
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549**

**FORM S-8
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**



CARDLYTICS, INC.

(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

**675 Ponce de Leon Avenue NE, Suite 4100
Atlanta, Georgia 30308**
(Address of principal executive offices) (Zip code)

26-3039436
(I.R.S. Employer
Identification No.)

**2018 Equity Incentive Plan
2018 Employee Stock Purchase Plan**
(Full title of the plan)
Karim Tamsamani
Cardlytics, Inc.
675 Ponce de Leon Avenue NE, Suite 4100
Atlanta, Georgia 30308
(Name and address of agent for service)
(888) 798-5802
(Telephone number, including area code, of agent for service)

Copies to:
Mark Ballantyne
Eric Jensen
Cooley LLP
One Freedom Square
Reston Town Center
11951 Freedom Drive
Reston, VA 20190
(703) 456-8000

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 | <input type="checkbox"/> | Accelerated filer | <input checked="" type="checkbox"/> |
| Non-accelerated filer | <input type="checkbox"/> | Smaller reporting company | <input type="checkbox"/> |
| | | Emerging growth company | <input type="checkbox"/> |

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

EXPLANATORY NOTE

Pursuant to General Instruction E of Form S-8, Cardlytics, Inc. (the “Registrant”) is filing this Registration Statement with the Securities and Exchange Commission (the “Commission”) to register 1,986,417 additional shares of its common stock under the 2018 Equity Incentive Plan (the “2018 Plan”) and 397,283 additional shares of its common stock under the 2018 Employee Stock Purchase Plan (the “2018 ESPP”), pursuant to the provisions of the 2018 Plan and the 2018 ESPP providing for an automatic increase in the number of shares of common stock reserved and available for issuance under the 2018 Plan and the 2018 ESPP, as applicable, on January 1, 2024. In accordance with the instructional note to Part I of Form S-8 as promulgated by the Commission, the information specified by Part I of the Form S-8 has been omitted from this Registration Statement.

PART II

ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE

The following documents filed by the Registrant with the Commission are incorporated by reference into this Registration Statement:

- (a) The contents of the earlier registration statements related to the 2018 Plan and the 2018 ESPP, previously filed with the Commission on February 9, 2018 ([File No. 333-222965](#)), May 21, 2019 ([File No. 333-231640](#)), March 3, 2020 ([File No. 333-236869](#)), March 1, 2021 ([File No. 333-253675](#)), March 1, 2022 ([File No. 333-263143](#)) and January 23, 2023 ([File No. 333-269361](#)) are incorporated herein by reference and made a part of this Registration Statement.
- (b) The Registrant’s Annual Report on Form 10-K for the fiscal year ended December 31, 2022, filed with the Commission on [March 1, 2023](#).
- (c) The information specifically incorporated by reference into the Registrant’s Annual Report on Form 10-K for the year ended December 31, 2022 from the Registrant’s [definitive proxy statement on Schedule 14A](#), as filed with the Commission on April 10, 2023.
- (d) The Registrant’s Quarterly Reports on Form 10-Q for the quarters ended March 31, 2023, June 30, 2023 and September 30, 2023, which were filed with the Commission on [May 4, 2023](#), [August 1, 2023](#) and [November 8, 2023](#), respectively.
- (e) The Registrant’s Current Reports on Form 8-K filed with the Commission on [January 23, 2023](#) (with respect to Item 5.02 only), [March 14, 2023](#), [March 22, 2023](#), [May 1, 2023](#), [May 24, 2023](#), [July 5, 2023](#), [July 10, 2023](#), [July 18, 2023](#) (with respect to Item 5.02 only), [September 6, 2023](#) (with respect to Item 5.02 only), [September 19, 2023](#) (with respect to Items 1.01 and 5.02 only), [October 30, 2023](#), [December 19, 2023](#) and [January 2, 2024](#) (with respect to Item 5.02 only).
- (f) The description of the Registrant’s Common Stock which is contained in the Registrant’s Registration Statement on Form 8-A filed on [February 6, 2018](#) (File No. 001-38386) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), including any amendment or report filed for the purpose of updating such description, including Exhibit 4.3 to the Annual Report on Form 10-K for the year ended December 31, 2019, as filed with the Commission on March 3, 2020.
- (g) All other reports and documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act (other than Current Reports furnished under Item 2.02 or Item 7.01 of Form 8-K and exhibits furnished on such form that relate to such items) on or after the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part of this Registration Statement from the date of the filing of such reports and documents. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any subsequently filed document that also is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

ITEM 8. EXHIBITS

| Exhibit Number | Description |
|----------------|--|
| 4.1 (1) | Amended and Restated Certificate of Incorporation of the Registrant |
| 4.2 (2) | Amended and Restated Bylaws of the Registrant |
| 4.3 (3) | 2018 Equity Incentive Plan and Forms of Stock Option Agreement, Notice of Exercise, Stock Option Grant Notice, Restricted Stock Unit Notice and Restricted Stock Agreement thereunder. |
| 4.4 (4) | 2018 Employee Stock Purchase Plan |
| 4.5 (5) | Specimen stock certificate evidencing shares of Common Stock |
| 5.1 (6) | Opinion of Cooley LLP |
| 23.1 (6) | Consent of Deloitte & Touche LLP, Independent Registered Public Accounting Firm |
| 23.2 (6) | Consent of Cooley LLP (included in Exhibit 5.1) |
| 24.1 (6) | Power of Attorney (included on the signature page of this Form S-8) |
| 107 (6) | Filing Fee Table |

- (1) Previously filed as Exhibit 3.2 to the Registrant's Registration Statement on Form S-1 (File No. 333-222531), filed with the Commission on January 12, 2018, and incorporated by reference herein.
- (2) Previously filed as Exhibit 3.4 to the Registrant's Registration Statement on Form S-1 (File No. 333-222531), filed with the Commission on January 12, 2018, and incorporated by reference herein.
- (3) Previously filed as Exhibit 10.2 to Amendment No. 1 to the Registrant's Registration Statement on Form S-1 (File No. 333-222531), filed with the Commission on January 29, 2018, and incorporated by reference herein.
- (4) Previously filed as Exhibit 10.3 to Amendment No. 1 to the Registrant's Registration Statement on Form S-1 (File No. 333-222531), filed with the Commission on January 29, 2018, and incorporated by reference herein.
- (5) Previously filed as Exhibit 4.1 to Amendment No. 1 to the Registrant's Registration Statement on Form S-1 (File No. 333-222531), filed with the Commission on January 29, 2018, and incorporated by reference herein.
- (6) Filed herewith.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Atlanta, State of Georgia, on January 29, 2024.

CARDLYTICS, INC.

By: /s/ Karim Temsamani

Karim Temsamani

Chief Executive Officer

POWER OF ATTORNEY

Know All Persons By These Presents, that each person whose signature appears below constitutes and appoints Karim Temsamani, Nick Lynton and Alexis DeSieno, and each or any one of them, his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he or she 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 his or her substitutes or substitute, may lawfully do or cause to be done by virtue hereof.

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 and on the dates indicated.

| Signature | Title | Date |
|---|---|------------------|
| <u>/s/ Karim Tamsamani</u> Karim Tamsamani | Chief Executive Officer and Director (Principal Executive Officer) | January 29, 2024 |
| <u>/s/ Alexis DeSieno</u> Alexis DeSieno | Chief Financial Officer (Principal Financial and Accounting Officer) | January 29, 2024 |
| <u>/s/ John Klinck</u> John Klinck | Chairperson | January 29, 2024 |
| <u>/s/ Jon Francis</u> Jon Francis | Director | January 29, 2024 |
| <u>/s/ Andre Fernandez</u> Andre Fernandez | Director | January 29, 2024 |
| <u>/s/ Scott Hill</u> Scott Hill | Director | January 29, 2024 |
| <u>/s/ Jessica Jensen</u> Jessica Jensen | Director | January 29, 2024 |
| <u>/s/ Aimée Lopic</u> Aimée Lopic | Director | January 29, 2024 |
| <u>/s/ Alex Mishurov</u> Alex Mishurov | Director | January 29, 2024 |

Filing Fee Tables

Form S-8
(Form Type)**CARDLYTICS, INC.**

(Exact Name of Registrant as Specified in its Charter)

Table 1: Newly Registered Securities

| Title of Securities to be Registered | Amount to be Registered ⁽¹⁾ | Proposed Maximum Offering Price Per Share | Proposed Maximum Aggregate Offering Price | Fee Rate | Amount of Registration Fee |
|--|--|---|---|-----------|----------------------------|
| Common Stock, par value \$0.0001 per share | | | | | |
| 2018 Equity Incentive Plan | 1,986,417 ⁽²⁾ | \$6.00 ⁽⁴⁾ | \$11,918,502.00 ⁽⁵⁾ | 0.0001476 | \$1,759.17 |
| 2018 Employee Stock Purchase Plan | 397,283 ⁽³⁾ | \$5.10 ⁽⁵⁾ | \$2,026,143.30 ⁽⁶⁾ | 0.0001476 | \$299.06 |
| Total Offering Amounts | 2,383,700 | | \$13,944,645.3 | | \$2,058.23 |
| Total Fees Previously Paid | | | | | \$— |
| Total Fee Offset | | | | | \$— |
| Net Fee Due | | | | | \$2,058.23 |

- (1) Pursuant to Rule 416(a) promulgated under the Securities Act of 1933, as amended (the "Securities Act"), this Registration Statement shall also cover any additional shares of the Registrant's Common Stock that become issuable under the 2018 Equity Incentive Plan (the "2018 Plan"), and the 2018 Employee Stock Purchase Plan (the "2018 ESPP") set forth herein by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without receipt of consideration that increases the number of outstanding shares of the Registrant's Common Stock.
- (2) Represents additional shares of Common Stock reserved for future issuance under the 2018 Plan.
- (3) Represents additional shares of Common Stock reserved for future issuance under the 2018 ESPP.
- (4) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(c) promulgated under the Securities Act. The proposed maximum offering price per share and the proposed maximum aggregate offering price are calculated using the average of the high and low prices of the Registrant's Common Stock as reported on the Nasdaq Global Market on January 25, 2024.
- (5) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(c) promulgated under the Securities Act. The proposed maximum offering price per share and the proposed maximum aggregate offering price are calculated using the average of the high and low prices of the Registrant's Common Stock as reported on the Nasdaq Global Market on January 25, 2024, multiplied by 85%, which is the percentage of the price per share applicable to purchases under the 2018 ESPP.



Mark Ballantyne
+1 703 456 8084
mballantyne@cooley.com

January 29, 2024

Cardlytics, Inc.
675 Ponce de Leon Avenue NE, Suite 4100
Atlanta, Georgia 30308

Ladies and Gentlemen:

You have requested our opinion, as counsel to Cardlytics, Inc., a Delaware corporation (the “*Company*”), in connection with the filing by the Company of a Registration Statement on Form S-8 (the “*Registration Statement*”) with the Securities and Exchange Commission (the “*Commission*”) covering the offering of up to 2,383,700 shares (the “*Shares*”) of the Company’s Common Stock, par value \$0.0001 per share (“*Common Stock*”), consisting of (i) 1,986,417 shares of Common Stock issuable pursuant to the Company’s 2018 Equity Incentive Plan (the “*2018 Plan*”) and (ii) 397,283 shares of Common Stock issuable pursuant to the Company’s 2018 Employee Stock Purchase Plan (together with the 2018 Plan, the “*Plans*”).

In connection with this opinion, we have examined and relied upon (a) the Registration Statement and the related prospectuses, (b) the Company’s certificate of incorporation and bylaws, each as currently in effect, (c) the Plans, and (d) such other records, documents, opinions, certificates, memoranda and instruments as in our judgment are necessary or appropriate to enable us to render the opinion expressed below. We have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as copies, the accuracy, completeness and authenticity of certificates of public officials, and the due authorization, execution and delivery of all documents by all persons other than the Company where authorization, execution and delivery are prerequisites to the effectiveness thereof. As to certain factual matters, we have relied upon a certificate of an officer of the Company and have not independently verified such matters.

Our opinion is expressed only with respect to the General Corporation Law of the State of Delaware. We express no opinion to the extent that any other laws are applicable to the subject matter hereof and express no opinion and provide no assurance as to compliance with any federal or state securities law, rule or regulation.

On the basis of the foregoing, and in reliance thereon, we are of the opinion that the Shares, when sold and issued in accordance with the Plans, the Registration Statement and the related prospectuses, will be validly issued, fully paid and nonassessable (except as to shares issued pursuant to deferred payment arrangements, which will be fully paid and nonassessable when such deferred payments are made in full).

This opinion is limited to the matters expressly set forth in this letter, and no opinion should be implied, or may be inferred, beyond the matters expressly stated. This opinion speaks only as to law and facts in effect or existing as of the date hereof, and we have no obligation or responsibility to update or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention or any changes in law that may hereafter occur.

We consent to the filing of this opinion as an exhibit to the Registration Statement. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act of 1933, as amended, or the rules and regulations of the Commission thereunder.

Sincerely,

Cooley LLP
By: /s/ Mark Ballantyne
Mark Ballantyne

Cooley LLP Reston Town Center Reston, VA 20190-5656
t: (703) 456 8000 f: (703) 456 8100 cooley.com

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in this Registration Statement on Form S-8 of our reports dated March 1, 2023 relating to the consolidated financial statements of Cardlytics, Inc. and subsidiaries (the “Company”) and the effectiveness of the Company's internal control over financial reporting appearing in the Annual Report on Form 10-K of Cardlytics, Inc. for the year ended December 31, 2022.

/s/ Deloitte & Touche LLP

Atlanta, Georgia

January 29, 2024



Mark Ballantyne
+1 703 456 8084
mballantyne@cooley.com

January 29, 2024

Cardlytics, Inc.
675 Ponce de Leon Avenue NE, Suite 4100
Atlanta, Georgia 30308

Ladies and Gentlemen:

You have requested our opinion, as counsel to Cardlytics, Inc., a Delaware corporation (the "**Company**"), in connection with the filing by the Company of a Registration Statement on Form S-8 (the "**Registration Statement**") with the Securities and Exchange Commission (the "**Commission**") covering the offering of up to 2,383,700 shares (the "**Shares**") of the Company's Common Stock, par value \$0.0001 per share ("**Common Stock**"), consisting of (i) 1,986,417 shares of Common Stock issuable pursuant to the Company's 2018 Equity Incentive Plan (the "**2018 Plan**") and (ii) 397,283 shares of Common Stock issuable pursuant to the Company's 2018 Employee Stock Purchase Plan (together with the 2018 Plan, the "**Plans**").

In connection with this opinion, we have examined and relied upon (a) the Registration Statement and the related prospectuses, (b) the Company's certificate of incorporation and bylaws, each as currently in effect, (c) the Plans, and (d) such other records, documents, opinions, certificates, memoranda and instruments as in our judgment are necessary or appropriate to enable us to render the opinion expressed below. We have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as copies, the accuracy, completeness and authenticity of certificates of public officials, and the due authorization, execution and delivery of all documents by all persons other than the Company where authorization, execution and delivery are prerequisites to the effectiveness thereof. As to certain factual matters, we have relied upon a certificate of an officer of the Company and have not independently verified such matters.

Our opinion is expressed only with respect to the General Corporation Law of the State of Delaware. We express no opinion to the extent that any other laws are applicable to the subject matter hereof and express no opinion and provide no assurance as to compliance with any federal or state securities law, rule or regulation.

On the basis of the foregoing, and in reliance thereon, we are of the opinion that the Shares, when sold and issued in accordance with the Plans, the Registration Statement and the related prospectuses, will be validly issued, fully paid and nonassessable (except as to shares issued pursuant to deferred payment arrangements, which will be fully paid and nonassessable when such deferred payments are made in full).

This opinion is limited to the matters expressly set forth in this letter, and no opinion should be implied, or may be inferred, beyond the matters expressly stated. This opinion speaks only as to law and facts in effect or existing as of the date hereof, and we have no obligation or responsibility to update or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention or any changes in law that may hereafter occur.

We consent to the filing of this opinion as an exhibit to the Registration Statement. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act of 1933, as amended, or the rules and regulations of the Commission thereunder.

Sincerely,

Cooley LLP
By: /s/ Mark Ballantyne
Mark Ballantyne

Cooley LLP Reston Town Center Reston, VA 20190-5656
t: (703) 456 8000 f: (703) 456 8100 cooley.com