

MOMENTA PHARMACEUTICALS INC

FORM S-8

(Securities Registration: Employee Benefit Plan)

Filed 08/07/17

Address	675 WEST KENDALL STREET CAMBRIDGE, MA 02142
Telephone	617 491-9700
CIK	0001235010
Symbol	MNTA
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

Momenta Pharmaceuticals, Inc.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

04-3561634

(I.R.S. Employer Identification No.)

**675 West Kendall Street
Cambridge, Massachusetts**

(Address of Principal Executive Offices)

02142

(Zip Code)

**Momenta Pharmaceuticals, Inc. 2013 Incentive Award Plan
Momenta Pharmaceuticals, Inc. 2004 Employee Stock Purchase Plan**
(Full title of the plan)

**Bruce A. Leicher
Momenta Pharmaceuticals, Inc.
675 West Kendall Street
Cambridge, Massachusetts 02142**
(Name and address of agent for service)

(617) 491-9700
(Telephone number, including area code, of agent for service)

Copy to:

**Peter N. Handrinos
Latham & Watkins LLP
200 Clarendon Street, 27th Floor
Boston, Massachusetts 02116
(617) 948-6000**

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" or "emerging growth company" in Rule 12b-2 of the Exchange Act.

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

Accelerated filer
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

Amount	Proposed maximum	Proposed maximum	Amount of
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Title of securities to be registered	to be registered(1)	offering price per share(4)	aggregate offering price(4)	registration fee
Common stock, par value \$0.0001 per share	1,400,000(2)	\$16.30	\$22,820,000	\$2,644.84
Common stock, par value \$0.0001 per share	4,300,000(3)	\$16.30	\$70,090,000	\$8,123.44

- (1) In accordance with Rule 416 under the Securities Act of 1933, as amended, this registration statement shall be deemed to cover any additional securities that may from time to time be offered or issued to prevent dilution resulting from stock splits, stock dividends or similar transactions.
 - (2) Consists of an additional 1,400,000 shares issuable under the Momenta Pharmaceuticals, Inc. 2004 Employee Stock Purchase Plan, as amended and restated (the "ESPP").
 - (3) Consists of an additional 4,300,000 shares issuable under the Momenta Pharmaceuticals, Inc. 2013 Incentive Award Plan, as amended and restated (the "2013 Plan").
 - (4) Estimated solely for the purpose of calculating the registration fee pursuant to Rules 457(c) and 457(h) of the Securities Act of 1933, as amended, and based upon the average of the high and low prices of the Registrant's common stock, par value \$0.0001 per share (the "Common Stock"), as reported on The Nasdaq Global Select Market on August 2, 2017.
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EXPLANATORY NOTE

This Registration Statement on Form S-8 is being filed for the purpose of registering an additional 4,300,000 shares of the Registrant's Common Stock to be issued under the 2013 Plan and an additional 1,400,000 shares of the Registrant's Common Stock to be issued under the ESPP, for which Registration Statements on Form S-8 of the Registrant relating to such employee benefit plans are effective.

STATEMENT OF INCORPORATION BY REFERENCE

This Registration Statement on Form S-8 hereby incorporates by reference the contents of the Registration Statements on Form S-8 (File Nos. 333-212991, 333-206112, 333-197582, 333-190394 and 333-117173).

Item 8. Exhibits.

The Exhibit Index immediately preceding the exhibits is incorporated 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 Cambridge, Commonwealth of Massachusetts, on August 7, 2017.

MOMENTA PHARMACEUTICALS, INC.

By: /s/ Craig A. Wheeler

Name: Craig A. Wheeler

Title: President and Chief Executive Officer

POWER OF ATTORNEY AND SIGNATURES

Each person whose signature appears below hereby constitutes and appoints Craig A. Wheeler, Bruce A. Leicher and Scott M. Storer, and each of them singly, with full power to act without the other, such person's true and lawful attorneys-in-fact and agents, 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 this registration statement and any and all amendments, including post-effective amendments to this registration statement, and to file the same, with exhibits and schedules 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 or desirable 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 substitute or substitutes 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 date indicated.

Signature	Title	Date
<u> /s/ Craig A. Wheeler</u> Craig A. Wheeler	President, Chief Executive Officer and Director (Principal Executive Officer)	August 7, 2017
<u> /s/ Scott M. Storer</u> Scott M. Storer	Senior Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)	August 7, 2017
<u> /s/ James R. Sulat</u> James R. Sulat	Chairman of the Board and Director	August 7, 2017
<u> /s/ Bruce L. Downey</u> Bruce L. Downey	Director	August 7, 2017
<u> /s/ Corey N. Fishman</u> Corey N. Fishman	Director	August 7, 2017
<u> /s/ Georges Gemayel</u> Georges Gemayel	Director	August 7, 2017
<u> /s/ Steven C. Gilman</u> Steven C. Gilman	Director	August 7, 2017
<u> /s/ Jose-Carlos Gutiérrez-Ramos</u> Jose-Carlos Gutiérrez-Ramos	Director	August 7, 2017
<u> /s/ Thomas P. Koestler</u> Thomas P. Koestler	Director	August 7, 2017

Elizabeth Stoner

INDEX TO EXHIBITS

Exhibit Number	Description
4.1(1)	Third Amended and Restated Certificate of Incorporation of the Registrant
4.2(2)	Certificate of Designations of Series A Junior Participating Preferred Stock, dated November 8, 2005
4.3(3)	Fourth Amended and Restated By-laws of the Registrant
4.4(4)	Specimen certificate evidencing shares of common stock of the Registrant
5.1	Opinion of Latham & Watkins LLP
23.1	Consent of Ernst & Young LLP
23.2	Consent of Latham & Watkins LLP (included in Exhibit 5.1)
24.1	Power of Attorney (included on signature page)
99.1(5)	Momenta Pharmaceuticals, Inc. 2013 Incentive Award Plan (as amended and restated)
99.1(6)	Momenta Pharmaceuticals, Inc. 2004 Employee Stock Purchase Plan (as amended and restated)

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- (1) Filed as Exhibit 3.1 to the Registrant's Registration Statement on Form S-3 filed on April 30, 2013 (File No. 333-188227) and incorporated herein by reference.
- (2) Filed as Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed on November 8, 2005 (File No. 000-50797) and incorporated herein by reference.
- (3) Filed as Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed on March 17, 2017 (File No. 000-50797) and incorporated herein by reference.
- (4) Filed as Exhibit 4.1 to Amendment No. 4 to the Registrant's Registration Statement on Form S-1 filed on June 15, 2004 (File No. 333-113522) and incorporated herein by reference.
- (5) Filed as Exhibit 10.5 to the Registrant's Quarterly Report on Form 10-Q filed on August 4, 2017 (File No. 000-50797) and incorporated herein by reference.
- (6) Filed as Exhibit 10.6 to the Registrant's Quarterly Report on Form 10-Q filed on August 4, 2017 (File No. 000-50797) and incorporated herein by reference.

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LATHAM & WATKINS LLP

August 7, 2017

Momenta Pharmaceuticals, Inc.
 675 West Kendall Street
 Cambridge, Massachusetts 02142

Re: Registration Statement on Form S-8; 5,700,000 shares of common stock, par value \$0.0001 per share, of Momenta Pharmaceuticals, Inc.

Ladies and Gentlemen:

We have acted as special counsel to Momenta Pharmaceuticals, Inc., a Delaware corporation (the “Company”), in connection with the registration by the Company of 5,700,000 shares of its common stock, \$0.0001 par value per share (the “Shares”), issuable under the Momenta Pharmaceuticals, Inc. 2013 Incentive Award Plan (as amended and restated, the “2013 Plan”) and the Momenta Pharmaceuticals, Inc. 2004 Employee Stock Purchase Plan (as amended and restated, the “ESPP,” and together with the 2013 Plan, the “Plans”). The Shares are included in a registration statement on Form S-8 under the Securities Act of 1933, as amended (the “Act”), filed with the Securities and Exchange Commission (the “Commission”) on August 7, 2017 (the “Registration Statement”). This opinion is being furnished in connection with the requirements of Item 601(b)(5) of Regulation S-K under the Act, and no opinion is expressed herein as to any matter pertaining to the contents of the Registration Statement or the related prospectus, other than as expressly stated herein with respect to the issue of the Shares.

As such counsel, we have examined such matters of fact and questions of law as we have considered appropriate for purposes of this letter. With your consent, we have relied upon certificates and other assurances of officers of the Company and others as to factual matters without having independently verified such factual matters. We are opining herein as to the General Corporation Law of the State of Delaware (the “DGCL”) and we express no opinion with respect to any other laws.

Subject to the foregoing and the other matters set forth herein, it is our opinion that, as of the date hereof, when the Shares shall have been duly registered on the books of the transfer agent and registrar therefor in the name or on behalf of the purchasers, and have been issued by the Company against payment therefor in the circumstances contemplated by and pursuant to the applicable Plan, and assuming in each case that the individual issuances, grants or awards under the Plans are duly authorized by all necessary corporate action and duly issued, granted or awarded and exercised in accordance with the requirements of law and the applicable Plan (and the agreements and awards duly adopted thereunder and in accordance therewith), the issue and sale of the Shares will have been duly authorized by

LATHAM & WATKINS LLP

all necessary corporate action of the Company, and the Shares will be validly issued, fully paid and nonassessable. In rendering the foregoing opinion, we have assumed that the Company will comply with all applicable notice requirements regarding uncertificated shares in the DGCL.

This opinion is for your benefit in connection with the Registration Statement and may be relied upon by you and by persons entitled to rely upon it pursuant to the applicable provisions of the Act. We consent to your filing 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 Act or the rules and regulations of the Commission thereunder.

Very truly yours,

/s/ LATHAM & WATKINS LLP

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statement (Form S-8) pertaining to the Momenta Pharmaceuticals, Inc. 2013 Incentive Award Plan and the Momenta Pharmaceuticals, Inc. 2004 Employee Stock Purchase Plan of our reports dated February 24, 2017, with respect to the consolidated financial statements of Momenta Pharmaceuticals, Inc. and the effectiveness of internal control over financial reporting of Momenta Pharmaceuticals, Inc. included in its Annual Report (Form 10-K) for the year ended December 31, 2016, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

Boston, Massachusetts
August 7, 2017