
**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 31, 2020**

TREVENA, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation)

001-36193
(Commission File No.)

26-1469215
(IRS Employer
Identification No.)

955 Chesterbrook Boulevard, Suite 110
Chesterbrook, PA 19087
(Address of principal executive offices and zip code)

(610) 354-8840
(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Common Stock, \$0.001 par value	TRVN	The Nasdaq Stock Market 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 check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 1.01 Entry into a Material Definitive Agreement.

As previously disclosed, on April 17, 2019, Trevena, Inc. (the “*Company*”) and H.C. Wainwright & Co., LLC (“*HCW*”) entered into a Common Stock Sales Agreement (the “*Sales Agreement*”), pursuant to which the Company may sell from time to time, at its option, shares of its common stock, par value \$0.001 per share (the “*Common Stock*”), through HCW, as sales agent, in an “at-the-market offering” as defined in Rule 415 under the Securities Act of 1933 (the “*ATM Offering*”). On December 31, 2020, the Company and HCW entered into Amendment No. 1 to Common Stock Sales Agreement (the “*Amendment*”) to amend the Sales Agreement to, among other things, update the reference to the registration statement pursuant to which the shares of Common Stock may be sold and to include an additional \$50 million of shares of Common Stock in the ATM Offering.

The Amendment provides for the issuance and sale of shares of Common Stock in the ATM Offering pursuant to the Company’s registration statement on Form S-3 (File No. 333-251006) filed with the Securities and Exchange Commission (“*SEC*”) on November 27, 2020, and declared effective by the SEC on December 4, 2020 (the “*New Registration Statement*”). From and after the date of the Amendment, the issuance and sale of shares of Common Stock in the ATM Offering will be made under the New Registration Statement, pursuant to a prospectus, which consists of a base prospectus dated December 4, 2020 and a prospectus supplement filed with the SEC on December 31, 2020. Prior to the Amendment, the Company had sold substantially all of the shares of Common Stock available for sale in the ATM Offering. The prospectus supplement provides for the sale of up to an additional \$50 million of shares of Common Stock in the ATM Offering under the New Registration Statement.

Under the terms of the Amendment, HCW will be entitled to compensation equal to up to 3.0% of the gross proceeds from each sale of shares of Common Stock under the Sales Agreement.

This Current Report on Form 8-K shall not constitute an offer to sell or the solicitation of an offer to buy the securities discussed herein, nor shall there be any offer, solicitation, or sale of the securities in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state.

The foregoing description of the Sales Agreement and the Amendment does not purport to be complete and is qualified in its entirety by reference to (a) the full text of the Sales Agreement, which is filed as [Exhibit 10.1 to the Company’s Current Report on Form 8-K filed with the SEC on April 17, 2019](#) and (b) the full text of the Amendment, which is filed as Exhibit 10.1 hereto, each of which is incorporated herein by reference. The opinion of the Company’s counsel regarding the validity of the shares that will be issued pursuant to the Sales Agreement, as amended, under the prospectus supplement filed on December 31, 2020 is filed herewith as Exhibit 5.1.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
5.1	Opinion of Troutman Pepper Hamilton Sanders LLP
10.1	Amendment No. 1 to Common Stock Sales Agreement dated December 31, 2020 between Trevena, Inc. and H.C. Wainwright & Co., LLC
23.1	Consent of Troutman Pepper Hamilton Sanders LLP (included in Exhibit 5.1)
104.1	The cover page from this Current Report on Form 8-K, formatted in Inline XBRL.

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.

TREVENA, INC.

Date: December 31, 2020

By: /s/ Barry Shin
Barry Shin
Senior Vice President & Chief Financial Officer

Troutman Pepper Hamilton Sanders LLP
 3000 Two Logan Square, Eighteenth and Arch Streets
 Philadelphia, PA 19103-2799

troutman.com



December 31, 2020

Trevena, Inc.
 955 Chesterbrook Blvd
 Suite 110
 Chesterbrook, PA 19087

Re: Securities Registered under Registration Statement on Form S-3

Ladies and Gentlemen:

Reference is made to (i) the Registration Statement on Form S-3 (Registration No. 333-251006) (as amended from time to time, the "**Registration Statement**") filed by Trevena, Inc., a Delaware corporation (the "**Company**"), with the Securities and Exchange Commission (the "**Commission**") and declared effective on December 4, 2020, which includes a base prospectus (the "**Base Prospectus**"), and (ii) the prospectus supplement, dated December 31, 2020 (the "**Prospectus Supplement**" and, together with the Base Prospectus, the "**Prospectus**") relating to up to \$50,000,000 of shares (the "**Shares**") of the Company's common stock, par value \$0.001 per share (the "**Common Stock**"), all of which may be issued from time to time on a delayed or continuous basis pursuant to Rule 415 under the Securities Act at an indeterminate offering price as set forth in the Prospectus.

We understand that the Shares are to be offered and sold in the manner set forth in the Prospectus pursuant to a Common Stock Sales Agreement, dated April 17, 2019, between the Company and H.C. Wainwright & Co., LLC (the "**Sales Agent**"), as amended by that certain Amendment No. 1 to Common Stock Sales Agreement, dated December 31, 2020, between the Company and the Sales Agent (as so amended, the "**Agreement**"), which is being filed with the Commission on the date hereof as Exhibit 1.1 to the Company's Current Report on Form 8-K.

We have acted as Company counsel in connection with the preparation of the Registration Statement and Prospectus, as well as with the issue and sale by the Company of the Shares pursuant to the Agreement. We are familiar with the proceedings taken by the board of directors of the Company (the "**Board**") in connection with the registration of the Shares, the authorization of the execution and delivery of the Agreement and the authorization, issuance and sale of the Shares. We have examined all such documents as we considered necessary to enable us to render this opinion, including but not limited to the Registration Statement, the Prospectus, the Agreement, the Company's Amended and Restated Certificate of Incorporation, as amended, and the Company's Amended and Restated By-Laws, in effect on the date hereof, certain resolutions of the Board, corporate records and instruments, and such laws and regulations as we have deemed necessary for purposes of rendering the opinions set forth herein.

Trevena, Inc.
 December 31, 2020
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In our examination, we have assumed: (a) the legal capacity of all natural persons; (b) the genuineness of all signatures; (c) the authenticity of all documents submitted to us as originals; (d) the conformity to original documents of all documents submitted to us as certified, conformed, photostatic or facsimile copies; (e) the authenticity of the originals of such latter documents; (f) the truth, accuracy and completeness of the information, representations and warranties contained in the records, documents, instruments, certificates and records we have reviewed; and (g) the absence of any undisclosed modifications to the agreements and instruments reviewed by us. Further, we assumed that no more than 33,333,333 Shares will be sold pursuant to the terms of the Agreement. As to any facts material to the opinions expressed herein, which were not independently established or verified, we have relied upon statements and representations of officers and other representatives of the Company and others.

We express no opinion herein as to the law of any state or jurisdiction other than the laws of the State of Delaware, including statutory provisions and all applicable provisions of the Delaware Constitution and reported judicial decisions interpreting such laws of the State of Delaware, and the federal laws of the United States of America.

Based upon the foregoing, we are of the opinion that, as of the date hereof, when the Shares have been (i) sold pursuant to the Agreement and duly registered on the books of the transfer agent and registrar therefor in the name or on behalf of the purchasers, and (ii) issued by the Company against payment therefor for an aggregate offering price that does not exceed \$50,000,000, (a) the sale and issuance of the Shares will have been duly authorized by all necessary corporate action of the Company, and (b) when issued and delivered by the Company against payment therefor as set forth in the Prospectus and the Agreement, the Shares will be validly issued, fully paid and non-assessable.

We assume no obligation to supplement this opinion if any applicable law changes after the date hereof or if we become aware of any fact that might change the opinion expressed herein after the date hereof.

We hereby consent to the filing of this opinion as a part of the Registration Statement and to the reference of our firm under the caption "Legal Matters" in the Prospectus. In giving such consent, we do not hereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission. Except as otherwise set forth herein, this opinion may not be used, circulated, quoted or otherwise referred to for any purpose or relied upon by any other person without the express written permission of this firm.

Very truly yours,

/s/ Troutman Pepper Hamilton Sanders LLP

TROUTMAN PEPPER HAMILTON SANDERS LLP

AMENDMENT NO. 1 TO COMMON STOCK SALES AGREEMENT

December 31, 2020

H.C. Wainwright & Co., LLC
430 Park Avenue
New York, New York 10022

Ladies and Gentlemen:

Trevena, Inc. (the “Company”) and H.C. Wainwright & Co., LLC (“HCW”) are parties to that certain Common Stock Sales Agreement dated April 17, 2019 (the “Original Agreement”). All capitalized terms not defined herein shall have the meanings ascribed to them in the Original Agreement. The parties, intending to be legally bound, hereby amend the Original Agreement as follows:

1. Reference to the “Registration Statement” in the Original Agreement shall refer to the registration statement on Form S-3 (File No. 333-251006), originally filed with the Securities and Exchange Commission on November 27, 2020 and declared effective by the Securities and Exchange Commission on December 4, 2020.
2. All references to “The Nasdaq Global Select Market” set forth in Section 3(a) of the Original Agreement are revised to read “The Nasdaq Capital Market”.
3. All references to “Cooley LLP” set forth in Section 7(n) and Section 9(e) of the Original Agreement are revised to read “Troutman Pepper Hamilton Sanders LLP”.
4. All references to “Pepper Hamilton LLP” set forth in Section 7(n) and Section 9(f) of the Original Agreement are revised to read “Troutman Pepper Hamilton Sanders LLP”.
5. Section 13 of the Original Agreement is hereby deleted in its entirety and replaced as follows:

Notices. All notices or other communications required or permitted to be given by any party to any other party pursuant to the terms of this Agreement shall be in writing, unless otherwise specified in this Agreement, and if sent to HCW, shall be delivered to HCW at H.C. Wainwright & Co., LLC, 430 Park Avenue, New York, NY 10022, email: atm@hcwco.com, Attention: Head of Investment Banking, with a copy to Duane Morris LLP, 1540 Broadway, New York, NY 10036, attention: Dean M. Colucci, e-mail: dmcolucci@duanemorris.com; or if sent to the Company, shall be delivered to the address of the Company set forth in the Prospectus, Attention: Chief Legal and Compliance Officer and Senior Vice President of Regulatory Affairs and Corporate Secretary with a copy to Troutman Pepper Hamilton Sanders LLP, 3000 Two Logan Square, Philadelphia, PA 19103, attention: Brian M. Katz, email: brian.katz@troutman.com. Each party to this Agreement may change such address for notices by sending to the parties to this Agreement written notice of a new address for such purpose. Each such notice or other communication shall be deemed given (i) when delivered personally or by verifiable facsimile transmission (with an original to follow) on or before 4:30 p.m., New York City time, on a Business Day (as defined below), or, if such day is not a Business Day on the next succeeding Business Day, (ii) on the next Business Day after timely delivery to a nationally-recognized overnight courier, (iii) on the Business Day actually received if deposited in the U.S. mail (certified or registered mail, return receipt requested, postage prepaid), and (iv) if sent by e-mail, on the Business Day on which receipt is confirmed by the individual to whom the notice is sent, other than via auto-reply. For purposes of this Agreement, “Business Day” shall mean any day on which the Nasdaq and commercial banks in the City of New York are open for business.

An electronic communication (“Electronic Notice”) shall be deemed written notice for purposes of this Section 12 if sent to the electronic mail address specified by the receiving party under separate cover. Electronic Notice shall be deemed received at the time the party sending Electronic Notice receives confirmation of receipt by the receiving party. Any party receiving Electronic Notice may request and shall be entitled to receive the notice on paper, in a non-electronic form (“Non-electronic Notice”) which shall be sent to the requesting party within ten (10) days of receipt of the written request for Non-electronic Notice.

6. Schedule 2 of the Original Agreement is hereby deleted in its entirety and replaced as follows:

“Authorized Placement Notice Parties.

The Company

Carrie L. Bourdow [Intentionally omitted.]

Barry Shin [Intentionally omitted.]

Scott Applebaum [Intentionally omitted.]

HCW

Craig Schwabe [Intentionally omitted.]

Charles Worthman [Intentionally omitted.]

With a copy to atm@hcwco.com

7. Schedule 3 of the Original Agreement is hereby deleted in its entirety and replaced as follows:

“Compensation. HCW shall be paid compensation equal to up to 3.0% of the gross proceeds from the sales of Placement Shares pursuant to the terms of this Agreement.”

8. All references to “April 17, 2019” set forth in Schedule 1 and Exhibit 7(m) of the Original Agreement are revised to read “April 17, 2019 (as amended by Amendment No. 1 to Common Stock Sales Agreement, dated December 31, 2020)”.
9. Except as specifically set forth herein, all other provisions of the Original Agreement shall remain in full force and effect.

10. Entire Agreement; Amendment; Severability. This Amendment No. 1 to the Original Agreement together with the Original Agreement (including all schedules and exhibits attached hereto and thereto and Placement Notices issued pursuant hereto and thereto) constitutes the entire agreement and supersedes all other prior and contemporaneous agreements and undertakings, both written and oral, among the parties hereto with regard to the subject matter hereof. All references in the Original Agreement to the "Agreement" shall mean the Original Agreement as amended by this Amendment No. 1; *provided, however*, that all references to "date of this Agreement" in the Original Agreement shall continue to refer to the date of the Original Agreement.

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11. Applicable Law; Consent to Jurisdiction. This amendment shall be governed by, and construed in accordance with, the internal laws of the State of New York without regard to the principles of conflicts of laws. Each party hereby irrevocably submits to the non-exclusive jurisdiction of the state and federal courts sitting in the City of New York, borough of Manhattan, for the adjudication of any dispute hereunder or in connection with any transaction contemplated hereby, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof (certified or registered mail, return receipt requested) to such party at the address in effect for notices to it under this amendment and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law.

12. Waiver of Jury Trial. The Company and HCW each hereby irrevocably waives any right it may have to a trial by jury in respect of any claim based upon or arising out of this amendment or any transaction contemplated hereby.

13. Counterparts. This amendment may be executed in counterparts, each of which shall be deemed an original, but both of which together shall constitute one and the same instrument. Delivery of an executed amendment by one party to the other may be made by facsimile transmission.

[Remainder of Page Intentionally Blank]

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If the foregoing correctly sets forth the understanding among the Company and HCW, please so indicate in the space provided below for that purpose, whereupon this letter shall constitute a binding amendment to the Original Agreement between the Company and HCW.

Very truly yours,

TREVENA, INC.

By: /s/ Barry Shin

Name: Barry Shin

Title: Senior Vice President and Chief Financial Officer

H.C. WAINWRIGHT & CO., LLC

By: /s/ Mark W. Viklund

Name: Mark W. Viklund

Title: Chief Executive Officer

[Signature page to Amendment No. 1 to Common Stock Sales Agreement]
