

# AERIE PHARMACEUTICALS INC

## FORM S-8

(Securities Registration: Employee Benefit Plan)

Filed 03/09/17

Address	7020 KIT CREEK ROAD SUITE 270 RESEARCH TRIANGLE PARK, NC 27709
Telephone	919-313-9650
CIK	0001337553
Symbol	AERI
SIC Code	2836 - Biological Products, Except Diagnostic Substances
Industry	Biotechnology & Medical Research
Sector	Healthcare
Fiscal Year	12/31

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

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

**AERIE PHARMACEUTICALS, INC.**

(Exact name of registrant as specified in its charter)

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

**20-3109565**  
(I.R.S. employer  
identification number)

**2030 Main Street, Suite 1500**  
**Irvine, California 92614**  
**(949) 526-8700**

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

**Aerie Pharmaceuticals, Inc. Inducement Award Plan**  
(Full title of the Plan)

**Vicente Anido, Jr., PhD**  
**Chief Executive Officer**  
**Aerie Pharmaceuticals, Inc.**  
**2030 Main Street, Suite 1500**  
**Irvine, California 92614**  
**Tel. No.: (949) 526-8700**

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b2 of the Exchange Act. (Check one):

Large Accelerated Filer  Accelerated filer   
Non-accelerated filer  (Do not check if a smaller reporting company) Smaller reporting company

**CALCULATION OF REGISTRATION FEE**

TITLE OF SECURITIES TO BE REGISTERED	AMOUNT TO BE REGISTERED (1)	PROPOSED MAXIMUM OFFERING PRICE PER SHARE	PROPOSED MAXIMUM AGGREGATE OFFERING PRICE	AMOUNT OF REGISTRATION FEE
Common Stock, \$0.001 par value per share	194,500 (2)	\$41.30 (3)	\$ 8,032,850.00	\$ 931.01
Common Stock, \$0.001 par value per share	223,500 (4)	\$47.53 (5)	\$10,622,955.00	\$1,231.20

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the "Securities Act"), this registration statement on Form S-8 (the "Registration Statement") shall also cover any additional shares of Aerie Pharmaceuticals, Inc.'s common stock, par value \$0.001 per share (the "Common Stock"), that become issuable under the Aerie Pharmaceuticals, Inc. Inducement Award Plan (the "Inducement Award Plan") by reason of any stock dividend, stock split, reclassification, recapitalization, spin-off or any other similar transaction that results in an increase in the number of shares of Common Stock.
- (2) Represents the number of shares of Common Stock issuable upon exercise of options that have been granted under the Inducement Award Plan.

- (3) Represents the weighted average exercise price for such outstanding options pursuant to Rule 457(h) under the Securities Act. The offering price is estimated solely for purposes of calculating the registration fee.
  - (4) Represents the total of 223,500 shares that remain available for future issuances under the Inducement Award Plan.
  - (5) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(c) and (h) under the Securities Act. The proposed maximum offering price per share is based upon the average of the high and low prices of the Common Stock on March 6, 2017, as reported on the Nasdaq Global Market.
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**EXPLANATORY NOTE**

This Registration Statement on Form S-8 (the “*Registration Statement*”) is filed by Aerie Pharmaceuticals, Inc. (the “*Registrant*”), relating to an aggregate of 418,000 shares of the Registrant’s common stock, par value \$0.001 per share (the “*Common Stock*”), that may be issued pursuant to the Aerie Pharmaceuticals, Inc. Inducement Award Plan (the “*Inducement Award Plan*”). The purpose of this Registration Statement is to register the aforementioned 418,000 shares on this Registration Statement. The Inducement Award Plan was approved by the Board of Directors of the Registrant on December 7, 2016, and all awards under the Inducement Award Plan are intended to be made in compliance with and reliance on NASDAQ Listing Rule 5635(c)(4).

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**PART I**

The documents containing the information specified in Part I of Form S-8 will be sent or given to plan participants as specified in Rule 428(b)(1) promulgated by the Securities and Exchange Commission (the “*Commission*”) under the Securities Act of 1933, as amended (the “*Securities Act*”). Such documents are not required to be filed with the Commission but constitute (along with the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Part II hereof) a prospectus that meets the requirements of Section 10(a) of the Securities Act.

## PART II

### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

#### Item 3. Incorporation of Documents by Reference

The following documents, which have been filed with the Commission by the Registrant, are incorporated by reference in this Registration Statement:

- (a) The Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2016 (Registration No. 001-36152), filed by the Registrant with the Commission under the Securities Act on March 9, 2017.
- (b) A description of the Registrant's Common Stock, which is registered under Section 12 of the Securities Exchange Act of 1934, as amended (the "*Exchange Act*"), contained in the Registration Statement on Form 8-A (File No. 001-36152) filed by the Registrant with the Commission on October 25, 2013, which incorporates by reference the description of the Common Stock contained in the S-1 Registration Statement including any amendment or report filed for the purpose of updating such description.

In addition, all documents filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, subsequent to the effective date of this Registration Statement, but prior to the filing of a post-effective amendment to this Registration Statement indicating that all securities offered hereby have been sold or deregistering all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part hereof from the date of filing of such documents.

#### Item 4. Description of Securities

Not applicable.

#### Item 5. Interests of Named Experts and Counsel

Certain legal matters with respect to the issuance of securities offered hereby will be passed upon for us by Fried, Frank, Harris, Shriver & Jacobson LLP.

#### Item 6. Indemnification of Directors and Officers

Section 102(b)(7) of the Delaware General Corporation Law, or DGCL, provides that a Delaware corporation, in its certificate of incorporation, may limit the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duties as a director, except for liability for any:

- Transaction from which the director derived an improper personal benefit;
- Act or omission not in good faith or that involved intentional misconduct or a knowing violation of law;
- Unlawful payment of dividends or purchase or redemption of shares; or
- Breach of the director's duty of loyalty to the corporation or its stockholders.

Section 145(a) of the DGCL provides, in general, that a Delaware corporation may 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) because that 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 or other enterprise. The indemnity may include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, so long as the person acted in good faith and in a manner he or she reasonably believed was in or not opposed to the corporation's best interests, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful.

Section 145(b) of the DGCL provides, in general, that a Delaware corporation may 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 obtain a judgment in its favor because 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 or other enterprise. The indemnity may include expenses (including attorneys' fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action, so long as the person acted in good faith and in a manner the person reasonably believed was in or not opposed to the corporation's best interests, except that no indemnification shall be permitted without judicial approval if a court has determined that the person is to be liable to the corporation with respect to such claim. Section 145(c) of the DGCL provides that if a present or former director or officer has been successful in defense of any action referred to in Sections 145(a) and (b) of the DGCL, the corporation must indemnify such officer or director against the expenses (including attorneys' fees) he or she actually and reasonably incurred in connection with such action.

Section 145(g) of the DGCL provides, in general, that a corporation may 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 or other enterprise against any liability asserted against and incurred by such person, in any such capacity, or arising out of his or her status as such, whether or not the corporation could indemnify the person against such liability under Section 145 of the DGCL.

The Registrant's restated certificate of incorporation and bylaws each provide for the indemnification of the Registrant's directors and officers to the fullest extent permitted under the DGCL.

The Registrant has entered into indemnification agreements with its directors and executive officers. These indemnification agreements may require the Registrant, among other things, to indemnify each such director and executive officer for some expenses, including attorneys' fees, judgments, fines and settlement amounts incurred by him in any action or proceeding arising out of his service as one of the Registrant's directors or executive officers.

The Registrant intends to purchase and maintain a general liability insurance policy that covers certain liabilities of the Registrant's directors and officers arising out of claims based on acts or omissions in their capacities as directors or officers.

The Registrant has entered into an underwriting agreement in connection with the initial public offering of the Common Stock, which provides for indemnification by the underwriters of the Registrant and its officers and directors for certain liabilities, including liabilities arising under the Securities Act.

Item 7. Exemption from Registration Claimed

Not applicable.

Item 8. Exhibits

**EXHIBIT  
NO.**

**DESCRIPTION**

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|-----|--|
| 3.1 | Amended and Restated Certificate of Incorporation of the Registrant (incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed on October 31, 2013). |
| 3.2 | Amended and Restated Bylaws of the Registrant (incorporated by reference to Exhibit 3.2 to the Registrant's Current Report on Form 8-K filed on October 31, 2013).                       |

- 4.1 Specimen Common Stock Certificate of the Registrant (incorporated by reference to Exhibit 4.1 to the Registrant's Form S-1 Registration Statement (Registration No. 333-191219) filed on October 15, 2013).
- 4.2 Aerie Pharmaceuticals, Inc. Inducement Award Plan (incorporated by reference to Exhibit 10.19 to the Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2016 (Registration No. 001-36152) filed on March 9, 2017).
- 4.3 Form of Aerie Pharmaceuticals, Inc. Inducement Award Plan Nonqualified Stock Option Agreement (incorporated by reference to Exhibit 10.20 to the Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2016 (Registration No. 001-36152) filed on March 9, 2017).
- 4.4 Form of Aerie Pharmaceuticals, Inc. Inducement Award Plan Restricted Stock Agreement (incorporated by reference to Exhibit 10.21 to the Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2016 (Registration No. 001-36152) filed on March 9, 2017).
- 5.1\* Opinion of Fried, Frank, Harris, Shriver & Jacobson LLP.
- 23.1\* Consent of PricewaterhouseCoopers LLP, independent registered public accounting firm.
- 23.2\* Consent of Fried, Frank, Harris, Shriver & Jacobson LLP (included in Exhibit 5.1).
- 24.1\* Power of Attorney (included on signature page).

\* Filed herewith.

Item 9. Undertakings

(a) The undersigned Registrant hereby undertakes as follows:

(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;

(ii) To reflect in the prospectus any facts or events arising after the effective date of this 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 this Registration Statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement;

*provided, however*, that the undertakings set forth in paragraphs (a)(1)(i) and (a)(1)(ii) 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 Exchange Act that are incorporated by reference in this Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act, 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.

(b) The undersigned Registrant hereby undertakes that, for the purpose of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in this 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.

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(c) Insofar as indemnification for liabilities arising under the Securities Act 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 Commission such indemnification is against public policy as expressed in the Securities 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 Securities Act and will be governed by the final adjudication of such issue.



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/s/ BENJAMIN F. MCGRAW, III, PHARM. D. Director  
Benjamin F. McGraw, III, Pharm. D.

March 9, 2017

/s/ JULIE MCHUGH Director  
Julie McHugh

March 9, 2017

<u>EXHIBIT NO.</u>	<u>DESCRIPTION</u>
3.1	Amended and Restated Certificate of Incorporation of the Registrant (incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed on October 31, 2013).
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24.1*	Power of Attorney (included on signature page).

\* Filed herewith.

[Letterhead of Fried, Frank, Harris, Shriver &amp; Jacobson LLP]

March 9, 2017

Aerie Pharmaceuticals, Inc.  
2030 Main Street, Suite 1500  
Irvine, California 92614

**Re: Registration Statement on Form S-8**

Ladies and Gentlemen:

We have acted as counsel to Aerie Pharmaceuticals, Inc., a Delaware corporation (the "Company"), in connection with the Company's Registration Statement on Form S-8 (together with any amendments thereto, the "Registration Statement") filed with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Securities Act"), relating to the registration of an aggregate of 418,000 shares (the "Shares") of the Company's common stock, par value \$0.001 per share, issuable under the Aerie Pharmaceuticals, Inc. Inducement Award Plan (the "Inducement Award Plan"). With your permission, all assumptions and statements of reliance herein have been made without any independent investigation or verification on our part and we express no opinion with respect to the subject matter or accuracy of such assumptions or items relied upon.

In connection with this opinion, we have (i) investigated such questions of law, (ii) examined the originals or certified, conformed, facsimile, electronic or reproduction copies of such agreements, instruments, documents and records of the Company, such certificates of public officials and such other documents and (iii) received such information from officers and representatives of the Company and others as we have deemed necessary or appropriate for the purposes of this opinion.

In all such examinations, we have assumed the legal capacity of all natural persons, the genuineness of all signatures, the authenticity of original and certified documents and the conformity to original or certified documents of all copies submitted to us as conformed, facsimile, electronic or reproduction copies. As to various questions of fact relevant to the opinion expressed herein, we have relied upon, and assume the accuracy of, certificates and oral or written statements and other information of or from public officials and officers and representatives of the Company.

Based upon the foregoing and subject to the limitations, qualifications and assumptions set forth herein, we are of the opinion that the Shares registered pursuant to the Registration Statement to be issued by the Company have been duly authorized and, when issued, delivered and paid for in accordance with the terms of the Inducement Award Plan and the applicable award agreement for consideration in an amount at least equal to the par value of such Shares, will be validly issued, fully paid and nonassessable.

The opinion expressed herein is limited to the applicable provisions of the General Corporation Law of the State of Delaware (the "DGCL"), as currently in effect, and no opinion is expressed with respect to any other laws or any effect that such other laws may have on the opinion expressed herein. The opinion expressed herein is limited to the matters stated herein and no opinion is implied or may be inferred beyond the matters expressly stated herein. We undertake no responsibility to update or supplement this letter after the effectiveness of the Registration Statement.

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

Very truly yours,

/s/ Fried, Frank, Harris, Shriver & Jacobson LLP

FRIED, FRANK, HARRIS, SHRIVER & JACOBSON LLP

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in this Registration Statement on Form S-8 of our report dated March 9, 2017 relating to the financial statements, which appears in Aerie Pharmaceuticals, Inc.'s Annual Report on Form 10-K for the year ended December 31, 2016.

/s/ PricewaterhouseCoopers LLP  
Florham Park, New Jersey  
March 9, 2017