

ARENA PHARMACEUTICALS INC

FORM S-8

(Securities Registration: Employee Benefit Plan)

Filed 04/16/02

Address	6166 NANCY RIDGE DR SAN DIEGO, CA 92121
Telephone	8584537200
CIK	0001080709
Symbol	ARNA
SIC Code	2834 - Pharmaceutical Preparations
Industry	Biotechnology & Drugs
Sector	Healthcare
Fiscal Year	12/31

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

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

ARENA PHARMACEUTICALS, INC.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or organization)

23-2908305
(I.R.S. Employer Identification No.)

6166 Nancy Ridge Drive
San Diego, CA
(Address of principal executive offices)

92121
(Zip Code)

ARENA PHARMACEUTICALS, INC.
2002 EQUITY COMPENSATION PLAN
(Full title of the plan)

Jack Lief
Arena Pharmaceuticals, Inc.
6166 Nancy Ridge Drive
San Diego, CA 92121
(Name and address of agent for service)

(858) 453-7200
(Telephone number, including area code, of agent for service)

Copies of all communications to:

General Counsel
Arena Pharmaceuticals, Inc.
6166 Nancy Ridge Drive
San Diego, CA 92121
(858) 453-7200

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount To Be Registered(1)	Proposed Maximum Offering Price Per Share(2)	Proposed Maximum Aggregate Offering Price(2)	Amount Of Registration Fee(3)
Common Stock, par value \$0.0001 per share	2,750,000 shares	\$ 9.42	\$ 25,905,000	\$ 2,383.26

- (1) This Registration Statement shall cover shares of Common Stock of Arena Pharmaceuticals which are offered or sold pursuant to the plan named above. Pursuant to Rule 416(a) of the Securities Act of 1933, this registration statement shall also cover any additional shares of Common Stock which are offered or issued under the plan to prevent dilution resulting from stock splits, stock dividends or similar transactions.
 - (2) Estimated pursuant to paragraphs (c) and (h) of Rule 457 solely for the purpose of calculating the registration fee, based upon the average of the reported high and low sales prices for a share of Common Stock of Arena Pharmaceuticals, Inc. on April 15, 2002, or lowest within last 5 trading days as reported on the Nasdaq National Market.
 - (3) Calculated pursuant to Section 6(b) of the Securities Act of 1933 as follows: proposed maximum aggregated offering price multiplied by \$92.00/\$1,000,000.
-

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference .

The following documents filed by Arena Pharmaceuticals, Inc. (the "Company") with the Commission, are incorporated by reference into this Registration Statement:

1. The Company's annual report on Form 10-K for the fiscal year ended December 31, 2001;
2. All other reports the Company has filed pursuant to Sections 13(a) or 15(d) of the Securities and Exchange Act of 1934 (the "Exchange Act") since the end of the fiscal year covered by the document referred to in (1) above; and
3. The description of the shares of the Company's Common Stock contained in the Company's Registration Statement on Form 8-A (File No. 333-35944) filed under the Exchange Act with the Commission on July 26, 2000, which incorporates by reference the sections entitled "Prospectus Summary" and "Description of Capital Stock" in the prospectus contained in the Registration Statement on Form S-1, filed July 26, 2000, including all amendments and reports updating such description (File No. 333-35944).

All documents subsequently filed by the Company with the Commission pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act after the date of this Registration Statement, but prior to the filing of a post-effective amendment to this Registration Statement which indicates that all securities offered by this Registration Statement have been sold or which deregisters all such securities then remaining unsold, shall be deemed to be incorporated by reference into this Registration Statement. Each document incorporated by reference into this Registration Statement shall be deemed to be a part of this Registration Statement from the date of the filing of such document with the Commission until the information contained therein is superseded or updated by any subsequently filed document which is incorporated by reference into this Registration Statement or by any document which constitutes part of the prospectus relating to the Arena Pharmaceuticals, Inc. 2002 Equity Compensation Plan and meets the requirements of Section 10(a) of the Securities Act.

Any statement contained in a document incorporated by reference herein shall be deemed to be modified or superseded for purposes hereof to the extent that a statement contained herein (or in any other subsequently filed document that is also 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 hereof.

Item 4. Description of Securities.

Not Applicable.

Item 5. Interests of Named Experts and Counsel.

Not Applicable.

Item 6. Indemnification of Directors and Officers.

Section 145 of the General Corporation Law of the State of Delaware (the "DGCL") permits a corporation, under specified circumstances, to indemnify its directors, officers, employees or agents against expenses (including attorney's fees), judgments, fines and amounts paid in settlements actually and reasonably incurred by them in connection with any action, suit or proceeding brought by third parties by reason of the fact that they were or are directors, officers, employees or agents of the corporation or were or are serving at the request of the corporation as a director, officer, employee or agent of another corporation, if such directors, officers, employees, or agents acted in good faith and in a manner

they 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 their conduct was

unlawful. In a derivative action, i.e., one by or in the right of the corporation, indemnification may be made only for expenses actually and reasonably incurred by directors, officers, employees or agents in connection with the defense or settlement of an action or suit, and only with respect to a matter as to which they shall have acted in good faith and in a manner they reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall be adjudicated to be liable to the corporation unless the court in which the action or suit was brought shall determine upon application that the defendant directors, officers, employees, or agents are fairly and reasonably entitled to indemnification for such expenses in view of all of the circumstances of the case, despite such adjudication of liability. Expenses incurred (including attorney's fees) by an officer or director 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 he is not entitled to be indemnified by the corporation.

Article V of the Company's Fourth Amended and Restated Certificate of Incorporation, provides that a director shall not be personally liable to the Company or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (a) for any breach of the director's duty of loyalty to the Company or its stockholders, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) pursuant to Section 174 of the DGCL, or (d) for any transaction from which a director derived an improper personal benefit.

Article IV of the Company's by-laws provides that it shall, to the full extent authorized or permitted by applicable law, indemnify any current or former director or officer. Subject to applicable law, the Company may indemnify an employee or agent to the extent that the board of directors or stockholders may determine in its or their discretion.

The Company maintains an insurance policy containing customary terms and conditions for the purpose of insuring its directors and officers against certain losses incurred by them as a result of claims based upon their actions or statements (including omissions to act or make statements) as directors and officers which may cover liabilities under the Securities Act.

Item 7. Exemption from Registration Claimed.

Not Applicable.

Item 8. Exhibits.

The following exhibits are filed herewith or incorporated by reference as part of this Registration Statement:

<u>Exhibit No.</u>	<u>Description</u>
4.1	Fourth Amended and Restated Certificate of Incorporation of the Company (1).
4.2	Amended and Restated By-Laws of the Company (2).
5.1	Opinion of Morgan, Lewis & Bockius LLP.
23.1	Consent of Ernst & Young LLP, Independent Auditors.
23.2	Consent of Counsel (included in Exhibit 5.1).
24.1	Power of Attorney (set forth on signature page to this Registration Statement).

(1) Incorporated herein by reference to Exhibit 3.1 to the Company's Registration Statement on Form S-1, as amended, filed on July 25, 2000; Commission File No. 333-35944.

(2) Incorporated herein by reference to Exhibit 3.2 to the Company's Form 10-K, filed on March 15, 2002.

Item 9. Undertakings.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement and the foregoing Power of Attorney has been signed by the following persons in the capacities indicated on the dates indicated:

Signature	Title	Date
/s/ JACK LIEF Jack Lief	President, Chief Executive Officer and Director	April 16, 2002
/s/ DOMINIC P. BEHAN Dominic P. Behan	Director	April 16, 2002
/s/ DEREK T. CHALMERS Derek T. Chalmers	Director	April 16, 2002
/s/ ROBERT HOFFMAN Robert Hoffman	Vice President, Finance and Principal Accounting Officer	April 16, 2002
/s/ JOHN P. MCALISTER, III John P. McAlister, III	Director	April 16, 2002
/s/ MICHAEL STEINMETZ Michael Steinmetz	Director	April 16, 2002
/s/ STEFAN RYSER Stefan Ryser	Director	April 16, 2002

INDEX TO EXHIBITS

Exhibit No.	Description
4.1	Fourth Amended and Restated Certificate of Incorporation of the Company (1).
4.2	Amended and Restated By-Laws of the Company (2).
5.1	Opinion of Morgan, Lewis & Bockius LLP.
23.1	Consent of Ernst & Young LLP, Independent Auditors.
23.2	Consent of Counsel (included in Exhibit 5.1).
24.1	Power of Attorney (set forth on signature page to this Registration Statement).

(1) Incorporated herein by reference to Exhibit 3.1 to the Company's Registration Statement on Form S-1, as amended, filed on July 25, 2000; Commission File No. 333-35944.

(2) Incorporated herein by reference to the Company's Form 10-K, filed on March 15, 2002.

[LETTERHEAD OF MORGAN, LEWIS & BOCKIUS LLP]

April 16, 2002

Arena Pharmaceuticals, Inc.
6166 Nancy Ridge Drive
San Diego, CA 92121

Re: Form S-8 Covering Securities to be Issued under the
Arena Pharmaceuticals, Inc. 2002 Equity Compensation Plan

Ladies and Gentlemen:

We have acted as counsel to Arena Pharmaceuticals, Inc., a Delaware corporation (the "Company") in connection with the preparation of a registration statement on Form S-8 (the "Registration Statement") to be filed pursuant to the Securities Act of 1933, as amended (the "Act"), relating to the registration of up to 2,750,000 shares of common stock, par value \$0.0001 per share, of the Company (the "Shares") to be issued under the Arena Pharmaceuticals, Inc. 2002 Equity Compensation Plan (the "Plan").

We have examined the Registration Statement and such corporate records, statutes and other documents as we have deemed relevant in rendering this opinion. As to matters of fact, we have relied on representations of officers of the Company. In our examination, we have assumed the genuineness of documents submitted to us as originals, and the conformity with originals of documents submitted to us as copies.

Based upon the foregoing, we are of the opinion that the Shares, when issued and delivered in the manner and on the terms described in the Plan, will be validly issued, fully paid and nonassessable.

We hereby consent to the filing of this opinion as Exhibit 5.1 to the Registration Statement. In giving such consent, we do not thereby admit that we are acting within the category of persons whose consent is required under Section 7 of the Act or the rules or regulations of the Securities and Exchange Commission thereunder.

Very truly yours,

Morgan, Lewis & Bockius LLP

[QuickLinks](#) -- Click here to rapidly navigate through this document

EXHIBIT 23.1

CONSENT OF ERNST & YOUNG LLP, INDEPENDENT AUDITORS

We consent to the incorporation by reference in the Registration Statement on (Form S-8) pertaining to the Arena Pharmaceuticals, Inc. 2002 Equity Compensation Plan, of our report dated January 11, 2002, with respect to the consolidated financial statements of Arena Pharmaceuticals, Inc. included in its Annual Report on (Form 10-K) for the year ended December 31, 2001, filed with the Securities and Exchange Commission.

/s/ ERNST & YOUNG LLP

San Diego, California
April 15, 2002

QuickLinks

CONSENT OF ERNST & YOUNG LLP, INDEPENDENT AUDITORS

End of Filing

Powered By **EDGAR**
Online

© 2005 | EDGAR Online, Inc.