

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

**FORM S-3
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, New York 10017
Telephone: (917) 289-1117

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

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

Copies to:

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Approximate date of commencement of proposed sale to the public: From time to time after the effective date of this registration statement.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

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 Securities Act.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with section 8(a) of the Securities Act, or until the registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said section 8(a), may determine.

The information in this prospectus is not complete and may be changed without notice. The selling stockholders may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and the selling stockholders named in this prospectus are not soliciting offers to buy these securities in any state where the offer or sale of these securities is not permitted.

Subject to completion, dated December 16, 2022

PRELIMINARY PROSPECTUS



EYENOVIA, INC.

2,875,554 Shares of Common Stock

This prospectus relates to the offer and sale by the selling stockholders identified in this prospectus of up to 2,875,554 shares of common stock (the "Common Stock") of Eyenovia, Inc. (the "Company") that have been issued or are issuable in connection with the Loan and Security Agreement, dated November 22, 2022, including the initial Supplement referenced therein (collectively, the "Loan and Security Agreement"), by and among the Company, Avenue Capital Management II, L.P., as administrative agent and collateral agent (the "Agent"), Avenue Venture Opportunities Fund, L.P., as a lender ("Avenue 1"), and Avenue Venture Opportunities Fund II, L.P., as a lender ("Avenue 2", and together with Avenue 1, the "Lenders"), as further described in this prospectus, and the note or notes issued pursuant to the Loan and Security Agreement. The selling stockholders refer to the Lenders and their respective pledgees, donees, transferees, or other successors in interest as permitted by the Loan and Security Agreement.

The number of shares of Common Stock being registered hereunder is comprised of: (i) 2,327,747 shares of Common Stock issuable upon conversion of up to \$5,000,000 of the outstanding principal amount under the note or notes issued by the Company pursuant to the Loan and Security Agreement, calculated by dividing such total aggregate convertible amount by 120% of the closing price of the Common Stock on November 22, 2022, or \$2.1480; and (ii) 547,807 shares (the "Private Placement Shares") of Common Stock issued to the Lenders in connection with the Loan and Security Agreement in a private placement.

We will not receive any of the proceeds from the sale of the Common Stock by the selling stockholders.

The selling stockholders may offer the shares of Common Stock in one or more transactions at fixed prices, at prevailing market prices at the time of sale, at varying prices determined at the time of sale, at negotiated prices, or in trading markets for our Common Stock. Additional information on the selling stockholders, and the times and manner in which they may offer and sell shares of our Common Stock under this prospectus, is provided under "Selling Stockholders" and "Plan of Distribution" in this prospectus.

Our Common Stock is quoted on The Nasdaq Capital Market under the symbol "EYEN." On December 15, 2022, the last reported sale price of our Common Stock was \$1.75 per share.

Investing in our Common Stock involves certain risks. See "Risk Factors" beginning on page 4 of this prospectus for the risks that you should consider. You should read this entire prospectus carefully before you make your investment decision.

NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED OF THESE SECURITIES OR DETERMINED IF THIS PROSPECTUS IS TRUTHFUL OR COMPLETE. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

The date of this prospectus is _____, 2022.

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ABOUT THIS PROSPECTUS

Except where the context requires otherwise, in this prospectus the terms “Company,” “our company,” “Eyenovia,” “we,” “us,” and “our” refer to Eyenovia, Inc., a Delaware corporation, and, where appropriate, its direct and indirect subsidiaries.

You should rely only on the information contained or incorporated by reference in this prospectus. We have not authorized any other person to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. For further information, please see the section of this prospectus entitled “Where You Can Find More Information.” The selling stockholders are not making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted.

You should not assume that the information appearing in this prospectus is accurate as of any date other than the date on the front cover of this prospectus, regardless of the time of delivery of this prospectus or any sale of a security. Our business, financial condition, results of operations, and prospects may have changed since those dates.

This prospectus contains trademarks, tradenames, service marks, and service names of the Company.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus and the documents incorporated by reference in this prospectus include forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the “Securities Act”), and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), that relate to future events or our future financial performance and involve known and unknown risks, uncertainties and other factors that may cause our actual results, levels of activity, performance or achievements to differ materially from any future results, levels of activity, performance or achievements expressed or implied by these forward-looking statements. Words such as, but not limited to, “believe,” “expect,” “anticipate,” “estimate,” “intend,” “may,” “plan,” “potential,” “predict,” “project,” “targets,” “likely,” “will,” “would,” “could,” “should,” “continue,” and similar expressions or phrases, or the negative of those expressions or phrases, are intended to identify forward-looking statements, although not all forward-looking statements contain these identifying words. Although we believe that we have a reasonable basis for each forward-looking statement contained in this prospectus and incorporated by reference in this prospectus, we caution you that these statements are based on our projections of the future that are subject to known and unknown risks and uncertainties and other factors that may cause our actual results, level of activity, performance or achievements expressed or implied by these forward-looking statements, to differ. The sections in our periodic reports, including our Annual Report on Form 10-K for the fiscal year ended December 31, 2021, entitled “Business,” “Risk Factors,” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” as supplemented by our subsequent Quarterly Reports on Form 10-Q and our Current Reports on Form 8-K, as well as other sections in this prospectus and the other documents or reports incorporated by reference in this prospectus, discuss some of the factors that could contribute to these differences.

You should understand that the following important factors, in addition to those discussed in our periodic reports filed with the SEC under the Exchange Act could affect our future results and could cause those results to differ materially from those expressed in such forward-looking statements:

- our need to raise additional money to fund our operations for the next twelve months as a going concern;
- our estimates regarding expenses, future revenue, timing of any future revenue, capital requirements and needs for additional financing;
- impacts of and uncertainty related to COVID-19;
- fluctuations in our financial results and stock price, particularly given market conditions and the potential economic impact of COVID-19;
- our expectations related to the use of proceeds from our financings;
- risks of our and our licensees’ clinical trials including, but not limited to, the costs, design, initiation and enrollment (which could be adversely impacted by COVID-19), timing, progress and results of such trials;
- the timing and our or our licensees’ ability to submit applications for, obtain and maintain regulatory approval for our product candidates;
- reliance on third parties to develop and commercialize certain of our product candidates;
- our and our partners’ ability to timely develop, implement and maintain manufacturing, commercialization and marketing capabilities and strategies for certain of our product candidates;
- our estimates regarding the potential market opportunity for our product candidates;
- the potential advantages of our product candidates and platform technology and potential revenues from licensing transactions;
- the rate and degree of market acceptance and clinical utility of our product candidates;
- our intellectual property position;

- our ability to identify additional products, product candidates or technologies with significant commercial potential that are consistent with our commercial objectives;
- our ability to attract and retain key personnel;
- the impact of government laws and regulations;
- our competitive position;
- developments relating to our competitors and our industry;
- our ability to maintain and establish collaborations;
- general or regional economic conditions;
- changes in U.S. GAAP; and
- changes in the legal, regulatory and legislative environments in the markets in which we operate, and the impact of these changes on our ability to obtain regulatory approval for our products.

We may not actually achieve the plans, intentions or expectations disclosed in our forward-looking statements, and you should not place undue reliance on our forward-looking statements. Actual results or events could differ materially from the plans, intentions and expectations disclosed in the forward-looking statements we make. We have included important cautionary statements in this prospectus and in the documents incorporated by reference in this prospectus, particularly in the "Risk Factors" section, that we believe could cause actual results or events to differ materially from the forward-looking statements that we make. For a summary of such factors, please refer to the section entitled "Risk Factors" in this prospectus, as updated and supplemented by the discussion of risks and uncertainties under "Risk Factors" contained in any supplements to this prospectus and in our most recent Annual Report on Form 10-K, as revised or supplemented by our subsequent Quarterly Reports on Form 10-Q or our Current Reports on Form 8-K, as well as any amendments thereto, as filed with the SEC and which are incorporated herein by reference. The information contained in this document is believed to be current as of the date of this document. We do not intend to update any of the forward-looking statements after the date of this document to conform these statements to actual results or to changes in our expectations, except as required by law.

In light of these assumptions, risks and uncertainties, the results and events discussed in the forward-looking statements contained in this prospectus or in any document incorporated herein by reference might not occur. Investors are cautioned not to place undue reliance on the forward-looking statements, which speak only as of the date of this prospectus or the date of the document incorporated by reference in this prospectus. We are not under any obligation, and we expressly disclaim any obligation, to update or alter any forward-looking statements, whether as a result of new information, future events or otherwise. All subsequent forward-looking statements attributable to us or to any person acting on our behalf are expressly qualified in their entirety by the cautionary statements contained or referred to in this section.

PROSPECTUS SUMMARY

This prospectus summary highlights important features of this offering and the information included or incorporated by reference in this prospectus. Because it is a summary, it may not contain all of the information that may be important to you. You should carefully read this entire prospectus, including the section entitled "Risk Factors."

Overview of Eyenovia

Eyenovia is a pre-commercial ophthalmic technology company developing the Optejet® delivery system for use both in combination with our own drug-device therapeutic programs as well as out-licensing for additional indications. Eyenovia's aim is to improve the delivery of topical ophthalmic medication through ergonomic design that facilitates ease-of-use, delivery of more physiologically appropriate medication volume, with the goal to reduce side effects and improve tolerability, and introduce digital health technology to improve therapy compliance and ultimately medical outcomes.

The ergonomic and functional design of the Optejet® allows for horizontal drug delivery and eliminates the need to tilt the head back or the manual dexterity to squeeze a bottle, to administer medications. Drug is delivered in a microscopic array of droplets faster than the blink reflex to help ensure instillation success. The precise delivery of a low-volume columnar spray by the Optejet® device minimizes contamination with a non-protruding nozzle and self-closing shutter. In clinical trials, the Optejet® has demonstrated that its targeted delivery achieves a high rate of successful administration, with 98% of sprays being accurately delivered upon first attempt compared to the established rate reported with traditional eye drops of ~ 50%.

A more physiologically appropriate volume of medication in the range of seven to nine microliters is delivered by the Optejet, approximately one fifth of the 35 to 50 microliter dose typically delivered in a single eye drop. Lower volume of medication exposes the ocular surface to less active ingredient and preservatives, potentially reducing ocular stress and surface damage and improving tolerability. The lower volume also minimizes the potential for drug to enter systemic circulation, with the goal of avoiding some common side effects that are related to overdosing of the eye.

Versions of the Optejet are being developed with on-board digital technology to provide reminders via Bluetooth to smart devices and date and time stamp device use. This information can then be used by practitioners and health care systems to measure treatment compliance and improve medical decision making. In this way, the Optejet could serve as an extension of the physician's office by providing information that is not currently possible to collect except through the use of diaries.

Eyenovia's drug-device therapeutic programs include MicroPine, MicroLine and Mydcombi™. MicroPine is Eyenovia's first-in-class topical therapy for the treatment of progressive myopia, a back-of-the-eye ocular disease associated with pathologic axial elongation and sclero-retinal stretching. In the United States, myopia is estimated to affect approximately 25 million children, with up to five million considered to be at high risk for progressive myopia. In February 2019, the FDA accepted our investigational new drug application ("IND") to initiate a Phase III registration trial of MicroPine (the "CHAPERONE study") to reduce the progression of myopia in children. The first patient was enrolled in the CHAPERONE study in June 2019. On October 9, 2020, we entered into a license agreement (the "Bausch License Agreement") with Bausch + Lomb, pursuant to which Bausch + Lomb may develop and commercialize MicroPine in the United States and Canada. Under the terms of the Bausch License Agreement, we received an upfront payment of \$10.0 million and we may receive up to a total of \$35.0 million in additional payments, based on the achievement of certain regulatory and launch-based milestones. Bausch + Lomb also will pay royalties to Eyenovia on a tiered basis (ranging from mid-single digit to mid-teen percentages) on gross profits from sales of MicroPine in the United States and Canada, subject to certain adjustments. Under the terms of the Bausch License Agreement, Bausch + Lomb assumed sponsorship of the IND as well as ownership and the costs related to the ongoing CHAPERONE study.

Eyenovia has also successfully expanded its manufacturing capabilities through a partnership with Coastline International, Inc. located in Tijuana, Mexico, and the construction of its own fill and finish facility in Redwood City, California. Eyenovia continues to reliably supply this study with clinical product as of the third quarter of 2022.

MicroLine is Eyenovia's investigational pharmacologic treatment for presbyopia. Presbyopia is a non-preventable, age-related hardening of the lens, which causes the gradual loss of the eye's ability to focus on near objects and impairs near visual acuity. Allergan recently launched Vuity™, a pilocarpine drug product for the treatment of presbyopia. Eyenovia's second Phase III study, VISION-2, used the same drug, delivered with the advantages of our Optejet® device. Eyenovia released positive top-line results from VISION-2 in the fourth quarter of 2022.

Mydcombi™ is Eyenovia's fixed combination formulation of tropicamide-phenylephrine for mydriasis and a novel approach for the over 100 million office-based comprehensive and diabetic eye exams performed every year in the United States. Eyenovia completed two Phase III trials for Mydcombi and announced positive results from these studies, known as MIST-1 and MIST-2, and has submitted an NDA to the FDA seeking approval to market the product in the U.S. In October 2021, Eyenovia received a complete response letter ("CRL") in response to our NDA, which in part informed us that pre-filled or co-packaged ophthalmic drug dispenser products like Mydcombi have been reclassified as drug-device combination products. This reclassification was based upon the U.S. Court of Appeals for the D.C. Circuit's decision in *Genus Medical Technologies v. FDA*, not involving Eyenovia, which ordered that products meeting the statutory definition of a device but were previously classified by the FDA as drugs must be regulated as devices. Before this ruling, the FDA regulated pre-filled or co-packaged ophthalmic dispensers as part of the approved ophthalmic drug distributed and sold with the dispenser. After the ruling, however, the dispenser must be considered as a distinct device constituent part of a drug-device combination product. Eyenovia resubmitted the NDA on November 8, 2022, and announced on December 13, 2022 that the FDA has accepted the resubmission. The FDA has assigned the resubmitted NDA a standard review with a Prescription Drug User Fee Act (PDUFA) target action date of May 8, 2023.

On August 10, 2020, Eyenovia entered into a license agreement (the "Arctic Vision License Agreement") with Arctic Vision (Hong Kong) Limited ("Arctic Vision"), which was amended on September 14, 2021, pursuant to which Arctic Vision may develop and commercialize MicroPine, MicroLine and Mydcombi in Greater China (mainland China, Hong Kong, Macau and Taiwan) and South Korea. Under the terms of the Arctic Vision License Agreement, as amended, Eyenovia received an upfront payment of \$4.25 million before any payments to Senju Pharmaceutical Co., Ltd. ("Senju"). In addition, Eyenovia may receive up to a total of \$43.75 million in additional payments, based on various development and regulatory milestones, including the initiation of clinical research and approvals in Greater China and South Korea, and development costs. Arctic Vision also will purchase its supply of MicroPine, MicroLine and Mydcombi from Eyenovia or, for such products not supplied by Eyenovia, pay a mid-single digit percentage royalty on net sales of such products, subject to certain adjustments. Eyenovia will pay between 30 and 40 percent of such payments, royalties, or net proceeds of such supply to Senju pursuant to an exclusive license agreement with Senju dated March 8, 2015, as amended.

Eyenovia is in active discussions with manufacturers of existing and late-stage ophthalmic medications to explore whether development with the Optejet technology can solve unmet medical and business needs. Some of those business needs could include extension of exclusivity under the Optejet patents, improvement in a drug's tolerability profile, or potential improvement in treatment compliance.

Eyenovia's principal executive offices are located at 295 Madison Avenue, Suite 2400, New York, New York 10017 and our telephone number is (833) 393-6684. Eyenovia's website address is <http://www.eyenovia.com>. The information on Eyenovia's website is not intended to be a part of this prospectus, and you should not rely on any of the information provided there in making your decision to invest in our securities. Eyenovia's website address referenced above is intended to be an inactive textual reference only and not an active hyperlink to its website.

THE OFFERING

Common Stock offered	Up to 2,875,554 shares (representing the maximum shares issuable upon conversion of up to \$5,000,000 of the outstanding principal amount under the note or notes issued by the Company pursuant to the Loan and Security Agreement, and the Private Placement Shares)
Common Stock outstanding before this offering	36,121,173 shares as of December 12, 2022 (which number does not include the shares being offered pursuant to this prospectus)
Common Stock outstanding after this offering	38,996,727 shares (assuming the maximum shares issuable upon conversion of up to \$5,000,000 of the outstanding principal amount under the note or notes issued by the Company pursuant to the Loan and Security Agreement, and the Private Placement Shares)
Use of proceeds	We will not receive any proceeds from the sale of shares of Common Stock in this offering. See the section entitled “Use of Proceeds.”
Nasdaq Capital Market symbol	EYEN
Risk factors	You should consider carefully the information set forth in the section entitled “Risk Factors,” beginning on page 4 of this prospectus, in deciding whether or not to invest in our Common Stock.
Plan of distribution	The selling stockholders and their pledgees, donees, transferees, or other successors in interest may offer the shares of Common Stock in one or more transactions at fixed prices, at prevailing market prices at the time of sale, at varying prices determined at the time of sale, at negotiated prices, or in trading markets for our Common Stock. See the section entitled “Plan of Distribution” beginning on page 10 of this prospectus for a complete description of the manner in which the shares registered hereby may be distributed.

RISK FACTORS

An investment in our securities involves a high degree of risk. Before making an investment decision you should carefully read and consider the risks described below, together with all of the other information included or incorporated by reference in this prospectus, including, without limitation, the risk factors in the section entitled "Risk Factors" in our most recent Annual Report on Form 10-K, which is on file with the Securities and Exchange Commission (the "SEC"), and subsequent Quarterly Reports on Form 10-Q. If any of the risks listed in our most recent Annual Report on Form 10-K, our subsequent Quarterly Reports on Form 10-Q or any of the following risks actually occur, our business, financial condition, and/or results of operations could suffer. In that case, the market price of our Common Stock offered by this prospectus could decline, and you may lose all or part of your investment. You should read the section entitled "Special Note Regarding Forward-Looking Statements" above for a discussion of what types of statements are forward-looking statements, as well as the significance of such statements in the context of this prospectus. Additional risks and uncertainties that we do not presently know or that we currently deem immaterial may also have a material adverse effect on our business.

The terms of the Loan and Security Agreement with the Agent and the Lenders require us to meet certain operating covenants and place restrictions on our operating and financial flexibility. If we raise additional capital through debt financing, the terms of any new debt could further restrict our ability to operate our business.

On November 22, 2022, we entered into the Loan and Security Agreement with the Agent and the Lenders that is secured by a lien on all of our assets. The Loan and Security Agreement contains customary affirmative and negative covenants and events of default. Affirmative covenants include, among others, covenants requiring us to protect and maintain our intellectual property and comply with all applicable laws, deliver certain financial reports and maintain insurance coverage. Negative covenants include, among others, covenants restricting us from transferring any part of our business or intellectual property, incurring additional indebtedness, engaging in mergers or acquisitions, repurchasing shares, paying dividends or making other distributions, making investments, and creating other liens on our assets, including our intellectual property, in each case subject to customary exceptions. If we raise any additional debt financing, the terms of such additional debt could further restrict our operating and financial flexibility. These restrictions may include, among other things, limitations on the incurrence of additional debt and specific restrictions on the use of our assets, as well as prohibitions on our ability to create liens, pay dividends, redeem capital stock or make investments. If we default under the terms of the Loan and Security Agreement or any future debt facility, the lender may accelerate all of our repayment obligations and take control of our pledged assets, potentially requiring us to renegotiate our agreement on terms less favorable to us or to immediately cease operations. Further, if we are liquidated, the lender's right to repayment would be senior to the rights of the holders of our common stock. The lender could declare an event of default upon the occurrence of any event that could reasonably be expected to result in what it interprets as a material adverse effect as defined under the Loan and Security Agreement. Any declaration by the lender of an event of default could significantly harm our business and prospects and could cause the price of our common stock to decline.

DESCRIPTION OF THE TRANSACTION

Loan and Security Agreement

On November 22, 2022, the Company as borrower, entered into the Loan and Security Agreement with the Agent and the selling stockholders.

Amount. The Loan and Security Agreement provides for term loans in an aggregate principal amount of up to \$15.0 million to be delivered in multiple tranches (the “Term Loans”). The tranches consist of (i) a term loan advance to the Company in an aggregate principal amount of \$10.0 million (“Tranche 1”), on November 22, 2022 (the “Closing Date”) and (ii) subject to the achievement of certain performance milestones set forth in the Loan and Security Agreement, a right of the Company to request that the selling stockholders make additional term loan advances to the Company in an aggregate principal amount of up to \$5.0 million (“Tranche 2”) with an expiration date of July 31, 2023. The Company intends to use the proceeds of the Term Loans for working capital and general corporate purposes.

Right to Invest. The selling stockholders have the right, at any time prior to the date that is 18 months following the Closing Date (the “End Date”), to invest up to \$1.0 million in the aggregate in the Company’s equity securities on the same terms, conditions, and pricing offered by the Company to other investors in connection with certain offerings of the Company’s equity securities to third party investors for capital raising purposes occurring after the Closing and prior to the End Date.

Conversion Right. Additionally, the selling stockholders have the right to convert, at any time prior to the End Date, an aggregate amount of up to \$5.0 million of the outstanding principal amount into shares of Common Stock at a conversion price equal to 120% of the closing price of the Common Stock on the Closing Date.

Maturity. The Term Loans mature on November 1, 2025 (the “Maturity Date”).

Interest Rate and Amortization. The principal balance of the Term Loans bears interest at a variable rate per annum equal to the greater of (a) the sum of 4.45% and the prime rate as reported in The Wall Street Journal and (b) 7.00%. Borrowings under the Loan and Security Agreement are repayable in monthly interest-only payments through the twelfth month anniversary of the Closing Date (which may be extended for an additional six months if the Company has requested and the selling stockholders have funded the full amount of Tranche 2). After the interest-only payment period, borrowings under the Loan and Security Agreement are repayable in equal monthly payments of principal and accrued interest until the Maturity Date.

Final Payment. The Company will pay 4.25% of the advanced amount, due upon the earlier of the Maturity Date or termination of the Term Loans (the “Final Payment”).

Prepayment Fee. The Company may, at its option at any time, prepay the Term Loans in their entirety by paying the then outstanding principal balance and all accrued and unpaid interest on the Term Loans, subject to a prepayment premium equal to (i) 3.0% of the principal amount outstanding if the prepayment occurs during the first anniversary following the Closing Date, (ii) 2.0% of the principal amount outstanding if the prepayment occurs after the first anniversary following the Closing Date, but on or prior to the second anniversary following the Closing Date, and (iii) 1.0% of the principal amount outstanding at any time thereafter but prior to the third anniversary following the Closing Date.

Security. The Loan and Security Agreement is collateralized by substantially all of the Company’s assets, in which the Agent is granted continuing security interests.

Covenants; Representations and Warranties; Other Provisions. The Loan and Security Agreement contains customary representations, warranties and covenants, including covenants by the Company limiting additional indebtedness, liens (including a negative pledge on intellectual property and other assets), guaranties, mergers and consolidations, substantial asset sales, investments and loans, certain corporate changes, transactions with affiliates and fundamental changes.

Default Provisions. The Loan and Security Agreement provides for events of default customary for term loans of this type, including but not limited to non-payment, breaches or defaults in the performance of covenants, insolvency, bankruptcy and the occurrence of a material adverse effect on the Company. After the occurrence of an event of default, the Agent may (i) accelerate payment of all obligations, impose an increased rate of interest, and terminate the selling stockholders’ commitments under the Loan and Security Agreement and (ii) exercise any other right or remedy provided by contract or applicable law.

Private Placement Shares; Subscription Agreement

The Private Placement Shares were issued in connection with the entry into the Loan and Security Agreement, pursuant to which the Company entered into a Subscription Agreement by and among the Company and the selling stockholders, pursuant to which the Company issued (i) 219,123 shares of Common Stock to Avenue 1 and (ii) 328,684 shares of Common Stock to Avenue 2, with an issue date as of the Closing Date. The issuance of the shares of Common Stock was made in reliance on the exemption from registration contained in Section 4(a)(2) of the Securities Act, and Rule 506 of Regulation D thereunder, because the offer and sale of such securities does not involve a “public offering” as defined in Section 4(a)(2) of the Securities Act, and other applicable requirements are met.

DESCRIPTION OF COMMON STOCK

We are authorized to issue 90,000,000 shares of common stock, par value \$0.0001 per share. As of December 12, 2022, we had 36,668,980 shares of common stock outstanding (which number includes the Private Placement Shares held by the selling stockholders, but does not include the shares issuable upon conversion of \$5,000,000 of the outstanding principal amount under the note or notes issued in accordance with the terms of the Loan and Security Agreement) and approximately 37 stockholders of record.

The following summary of certain provisions of our common stock does not purport to be complete. You should refer to our third amended and restated certificate of incorporation, as amended (our “Certificate of Incorporation”), and our second amended and restated bylaws (our “Bylaws”), both of which are included as exhibits to the registration statement of which this prospectus is a part. The summary below is also qualified by provisions of applicable law.

General

We are authorized to issue one class of common stock. Holders of our common stock are entitled to one vote for each share of common stock held of record for the election of directors and on all matters submitted to a vote of stockholders, except matters that relate only to one or more of the series of our preferred stock, and no holder has cumulative voting rights. Accordingly, the holders of a majority of the shares of common stock entitled to vote in any election of directors can elect all of the directors standing for election, if they so choose. Subject to preferences that may be applicable to any then outstanding preferred stock, holders of our common stock are entitled to receive dividends ratably, if any, as may be declared by our board of directors out of legally available funds, subject to any preferential dividend rights of any preferred stock then outstanding. Upon our dissolution, liquidation or winding up, holders of our common stock are entitled to share ratably in our net assets legally available after the payment of all our debts and other liabilities, subject to the preferential rights of any preferred stock then outstanding. Holders of our common stock have no preemptive, subscription, redemption or conversion rights. The rights, preferences and privileges of holders of common stock are subject to, and may be adversely affected by, the rights of the holders of shares of any series of preferred stock that are currently designated and issued or that we may designate and issue in the future. A majority vote of the holders of common stock is generally required to take action under our Certificate of Incorporation and our Bylaws.

Stock Options and Warrants

As of December 12, 2022, we had outstanding options to purchase 5,498,687 shares of our common stock at a weighted average price of \$3.53 per share under our 2014 Equity Incentive Plan and 2018 Omnibus Stock Incentive Plan. All of our stock options expire 10 years after their grant date.

As of December 12, 2022, we had outstanding warrants to purchase 6,087,845 shares of our common stock at exercise prices ranging from \$2.47 to \$4.76 per share. 1,125,831 warrants will expire on March 24, 2025, 4,870,130 will expire on September 7, 2027, and 91,884 warrants will expire on May 6, 2031.

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is American Stock Transfer & Trust Company, LLC, with offices at 6201 15th Avenue, Brooklyn, New York 11219.

Stock Exchange Listing

Our common stock is listed for quotation on The Nasdaq Capital Market under the symbol “EYEN.”

USE OF PROCEEDS

We will not receive any proceeds from the sale of the shares of Common Stock by the selling stockholders.

The selling stockholders will pay all underwriting discounts, selling commissions and expenses incurred by them for brokerage, accounting, tax or legal services or any other expenses incurred by the selling stockholders in connection with the sale of the shares, if any. We will bear all other costs, fees and expenses incurred in effecting the registration of the shares covered by this prospectus, including, without limitation, all registration and filing fees, Nasdaq listing fees and fees and expenses of our counsel and our accountants.

SELLING STOCKHOLDERS

The shares of Common Stock being offered for resale by the selling stockholders pursuant to the Form S-3 of which this prospectus forms a part are (i) the shares of Common Stock issuable to the selling stockholders pursuant to the conversion of \$5,000,000 of the outstanding principal amount under the note or notes issued in accordance with the terms of the Loan and Security Agreement, and (ii) the Private Placement Shares. For additional information regarding the Loan and Security Agreement and the Private Placement Shares, see the section entitled "Description of the Transaction" above. We are registering the shares of Common Stock in order to permit the selling stockholders to offer the shares for resale from time to time. Except for the Loan and Security Agreement and the Private Placement Shares and as described below, the selling stockholders have not had any material relationship with us within the past three years.

The table below lists the selling stockholders and other information regarding the beneficial ownership of shares of Common Stock by each of the selling stockholders. The second column lists the number of shares of Common Stock beneficially owned by each selling shareholder as of December 12, 2022, assuming the conversion of \$5,000,000 of the outstanding principal amount under the note or notes issued in accordance with the terms of the Loan and Security Agreement as of the trading day immediately preceding the date the registration statement is initially filed with the SEC, and assuming Avenue 1 and Avenue 2 convert such amounts on a pro rata basis based on the principal amounts on their respective notes. The third column lists the shares of Common Stock being offered by this prospectus by the selling stockholders. The fourth column lists the shares of Common Stock held by each selling shareholder after completion of this offering, assuming the conversion of \$5,000,000 of the outstanding principal amount under the note or notes issued in accordance with the terms of the Loan and Security Agreement. The fifth column lists the percentage ownership held by each selling shareholder after completion of this offering to the extent such percentage exceed 1% of the total number of shares of Common Stock outstanding at that time. The information presented regarding the selling stockholders is based, in part, on information the selling stockholders provided to us in writing specifically for use in this prospectus. The selling stockholders may sell all, some or none of their shares in this offering. See "Plan of Distribution."

In addition to the assumptions described above, beneficial ownership is determined in accordance with the rules of the SEC and generally includes voting or investment power over securities. To our knowledge, unless otherwise indicated, all persons named in the table below have sole voting and investment power with respect to their shares of Common Stock. Percentage of beneficial ownership is based on 36,668,980 shares of our Common Stock outstanding as of December 12, 2022 (which number includes the Private Placement Shares).

Name of Selling Shareholder	Number of Shares of Common Stock Owned Prior to Offering	Maximum Number of Shares of Common Stock to be Sold Pursuant to this Prospectus	Number of Shares of Common Stock Owned After Offering	Percentage of Shares of Common Stock Owned After Offering (to the extent greater than 1%)
Avenue Venture Opportunities Fund, L.P. ⁽¹⁾	1,150,223 ⁽²⁾	1,150,223	—	*
Avenue Venture Opportunities Fund II, L.P. ⁽¹⁾	1,725,331 ⁽³⁾	1,725,331	—	*

* Denotes less than 1%.

- (1) Avenue Venture Opportunities Fund, L.P. and Avenue Venture Opportunities Fund II, L.P. are both Delaware limited partnerships. Decisions with respect to the disposition of securities are determined by Avenue Venture Opportunities Fund II, L.P. The address of Avenue Venture Opportunities Fund, L.P. and Avenue Venture Opportunities Fund II, L.P., and their affiliates, is 11 West 42nd Street, 9th Floor, New York, New York 10036.
- (2) Consists of (i) 1,150,223 shares of our Common Stock potentially issuable upon conversion of the pro rata portion of the \$5,000,000 of the outstanding principal amount under the note or notes issued in accordance with the terms of the Loan and Security Agreement, and (ii) 219,123 Private Placement Shares.
- (3) Consists of (i) 1,725,331 shares of our Common Stock potentially issuable upon conversion of the pro rata portion of the \$5,000,000 of the outstanding principal amount under the note or notes issued in accordance with the terms of the Loan and Security Agreement, and (ii) 328,684 Private Placement Shares.

PLAN OF DISTRIBUTION

We are registering the shares of Common Stock issuable upon conversion of \$5,000,000 of the outstanding principal amount under the note or notes issued in accordance with the terms of the Loan and Security Agreement and the Private Placement Shares to permit the resale of these shares of Common Stock by the selling stockholders from time to time after the date of this prospectus. We will not receive any of the proceeds from the sale by the selling stockholders of the shares of Common Stock.

The selling stockholders, which, as used herein, includes donees, pledgees, transferees or other successors in interest selling shares of Common Stock or interests in shares of Common Stock received after the date of this prospectus from a selling shareholder as a gift, pledge, partnership distribution or other transfer, may, from time to time, sell, transfer or otherwise dispose of any or all of their shares of Common Stock or interests in shares of Common Stock on any stock exchange, market or trading facility on which the shares are traded or in private transactions. These dispositions may be at fixed prices, at prevailing market prices at the time of sale, at prices related to the prevailing market price, at varying prices determined at the time of sale, or at negotiated prices.

The selling stockholders may use any one or more of the following methods when disposing of shares or interests therein:

- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;
- block trades in which the broker-dealer will attempt to sell the shares as agent, but may position and resell a portion of the block as principal to facilitate the transaction;
- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
- an exchange distribution in accordance with the rules of the applicable exchange;
- privately negotiated transactions;
- short sales effected after the date the registration statement of which this prospectus is a part is declared effective by the SEC;
- through the writing or settlement of options or other hedging transactions, whether through an options exchange or otherwise;
- broker-dealers may agree with the selling stockholders to sell a specified number of such shares at a stipulated price per share;
- one or more underwritten offerings on a firm commitment or best effort basis;
- a combination of any such methods of sale; and
- any other method permitted by applicable law.

The selling stockholders may, from time to time, pledge or grant a security interest in some or all of the shares of the Common Stock owned by them and, if they default in the performance of their secured obligations, the pledgees or secured parties may offer and sell the shares of Common Stock, from time to time, under this prospectus, or under an amendment to this prospectus under Rule 424(b)(3) or other applicable provision of the Securities Act, amending the list of selling stockholders to include the pledgee, transferee or other successors in interest as selling stockholders under this prospectus. The selling stockholders also may transfer the shares of Common Stock in other circumstances, in which case the transferees, pledgees or other successors in interest will be the selling beneficial owners for purposes of this prospectus.

In connection with the sale of Common Stock or interests therein, the selling stockholders may enter into hedging transactions with broker-dealers or other financial institutions, which may in turn engage in short sales of the Common Stock in the course of hedging the positions they assume. The selling stockholders may also sell shares of Common Stock short and deliver these securities to close out their short positions, or loan or pledge the Common Stock to broker-dealers that in turn may sell these securities. The selling stockholders may also enter into option or other transactions with broker-dealers or other financial institutions or the creation of one or more derivative securities which require the delivery to such broker-dealer or other financial institution of shares offered by this prospectus, which shares such broker-dealer or other financial institution may resell pursuant to this prospectus (as supplemented or amended to reflect such transaction).

The aggregate proceeds to the selling stockholders from the sale of the Common Stock offered by them will be the purchase price of the Common Stock less discounts or commissions, if any. Each of the selling stockholders reserves the right to accept and, together with their agents from time to time, to reject, in whole or in part, any proposed purchase of Common Stock to be made directly or through agents. We will not receive any of the proceeds from this offering.

The selling stockholders also may resell all or a portion of the shares in open market transactions in reliance upon Rule 144 under the Securities Act, if available, or pursuant to other available exemptions from the registration requirements under the Securities Act, rather than this prospectus, provided that they meet the criteria and conform to the requirements of that rule. Registration of the shares of Common Stock covered by this prospectus does not mean that any shares of the Common Stock will be offered or sold.

The selling stockholders may engage in at-the-market offerings and offer the Common Stock into an existing trading market in accordance with Rule 415(a)(4) under the Securities Act on the terms described in the prospectus supplement relating thereto. Underwriters, dealers and agents who participate in any at-the-market offerings will be described in the prospectus supplement relating thereto.

The selling stockholders and any underwriters, broker-dealers or agents that participate in the sale of the Common Stock or interests therein may be “underwriters” within the meaning of Section 2(11) of the Securities Act. Any discounts, commissions, concessions or profit they earn on any resale of the shares may be underwriting discounts and commissions under the Securities Act. Selling stockholders who are “underwriters” within the meaning of Section 2(11) of the Securities Act will be subject to the prospectus delivery requirements of the Securities Act.

To the extent required, the shares of our Common Stock to be sold, the names of the selling stockholders, the respective purchase prices and public offering prices, the names of any agents, dealer or underwriter, and any applicable commissions or discounts with respect to a particular offer will be set forth in an accompanying prospectus supplement or, if appropriate, a post-effective amendment to the registration statement that includes this prospectus.

In order to comply with the securities laws of some states, if applicable, the Common Stock may be sold in these jurisdictions only through registered or licensed brokers or dealers. In addition, in some states the Common Stock may not be sold unless it has been registered or qualified for sale or an exemption from registration or qualification requirements is available and is complied with.

If at the time of any offering made under this prospectus, a member of FINRA participating in the offering has a “conflict of interest” as defined in FINRA Rule 5121 (“Rule 5121”), that offering will be conducted in accordance with the relevant provisions of Rule 5121.

We have advised the selling stockholders that the anti-manipulation rules of Regulation M promulgated under the Securities Exchange Act of 1934, as amended, may apply to sales of shares in the market and to the activities of the selling stockholders and their affiliates. In addition, to the extent applicable we will make copies of this prospectus (as it may be supplemented or amended from time to time) available to the selling stockholders for the purpose of satisfying the prospectus delivery requirements of the Securities Act. The selling stockholders may indemnify any broker-dealer that participates in transactions involving the sale of the shares against certain liabilities, including liabilities arising under the Securities Act.

We will pay all expenses of the registration of the shares of Common Stock, including, without limitation, Securities and Exchange Commission filing fees and expenses of compliance with state securities or “blue sky” laws; provided, however, that a selling shareholder will pay all underwriting discounts and selling commissions, if any.

LEGAL MATTERS

The validity of the Common Stock issued and issuable upon conversion of the note or notes referenced herein and the Private Placement Shares will be passed upon for us by Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., Boston, MA.

EXPERTS

The financial statements of Eyenovia, Inc. as of December 31, 2021 and 2020 and for each of the two years in the period ended December 31, 2021, have been audited by Marcum LLP, independent registered public accounting firm, as stated in their report, which includes an explanatory paragraph as to the Company's ability to continue as a going concern, which is incorporated herein by reference. Such financial statements of Eyenovia, Inc. are incorporated in this prospectus by reference in reliance on the report of such firm given upon their authority as experts in accounting and auditing.

WHERE YOU CAN FIND MORE INFORMATION

We are subject to the reporting requirements of the Exchange Act, and file annual, quarterly and current reports, proxy statements and other information with the SEC. SEC filings are available at the SEC's web site at <http://www.sec.gov>. This prospectus is only part of a registration statement on Form S-3 that we have filed with the SEC under the Securities Act and therefore omits certain information contained in the registration statement. We have also filed exhibits and schedules with the registration statement that are excluded from this prospectus, and you should refer to the applicable exhibit or schedule for a complete description of any statement referring to any contract or other document.

We also maintain a website at <http://www.eyenovia.com>, through which you can access our SEC filings. The information set forth on our website is not part of this prospectus.

INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

The SEC allows us to "incorporate by reference" information that we file with them. Incorporation by reference allows us to disclose important information to you by referring you to those other documents. The information incorporated by reference is an important part of this prospectus, and information that we file later with the SEC will automatically update and supersede this information. We filed a registration statement on Form S-3 under the Securities Act, with the SEC with respect to the securities we may offer pursuant to this prospectus. This prospectus omits certain information contained in the registration statement, as permitted by the SEC. You should refer to the registration statement, including the exhibits, for further information about us and the securities we may offer pursuant to this prospectus. Statements in this prospectus regarding the provisions of certain documents filed with, or incorporated by reference in, the registration statement are not necessarily complete and each statement is qualified in all respects by that reference. Copies of all or any part of the registration statement, including the documents incorporated by reference or the exhibits, may be accessed on the SEC website as noted above in "Where You Can Find More Information." The documents we are incorporating by reference are:

- [our Annual Report on Form 10-K for the fiscal year ended December 31, 2021 that we filed with the SEC on March 30, 2022](#);
- [the portions of our definitive proxy statement on Schedule 14A filed on May 2, 2022 that are deemed "filed" with the SEC under the Exchange Act](#);
- our Quarterly Reports on Form 10-Q for the fiscal quarters ended March 31, 2022, June 30, 2022 and September 30, 2022, that we filed with the SEC on [May 13, 2022](#), [August 11, 2022](#) and [November 14, 2022](#), respectively;
- our Current Reports on Form 8-K that we filed with the SEC on [February 7, 2022](#), [February 8, 2022](#), [March 7, 2022](#), [March 9, 2022](#), [April 4, 2022](#), [May 12, 2022](#) (first filing), [June 7, 2022](#), [June 17, 2022](#), [July 7, 2022](#), [July 27, 2022](#), [August 10, 2022](#), [September 30, 2022](#), [October 20, 2022](#), [November 7, 2022](#), [November 29, 2022](#), [December 8, 2022](#) and [December 13, 2022](#) (except for the information furnished under Items 2.02 or 7.01 and the exhibits furnished thereto);
- the description of our common stock contained in our Registration Statement on Form 8-A filed on [January 24, 2018](#), including any amendment or report filed for the purpose of updating such description; and

· all reports and other documents subsequently filed by us pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act after the date of this prospectus and prior to the termination or completion of the offering of securities under this prospectus shall be deemed to be incorporated by reference in this prospectus and to be a part hereof from the date of filing such reports and other documents.

The SEC file number for each of the documents listed above is 001-38365.

In addition, all reports and other documents filed by us pursuant to the Exchange Act after the date of the initial registration statement and prior to effectiveness of the registration statement shall be deemed to be incorporated by reference into this prospectus.

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

You may request, orally or in writing, a copy of any or all of the documents incorporated herein by reference. These documents will be provided to you at no cost, by contacting:

Eyenovia, Inc.
295 Madison Avenue
Suite 2400
New York, NY 10017
Attn: Corporate Secretary
(833) 393-6684

You may also access these documents on our website, <http://www.eyenovia.com>. The information contained on, or that can be accessed through, our website is not a part of this prospectus. We have included our website address in this prospectus solely as an inactive textual reference.

You should rely only on information contained in, or incorporated by reference into, this prospectus and any prospectus supplement. We have not authorized anyone to provide you with information different from that contained in this prospectus or incorporated by reference in this prospectus. We are not making offers to sell the securities in any jurisdiction in which such an offer or solicitation is not authorized or in which the person making such offer or solicitation is not qualified to do so or to anyone to whom it is unlawful to make such offer or solicitation.

PART II. INFORMATION NOT REQUIRED IN PROSPECTUS

Item 14. Other Expenses of Issuance and Distribution.

The following expenses incurred in connection with the sale of the securities being registered will be borne by the registrant. Other than the SEC registration fee, the amounts stated are estimates.

SEC Registration Fee	\$ 581.49
Legal Fees and Expenses	\$ 25,000.00
Accounting Fees and Expenses	\$ 10,000.00
Miscellaneous	\$ 2,500.00
Total	<u>\$ 38,081.49</u>

Item 15. Indemnification of Directors and Officers.

Section 102 of the General Corporation Law of the State of Delaware (the “Delaware General Corporation Law”) permits a corporation to eliminate the personal liability of directors of a corporation to the corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director, except where the director breached his duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of Delaware corporate law or obtained an improper personal benefit.

Section 145 of the Delaware General Corporation Law authorizes a court to award, or a corporation’s board of directors to grant, indemnity to directors and officers in terms sufficiently broad to permit such indemnification under certain circumstances for liabilities, including reimbursement for expenses incurred, arising under the Securities Act.

Section 145 of the Delaware General Corporation Law states:

(a) A corporation shall have power to indemnify any person who was or is a party or is 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 the person 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 expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person 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 the person’s 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 the person did not act in good faith and in a manner which the person 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 the person’s conduct was unlawful.

(b) A corporation shall have power to indemnify any person who was or is a party or is 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 the person 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 expenses (including attorneys’ fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

(c) To the extent that a present or former director or officer of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (a) and (b) of this section, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith.

(d) Any indemnification under subsections (a) and (b) of this section (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the present or former director, officer, employee or agent is proper in the circumstances because the person has met the applicable standard of conduct set forth in subsections (a) and (b) of this section. Such determination shall be made, with respect to a person who is a director or officer of the corporation at the time of such determination:

- (1) By a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum; or
- (2) By a committee of such directors designated by majority vote of such directors, even though less than a quorum; or
- (3) If there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion; or
- (4) By the stockholders.

(e) Expenses (including attorneys' fees) incurred by an officer or director of the corporation in defending any civil, criminal, administrative or investigative action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the corporation as authorized in this section. Such expenses (including attorneys' fees) incurred by former directors and officers or other employees and agents of the corporation or by persons serving at the request of the corporation as directors, officers, employees or agents of another corporation, partnership, joint venture, trust or other enterprise may be so paid upon such terms and conditions, if any, as the corporation deems appropriate.

(f) The indemnification and advancement of expenses provided by, or granted pursuant to, the other subsections of this section shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office. A right to indemnification or to advancement of expenses arising under a provision of the certificate of incorporation or a bylaw shall not be eliminated or impaired by an amendment to the certificate of incorporation or the bylaws after the occurrence of the act or omission that is the subject of the civil, criminal, administrative or investigative action, suit or proceeding for which indemnification or advancement of expenses is sought, unless the provision in effect at the time of such act or omission explicitly authorizes such elimination or impairment after such action or omission has occurred.

(g) A corporation shall have power to 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 such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the corporation would have the power to indemnify such person against such liability under this section.

(h) For purposes of this section, references to "the corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under this section with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued.

(i) For purposes of this section, references to “other enterprises” shall include employee benefit plans; references to “fines” shall include any excise taxes assessed on a person with respect to any employee benefit plan; and references to “serving at the request of the corporation” shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the corporation” as referred to in this section.

(j) The indemnification and advancement of expenses provided by, or granted pursuant to, this section shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(k) The Court of Chancery is hereby vested with exclusive jurisdiction to hear and determine all actions for advancement of expenses or indemnification brought under this section or under any bylaw, agreement, vote of stockholders or disinterested directors, or otherwise. The Court of Chancery may summarily determine a corporation’s obligation to advance expenses (including attorneys’ fees).

As permitted by Delaware law, our Certificate of Incorporation limits or eliminates the personal liability of our directors to the maximum extent permitted by Delaware law.

Our Bylaws provide for indemnification of our directors and executive officers to the maximum extent permitted by the Delaware General Corporation Law.

In addition, we have entered into indemnification agreements with each of our current directors and executive officers and we intend to enter into new indemnification agreements with certain of our current directors and each of our executive officers. These agreements will require us to indemnify these individuals to the fullest extent permitted under Delaware law against liabilities that may arise by reason of their service to us and to advance expenses incurred as a result of any proceeding against them as to which they could be indemnified. We also intend to enter into indemnification agreements with our future directors and executive officers.

We also maintain standard policies of insurance under which coverage is provided to our directors and officers against losses arising from claims made by reason of breach of duty or other wrongful act, and to us with respect to payments which may be made by us to such directors and officers pursuant to the above indemnification provisions or otherwise as a matter of law.

The above discussion of our Certificate of Incorporation, our Bylaws, our indemnification agreements with our current directors and executive officers and Sections 102 and 145 of the Delaware General Corporation Law is not intended to be exhaustive and is respectively qualified in its entirety by such Certificate of Incorporation, such Bylaws, such indemnification agreements and such statutes.

To the extent that our directors, officers and controlling persons are indemnified under the provisions contained in our Certificate of Incorporation, Delaware law or contractual arrangements against liabilities arising under the Securities Act, we have been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

Item 16. Exhibits.

The following exhibits are filed herewith or incorporated herein by reference:

Exhibit Number	Exhibit Description	Filed Herewith	Incorporated by Reference herein from Form or Schedule	Filing Date	SEC File/ Reg. Number
<u>3.1</u>	Third Amended and Restated Certificate of Incorporation of the Registrant		8-K (Exhibit 3.1)	<u>1/29/2018</u>	001-38365
<u>3.2</u>	Certificate of Amendment to Third Amended and Restated Certificate of Incorporation of the Registrant		8-K (Exhibit 3.1.1)	<u>6/14/2018</u>	001-38365
<u>3.3</u>	Second Amended and Restated Bylaws of the Registrant		8-K (Exhibit 3.1)	<u>2/7/2022</u>	001-38365
<u>5.1</u>	Opinion of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. with respect to the legality of the securities being registered	X			
<u>23.1</u>	Consent of Marcum LLP	X			
<u>23.2</u>	Consent of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. (included in the opinion filed as Exhibit 5.1)	X			
<u>24.1</u>	Power of Attorney (included on the signature page of this registration statement)	X			
<u>107</u>	Filing Fee Table	X			

Item 17. Undertakings.

(a) The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement; *provided, however,* that paragraphs (a)(1)(i), (a)(1)(ii) and (a)(1)(iii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post- effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:

(i) Each prospectus filed by the registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(ii) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii), or (x) for the purpose of providing the information required by section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof. *Provided, however,* that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

(5) That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities, in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

- (i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;
- (ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;
- (iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and
- (iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

(b) That, for purposes of determining any liability under the Securities Act:

(i) the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in the form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective; and

(ii) each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(c) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to section 13(a) or section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(d) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

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-3 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 the 16th day of December, 2022.

EYENOVIA INC.

By: /s/ Michael Rowe
Michael Rowe
Chief Executive Officer

SIGNATURES AND POWER OF ATTORNEY

We, the undersigned officers and directors of Eyenovia, Inc., hereby severally constitute and appoint Michael Rowe and John Gandolfo, and each of them singly (with full power to each of them to act alone), our true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution in each of them for her or him and in her or his name, place and stead, and in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement (or any other registration statement for the same offering that is to be effective upon filing pursuant to Rule 462(b) under the Securities Act of 1933), and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, 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 full to all intents and purposes as she or he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them or their or her 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 below by the following persons in the capacities and on the dates indicated.

Signature	Capacity	Date
/s/ Michael Rowe Michael Rowe	Chief Executive Officer and Director (<i>Principal Executive Officer</i>)	December 16, 2022
/s/ John Gandolfo John Gandolfo	Chief Financial Officer (<i>Principal Financial and Accounting Officer</i>)	December 16, 2022
/s/ Stephen Benjamin Stephen Benjamin	Director	December 16, 2022
/s/ Tsontcho Ianchulev Tsontcho Ianchulev	Director	December 16, 2022
/s/ Rachel Jacobson Rachel Jacobson	Director	December 16, 2022
/s/ Charles E. Mather IV Charles E. Mather IV	Director	December 16, 2022
/s/ Ram Palanki Ram Palanki	Director	December 16, 2022
/s/ Ellen Strahlman Ellen Strahlman	Director	December 16, 2022



One Financial Center
Boston, MA 02111
617 542 6000
mintz.com

December 16, 2022

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

Ladies and Gentlemen:

We have acted as legal counsel to Eyenovia, Inc., a Delaware corporation (the "Company"), in connection with the preparation and filing with the Securities and Exchange Commission (the "Commission") of a Registration Statement on Form S-3 (the "Registration Statement"), under the Securities Act of 1933, as amended (the "Securities Act"), relating to the registration of (i) 2,327,747 shares (the "Conversion Shares") of the Company's common stock, \$0.0001 par value per share (the "Common Stock") issuable upon conversion of up to \$5,000,000 in note(s) issued pursuant to the Loan and Security Agreement, dated November 22, 2022, including the initial Supplement referenced therein (collectively, the "Loan and Security Agreement"), by and among the Company, Avenue Capital Management II, L.P., Avenue Venture Opportunities Fund, L.P. ("Avenue 1"), and Avenue Venture Opportunities Fund II, L.P. ("Avenue 2", and together with Avenue 1, the "Selling Stockholders") and (ii) 547,807 shares (the "Private Placement Shares") of Common Stock issued to the Selling Stockholders in connection with the Loan and Security Agreement in a private placement.

In connection with this opinion, we have examined the Company's Third Amended and Restated Certificate of Incorporation, as amended, and Second Amended and Restated Bylaws, as amended, each as currently in effect; the Loan and Security Agreement; such other records of the corporate proceedings of the Company and certificates of the Company's officers as we have deemed relevant; and the Registration Statement and the exhibits thereto.

In our examination, we have assumed the genuineness of all signatures, the legal capacity of natural persons, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as copies, the authenticity of the originals of such copies, and the truth and correctness of any representations and warranties contained therein.

Our opinion expressed herein is limited to the General Corporation Law of the State of Delaware and we express no opinion with respect to the laws of any other jurisdiction. No opinion is expressed herein with respect to the qualification of the Conversion Shares or the Private Placement Shares under the securities or blue sky laws of any state or any foreign jurisdiction.

Please note that we are opining only as to the matters expressly set forth herein, and no opinion should be inferred as to any other matters. This opinion is based upon currently existing statutes, rules, regulations and judicial decisions, and we disclaim any obligation to advise you of any change in any of these sources of law or subsequent legal or factual developments which might affect any matters or opinions set forth herein.

Based upon the foregoing, and subject to the qualifications stated herein, we are of the opinion that (i) the Conversion Shares, when issued and delivered in accordance with the Loan and Security Agreement, will be duly authorized, validly issued, fully paid and non-assessable and (ii) the Private Placement Shares are duly authorized, validly issued, fully paid and non-assessable.

BOSTON LONDON LOS ANGELES NEW YORK SAN DIEGO SAN FRANCISCO WASHINGTON

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C.

We understand that you wish to file this opinion with the Commission as an exhibit to the Registration Statement in accordance with the requirements of Item 601(b) (5) of Regulation S-K promulgated under the Securities Act and to reference the firm's name under the caption "Legal Matters" in the prospectus which forms part of the Registration Statement, and we hereby consent thereto. In giving this consent, we do not admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission promulgated thereunder.

Very truly yours,

/s/ Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM'S CONSENT

We consent to the incorporation by reference in this Registration Statement of Eyenovia, Inc. on Form S-3 of our report dated March 30, 2022, 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 Eyenovia, Inc. as of December 31, 2021 and 2020 and for each of the two years in the period ended December 31, 2021 appearing in the Annual Report on Form 10-K of Eyenovia, Inc. for the year ended December 31, 2021. We also consent to the reference to our firm under the heading "Experts" in the Prospectus, which is part of this Registration Statement.

/s/ Marcum LLP

Marcum LLP
New York, New York
December 16, 2022

CALCULATION OF REGISTRATION FEE TABLE

Form S-3
(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	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
Equity	Common Stock \$0.0001 par value per share	457(c)	2,327,747(2)	\$ 1.835 (4)	\$ 4,271,415.75	\$ 0.00011020	\$ 470.71
Equity	Common Stock, par value \$0.0001 per share	457(c)	547,807(3)	\$ 1.835 (4)	\$ 1,005,225.85	\$ 0.00011020	\$ 110.78
Total Offering Amounts					\$ 5,276,641.60		\$ 581.49
Total Fees Previously Paid							-
Total Fee Offsets							-
Net Fee Due							\$ 581.49

- (1) This Registration Statement also relates to an indeterminate number of shares of common stock, par value \$0.0001 per share (“Common Stock”), of Eyenovia, Inc. (the “Registrant”) that may be offered or issued to prevent dilution resulting from stock splits, stock dividends or similar transactions in accordance with Rule 416 under the Securities Act of 1933, as amended (the “Securities Act”).
- (2) Represents shares of Common Stock issuable upon conversion of \$5,000,000 of the outstanding principal amount under the note or notes issued in accordance with the terms of the Loan and Security Agreement, including the initial Supplement referenced therein (collectively, the “Loan and Security Agreement”), by and among the Registrant, Avenue Capital Management II, L.P., as administrative agent and collateral agent, Avenue Venture Opportunities Fund, L.P., as a lender (“Avenue 1”), and Avenue Venture Opportunities Fund II, L.P., as a lender (“Avenue 2”, and together with Avenue 1, the “Lenders”). The number of shares of Common Stock registered by the Registrant is calculated by dividing \$5,000,000 by 120% of the closing price of the Registrant’s common stock on November 22, 2022, or \$2.1480, in accordance with the terms of the Loan and Security Agreement.
- (3) Represents the shares of Common Stock issued to the Lenders in a private placement in connection with the Loan and Security Agreement.
- (4) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(c) promulgated under the Securities Act on the basis of the average of the high and the low price of Registrant’s Common Stock as reported on the Nasdaq Capital Market on December 13, 2022.