

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): November 21, 2022

Aerie Pharmaceuticals, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation)

001-36152
(Commission File Number)

20-3109565
(I.R.S. Employer Identification Number)

4301 Emperor Boulevard, Suite 400
Durham, North Carolina 27703
(Address of principal executive offices) (Zip code)

Registrant's telephone number, including area code: (919) 237-5300

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))

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.001 per share	AERI	Nasdaq Global Market

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.

Introductory Note

As previously disclosed in the Current Report on Form 8-K filed by Aerie Pharmaceuticals, Inc., a Delaware corporation (the “*Company*” or “*Aerie*”), with the Securities and Exchange Commission (the “*SEC*”) on August 23, 2022, the Company entered into an Agreement and Plan of Merger (the “*Merger Agreement*”), dated as of August 22, 2022, by and among the Company, Alcon Research, LLC, a Delaware limited liability company (“*Parent*”), and Lyon Merger Sub, Inc., a Delaware corporation and a wholly owned subsidiary of Parent (“*Merger Sub*”). On November 21, 2022 (the “*Closing Date*”), the Company completed its merger with Merger Sub pursuant to the terms of the Merger Agreement, whereby Merger Sub merged with and into the Company, with the Company continuing as the surviving corporation (the “*Surviving Corporation*”) and a wholly owned subsidiary of Parent (the “*Merger*”).

Item 1.01 Entry into a Material Definitive Agreement.

In connection with the consummation of the Merger, the Company and Wilmington Trust, National Association, as trustee (the “*Trustee*”), entered into a First Supplemental Indenture (the “*First Supplemental Indenture*”), dated as of November 21, 2022, which amends and supplements the Indenture (the “*Indenture*”), dated as of September 9, 2019, by and between the Company and the Trustee, governing the Company’s 1.50% Convertible Senior Notes due 2024 (the “*Notes*”), of which \$316,250,000 aggregate principal amount was outstanding as of September 30, 2022.

The First Supplemental Indenture provides that, from and after the effective time of the Merger (the “*Effective Time*”), the right to convert each \$1,000 principal amount of the Notes will be settled by such consideration equal to the product of (i) the Conversion Rate (as defined in the Indenture) applicable to such conversion and (ii) the applicable Reference Property Unit, which will consist of an amount in cash equal to \$15.25. The First Supplemental Indenture also reflects that the Company is deemed to have elected to settle all conversions occurring on and after the Effective Time solely by Physical Settlement (as defined in the Indenture), which will be the delivery of the cash conversion consideration.

The foregoing description of the Indenture and the First Supplemental Indenture does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Indenture, which was filed as Exhibit 4.1 to the Current Report on Form 8-K filed by the Company with the SEC on September 10, 2019, and is incorporated herein by reference, and the full text of the First Supplemental Indenture, which is filed as Exhibit 4.1 hereto and is incorporated herein by reference.

Item 1.02 Termination of a Material Definitive Agreement.

The Company has entered into separate unwind agreements with the counterparties to the capped call transactions that the Company entered into in connection with the issuance of the Notes.

Item 2.01 Completion of Acquisition or Disposition of Assets.

The information set forth in the Introductory Note of this Current Report on Form 8-K is incorporated herein by reference.

On November 17, 2022, the Company held a special meeting of stockholders at which the Company’s stockholders voted to adopt the Merger Agreement and approve the Merger. On the Closing Date, pursuant to the terms of the Merger Agreement, the Merger was effected, with Merger Sub being merged with and into the Company, and the Company continuing as the Surviving Corporation and a wholly owned subsidiary of Parent.

At the Effective Time, and by virtue of the Merger, each share of common stock, par value \$0.001 per share, of the Company (the “**Shares**”) outstanding (other than Shares held (i) by the Company (or held in the Company’s treasury) or (ii) by Parent, Merger Sub or any direct or indirect wholly owned Subsidiary (as defined in the Merger Agreement) of Parent or the Company, which, in each case, was cancelled and retired and ceased to exist) was converted into the right to receive \$15.25 per Share in cash (the “**Merger Consideration**”), without interest and subject to any withholding of taxes.

Pursuant to the Merger Agreement, at the Effective Time:

1. each outstanding option to purchase Shares (a “**Company Option**”) or stock appreciation rights (a “**Company SAR**”), as applicable, that was then outstanding and unexercised that had a per Share exercise price or strike price per Share, that was less than the Merger Consideration (an “**In the Money Option**” and an “**In the Money SAR**”, respectively) was cancelled and the holder thereof became entitled to receive a cash payment equal to (i) the excess, if any, of (A) the Merger Consideration over (B) the exercise price payable per Share under such In the Money Option or In the Money SAR, as applicable, multiplied by (ii) the total number of Shares subject to such In the Money Option or In the Money SAR, as applicable, immediately prior to the Effective Time (without regard to vesting);
2. each Company Option or Company SAR that was not an In the Money Option nor an In the Money SAR, as applicable, was cancelled without any consideration;
3. each outstanding Share of restricted stock of the Company (a “**Company Restricted Stock**”) that vested solely on the passage of time, whether or not vested, was cancelled and the holder thereof became entitled to receive a cash payment equal to the Merger Consideration with respect to each Share of time-vested Company Restricted Stock, whether or not vested, held by such holder (without regard to vesting);
4. each outstanding Share of Company Restricted Stock that vested based on achievement of strategic performance metrics (the “**Strategic PSAs**”), whether or not vested, was cancelled and the holder thereof became entitled to receive a cash payment equal to (i) the product of (A) the target number of Shares of Strategic PSAs granted to the holder, multiplied by (B) 100% (such product, the “**Earned Strategic PSAs**”), multiplied by (ii) the Merger Consideration (without regard to vesting). Promptly following the Effective Time, Parent will calculate the cumulative shareholder return through the Closing Date (the “**Relative TSR Performance**”) for each of the Company and each member of the comparator group companies as set forth in terms of the award agreement for each then outstanding Share of Company Restricted Stock that vests based on achievement of a relative total shareholder return metric (the “**rTSR PSAs**”), and will pay the holders of the rTSR PSAs in accordance with the Relative TSR Performance and the terms of each rTSR PSA; and
5. each outstanding Company restricted stock unit (a “**Company RSU**”), whether or not vested, was cancelled and the holder thereof became entitled to receive a cash payment equal to the product of (i) the Merger Consideration and (ii) the total number of Shares subject to such Company RSU (without regard to vesting).

The foregoing description of the Merger and the Merger Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Merger Agreement, which was filed as Exhibit 2.1 to the Current Report on Form 8-K filed by the Company with the SEC on August 23, 2022, and is incorporated herein by reference.

Item 3.01 Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing.

The information set forth in the Introductory Note and under Item 2.01 of this Current Report on Form 8-K is incorporated herein by reference.

In connection with the closing of the Merger, the Company notified the NASDAQ Global Market (“*NASDAQ*”) that the Merger had been consummated and requested that NASDAQ suspend trading of the Shares following the closing of trading on the Closing Date. The Company also requested that NASDAQ file a notification of removal from listing and registration on Form 25 with the SEC to effect the delisting of the Shares from NASDAQ and the deregistration of the Shares under Section 12(b) of the Securities Exchange Act of 1934, as amended (the “*Exchange Act*”). The Company intends to file with the SEC a Form 15 requesting the termination of registration of the Shares under Section 12(g) of the Exchange Act and the suspension of reporting obligations under Sections 13 and 15(d) of the Exchange Act.

Item 3.03 Material Modification to Rights of Security Holders.

The information set forth in the Introductory Note and Item 2.01, Item 3.01, Item 5.01 and Item 5.03 of this Current Report on Form 8-K is incorporated herein by reference.

Item 5.01 Changes in Control of Registrant.

The information set forth in the Introductory Note and Item 2.01, Item 3.01, Item 5.02 and Item 5.03 of this Current Report on Form 8-K is incorporated herein by reference.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

Resignations and Appointment of Directors

At the Effective Time and pursuant to the terms of the Merger Agreement, the directors of the Company immediately prior to the Effective Time, Raj Kannan, Richard Croarkin, Mechiel (Michael) M. du Toit, David W. Gryska, Peter J. McDonnell, M.D., Benjamin F. McGraw, III, Pharm.D., and Julie McHugh, each resigned and ceased serving as members of the Company’s board of directors and each committee thereof. These resignations were not a result of any disagreement between the Company and the directors on any matter relating to the Company’s operations, policies or practices.

Also at the Effective Time and pursuant to the terms of the Merger Agreement, Jonathan Balch, Ian Bell, and Sergio Duplan, the directors of Merger Sub immediately prior to the Effective Time, became the directors of the Company following the consummation of the Merger until the earlier of their death, resignation or removal or until their respective successors are duly elected and qualified.

Resignations and Appointment of Officers

The information set forth in the Introductory Note and Item 2.01 of this Current Report on Form 8-K is incorporated herein by reference.

At the Effective Time and pursuant to the terms of the Merger Agreement, the named executive officers of the Company immediately prior to the Effective Time, Raj Kannan, Peter Lang, Casey C. Kopczyński, Ph.D and John W. LaRocca, Esq., each resigned and ceased serving as officers of the Company.

Also at the Effective Time and pursuant to the terms of the Merger Agreement, the officers of Merger Sub immediately prior to the Effective Time became the officers of the Company following the consummation of the Merger until the earlier of their death, resignation or removal or until their respective successors are duly elected and qualified. Among those officers, David Endicott, Timothy Stonesifer and Royce Bedward were appointed as President and Chief Executive Officer, Chief Financial Officer, and General Counsel of the Company, respectively.

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

The information set forth in the Introductory Note and Item 2.01 of this Current Report on Form 8-K is incorporated herein by reference.

At the Effective Time, the Company's certificate of incorporation and bylaws as in effect immediately prior to the Merger were each amended and restated in their entirety (the "*Amended and Restated Certificate of Incorporation*" and the "*Amended and Restated Bylaws*," respectively). A copy of the Amended and Restated Certificate of Incorporation is filed as Exhibit 3.1 hereto and is incorporated herein by reference. A copy of the Amended and Restated Bylaws is filed as Exhibit 3.2 hereto and is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits

Exhibit Number	Description of Exhibit
2.1†	Agreement and Plan of Merger, dated as of August 22, 2022, by and among Aerie Pharmaceuticals, Inc., Alcon Research, LLC and Lyon Merger Sub, Inc. (incorporated by reference to Exhibit 2.1 to the Company's Current Report on Form 8-K filed with the SEC on August 23, 2022).
3.1	Amended and Restated Certificate of Incorporation of Aerie Pharmaceuticals, Inc.
3.2	Amended and Restated Bylaws of Aerie Pharmaceuticals, Inc.
4.1	First Supplemental Indenture, dated as of November 21, 2022, by and between Aerie Pharmaceuticals, Inc. and Wilmington Trust, National Association.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).
†	Certain exhibits and schedules have been omitted pursuant to Item 601(b)(2) of Regulation S-K. The Company agrees to furnish supplementally to the SEC a copy of any omitted exhibits or schedules upon request.

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.

AERIE PHARMACEUTICALS, INC.

Date: November 21, 2022

By: /s/ Tom Hudnall
Name: Tom Hudnall
Title: Assistant Secretary

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
AERIE PHARMACEUTICALS, INC.

ARTICLE ONE

The name of the corporation is Aerie Pharmaceuticals, Inc. (the "Corporation").

ARTICLE TWO

The address of the Corporation's registered office in the State of Delaware is 251 Little Falls Drive, Wilmington, County of New Castle, 19808. The name of its registered agent at such address is Corporation Service Company.

ARTICLE THREE

The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended ("Delaware Law").

ARTICLE FOUR

The total number of shares of capital stock that the Corporation has authority to issue is one hundred (100) shares of Common Stock, par value \$0.01 per share.

ARTICLE FIVE

The Board of Directors shall have the power to adopt, amend or repeal the by-laws of the Corporation.

ARTICLE SIX

Meetings of stockholders may be held within or outside of the State of Delaware, as the by-laws of the Corporation may provide. The books of the Corporation may be kept outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the by-laws of the Corporation. Election of directors need not be by written ballot unless the by-laws of the Corporation so provide.

ARTICLE SEVEN

The Corporation shall provide indemnification and advancement of expenses as follows:

1. Actions, Suits and Proceedings Other than by or in the Right of the Corporation. The Corporation shall indemnify each person who was or is a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he or she is or was, or has agreed to become, a director or officer of the Corporation, or is or was serving, or has agreed to serve, at the request of the Corporation, as a director, officer, partner, employee or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise (including any employee benefit plan) (all such persons being referred to hereafter as an “Indemnitee”), or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including attorneys’ fees), liabilities, losses, judgments, fines (including excise taxes and penalties arising under the Employee Retirement Income Security Act of 1974), and amounts paid in settlement actually and reasonably incurred by or on behalf of Indemnitee in connection with such action, suit or proceeding and any appeal therefrom, if Indemnitee acted in good faith and in a manner which Indemnitee reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that Indemnitee did not act in good faith and in a manner which Indemnitee reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

2. Actions or Suits by or in the Right of the Corporation. The Corporation shall indemnify any Indemnitee who was or is a party to or threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that Indemnitee is or was, or has agreed to become, a director or officer of the Corporation, or is or was serving, or has agreed to serve, at the request of the Corporation, as a director, officer, partner, employee or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise (including any employee benefit plan), or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including attorneys’ fees) and, to the extent permitted by law, amounts paid in settlement actually and reasonably incurred by or on behalf of Indemnitee in connection with such action, suit or proceeding and any appeal therefrom, if Indemnitee acted in good faith and in a manner which Indemnitee reasonably believed to be in, or not opposed to, the best interests of the Corporation, except that no indemnification shall be made under this Article Seven, Section 2 in respect of any claim, issue or matter as to which Indemnitee shall have been adjudged to be liable to the Corporation, unless, and only to the extent, that the Court of Chancery of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of such liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnity for such expenses (including attorneys’ fees) which the Court of Chancery of Delaware or such other court shall deem proper.

3. Indemnification for Expenses of Successful Party. Notwithstanding any other provisions of this Article Seven, to the extent that an Indemnitee has been successful, on the merits or otherwise, in defense of any action, suit or proceeding referred to in Article Seven, Sections 1 and 2, or in defense of any claim, issue or matter therein, or on appeal from any such action, suit or proceeding, Indemnitee shall be indemnified against all expenses (including attorneys’ fees) actually and reasonably incurred by or on behalf of Indemnitee in connection therewith. Without limiting the foregoing, if any action, suit or proceeding is disposed of, on the merits or otherwise (including a disposition without prejudice), without (i) the disposition being adverse to Indemnitee, (ii) an adjudication that Indemnitee was liable to the Corporation, (iii) a plea of guilty or nolo contendere by Indemnitee, (iv) an adjudication that Indemnitee did not act in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation, and (v) with respect to any criminal proceeding, an adjudication that Indemnitee had reasonable cause to believe his or her conduct was unlawful, Indemnitee shall be considered for the purposes hereof to have been wholly successful with respect thereto.

4. Notification and Defense of Claim. As a condition precedent to an Indemnitee's right to be indemnified, such Indemnitee must notify the Corporation in writing as soon as practicable of any action, suit, proceeding or investigation involving such Indemnitee for which indemnity will or could be sought. With respect to any action, suit, proceeding or investigation of which the Corporation is so notified, the Corporation will be entitled to participate therein at its own expense and/or to assume the defense thereof at its own expense, with legal counsel reasonably acceptable to Indemnitee. After notice from the Corporation to Indemnitee of its election so to assume such defense, the Corporation shall not be liable to Indemnitee for any legal or other expenses subsequently incurred by Indemnitee in connection with such action, suit, proceeding or investigation, other than as provided below in this Article Seven, Section 4. Indemnitee shall have the right to employ his or her own counsel in connection with such action, suit, proceeding or investigation, but the fees and expenses of such counsel incurred after notice from the Corporation of its assumption of the defense thereof shall be at the expense of Indemnitee unless (i) the employment of counsel by Indemnitee has been authorized by the Corporation, (ii) counsel to Indemnitee shall have reasonably concluded that there may be a conflict of interest or position on any significant issue between the Corporation and Indemnitee in the conduct of the defense of such action, suit, proceeding or investigation or (iii) the Corporation shall not in fact have employed counsel to assume the defense of such action, suit, proceeding or investigation, in each of which cases the fees and expenses of counsel for Indemnitee shall be at the expense of the Corporation, except as otherwise expressly provided by this Article Seven. The Corporation shall not be entitled, without the consent of Indemnitee, to assume the defense of any claim brought by or in the right of the Corporation or as to which counsel for Indemnitee shall have reasonably made the conclusion provided for in clause (ii) above. The Corporation shall not be required to indemnify Indemnitee under this Article Seven for any amounts paid in settlement of any action, suit, proceeding or investigation effected without its written consent. The Corporation shall not settle any action, suit, proceeding or investigation in any manner which would impose any penalty or limitation on Indemnitee without Indemnitee's written consent. Neither the Corporation nor Indemnitee will unreasonably withhold or delay its consent to any proposed settlement.

5. Advancement of Expenses. Subject to the provisions of Article Seven, Section 6, in the event of any threatened or pending action, suit, proceeding or investigation of which the Corporation receives notice under this Article Seven, any expenses (including attorneys' fees) incurred by or on behalf of Indemnitee in defending an action, suit, proceeding or investigation or any appeal therefrom shall be paid by the Corporation in advance of the final disposition of such matter; provided, however, that the payment of such expenses incurred by or on behalf of Indemnitee in advance of the final disposition of such matter shall be made only upon receipt of an undertaking by or on behalf of Indemnitee to repay all amounts so advanced in the event that it shall ultimately be determined by final judicial decision from which there is no further right to appeal that Indemnitee is not entitled to be indemnified by the Corporation as authorized in this Article Seven.

6. Procedure for Indemnification and Advancement of Expenses. In order to obtain indemnification or advancement of expenses pursuant to Article Seven, Sections 1, 2, 3 or 5, an Indemnitee shall submit to the Corporation a written request. Any such advancement of expenses shall be made promptly, and in any event within 30 days after receipt by the Corporation of the written request of Indemnitee, unless the Corporation has assumed the defense pursuant to Article Seven, Section 4 (and none of the circumstances described in Article Seven, Section 4 that would nonetheless entitle the Indemnitee to indemnification for the fees and expenses of separate counsel have occurred). Any such indemnification, unless ordered by a court, shall be made with respect to requests under Article Seven, Section 1 or 2 only as authorized in the specific case upon a determination by the Corporation that the indemnification of Indemnitee is proper because Indemnitee has met the applicable standard of conduct set forth in Article Seven, Section 1 or 2, as the case may be. Such determination shall be made in each instance (a) by a majority vote of the directors of the Corporation consisting of persons who are not at that time parties to the action, suit or proceeding in question ("disinterested directors"), whether or not a quorum, (b) by a committee of disinterested directors designated by majority vote of disinterested directors, whether or not a quorum, (c) if there are no disinterested directors, or if the disinterested directors so direct, by independent legal counsel (who may, to the extent permitted by law, be regular legal counsel to the Corporation) in a written opinion, or (d) by the stockholders of the Corporation.

7. Remedies. The right to indemnification or advancement of expenses as granted by this Article Seven shall be enforceable by Indemnitee in any court of competent jurisdiction. Neither the failure of the Corporation to have made a determination prior to the commencement of such action that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Corporation pursuant to Article Seven, Section 6 that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct. In any suit brought by Indemnitee to enforce a right to indemnification, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall have the burden of proving that Indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Article Seven. Indemnitee's expenses (including attorneys' fees) reasonably incurred in connection with successfully establishing Indemnitee's right to indemnification, in whole or in part, in any such proceeding shall also be indemnified by the Corporation. Notwithstanding the foregoing, in any suit brought by Indemnitee to enforce a right to indemnification hereunder it shall be a defense that the Indemnitee has not met any applicable standard for indemnification set forth in Delaware Law.

8. Limitations. Notwithstanding anything to the contrary in this Article Seven, except as set forth in Article Seven, Section 7, the Corporation shall not indemnify an Indemnitee pursuant to this Article Seven in connection with a proceeding (or part thereof) initiated by such Indemnitee unless the initiation thereof was approved by the Board of Directors of the Corporation. Notwithstanding anything to the contrary in this Article Seven, the Corporation shall not indemnify an Indemnitee to the extent such Indemnitee is reimbursed from the proceeds of insurance, and in the event the Corporation makes any indemnification payments to an Indemnitee and such Indemnitee is subsequently reimbursed from the proceeds of insurance, such Indemnitee shall promptly refund indemnification payments to the Corporation to the extent of such insurance reimbursement.

9. Subsequent Amendment. No amendment, termination or repeal of this Article Seven or of the relevant provisions of the Delaware Law or any other applicable laws shall adversely affect or diminish in any way the rights of any Indemnitee to indemnification under the provisions hereof with respect to any action, suit, proceeding or investigation arising out of or relating to any actions, transactions or facts occurring prior to the final adoption of such amendment, termination or repeal.

10. Other Rights. The indemnification and advancement of expenses provided by this Article Seven shall not be deemed exclusive of any other rights to which an Indemnitee seeking indemnification or advancement of expenses may be entitled under any law (common or statutory), agreement or vote of stockholders or disinterested directors or otherwise, both as to action in Indemnitee's official capacity and as to action in any other capacity while holding office for the Corporation, and shall continue as to an Indemnitee who has ceased to be a director or officer, and shall inure to the benefit of the estate, heirs, executors and administrators of Indemnitee. Nothing contained in this Article Seven shall be deemed to prohibit, and the Corporation is specifically authorized to enter into, agreements with officers and directors providing indemnification rights and procedures different from those set forth in this Article Seven. In addition, the Corporation may, to the extent authorized from time to time by its Board of Directors, grant indemnification rights to other employees or agents of the Corporation or other persons serving the Corporation and such rights may be equivalent to, or greater or less than, those set forth in this Article Seven.

11. Partial Indemnification. If an Indemnitee is entitled under any provision of this Article Seven to indemnification by the Corporation for some or a portion of the expenses (including attorneys' fees), liabilities, losses, judgments, fines (including excise taxes and penalties arising under the Employee Retirement Income Security Act of 1974) or amounts paid in settlement actually and reasonably incurred by or on behalf of Indemnitee in connection with any action, suit, proceeding or investigation and any appeal therefrom but not, however, for the total amount thereof, the Corporation shall nevertheless indemnify Indemnitee for the portion of such expenses (including attorneys' fees), liabilities, losses, judgments, fines (including excise taxes and penalties arising under the Employee Retirement Income Security Act of 1974) or amounts paid in settlement to which Indemnitee is entitled.

12. Insurance. The Corporation may purchase and maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise (including any employee benefit plan) against any expense, liability or loss incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under Delaware Law.

13. Savings Clause. If this Article Seven or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify each Indemnitee as to any expenses (including attorneys' fees), liabilities, losses, judgments, fines (including excise taxes and penalties arising under the Employee Retirement Income Security Act of 1974) and amounts paid in settlement in connection with any action, suit, proceeding or investigation, whether civil, criminal or administrative, including an action by or in the right of the Corporation, to the fullest extent permitted by any applicable portion of this Article Seven that shall not have been invalidated and to the fullest extent permitted by applicable law.

14. Definitions. Terms used herein and defined in Section 145(h) and Section 145(i) of Delaware Law shall have the respective meanings assigned to such terms in such Section 145(h) and Section 145(i).

ARTICLE EIGHT

Except to the extent that the Delaware Law prohibits the elimination or limitation of liability of directors for breaches of fiduciary duty, no director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty as a director, notwithstanding any provision of law imposing such liability. No amendment to or repeal of this provision shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal. If Delaware Law is amended to permit further elimination or limitation of the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by Delaware Law is so amended.

ARTICLE NINE

The Corporation expressly elects not to be governed by §203 of Delaware Law.

ARTICLE TEN

The Corporation reserves the right to amend this Certificate of Incorporation in any manner permitted by Delaware Law and all rights and powers conferred herein on stockholders, directors and officers, if any, are subject to this reserved power.

* * * * *

AMENDED AND RESTATED BY-LAWS

of

Aerie Pharmaceuticals, Inc.

As adopted as of November 21, 2022

A Delaware Corporation

AMENDED AND RESTATED
BY-LAWS

ARTICLE I
STOCKHOLDERS

1. Annual Meeting. Unless directors are elected by written consent in lieu of an annual meeting, an annual meeting of stockholders for the purposes of electing directors and of transacting such other business as may come before it shall be held commencing with the year 2022 on such date and time as shall be designated from time to time by the Board of Directors or the President, either within or without the State of Delaware, or not at any place, but instead held by means of remote communication, as may be determined by the Board of Directors. If a written consent electing directors is less than unanimous, such action by written consent may be in lieu of holding an annual meeting only if all of the directorships to which directors could be elected at an annual meeting held at the effective time of such action are vacant and are filled by such action.

2. Special Meeting. Special meetings of stockholders for any purpose or purposes may be held at any time upon the call of the Chairman of the Board, if any, the President, the Secretary, or a majority of the Board of Directors, at such time and place either within or without the State of Delaware, or not at any place, but instead held by means of remote communication, as may be stated in a notice to stockholders. A special meeting of stockholders shall be called by the President or the Secretary upon the written request, stating time, place (or if not at any place, the means of remote communication), and the purpose or purposes of the meeting, of stockholders who together own of record 25% of the outstanding stock of all classes entitled to vote at such meeting.

3. Notice of Meetings. Notice of stockholders' meetings, stating the place, if any, date, and hour thereof, the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given by the Chairman of the Board, if any, the President, any Vice President, the Secretary, or an Assistant Secretary, to each stockholder entitled to vote thereat at least ten days but not more than sixty days before the date of the meeting, unless a different period is prescribed by law, and except to the extent that such notice is waived or is not required as provided in the General Corporation Law of the State of Delaware (the "Delaware General Corporation Law") or these By-Laws. Such notice shall be given in accordance with, and shall be deemed effective as set forth in, Sections 222 and 232 (or any successor section or sections) of the Delaware General Corporation Law.

4. Quorum. Except as otherwise provided by law or in the Certificate of Incorporation or these By-Laws, at any meeting of stockholders, the holders of a majority in voting power of the outstanding shares entitled to vote at the meeting shall be present or represented by proxy in order to constitute a quorum for the transaction of any business. In the absence of a quorum, a majority in interest of the stockholders present or the chairman of the meeting may adjourn the meeting from time to time in the manner provided in Article I, Section 5 of these By-Laws until a quorum shall attend.

5. Adjournment. Any meeting of stockholders, whether annual or special, may adjourn from time to time to reconvene at the same or some other place, if any place, and notice need not be given of any such adjourned meeting if the time and place (if any) thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If the adjournment is for more than thirty (30) days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for determination of stockholders entitled to vote is fixed for the adjourned meeting, the Board of Directors shall fix as the record date for determining stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote at the adjourned meeting, and shall give notice of the adjourned meeting to each stockholder of record as of the record date so fixed for notice of such adjourned meeting.

6. Organization. The Chairman of the Board, if any, or in his absence the President, or in his absence any Vice President, shall call to order meetings of stockholders and shall act as chairman of such meetings. The Board of Directors or, if the Board fails to act, the stockholders may appoint any stockholder, director, or officer of the Corporation to act as chairman of any meeting in the absence of the Chairman of the Board, the President, and all Vice Presidents. The Secretary of the Corporation shall act as secretary of all meetings of stockholders, but, in the absence of the Secretary, the chairman of the meeting may appoint any other person to act as secretary of the meeting.

7. Voting. Except as otherwise provided by law or in the Certificate of Incorporation or these By-Laws and except for the election of directors, at any meeting duly called and held at which a quorum is present, a majority of the votes cast at such meeting upon a given question by the holders of outstanding shares of stock of all classes of stock of the Corporation entitled to vote thereon who are present in person or by proxy shall decide such question. At any meeting duly called and held for the election of directors at which a quorum is present, those directors receiving a plurality of the votes cast by the holders of shares of any class or series entitled to elect directors as a class shall be elected.

8. Action Without a Meeting. Unless otherwise restricted by the Certificate of Incorporation, any action required or permitted to be taken at any annual or special meeting of the stockholders may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the corporation in accordance with applicable law.

ARTICLE II
BOARD OF DIRECTORS

1. Number and Term of Office. The business, property, and affairs of the Corporation shall be managed by or under the direction of a board of at least one director; provided, however, that the Board, by resolution adopted by vote of a majority of the then authorized number of directors, may increase or decrease the number of directors. The Board of Directors shall initially consist of the persons named as directors in the Certificate of Incorporation or elected by the incorporator of the Corporation. The directors shall be elected by the holders of shares entitled to vote thereon at the annual meeting of stockholders (unless directors are elected by written consent pursuant to Article I, Section 1 of these By-Laws), and each shall serve (subject to the provisions of Article IV) until the next succeeding annual meeting of stockholders and until his respective successor is elected and qualified or until the director's earlier death, resignation or removal.

2. Chairman of the Board. The directors may elect one of their members to be Chairman of the Board of Directors. The Chairman shall be subject to the control of and may be removed by the Board of Directors. He shall perform such duties as may from time to time be assigned to him by the Board.

3. Meetings. Regular meetings of the Board of Directors may be held without notice at such time and place as shall from time to time be determined by the Board.

4. Special Meetings. Special meetings of the Board may be called by the Chairman of the Board or the President on one day's notice to each director, either personally or by telephone, express delivery service (so that the scheduled delivery date of the notice is at least one day in advance of the meeting), telegram, facsimile transmission, electronic mail (effective when directed to an electronic mail address of the director), or other electronic transmission, as defined in Section 232(c) (or any successor section) of the Delaware General Corporation Law (effective when directed to the director), and on five days' notice by mail (effective upon deposit of such notice in the mail). The notice need not describe the purpose of a special meeting.

5. Quorum and Organization of Meetings. A majority of the total number of members of the Board of Directors as constituted from time to time shall constitute a quorum for the transaction of business, but, if at any meeting of the Board of Directors (whether or not adjourned from a previous meeting) there shall be less than a quorum present, a majority of those present may adjourn the meeting to another time and place, and the meeting may be held as adjourned without further notice or waiver. Except as otherwise provided by law or in the Certificate of Incorporation or these By-Laws, a majority of the directors present at any meeting at which a quorum is present may decide any question brought before such meeting. Meetings shall be presided over by the Chairman of the Board, if any, or in his absence, by the President, or in the absence of both by such other person as the directors may select. The Secretary of the Corporation shall act as secretary of the meeting, but in his absence the chairman of the meeting may appoint any person to act as secretary of the meeting.

6. Committees. The Board of Directors may, by resolution passed by the Board, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors, shall have and may exercise all the power and authority of the Board of Directors in the management of the business, property, and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have power or authority which is prohibited to such committee by the Delaware General Corporation Law. Each committee which may be established by the Board of Directors pursuant to these By-Laws may fix its own rules and procedures. Notice of meetings of committees, other than of regular meetings provided for by the rules, shall be given to committee members. All action taken by committees shall be recorded in minutes of the meetings.

7. Action Without Meeting. The Board of Directors or any committee designated by the Board may take any action required or permitted to be taken by them without a meeting unless otherwise prohibited by law or the Certificate of Incorporation. The action must be evidenced by one or more consents in writing or by electronic transmission describing the action taken, signed by each director, and delivered to the Corporation for inclusion in the minute book.

8. Telephone Meetings. Nothing contained in these By-Laws shall be deemed to restrict the power of members of the Board of Directors, or any committee designated by the Board, to participate in a meeting of the Board, or committee, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other. A director participating in a meeting by this means is deemed to be present in person at the meeting.

ARTICLE III OFFICERS

1. Executive. The executive officers of the Corporation shall be a President, one or more Vice Presidents, a Treasurer, and a Secretary, each of whom shall be elected by the Board of Directors. The Board of Directors may elect or appoint such other officers (including a Controller, a Chief Executive Officer and one or more Assistant Secretaries) as it may deem necessary or desirable. Each officer shall hold office for such term as may be prescribed by the Board of Directors from time to time. Any person may hold at one time two or more offices.

2. Powers and Duties. The Chairman of the Board, if any, or, in his absence, the President, shall preside at all meetings of the stockholders and of the Board of Directors. Unless otherwise provided by the Board of Directors, the President shall be the chief executive officer of the Corporation. In the absence of the President, a Vice President appointed by the President or, if the President fails to make such appointment, by the Board, shall perform all the duties of the chief executive officer of the Corporation. The officers and agents of the Corporation shall each have such powers and authority and shall perform such duties in the management of the business, property and affairs of the Corporation as generally pertain to their respective offices, as well as such powers and authorities and such duties as from time to time may be prescribed by the Board of Directors.

ARTICLE IV RESIGNATIONS, REMOVALS, AND VACANCIES

1. Resignations. Any director or officer of the Corporation, or any member of any committee, may resign at any time by giving written or electronic notice to the Board of Directors, the President, or the Secretary of the Corporation. Any such resignation shall take effect at the time specified therein or, if the time be not specified therein, then upon receipt thereof. The acceptance of such resignation shall not be necessary to make it effective unless the resignation provides otherwise.

2. Removals. The Board of Directors, by a vote of not less than a majority of the entire Board, at any meeting thereof, or by written consent, at any time, may, to the extent permitted by law, remove with or without cause, from office or terminate the employment of any officer or member of any committee and may, with or without cause, disband any committee. Any director or the entire Board of Directors may be removed, with or without cause, by the holders of a majority in voting power of the shares entitled at the time to vote at an election of directors.

3. Vacancies. Any vacancy in the office of any director through death, resignation, removal, disqualification, or other cause, and any additional directorship resulting from any increase in the number of directors, may be filled at any time by a majority of the directors then in office (even though less than a quorum remains) or by the stockholders, and, subject to the provisions of this Article IV, the person so chosen shall hold office until his successor shall have been elected and qualified. Any vacancy in the office of any officer may be filled by resolution of the Board of Directors.

ARTICLE V CAPITAL STOCK

1. Certificates Representing Shares. The shares of stock of the Corporation shall be represented by certificates; provided that the Board of Directors may provide by resolution or resolutions that some or all of any class or series shall be uncertificated shares that may be evidenced by a book-entry system maintained by the registrar of such stock. If shares are represented by certificates, such certificates shall be in the form, other than bearer form, approved by the Board of Directors. The certificates representing shares of stock of each class shall be signed by, or in the name of, the Corporation by any two authorized officers of the Corporation. Any or all such signatures may be facsimiles. Although any officer, transfer agent, or registrar whose manual or facsimile signature is affixed to such a certificate ceases to be such officer, transfer agent, or registrar before such certificate has been issued, it may nevertheless be issued by the Corporation with the same effect as if such officer, transfer agent, or registrar were still such at the date of its issue.

2. Transfer of Shares. Shares of stock of the Corporation shall be transferable in the manner prescribed by law and in these By-Laws. Transfers of stock shall be made on the books of the Corporation only by the holder of record thereof, by such person's attorney lawfully constituted in writing and, in the case of certificated shares, upon the surrender of the certificate thereof, which shall be cancelled before a new certificate or uncertificated shares shall be issued. No transfer of stock shall be valid as against the Corporation for any purpose until it shall have been entered in the stock records of the Corporation by an entry showing from and to whom transferred. To the extent designated by the president or any vice president or the treasurer of the Corporation, the Corporation may recognize the transfer of fractional uncertificated shares, but shall not otherwise be required to recognize the transfer of fractional shares.

3. Record Date.

3.1. *Actions by Stockholders.* In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than sixty days nor less than ten days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting, provided, however, that the Board of Directors may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting. In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than ten days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date has been fixed by the Board of Directors, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by the Delaware General Corporation Law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation in the manner prescribed by Section 213(b) of the Delaware General Corporation Law. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by the Delaware General Corporation Law, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

3.2. *Payments.* In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

4. Lost Certificates. The Corporation or any transfer agent of the Corporation may direct a new certificate or certificates representing stock of the Corporation to be issued in place of any certificate or certificates theretofore issued by the Corporation, alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate to be lost, stolen, or destroyed. When authorizing such issue of a new certificate or certificates, the Corporation (or any transfer agent of the Corporation authorized to do so by a resolution of the Board of Directors) may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen, or destroyed certificate or certificates, or his legal representative, to give the Corporation a bond in such sum as the Corporation (or any transfer agent so authorized) shall direct to indemnify the Corporation against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost, stolen, or destroyed or the issuance of such new certificates, and such requirement may be general or confined to specific instances.

5. Regulations. The Board of Directors shall have power and authority to make all such rules and regulations as it may deem expedient concerning the issue, transfer, registration, cancellation, and replacement of certificates representing stock of the Corporation.

ARTICLE VI INDEMNIFICATION

1. Indemnification of Directors and Officers. The Corporation shall indemnify and hold harmless, to the fullest extent permitted by the Delaware General Corporation Law as it presently exists or may hereafter be amended, any director or officer of the Corporation who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "Proceeding") by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or non-profit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses reasonably incurred by such person in connection with any such Proceeding. The Corporation shall be required to indemnify a person in connection with a Proceeding initiated by such person only if the Proceeding was authorized by the Board of Directors.

2. Indemnification of Others. The Corporation shall have the power to indemnify and hold harmless, to the extent permitted Corporation applicable law as it presently exists or may hereafter be amended, any employee or agent of the Corporation who was or is made or is threatened to be made a party or is otherwise involved in any Proceeding by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was an employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or non-profit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses reasonably incurred by such person in connection with any such Proceeding.

3. Prepayment of Expenses. The Corporation shall pay the expenses incurred by any officer or director of the Corporation, and may pay the expenses incurred by any employee or agent of the Corporation, in defending any Proceeding in advance of its final disposition; provided, however, that the payment of expenses incurred by a person in advance of the final disposition of the Proceeding shall be made only upon receipt of an undertaking by the person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Article VI or otherwise.

4. Determination; Claim. If a claim for indemnification or payment of expenses under this Article VI is not paid in full within sixty days after a written claim therefor has been received by the Corporation the claimant may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action the Corporation shall have the burden of proving that the claimant was not entitled to the requested indemnification or payment of expenses under applicable law.

5. Non-Exclusivity of Rights. The rights conferred on any person by this Article VI shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, provision of the certificate of incorporation, these By-Laws, agreement, vote of stockholders or disinterested directors or otherwise.

6. Insurance. The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him or her against such liability under the provisions of the Delaware General Corporation Law.

7. Other Indemnification. The Corporation's obligation, if any, to indemnify any person who was or is serving at its request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, enterprise or non-profit entity shall be reduced by any amount such person may collect as indemnification from such other corporation, partnership, joint venture, trust, enterprise or non-profit enterprise.

8. Amendment or Repeal. Any repeal or modification of the foregoing provisions of this Article VI shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification.

ARTICLE VII MISCELLANEOUS

1. Corporate Seal. The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization, and the words "Corporate Seal" and "Delaware".

2. Fiscal Year. The fiscal year of the Corporation shall be determined by resolution of the Board of Directors.

3. Notices and Waivers Thereof. Wherever any notice whatsoever is required by law, the Certificate of Incorporation, or these By-Laws to be given to any stockholder, director, or officer, such notice, except as otherwise provided by law, may be given personally, or by mail, e-mail, telex, telecopy, telegraph, cable or overnight courier addressed to such address as appears on the books of the Corporation. Any notice given by e-mail, telex, telecopy, telegraph or cable shall be deemed to have been given when it shall have been delivered for transmission, and any notice given by mail or overnight courier shall be deemed to have been given when it shall have been deposited in the United States mail with postage thereon prepaid or given to such courier service, as applicable. In addition to the foregoing, any notice to stockholders required by law, the Certificate of Incorporation or these By-Laws may be given by means of electronic transmission as defined in Section 232(c) (or any successor section) of the Delaware General Corporation Law, and any such notice shall be deemed to have been given in accordance with such section. Whenever any notice is required to be given by law, the Certificate of Incorporation, or these By-Laws, a written waiver thereof, signed by the person entitled to such notice, or made by electronic transmission as defined in Section 232(c) of the Delaware General Corporation Law (or any successor section) by the person entitled to the notice, whether before or after the meeting or the time stated therein, shall be deemed equivalent in all respects to such notice to the full extent permitted by law. Any such waiver shall be delivered to the Corporation for inclusion in the minute book. Notwithstanding the foregoing, a director's or stockholder's attendance at or participation in a meeting waives any required notice to the director or stockholder of the meeting unless the director or stockholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

4. Stock of Other Corporations or Other Interests. Unless otherwise ordered by the Board of Directors, the President, the Secretary, and such attorneys or agents of the Corporation as may be from time to time authorized by the Board of Directors, or the President, shall have full power and authority on behalf of the Corporation to attend and to act and vote in person or by proxy at any meeting of the holders of securities of any corporation or other entity in which the Corporation owns or holds shares or other securities, and at such meetings shall possess and may exercise all the rights and powers incident to the ownership of such shares or other securities which the Corporation, as the owner or holder thereof, might have possessed and exercised if present. The President, the Secretary, or such attorneys or agents, may also execute and deliver on behalf of the Corporation powers of attorney, proxies, consents, waivers, and other instruments relating to the shares or securities owned or held by the Corporation.

ARTICLE VIII AMENDMENTS

The holders of shares entitled at the time to vote for the election of directors shall have power to adopt, amend, or repeal these By-Laws and, except as otherwise provided by law, the Board of Directors shall have power equal in all respects to that of the stockholders to adopt, amend, or repeal these By-Laws. However, any By-Law adopted by the Board may be amended or repealed by vote of the stockholders.

ARTICLE IX PROVISIONS

These By-Laws shall be subject to such provisions of the statutory and common laws of the State of Delaware as may be applicable to corporations organized under the laws of the State of Delaware. References herein to provisions of law shall be deemed to be references to the aforesaid provisions of law unless otherwise explicitly stated. All references in these By-Laws to such provisions of law shall be construed to refer to such provisions as from time to time amended.

ARTICLE X CERTIFICATE OF INCORPORATION

These By-Laws shall be subject to the Certificate of Incorporation of the Corporation. All references in these By-Laws to the Certificate of Incorporation shall be construed to mean the Certificate of Incorporation of the Corporation as from time to time amended and/or restated.

AERIE PHARMACEUTICALS, INC.

and

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Trustee

FIRST SUPPLEMENTAL INDENTURE

dated as of November 21, 2022

to the

INDENTURE

dated as of September 9, 2019

1.50% Convertible Senior Notes due 2024

FIRST SUPPLEMENTAL INDENTURE (this “**Supplemental Indenture**”), dated as of November 21, 2022, between Aerie Pharmaceuticals, Inc., a Delaware corporation, as issuer (the “**Company**”), and Wilmington Trust, National Association, as trustee (the “**Trustee**”), to the Indenture, dated as of September 9, 2019 (as supplemented or otherwise modified prior to the date hereof, the “**Indenture**”), between the Company and the Trustee. Capitalized terms used in this Supplemental Indenture without definition have the meanings ascribed to such terms in the Indenture.

WITNESSETH:

WHEREAS, the Company has heretofore executed and delivered the Indenture, pursuant to which the Company issued its 1.50% Convertible Senior Notes due 2024 (the “**Notes**”) in an aggregate principal amount of \$316,250,000;

WHEREAS, the Company, Alcon Research, LLC, a Delaware limited liability company (“**Parent**”), and Lyon Merger Sub, Inc., a Delaware corporation and a wholly owned subsidiary of Parent (“**Merger Sub**”), have entered into an Agreement and Plan of Merger, dated as of August 22, 2022 (as amended, supplemented, restated, or otherwise modified from time to time, the “**Merger Agreement**”), pursuant to which, among other things, Merger Sub will be merged with and into the Company, with the Company surviving as a wholly owned subsidiary of Parent as of the date hereof (the “**Merger**”);

WHEREAS, in connection with the Merger, each share of the Company’s common stock, par value \$0.001 per share (the “**Common Stock**”), outstanding immediately prior to the effective time of the Merger (the “**Effective Time**”) (other than certain shares of Common Stock as set forth in the Merger Agreement) will be automatically converted into the right to receive an amount in cash equal to \$15.25 per share, without interest and subject to any withholding of taxes;

WHEREAS, the Company has determined the Merger constitutes a “Common Stock Change Event” under the Indenture;

WHEREAS, Section 5.10 of the Indenture requires the Company to execute and deliver to the Trustee a supplemental indenture, pursuant to Section 8.01(F) of the Indenture without the consent of any Holders, in connection with a Common Stock Change Event, providing for the change in the conversion right of the Notes resulting from the Common Stock Change Event, as provided in Article 5 of the Indenture;

WHEREAS, the Company has determined that all things necessary to make this Supplemental Indenture a legal, valid and binding agreement of the Company and a valid amendment to the Indenture have been done, and pursuant to Section 8.06 of the Indenture, the Company requests that the Trustee execute and deliver this Supplemental Indenture; and

WHEREAS, in connection with the execution and delivery of this Supplemental Indenture, the Trustee has received an Officer’s Certificate and an Opinion of Counsel pursuant to Sections 5.10, 6.01(B), 8.06 and 11.02 of the Indenture upon each of which the Trustee is entitled to and shall conclusively rely.

NOW, THEREFORE, for and in consideration of the premises, the receipt and sufficiency of which is hereby acknowledged, the Company covenants and agrees with the Trustee for the equal and proportionate benefit of the respective Holders from time to time of the Notes, as follows:

ARTICLE 1
AMENDMENTS

Section 1.01. *Occurrence of Common Stock Change Event.* The consummation of the Merger will constitute a Common Stock Change Event consistent with the definition thereof and as provided for under the Indenture.

Section 1.02. *Settlement Election*. Pursuant to Section 5.10(A)(2) of the Indenture, the Company has been deemed to have elected Physical Settlement to apply to all conversions whose Conversion Date occurs on or after the effective date of the Common Stock Change Event, subject to Section 1.03 below.

Section 1.03. *Conversion of Notes following Merger*. In accordance with and subject to Section 5.10 of the Indenture, from and after the Effective Time, the Notes will be convertible solely into the Reference Property of the Merger. Each Reference Property Unit of the Merger consists of an amount in cash equal to \$15.25. Accordingly, from and after the Effective Time, the conversion of any Note will be settled by such consideration, per \$1,000 principal amount of such Note to be converted, equal to the product of (A) the Conversion Rate applicable to such conversion, and (B) the applicable Reference Property Unit. From and after the Effective Time, in accordance with Section 5.10 of the Indenture, the Conversion Rate will no longer be subject to adjustment pursuant to Section 5.05(A) of the Indenture.

ARTICLE 2 MISCELLANEOUS

Section 2.01. *Governing Law; Waiver to Jury Trial*. THIS SUPPLEMENTAL INDENTURE AND ANY CLAIM, CONTROVERSY, OR DISPUTE ARISING UNDER OR RELATED TO THIS SUPPLEMENTAL INDENTURE WILL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK. EACH OF THE COMPANY AND THE TRUSTEE IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS SUPPLEMENTAL INDENTURE OR THE TRANSACTIONS CONTEMPLATED BY THIS SUPPLEMENTAL INDENTURE.

Section 2.02. *Successors*. All agreements of the Company in this Supplemental Indenture will bind its successors. All agreements of the Trustee in this Supplemental Indenture will bind its successors.

Section 2.03. *Severability*. If any provision of this Supplemental Indenture is invalid, illegal or unenforceable, then the validity, legality and enforceability of the remaining provisions of this Supplemental Indenture will not in any way be affected or impaired thereby.

Section 2.04. *Counterparts*. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy will be an original, and all of them together represent the same agreement. Delivery of an executed counterpart of this Supplemental Indenture by facsimile, electronically in portable document format or in any other format will be effective as delivery of a manually executed counterpart.

Section 2.05. *Headings, Etc*. The headings of the articles and sections of this Supplemental Indenture have been inserted for convenience of reference only, are not to be considered a part of this Supplemental Indenture, and will in no way modify or restrict any of the terms or provisions of this Supplemental Indenture.

Section 2.06. *Effectiveness*. This Supplemental Indenture shall become effective upon, without further action by the parties hereto, the Effective Time. The Company shall provide written notice to the Trustee upon the occurrence of the Effective Time; provided, however, that failure to provide such notice shall have no impact on the effectiveness of this Supplemental Indenture.

Section 2.07. *The Trustee*. In entering into this Supplemental Indenture, the Trustee shall be entitled to the benefit of every provision of the Indenture relating to the conduct or effecting the liability of or affording protection to the Trustee, whether or not elsewhere herein so provided. The Trustee makes no representations as to the validity, execution or sufficiency of this Supplemental Indenture, other than as to the validity of its execution and delivery by the Trustee. The Trustee assumes no responsibility for the correctness of the recitals contained herein, which shall be taken as a statement of the Company.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed as of the date first written above.

AERIE PHARMACEUTICALS, INC.

By: /s/ Peter Lang

Name: Peter Lang

Title: Chief Financial Officer

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Trustee

By: /s/ Barry D. Somrock

Name: Barry D. Somrock

Title: Vice President