

Capnia, Inc.  
Form 8-K  
July 27, 2015

**SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**FORM 8-K**

**CURRENT REPORT**

**Pursuant to Section 13 or 15(d)**

**of the Securities Exchange Act of 1934**

**Date of Report (date of earliest event reported): July 24, 2015**

**CAPNIA, INC.**

**(Exact name of registrant as specified in its charter)**

**Delaware**  
**(State or other jurisdiction**  
  
**of incorporation)**

**001-36593**  
**(Commission**  
  
**File No.)**  
**3 Twin Dolphin Drive, Suite 160**  
  
**Redwood City, CA 94065**

**77-0523891**  
**(IRS Employer**  
  
**Identification Number)**

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**(Address of principal executive offices)**

**(650) 213-8444**

**(Registrant's telephone number, including area code)**

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

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

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**ITEM 1.01. Entry into a Material Definitive Agreement.  
Purchase Agreement and Registration Rights Agreement with Aspire Capital**

On July 24, 2015, Capnia, Inc. (the **Company**), entered into a common stock purchase agreement (the **Purchase Agreement**) with Aspire Capital Fund, LLC, an Illinois limited liability company (**Aspire Capital**) which provides that, upon the terms and subject to the conditions and limitations set forth therein, Aspire Capital is committed to purchase up to an aggregate of \$10.0 million of shares of the Company's common stock over the 24-month term of the Purchase Agreement. Concurrently with entering into the Purchase Agreement, the Company also entered into a registration rights agreement with Aspire Capital (the **Registration Rights Agreement**), in which the Company agreed to file one or more registration statements, as permissible and necessary to register under the Securities Act of 1933, as amended (the **Securities Act**), registering the sale of the shares of the Company's common stock that have been and may be issued to Aspire Capital under the Purchase Agreement.

Under the Purchase agreement, after the Securities and Exchange Commission (the **SEC**) has declared effective the registration statement referred to above, on any trading day selected by the Company, the Company has the right, in its sole discretion, to present Aspire Capital with a purchase notice (each, a **Purchase Notice**), directing Aspire Capital (as principal) to purchase up to 75,000 shares of the Company's common stock per business day, up to \$10.0 million of the Company's common stock in the aggregate at a per share price (the **Purchase Price**) equal to the lesser of:

the lowest sale price of the Company's common stock on the purchase date; or

the arithmetic average of the three (3) lowest closing sale prices for the Company's common stock during the ten (10) consecutive trading days ending on the trading day immediately preceding the purchase date.

In addition, on any date on which the Company submits a Purchase Notice to Aspire Capital in an amount equal to at least 75,000 shares, the Company also has the right, in its sole discretion, to present Aspire Capital with a volume-weighted average price purchase notice (each, a **VWAP Purchase Notice**) directing Aspire Capital to purchase an amount of stock equal to up to 30% of the aggregate shares of the Company's common stock traded on its principal market on the next trading day (the **VWAP Purchase Date**), subject to a maximum number of shares the Company may determine. The purchase price per share pursuant to such VWAP Purchase Notice is generally 97% of the volume-weighted average price for the Company's common stock traded on its principal market on the VWAP Purchase Date.

The Purchase Price will be adjusted for any reorganization, recapitalization, non-cash dividend, stock split, or other similar transaction occurring during the period(s) used to compute the Purchase Price. The Company may deliver multiple Purchase Notices and VWAP Purchase Notices to Aspire Capital from time to time during the term of the Purchase Agreement, so long as the most recent purchase has been completed.

The Purchase Agreement provides that the Company and Aspire Capital shall not effect any sales under the Purchase Agreement on any purchase date where the closing sale price of the Company's common stock is less than \$2.63. There are no trading volume requirements or restrictions under the Purchase Agreement, and the Company will control the timing and amount of sales of the Company's common stock to Aspire Capital. Aspire Capital has no right to require any sales by the Company, but is obligated to make purchases from the Company as directed by the Company in accordance with the Purchase Agreement. There are no limitations on use of proceeds, financial or business covenants, restrictions on future fundings, rights of first refusal, participation rights, penalties or liquidated damages in the Purchase Agreement. In consideration for entering into the Purchase Agreement, concurrently with the execution of the Purchase Agreement, the Company issued to Aspire Capital 71,891 shares of the Company's common

stock (the **Commitment Shares** ). The Purchase Agreement may be terminated by the Company at any time, at its discretion, without any cost to the Company. Aspire Capital has agreed that neither it nor any of its agents, representatives and affiliates shall engage in any direct or indirect short-selling or hedging of the Company's common stock during any time prior to the termination of the Purchase Agreement. Any proceeds that the Company receives under the Purchase Agreement are expected to be used for working capital and general corporate purposes.

The foregoing is a summary description of certain terms of the Purchase Agreement and the Registration Rights Agreement and, by its nature, is incomplete. Copies of the Purchase Agreement and Registration Rights Agreement are filed herewith as Exhibits 10.1 and 4.1, respectively, to this Current Report on Form 8-K and are incorporated herein by reference. All readers are encouraged to read the entire text of the Purchase Agreement and the Registration Rights Agreement.

The issuance of the Commitment Shares and all other shares of common stock that may be issued from time to time to Aspire Capital under the Purchase Agreement is exempt from registration under the Securities Act, pursuant to the exemption for transactions by an issuer not involving any public offering under Section 4(a)(2) of the Securities Act.

This Current Report on Form 8-K contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934, including statements related to the potential future sale of shares of the Company's common stock and price for such sales under the Purchase Agreement. The words may, will, could, would, should, expect, intend, plan, anticipate, believe, estimate, potential, continue, ongoing and similar expressions are intended to identify forward-looking statements, although not all forward-looking statements contain these identifying words. While the Company believes its plans, intentions and expectations reflected in those forward-looking statements are reasonable, these plans, intentions or expectations may not be achieved. The Company's actual results, performance or achievements could differ materially from those contemplated, expressed or implied by the forward-looking statements. For information about the factors that could cause such differences, please refer to the Company's Annual Report on Form 10-K for the year ended December 31, 2013, including the information discussed under the captions Item 1 Business, Item 1A. Risk Factors and Item 7 Management's Discussion and Analysis of Financial Condition and Results of Operations, as well as the Company's various other filings with the SEC. Given these uncertainties, you should not place undue reliance on these forward-looking statements. The Company assumes no obligation to update any forward-looking statement.

**Item 3.02 Unregistered Sales of Equity Securities.**

The information contained above in Item 1.01 is hereby incorporated by reference into this Item 3.02 in its entirety.

**Item 7.01 Regulation FD Disclosure.**

On July 27, 2015, the Company issued a press release announcing that it has entered into the Purchase Agreement with Aspire Capital. A copy of the press release is attached as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated by reference into this Item 7.01.

**Item 9.01 Financial Statements and Exhibits.**

**(d) Exhibits**

Exhibit Number	Description
4.1	Registration Rights Agreement, dated July 24, 2015, Capnia, Inc. and Aspire Capital Fund, LLC *
10.1	Common Stock Purchase Agreement, dated July 24, 2015, between Capnia, Inc. and Aspire Capital Fund, LLC *
99.1	Press Release, dated July 27, 2015, titled "Capnia Announces \$10 Million At-the-Market Firm Commitment Stock Purchase Agreement with Aspire Capital". *

\* Filed herewith.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

CAPNIA, INC.

Date: July 27, 2015

By: /s/ David O Toole  
David O Toole  
Chief Financial Officer

**EXHIBIT INDEX**

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