

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

FORM S-8

**REGISTRATION STATEMENT UNDER
THE SECURITIES ACT OF 1933**

EYENOVIA, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or organization)

47-1178401
(I.R.S. Employer Identification No.)

**295 Madison Avenue, Suite 2400
New York, NY**
(Address of Principal Executive Offices)

10017
(Zip Code)

Eyenovia, Inc. Amended and Restated 2018 Omnibus Stock Incentive Plan, as Amended
(Full title of the plan)

Michael Rowe
Chief Executive Officer
295 Madison Avenue, Suite 2400
New York, NY 10017
(833) 393-6684
(Name, address and telephone number, including area code, of agent for service)

Copy:

Megan N. Gates, Esq.
Covington & Burling LLP
1 International Place
Boston, MA 02110
(212) 841-1247

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a 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
Non-accelerated filer

Accelerated filer
Smaller reporting company
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 7(a)(2)(B) of the Securities Act.

EXPLANATORY NOTE

This Registration Statement registers an aggregate of 1,000,000 additional shares of common stock, par value \$0.0001 per share (“Common Stock”), of Eyenovia, Inc. (the “Company” or the “Registrant”) under the Eyenovia, Inc. Amended and Restated 2018 Omnibus Stock Incentive Plan, as Amended, representing an increase in the number of shares of Common Stock reserved for issuance under such plan as a result of an amendment thereto, which was adopted by the board of directors of the Company on March 6, 2023 and approved by the Company’s stockholders at the Annual Meeting of Stockholders held on June 27, 2023.

Pursuant to General Instruction E to Form S-8 under the Securities Act of 1933, as amended, the contents of the Registrant’s Registration Statements on Form S-8 filed with the U.S. Securities and Exchange Commission (the “Commission”) on [August 27, 2018 \(File No. 333-227049\)](#), [August 14, 2019 \(File No. 333-233280\)](#), [August 14, 2020 \(File No. 333-246288\)](#), [November 12, 2021 \(File No. 333-261035\)](#) and [August 12, 2022 \(File No. 333-266823\)](#) are incorporated by reference and made part of this Registration Statement. Any items in such registration statements not expressly changed hereby shall be as set forth in such registration statements.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The Company is subject to the informational and reporting requirements of Sections 13(a), 14 and 15(d) of the Securities Exchange Act of 1934 (the “Exchange Act”) and in accordance therewith files reports, proxy statements and other information with the Commission. The following documents, which are on file with the Commission, are incorporated in this Registration Statement by reference:

(a) The Company’s Annual Report on [Form 10-K for the fiscal year ended December 31, 2022, filed with the Commission on March 31, 2023 \(File No. 001-38365\)](#), as amended by the Company’s [Amendment No. 1 to Annual Report on Form 10-K, filed with the Commission on May 1, 2023](#);

(b) All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the document referred to in (a) above (other than the portions of those documents not deemed to be filed); and

(c) The description of the Company’s Common Stock contained in [Exhibit 4.1 to the Company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2022, filed with the Commission on March 31, 2023 \(File No. 001-38365\)](#).

All documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment that indicates that all securities offered hereby have been sold or that deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be part hereof from the date of the filing of such documents.

Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for the purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document that also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 8. Exhibits.

Exhibit No.	Description
4.1	Third Amended and Restated Certificate of Incorporation of the Registrant (incorporated herein by reference to Exhibit 3.1 of the Registrant's Current Report on Form 8-K filed on January 29, 2018).
4.2	Certificate of Amendment to the Third Amended and Restated Certificate of Incorporation of the Registrant (incorporated herein by reference to Exhibit 3.1.1 of the Registrant's Current Report on Form 8-K filed on June 14, 2018).
4.3	Second Amended and Restated Bylaws of the Registrant (incorporated herein by reference to Exhibit 3.1 of the Registrant's Current Report on Form 8-K filed on February 7, 2022).
4.4	Eyenovia, Inc. Amended and Restated 2018 Omnibus Stock Incentive Plan, as Amended (incorporated herein by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K filed on June 27, 2023).
5.1*	Opinion of Covington and Burling LLP.
23.1*	Consent of Marcum LLP.
23.2*	Consent of Covington and Burling LLP (included in Exhibit 5.1).
24.1*	Power of Attorney (included on the signature page of this Registration Statement).
107*	Filing Fees Exhibit.

* Filed herewith.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of New York, State of New York, on June 27, 2023.

EYENOVIA, INC.

By: /s/ John Gandolfo
John Gandolfo
Chief Financial Officer

SIGNATURES AND POWER OF ATTORNEY

Each person whose signature appears below constitutes and appoints Michael Rowe and John Gandolfo, and each of them singly (with full power to each of them to act alone), as his true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him and in name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite or necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
<u>/s/ Michael Rowe</u> Michael Rowe	Chief Executive Officer (<i>Principal Executive Officer</i>) and Director	June 27, 2023
<u>/s/ John Gandolfo</u> John Gandolfo	Chief Financial Officer (<i>Principal Financial and Accounting Officer</i>)	June 27, 2023
<u>/s/ Tsoncho Ianchulev</u> Tsoncho Ianchulev	Director	June 27, 2023
<u>/s/ Rachel Jacobson</u> Rachel Jacobson	Director	June 27, 2023
<u>/s/ Charles E. Mather IV</u> Charles E. Mather IV	Director	June 27, 2023
<u>/s/ Ram Palanki</u> Ram Palanki	Director	June 27, 2023
<u>Ellen R. Strahlman</u>	Director	June 27, 2023

COVINGTON

BEIJING BRUSSELS DUBAI FRANKFURT JOHANNESBURG
LONDON LOS ANGELES NEW YORK PALO ALTO
SAN FRANCISCO SEOUL SHANGHAI WASHINGTON

Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 6000

June 27, 2023

Eyenovia, Inc.
295 Madison Avenue, Suite 2400
New York, NY 10017

Ladies and Gentlemen:

We have acted as counsel to Eyenovia, Inc., a Delaware corporation (the “*Company*”), in connection with the registration by the Company under the Securities Act of 1933, as amended (the “*Act*”), of 1,000,000 shares (the “*Shares*”) of the Company’s common stock, par value \$0.0001 per share (the “*Common Stock*”), issuable under the Eyenovia, Inc. Amended and Restated 2018 Omnibus Stock Incentive Plan, as Amended (the “*Plan*”), pursuant to the Registration Statement on Form S-8 filed with the Securities and Exchange Commission on the date hereof (such registration statement is referred to herein as the “*Registration Statement*”).

We have reviewed such corporate records, certificates and other documents, and such questions of law, as we have considered necessary or appropriate for the purposes of this opinion. We have assumed that all signatures are genuine, that all documents submitted to us as originals are authentic and that all copies of documents submitted to us conform to the originals.

We have relied as to certain matters on information obtained from public officials, officers of the Company and other sources believed by us to be responsible.

Based upon the foregoing, we are of the opinion that the Shares have been duly authorized and, when issued and paid for in accordance with the terms of the Plan, and any individual agreements relating to such Shares, the Shares will be validly issued, fully paid and non-assessable.

We are members of the bar of the Massachusetts. We do not express any opinion herein on any laws other than the General Corporation Law of the State of Delaware and reported judicial decisions interpreting these laws.

We hereby consent to the filing of this opinion as Exhibit 5.1 to the Registration Statement. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Act.

Very truly yours,

/s/ Covington & Burling LLP

INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM'S CONSENT

We consent to the incorporation by reference in this Registration Statement of Eyenovia, Inc. (the "Company") on Form S-8 of our report dated March 31, 2023, which includes an explanatory paragraph as to the Company's ability to continue as a going concern, with respect to our audits of the financial statements of the Company as of December 31, 2022 and 2021 and for each of the two years in the period ended December 31, 2022 appearing in the Annual Report on Form 10-K of the Company for the year ended December 31, 2022.

As discussed in Note 2 and Note 9 to the financial statements, the Company has changed its method of accounting for leases in 2022 due to the adoption of the guidance in ASC Topic 842, Leases effective January 1, 2022.

/s/ Marcum LLP

Marcum LLP
New York, New York
June 27, 2023

Calculation of Filing Fee Table

Form S-8
(Form Type)

Eyenovia, Inc.
(Exact Name of Registrant as Specified in its Charter)

Table 1: Newly Registered Securities

Security Type	Security Class Title	Fee Calculation Rule	Amount Registered(1)	Proposed Maximum Offering Price Per Unit(2)	Maximum Aggregate Offering Price(2)	Fee Rate	Amount of Registration Fee
Equity	Common Stock, par value \$0.0001 per share, to be issued under the Eyenovia, Inc. Amended and Restated 2018 Omnibus Stock Incentive Plan, as Amended	Other	1,000,000(3)	\$2.38	\$2,380,000	.0001102	\$262.28
Total Offering Amounts					\$2,380,000		\$262.28
Total Fee Offsets							\$—
Net Fee Due							\$262.28

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the “Securities Act”), this Registration Statement shall also cover any additional shares of the registrant’s Common Stock that become issuable in respect of such securities by reason of any stock dividend, stock split, recapitalization or other similar transaction.
- (2) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(c) and Rule 457(h) under the Securities Act, and based upon the average of the high and low prices of the registrant’s Common Stock as reported on The Nasdaq Capital Market on June 23, 2023.
- (3) Represents additional shares of the registrant’s Common Stock reserved for issuance under the Eyenovia, Inc. Amended and Restated 2018 Omnibus Stock Incentive Plan, as Amended.