

ARENA PHARMACEUTICALS INC

FORM S-8

(Securities Registration: Employee Benefit Plan)

Filed 05/09/17

Address	6154 NANCY RIDGE DRIVE SAN DIEGO, CA 92121
Telephone	858-453-7200
CIK	0001080709
Symbol	ARNA
SIC Code	2834 - Pharmaceutical Preparations
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

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.)

6154 Nancy Ridge Drive
San Diego, California 92121
(Address of Principal Executive Offices) (Zip Code)

Arena Pharmaceuticals, Inc. 2013 Long-Term Incentive Plan
(Full title of the plan)

Steven W. Spector, Esq.
Executive Vice President, General Counsel and Secretary
6154 Nancy Ridge Drive
San Diego, California 92121
(Name and address of agent for service)

858.453.7200
(Telephone number, including area code, of agent for service)

Copy to:
Steven M. Przesmicki, Esq.
Cooley LLP
4401 Eastgate Mall
San Diego, California 92121
858.550.6000

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, 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 Accelerated filer
 Non-accelerated filer (Do not check if a smaller reporting company) 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 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, par value \$0.0001 per share	1,293,500 shares (2)	\$ 1.505 (3)	\$ 1,946,717.50 (3)	\$225.62

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the “Securities Act”), this registration statement shall also cover any additional shares of Common Stock of Arena Pharmaceuticals, Inc. (the “Registrant” or “Arena”) that, with respect to the shares registered hereunder, become issuable under the 2013 Long-Term Incentive Plan (the “2013 LTIP”) 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 the shares of the Registrant’s Common Stock added to the shares previously authorized for issuance under the 2013 LTIP pursuant to an amendment to the 2013 LTIP approved by the Registrant’s Board of Directors effective March 20, 2017, which shares are reserved for issuance upon the exercise of an outstanding stock option granted under the 2013 LTIP.
- (3) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(h) of the Securities Act. The proposed maximum aggregate offering price per share and proposed maximum aggregate offering price for the 1,293,500 shares of the Registrant’s Common Stock reserved for issuance upon the exercise of an outstanding stock option granted under the 2013 LTIP are calculated using the exercise price of such stock option of \$1.505 per share.

INCORPORATION BY REFERENCE

This registration statement is being filed for the purpose of increasing the number of securities of the same class as other securities for which a registration statement of the Registrant on Form S-8 relating to the same benefit plan is effective. The Registrant previously registered shares of its Common Stock for issuance under the 2013 LTIP under registration statements on Form S-8 filed with the Securities and Exchange Commission on June 10, 2013 (File No. 333-189213), June 14, 2016 (File No. 333-212012) and November 9, 2016 (File No. 333-214529). Pursuant to General Instruction E to Form S-8, this registration statement hereby incorporates by reference the contents of the registration statements referenced above.

Item 8. Exhibits

See the Exhibit Index on the page immediately following the signature page to this registration statement for a list of exhibits filed as part of this registration statement, which Exhibit Index is incorporated herein by reference.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, 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 San Diego, State of California, on May 9, 2017.

ARENA PHARMACEUTICALS, INC.

By: /s/ Amit Munshi
Amit Munshi
President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Amit Munshi and Steven W. Spector, and each of them, as his or her true and lawful agent, proxy and attorney-in-fact, each acting alone, 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 either of them, or their or his substitutes or substitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signatures</u>	<u>Title</u>	<u>Date</u>
By: <u> /s/ Amit Munshi </u> Amit Munshi	President and Chief Executive Officer and Director (principal executive officer)	May 9, 2017
By: <u> /s/ Kevin R. Lind </u> Kevin R. Lind	Executive Vice President and Chief Financial Officer (principal financial officer and principal accounting officer)	May 9, 2017
By: <u> /s/ Donald D. Belcher </u> Donald D. Belcher	Director	May 9, 2017
By: <u> /s/ Scott H. Bice </u> Scott H. Bice	Director	May 9, 2017
By: <u> /s/ Jayson Dallas </u> Jayson Dallas, M.D.	Director	May 9, 2017
By: <u> /s/ Oliver Fetzer </u> Oliver Fetzer, Ph.D.	Director	May 9, 2017
By: <u> /s/ Harry F. Hixson Jr. </u> Harry F. Hixson Jr., Ph.D.	Director	May 9, 2017
By: <u> /s/ Garry A. Neil </u> Garry A. Neil, M.D.	Director	May 9, 2017
By: <u> /s/ Tina S. Nova </u> Tina S. Nova, Ph.D.	Director	May 9, 2017
By: <u> /s/ Phillip M. Schneider </u> Phillip M. Schneider	Director	May 9, 2017

By: /s/ Christine A. White Director
Christine A. White, M.D.

May 9, 2017

By: /s/ Randall E. Woods Director
Randall E. Woods

May 9, 2017

EXHIBIT INDEX

Exhibit Number	Description of Document
4.1	Fifth Amended and Restated Certificate of Incorporation of Arena (incorporated by reference to Exhibit 3.1 to Arena's quarterly report on Form 10-Q for the quarter ended June 30, 2002, filed with the Securities and Exchange Commission on August 14, 2002, Commission File No. 000-31161)
4.2	Certificate of Amendment of the Fifth Amended and Restated Certificate of Incorporation of Arena (incorporated by reference to Exhibit 4.2 to Arena's registration statement on Form S-8 filed with the Securities and Exchange Commission on June 28, 2006, Commission File No. 333-135398)
4.3	Certificate of Amendment No. 2 of the Fifth Amended and Restated Certificate of Incorporation of Arena, as amended (incorporated by reference to Exhibit 4.3 to Arena's registration statement on Form S-8 filed with the Securities and Exchange Commission on June 30, 2009, Commission File No. 333-160329)
4.4	Certificate of Amendment No. 3 of the Fifth Amended and Restated Certificate of Incorporation of Arena, as amended (incorporated by reference to Exhibit 3.4 to Arena's registration statement on Form S-8 filed with the Securities and Exchange Commission on June 20, 2012, Commission File No. 333-182238)
4.5	Amended and Restated Bylaws of Arena (incorporated by reference to Exhibit 3.1 to Arena's current report on Form 8-K filed with the Securities and Exchange Commission on October 9, 2014, Commission File No. 000-31161)
4.6	Form of common stock certificate (incorporated by reference to Exhibit 4.2 to Arena's registration statement on Form S-1, as amended, filed with the Securities and Exchange Commission on July 19, 2000, Commission File No. 333-35944)
5.1	Opinion of Cooley LLP
23.1	Consent of Independent Registered Public Accounting Firm
23.2	Consent of Cooley LLP (included in Exhibit 5.1)
24.1	Power of Attorney (included on signature page)
99.1	Arena's 2013 Long-Term Incentive Plan, as amended in May, June and August 2016 and March 2017 (incorporated by reference to Exhibit 10.2 to Arena's quarterly report on Form 10-Q for the quarter ended March 31, 2017 filed with the Securities and Exchange Commission on May 9, 2017, Commission File No. 000-31161)



STEVEN M. PRZESMICKI
+1 858 550 6070
przes@cooley.com

May 9, 2017

Arena Pharmaceuticals, Inc.
6154 Nancy Ridge Drive
San Diego, California 92121

Ladies and Gentlemen:

You have requested our opinion, as counsel to Arena Pharmaceuticals, Inc., a Delaware corporation (the "**Company**"), with respect to certain matters in connection with the filing of a Registration Statement on Form S-8 (the "**Registration Statement**") with the Securities and Exchange Commission covering the offering of up to 1,293,500 shares of the Company's Common Stock, \$0.0001 par value (the "**Shares**"), issuable pursuant to the Company's 2013 Long-Term Incentive Plan, as amended (the "**Plan**").

In connection with this opinion, we have examined and relied upon the Registration Statement and related prospectus, the Company's Fifth Amended and Restated Certificate of Incorporation, as amended, its Amended and Restated Bylaws, the Plan and the originals or copies certified to our satisfaction of such records, documents, certificates, memoranda and other instruments as in our judgment are necessary or appropriate to enable us to render the opinion expressed below. We have assumed the genuineness and authenticity of all documents submitted to us as originals and the conformity to originals of all documents submitted to us as copies thereof.

Our opinion herein is expressed only with respect to the General Corporation Law of the State of Delaware.

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

We consent to the filing of this opinion as an exhibit to the Registration Statement.

Sincerely,

Cooley LLP

By: /s/ Steven M. Przesmicki
Steven M. Przesmicki

Consent of Independent Registered Public Accounting Firm

The Board of Directors
Arena Pharmaceuticals, Inc.:

We consent to the use of our reports with respect to the consolidated financial statements and the effectiveness of internal control over financial reporting incorporated by reference herein.

/s/ KPMG LLP

San Diego, California
May 9, 2017