statement is made, except as is required by law. See also the "Risk Factors" and "Forward-Looking Statements" described in the Company's periodic filings with the Securities and Exchange Commission.

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.

Cleveland BioLabs, Inc.

Date: August 14, 2018 By: /s/ YAKOV KOGAN

Name: Yakov Kogan

Title: Chief Executive Officer