REPLY EXHIBIT 13

Reply Exhibit 13 – Heat Biologics, NightHawk Biosciences and Scorpius Holdings Forms 8-K (excerpts: A.G.P. offering; sale of Elusys and the NightHawk name; later amendments)

Nejmeh v. Theriva Biologics, Inc., No. 3:26-cv-00705-ART-CSD (D. Nev.)

Source: SEC EDGAR, Accession Nos. 0001553350-18-000494, 0001558370-23-019741, 0001079973-24-001136, 0001079973-25-000380.

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): **May 2, 2018**

Heat Biologics, Inc.

(Exact name of registrant as specified in charter)

Delaware
(State or other jurisdiction of incorporation)

001-35994	**26-2844103**
(Commission File Number)	*(IRS Employer Identification No.)*

801 Capitola Drive
Durham, NC 27713
(Address of principal executive offices and zip code)

(919) 240-7133
(Registrant's telephone number including area code)

N/A
(Former Name and Former Address)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of 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(b) 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 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 checkmark 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.

On May 7, 2018, Heat Biologics, Inc. (the "Company") closed its previously announced firm commitment underwritten public offering (the "Offering") in which, pursuant to the underwriting agreement (the "Underwriting Agreement") entered into between the Company and A.G.P./Alliance Global Partners (A.G.P.), as representative of the underwriters, dated May 2, 2018, the Company issued and sold (i) 4,875,000 shares of common stock (inclusive of 1,875,000 shares of common stock subject to the over-allotment option, which was exercised in full) together with a number of common warrants to purchase 2,437,500 shares of its common stock (inclusive of warrants to purchase 937,500 shares of common stock subject to the over-allotment option, which was exercised in full), and (ii) 9,500,000 pre-funded warrants, with each pre-funded warrant exercisable for one share of common stock, together with a number of common warrants to purchase 4,750,000 shares of our common stock. The public offering price was $1.44 per share of common stock, $1.43 per pre-funded warrant and $0.01 per common warrant, and the gross proceeds received by the Company at the closing of the Offering on May 7, 2018 pursuant to such sales were approximately $20.7 million, prior to deducting underwriting discounts and commissions and other estimated offering expenses.

The common warrants will be immediately exercisable at a price of $1.584 per share of common stock, subject to adjustment in certain circumstances, and will expire on May 7, 2023 (five years from the date of issuance). The Company has the option to "call" the exercise of any or all of the common warrants, from time to time after any 10-consecutive trading day period during which the daily VWAP of the common stock is not less than 300% of the exercise price for the common warrants in effect for such 10-consecutive trading day period. No fractional shares of common stock will be issued in connection with the exercise of a common warrant. In lieu of fractional shares, we will round up to the next whole share. The common warrants also provide that in the event of a fundamental transaction the Company is required to cause any successor entity to assume its obligations under the common warrants. In addition, the holder of the common warrant will be entitled to receive upon exercise of the common warrant the kind and amount of securities, cash or property that the holder would have received had the holder exercised the common warrant immediately prior to such fundamental transaction.

Each purchaser whose purchase of shares of common stock in the offering would otherwise result in the purchaser, together with its affiliates and certain related parties, beneficially owning more than 4.99% (or, at the election of the holder, 9.99%) of the Company's outstanding common stock immediately following the consummation of this offering, was offered the opportunity to purchase pre-funded warrants, in lieu of shares of common stock that would otherwise result in the purchaser's beneficial ownership exceeding 4.99% (or, at the election of the holder, 9.99%) of the Company's outstanding common stock. Subject to limited exceptions, a holder of pre-funded warrants will not have the right to exercise any portion of its pre-funded warrants if the holder, together with its affiliates, would beneficially own in excess of 4.99% (or, at the election of the holder, 9.99%) of the number of shares of common stock outstanding immediately after giving effect to such exercise. Each pre-funded warrant will be exercisable for one share of the Company's common stock. The exercise price of each pre-funded warrant will be $0.01 per share. Each pre-funded warrant will be exercisable upon issuance and may be exercised at any time until all of the pre-funded warrants are exercised in full. The pre-funded warrants also provide that in the event of a fundamental transaction the Company is required to cause any successor entity to assume our obligations under the pre-funded warrants. In addition, the holder of the pre-funded warrant will be entitled to receive upon exercise of the pre-funded warrant the kind and amount of securities, cash or property that the holder would have received had the holder exercised the pre-funded warrant immediately prior to such fundamental transaction. On May 2, 2018, the Company entered into a warrant agency agreement with Continental Stock Transfer & Trust Company, as warrant agent (the "Warrant Agency Agreement") with respect to the common warrants.

The foregoing descriptions of the Underwriting Agreement, the Warrant Agency Agreement, the common warrant and the pre-funded warrants are not complete and are qualified in their entirety by reference to the full text of the Underwriting Agreement, the common warrant, the Warrant Agency Agreement and the pre-funded warrant, copies of which are included as Exhibit 1.1, Exhibit 4.1, Exhibit 4.2, and Exhibit 4.3 respectively, and incorporated by reference herein.

Item 8.01 Other Information.

On May 3, 2018, the Company issued a press release announcing the pricing of the Offering. A copy of the press release is attached as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated by reference herein.

On May 7, 2018, the Company issued a press release announcing the closing of the Offering. A copy of the press release is attached as Exhibit 99.2 to this Current Report on Form 8-K and is incorporated by reference herein.

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): **December 11, 2023**

NightHawk Biosciences, Inc.
(Exact name of registrant as specified in charter)

Delaware	**001-35994**	**26-2844103**
(State or other jurisdiction of incorporation)	**(Commission File Number)**	**(IRS Employer Identification No.)**

627 Davis Drive, Suite 300
Morrisville, North Carolina 27560
(Address of principal executive offices and zip code)

(919) 240-7133
(Registrant's telephone number including area code)

N/A
(Former Name and Former Address)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of registrant under any of the following provisions (see General Instruction A.2. below):

- ☐ 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, $0.0002 par value per share	NHWK	NYSE American LLC
Common Stock Purchase Rights		NYSE American LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☐

If an emerging growth company, indicate by checkmark 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.

Purchase Agreement

On December 11, 2023, NightHawk Biosciences, Inc. (the "Company") entered into an Asset and Equity Interests Purchase Agreement (the "Agreement") with Elusys Holdings Inc., a Delaware corporation ("Buyer"), which is a company controlled by the Company's Chairman, Chief Executive Officer and President, Jeffrey Wolf, pursuant to which the Company agreed to sell to the Buyer (i) all of the issued and outstanding equity interests in Elusys Therapeutics, Inc., a wholly owned subsidiary of the Company ("Elusys"), and (ii) the exclusive right to use the name "NightHawk" and ownership of all trademark, goodwill and other rights in connection with such name (collectively, the "Purchased Assets") (such transaction, the "Transaction"). A special committee of the Board (the "Special Committee") comprised solely of independent board members who were not interested parties in the Transaction negotiated the Agreement with Mr. Wolf and his entity.

Upon execution of the Agreement, the Buyer agreed to assume at the closing of the Transaction (the "Closing") certain specified liabilities and manufacturing commitments relating to Elusys' business, currently estimated at $40 million and paid the Company a cash payment of $500,000. The assumed liabilities and manufacturing commitments include all amounts owed to the former owners of Elusys under that certain Agreement and Plan of Merger and Reorganization by and among the Company, Heat Acquisition Sub 1, Inc., Elusys Therapeutics and Fortis Advisors LLC, in its capacity as "Stockholders' Representative," and the assumption by Buyer of all operating costs of Elusys, including the costs incurred after the Closing related to Elusys employees, consultants, and regulatory and research costs (collectively, the "Assumed Liabilities"). Mr. Wolf and Mr. Ostrander will continue to serve in their current positions with the Company following the Closing and will also serve as the Chief Executive Officer and Chief Financial Officer, respectively, of the Buyer following the Closing.

Pursuant to the Purchase Agreement, the Buyer will also be obligated to pay to the Company on an annual basis a royalty fee equal to 3% of gross revenue received by Buyer or any of its affiliates or their respective successors or licensees from all sales of the anthrax antitoxin known as ANTHIM® during the period commencing on January 1, 2024 and ending on June 30, 2031; provided that, if as of December 31, 2028, the Company has not received an aggregate of $5,000,000 in such royalty fees, Buyer will be obligated to pay to the Company no later than March 1, 2029 a cash payment equal to the difference between the aggregate amount of such royalty fees received by the Company and $5,000,000.

The Buyer agreed, as a post-closing covenant, to purchase from the Company, no later than January 20, 2024, a convertible promissory note in the aggregate amount of $2,250,000 (the "Note"), the conversion of which is subject to obtaining stockholder approval of the issuance of shares of the Company's common stock upon such conversion. The Note will bear interest at a rate of 1% per annum, mature on the one-year anniversary of its issuance and convert into shares of our common stock at the option of the Buyer only if stockholder approval of the issuance of such shares of common stock issuable upon conversion of the Note is obtained prior to the maturity date. The conversion price will be equal to 110% of the volume weighted average price (VWAP) of the Company's common stock for the seven trading days prior to December 11, 2023. Notwithstanding the foregoing, if the Company consummates a public financing, subject to certain exceptions, within sixty days of December 11, 2023, the conversion price shall be adjusted to be 110% of the per share purchase price of the common stock in such public financing. Such adjustment shall only be made upon the first financing in the event of multiple financings during the foregoing period. Based upon a conversion price of $0.39281, which is 110% of the VWAP of our common stock for the seven trading days prior to December 11, 2023, upon conversion of the Note (exclusive of interest), Buyer would be issued 5,727,960 shares of the Company's common stock upon conversion of the Note.

The Closing is subject to certain conditions, including receipt of all necessary governmental approvals, no injunction or restraining order preventing the consummation of the Transaction, no similar action from a governmental authority and no less than thirty days having passed since the time the Company provides a certain notice to the Stockholders' Representative or a waiver of such notice by the Stockholders' Representative. The Closing of the Transaction is expected to occur within two days after fulfillment of all conditions to Closing.

Pro forma financial information regarding the Transaction is provided as Exhibit 99.1 to this Current Report on Form 8-K.

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): **July 30, 2024**

Scorpius Holdings, Inc.
(Exact name of registrant as specified in charter)

Delaware
(State or other jurisdiction of incorporation)

001-35994	**26-2844103**
(Commission File Number)	*(IRS Employer Identification No.)*

627 Davis Drive, Suite 300
Morrisville, North Carolina 27560
(Address of principal executive offices and zip code)

(919) 240-7133
(Registrant's telephone number including area code)

(Former Name and Former Address)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of 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(b) 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, $0.0002 par value per share	SCPX	NYSE American LLC
Common Stock Purchase Rights		NYSE American LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☐

If an emerging growth company, indicate by checkmark 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.

Effective as of July 30, 2024, Scorpius Holdings, Inc. (the "Company") entered into a Note Cancellation and Amendment to Asset and Equity Interests Purchase Agreement (the "Amendment") of that certain 1% non-convertible promissory note, dated May 1, 2024, in the principal amount of $750,000 (the "Note"), issued by the Company to Elusys Holdings Inc. ("Elusys Holdings") and to the Asset and Equity Interests Purchase Agreement (the "Purchase Agreement"), dated as of December 11, 2023, by and between Elusys Holdings and the Company. Pursuant to the Amendment the Note was cancelled in exchange for an amendment to the Asset and Equity Interests Purchase Agreement which eliminates the payment of any royalty fees by Elusys Holdings to the Company and instead provides a cash payment to the Company of $2.5 million on or prior to December 31, 2028.

The foregoing description of the Amendment is qualified in its entirety by reference to the full text of the Amendment, a copy of which is attached hereto as Exhibit 10.1 and is incorporated herein by reference.

Item 1.02. Termination of Material Definitive Agreement

The information contained in Item 1.01 of this Current Report on Form 8-K in relation to the cancellation of the Note is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit Number	Exhibit Description
10.1	Note Cancellation and Amendment to Asset and Equity Interests Purchase Agreement, effective July 30, 2024
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

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): **March 7, 2025**

Scorpius Holdings, Inc.

(Exact name of registrant as specified in charter)

Delaware
(State or other jurisdiction of incorporation)

001-35994	**26-2844103**
(Commission File Number)	*(IRS Employer Identification No.)*

1305 E. Houston Street, Building 2
San Antonio, TX 78205
(Address of principal executive offices and zip code)

(919) 240-7133
(Registrant's telephone number including area code)

627 Davis Drive, Suite 300
Morrisville, North Carolina 27560
(Former Name and Former Address)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of 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(b) 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, $0.0002 par value per share	SCPX	NYSE American LLC
Common Stock Purchase Rights		NYSE American LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☐

If an emerging growth company, indicate by checkmark 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.

Assignment and Assumption of Lease

On March 7, 2025, Scorpius Holdings, Inc. (the "Company") entered into an Assignment and Assumption of Lease (the "Lease Assignment") with a third party ("Assignee") and Durham Keystone Tech 7, LLC (the "Landlord") pursuant to which the Company assigned to Assignee all of its rights and obligations under its Lease, dated June 21, 2021, as amended (the "Lease"), for its former principal offices in Morrisville, North Carolina. In connection with the Lease Assignment, the Company paid $55,720.17 to the Landlord for the monthly rent due under the Lease for the month of March 2025 and sold certain furniture, fixtures and equipment on the leased premises to Assignee for $55,720.17. The Assignee's obligation to pay monthly rent to Landlord under the Lease will commence on April 1, 2025. leased premises to Assignee for $55,720.17. The Assignee's obligation to pay monthly rent to Landlord under the Lease will commence on April 1, 2025. The Company will save over $4,000,000 in rent and facility-related obligations and expenses over the remaining lease period. The Company has moved its principal offices to San Antonio, Texas.

The foregoing does not purport to be a complete description of the Lease Assignment and is qualified in its entirety by reference to the full text of such document, which is filed as Exhibit 10.1 to this Form 8-K and incorporated herein by reference.

Second Amendment to the Asset and Equity Interests Purchase Agreement

Effective as of March 12, 2025, the Company entered into a Second Amendment (the "Second Amendment") to the Asset and Equity Interests Purchase Agreement, dated as of December 11, 2023, as amended as of July 30, 2024 (the "Purchase Agreement"), by and between Elusys Holdings Inc. ("Elusys Holdings") and the Company. Pursuant to the Second Amendment, in exchange for the payment of $500,000 by Elusys Holdings to the Company on or about March 12, 2025, the Purchase Agreement was amended to eliminate the payment of $2.5 million to the Company on or prior to December 31, 2028.

The foregoing description of the Second Amendment is qualified in its entirety by reference to the full text of the Second Amendment, which is filed as Exhibit 10.2 to this Form 8-K and incorporated herein by reference.

Item 2.01 Completion of Acquisition or Disposition of Assets.

The information set forth under Item 1.01 above of this Current Report on Form 8-K is incorporated by reference in this Item 2.01.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

Exhibit Number	Exhibit Description
10.1	Assignment and Assumption of Lease, by and between Scorpius Holdings, Inc., Revvity, Inc. and Durham Keystone Tech 7, LLC
10.2	Second Amendment to the Asset and Equity Interests Purchase Agreement
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).