

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

FORM S-1
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

BIORESTORATIVE THERAPIES, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

8099
(Primary Standard Industrial
Classification Code Number)

91-1835664
(I.R.S. Employer
Identification Number)

40 Marcus Drive, Suite One
Melville, New York 11747
(631) 760-8100

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

Lance Alstodt, President and Chief Executive Officer
BioRestorative Therapies, Inc.
40 Marcus Drive, Suite One
Melville, New York 11747
(631) 760-8100

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

Fred Skolnik, Esq.
Certilman Balin Adler & Hyman, LLP
90 Merrick Avenue
East Meadow, New York 11554
(516) 296-7048

Robert F. Charron, Esq.
Charles E. Phillips, Esq.
Ellenoff Grossman & Schole LLP
1345 Avenue of the Americas
New York, New York 10105
(212) 370-1300

Approximate date of commencement of proposed sale to the public: As soon as practicable after the effective date of this registration statement.

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, 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, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☒ **333-258611**

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 post-effective amendment filed pursuant to Rule 462(d) 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. ☐

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 (check one):

Large accelerated filer ☐
Non-accelerated filer ☒

Accelerated filer ☐
Smaller reporting company ☒
Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act. ☐

Calculation of Registration Fee

| Title of Each Class of Securities to be Registered | Proposed Maximum Aggregate Offering Price ⁽¹⁾ | Amount of Registration Fee |
|---|--|-------------------------------|
| Units consisting of shares of Common Stock, par value \$0.0001 per share, and Warrants to purchase shares of Common Stock, par value \$0.0001 per share (2) | \$ 3,450,000.00 | \$ 319.82 |
| Common Stock included as part of the Units | Included with Units above | \$ - |
| Warrants to purchase shares of Common Stock included as part of the Units (3) | Included with Units above | \$ - |
| Representative Warrants to purchase Common Stock (3) | \$ - | \$ - |
| Shares of Common Stock issuable upon exercise of the Warrants (4)(5) | \$ 3,450,000.00 | \$ 319.82 |
| Shares of Common Stock issuable upon exercise of Representative Warrants (5)(6) | \$ 431,250.00 | \$ 39.98 |
| TOTAL REGISTRATION FEE | \$ 7,331,250.00 | \$ 679.62 |

(1) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(o) under the Securities Act of 1933, as amended.

(2) Includes Units which may be issued upon exercise of a 45-day option granted to the underwriters to cover over-allotments, if any.

(3) In accordance with Rule 457(g) under the Securities Act, because the shares of the registrant's common stock underlying the Warrants and Representative Warrants are registered hereby, no separate registration fee is required with respect to the warrants registered hereby.

(4) There will be issued warrants to purchase one share of common stock for every share of common stock offered. The warrants are exercisable at a per share price equal to 100% of the Unit public offering price.

(5) Includes shares of common stock which may be issued upon exercise of additional warrants which may be issued upon exercise of 45-day option granted to the underwriters to cover over-allotments, if any.

(6) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(g) under the Securities Act. The warrants are exercisable at a per share exercise price equal to 125% of the public offering price. As estimated solely for the purpose of recalculating the registration fee pursuant to Rule 457(g) under the Securities Act, the proposed maximum aggregate offering price of the Representative Warrants is \$431,250, which is equal to 125% of \$345,000 (5% of \$6,900,000).

In the event of a stock split, stock dividend, or similar transaction involving the common stock, the number of shares registered shall automatically be increased to cover the additional shares of common stock issuable pursuant to Rule 416 under the 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 of 1933, as amended, 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.

EXPLANATORY NOTE

BioRestorative Therapies, Inc (the “Company”) is filing this registration statement with the Securities and Exchange Commission (the “SEC”) pursuant to Rule 462(b) under the Securities Act of 1933, as amended. This registration statement relates to the public offering of securities contemplated by the registration statement on Form S-1, as amended (File No. 333-258611), which was originally filed with the SEC on August 6, 2021 (the “Registration Statement”).

The Company is filing this registration statement for the purpose of registering additional securities of the Company with the proposed maximum aggregate offering price not to exceed \$7,331,250. The information set forth in the Registration Statement, including all exhibits thereto and all information incorporated by reference therein, is incorporated by reference in this filing.

The required opinions and consents are listed on the exhibit index and filed with this filing.

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 16. Exhibits and Financial Statement Schedules.

(a) *Exhibits.* All exhibits filed with or incorporated by reference in the Registration Statement on Form S-1 (File No. 333-258611) are incorporated by reference into, and shall be deemed a part of, this Registration Statement, and the following additional exhibits are filed herewith, as part of this Registration Statement:

| Exhibit No. | Description |
|--------------------|--|
| 5.1 | <u>Opinion of Certilman Balin Adler & Hyman, LLP</u> |
| 23.1 | <u>Independent Registered Public Accounting Firm's Consent</u> |
| 23.2 | <u>Consent of Certilman Balin Adler & Hyman, LLP (included in the opinion of Certilman Balin Adler & Hyman filed as Exhibit 5.1)</u> |
| 24.1 | <u>Power of Attorney (included on signature page)</u> |

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the County of Suffolk, State of New York, on November 4, 2021.

BIORESTORATIVE THERAPIES, INC.

By: /s/ Lance Alstodt

Lance Alstodt
Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, as amended, this registration statement has been signed by the following persons in the capacities indicated as of November 4, 2021.

| <u>Signature</u> | <u>Capacity</u> |
|---|--|
| <u>/s/ Lance Alstodt</u> Lance Alstodt | Chief Executive Officer, President, Chairman of the Board and Director (Principal Executive Officer, Principal Financial Officer and Principal Accounting Officer) |
| <u>/s/ Francisco Silva</u> Francisco Silva | Vice President, Research and Development, Secretary and Director |
| <u>/s/ Nickolay Kukekov</u> Nickolay Kukekov | Director |

Certilman Balin Adler & Hyman LLP
90 Merrick Avenue, 9th floor
East Meadow, NY 11554

November 4, 2021

BioRestorative Therapies, Inc.
40 Marcus Drive
Melville, New York 11747

Re: Registration Statement on Form S-1

Gentlemen:

In our capacity as counsel to BioRestorative Therapies, Inc., a Delaware corporation (the “Company”), we have been asked to render this opinion in connection with the filing by the Company with the Securities and Exchange Commission (the “Commission”) of a Registration Statement on Form S-1 (the “462(b) Registration Statement”) for the purpose of registering with the Commission pursuant to Rule 462(b) under the Securities Act of 1933, as amended (the “Act”), (i) shares (the “Shares”) of Common Stock, par value \$0.0001 per share, of the Company (the “Common Stock”), and warrants to purchase shares of Common Stock (the “Warrants”). The shares of Common Stock underlying the Warrants are collectively referred to herein as the “Warrant Shares”. The 462(b) Registration Statement relates to the Company’s registration statement on Form S-1 (File No.: 333-258611) which was initially filed with the Commission on August 6, 2021 and was declared effective on November 4, 2021 (the “Registration Statement”).

In connection with this opinion, we have examined originals or copies (certified or otherwise identified to our satisfaction) of the Certificate of Incorporation and the By-Laws of the Company, each as amended to date, minutes of meetings and unanimous written consents of the Board of Directors of the Company and committees thereof and the 462(b) Registration Statement. We have also examined such other instruments and documents as we deemed relevant under the circumstances.

For purposes of the opinions expressed below, we have assumed (i) the authenticity of all documents submitted to us as original, (ii) the conformity to the originals of all documents submitted as certified, photostatic or facsimile copies and the authenticity of the originals, (iii) the legal capacity of natural persons, (iv) the due authorization, execution and delivery of all documents by all parties and the validity and binding effect thereof and (v) the conformity to the proceedings of the Board of Directors and committees thereof of all minutes of such proceedings. We have also assumed that the corporate records furnished to us by the Company include all corporate proceedings taken by the Company to date.

Based upon and subject to the foregoing, we are of the opinion that (i) the Shares have been duly authorized and, when issued and delivered by the Company against payment therefor as described in the Registration Statement, will be validly issued, fully paid and nonassessable; (ii) the Warrants have been duly authorized and, when issued and delivered by the Company against payment therefor as described in the Registration Statement, will be valid and binding obligations of the Company; and (iii) the Warrant Shares have been duly authorized and, when issued and delivered by the Company against payment therefor in accordance with the terms of the Warrants, will be validly issued, fully paid and nonassessable.

We hereby consent to the use of our opinion as herein set forth as an exhibit to the 462(b) Registration Statement. In giving such consent, we do not hereby admit that we are in the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Commission thereunder.

This opinion is as of the date hereof, and we do not undertake, and hereby disclaim, any obligation to advise you of any changes in any of the matters set forth herein.

We are rendering this opinion only as to the matters expressly set forth herein, and no opinion should be inferred as to any other matters.

This opinion is for your exclusive use only and is to be utilized and relied upon only in connection with the matters expressly set forth herein.

Very truly yours,

CERTILMAN BALIN ADLER & HYMAN, LLP

By: /s/

Fred Skolnik, a Member of the Firm

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in this Registration Statement of BioRestorative Therapies, Inc. (the “Company”) on Form S-1 MEF pursuant to Rule 462(b) under the Securities Act of 1933, as amended, of our report dated April 29, 2021, except for Note 13, as to which the date is October 29, 2021, with respect to the consolidated financial statements of the Company as of December 31, 2020 and 2019, and for the years then ended appearing in the Amendment No. 3 to the Registration Statement on Form S-1 (333-258611).

/s/ Friedman LLP

Marlton, New Jersey
November 4, 2021
