

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

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

**Biora Therapeutics, Inc.**  
(Exact name of registrant as specified in its charter)

**Delaware**  
(State or Other Jurisdiction of  
Incorporation or Organization)

**27-3950390**  
(I.R.S. Employer  
Identification No.)

**4330 La Jolla Village Drive, Suite 300  
San Diego, CA 92122**  
(Address of Principal Executive Offices, Zip Code)

**Biora Therapeutics, Inc. 2018 Equity Incentive Plan (Fifth Amended and Restated)**  
(Full title of the plan)

**Adi Mohanty**  
**Chief Executive Officer**  
**Biora Therapeutics, Inc.**  
**4330 La Jolla Village Drive, Suite 300**  
**San Diego, CA 92122**  
(Name and address of agent for service)

**(833) 727-2841**  
(Telephone number, including area code, of agent for service)

**Copies to:**

**Clarke W. Neumann**  
**General Counsel**  
**Biora Therapeutics, Inc.**  
**4330 La Jolla Village Drive, Suite 300**  
**San Diego, CA 92122**  
**(833) 727-2841**

**Stephen W. Fackler**  
**Gibson, Dunn & Crutcher, LLP**  
**310 University Avenue**  
**Palo Alto, CA 94301-1744**  
**(650) 849-5300**

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

Large accelerated filer  Accelerated filer   
Non-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.

## EXPLANATORY NOTE

This Registration Statement on Form S-8 is filed by Biora Therapeutics, Inc. (the “Company” or the “Registrant”), relating to 5,500,000 additional shares of its common stock, par value \$0.001 per share, available for issuance pursuant to future awards to eligible persons under the Biora Therapeutics, Inc. 2018 Equity Incentive Plan (Fifth Amended and Restated). The information contained in the Registrant’s registration statements on Form S-8 filed on [March 28, 2022](#) (Registration No. 333-263911) and [August 14, 2020](#) (Registration No. 333-246343), together with all exhibits filed therewith or incorporated therein by reference, is hereby incorporated by reference pursuant to General Instruction E to Form S-8.

### PART II

#### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

##### Item 8. Exhibits.

<u>Exhibit No.</u>	<u>Exhibit Description</u>
4.1	<a href="#">Eighth Amended and Restated Certificate of Incorporation of the Registrant (incorporated by reference to Exhibit 3.1 to the Company’s Current Report on Form 8-K filed on June 26, 2020).</a>
4.2	<a href="#">Certificate of Amendment of the Eighth Amended and Restated Certificate of Incorporation of the Registrant, effective April 26, 2022 (incorporated by reference to Exhibit 3.1 to the Company’s Current Report on Form 8-K filed on April 27, 2022).</a>
4.3	<a href="#">Second Certificate of Amendment of the Eighth Amended and Restated Certificate of Incorporation of the Registrant (incorporated by reference to Exhibit 3.1 to the Company’s Current Report on Form 8-K filed on December 30, 2022).</a>
4.4	<a href="#">Third Amended and Restated Bylaws of the Registrant (incorporated by reference to Exhibit 3.2 to the Company’s Current Report on Form 8-K filed on November 28, 2022).</a>
5.1*	<a href="#">Opinion of Gibson, Dunn &amp; Crutcher LLP.</a>
23.1*	<a href="#">Consent of Independent Registered Public Accounting Firm.</a>
23.2*	<a href="#">Consent of Gibson, Dunn &amp; Crutcher LLP (included in Exhibit 5.1).</a>
24.1*	<a href="#">Power of Attorney (included on signature page hereto).</a>
99.1	<a href="#">Biora Therapeutics, Inc. 2018 Equity Incentive Plan (Fifth Amended and Restated) (incorporated by reference to Exhibit 10.1 to the Company’s Current Report on Form 8-K filed on June 15, 2023).</a>
107*	<a href="#">Calculation of Filing Fee Table.</a>

\* Filed herewith.

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**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, as amended, 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 July 28, 2023.

**Biora Therapeutics, Inc.**

By:           /s/ Adi Mohanty          

Name: Adi Mohanty

Title: Chief Executive Officer

**POWER OF ATTORNEY**

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Adi Mohanty, Eric d'Esparbes and Clarke W. Neumann, and each of them, his or her true and lawful attorneys-in-fact and agents, each 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 any registration statement relating to the offering covered by this Registration Statement and filed pursuant to Rule 462 under the Securities Act, and to file the same, with exhibits thereto and other documents in connection therewith, with the 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, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that each of said attorneys-in-fact and agents or their substitute or substitutes may lawfully so or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, the following persons have signed this Registration Statement in the capacities and on the date(s) indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Adi Mohanty</u> Adi Mohanty	Chief Executive Officer and Director ( <i>Principal Executive Officer</i> )	July 28, 2023
<u>/s/ Eric d'Esparbes</u> Eric d'Esparbes	Chief Financial Officer ( <i>Principal Financial and Accounting Officer</i> )	July 28, 2023
<u>/s/ Jeffrey Alter</u> Jeffrey Alter	Director	July 28, 2023
<u>/s/ Jeffrey Ferrell</u> Jeffrey Ferrell	Director	July 28, 2023
<u>/s/ Jill Howe</u> Jill Howe	Director	July 28, 2023
<u>/s/ Dr. Brian L. Kotzin</u> Dr. Brian L. Kotzin	Director	July 28, 2023
<u>/s/ Lynne Powell</u> Lynne Powell	Director	July 28, 2023



Gibson, Dunn & Crutcher LLP

310 University Avenue  
Palo Alto, CA 94301-1744  
Tel 650.849.5300  
www.gibsondunn.com

July 28, 2023

Biora Therapeutics, Inc.  
4330 La Jolla Village Drive, Suite 300  
San Diego, California 92122

Re: *2018 Equity Incentive Plan (Fifth Amended and Restated)*

Ladies and Gentlemen:

We have examined the Registration Statement on Form S-8, (the "Registration Statement") of Biora Therapeutics, Inc., a Delaware corporation (the "Company"), to be filed with the Securities and Exchange Commission (the "Commission") pursuant to the Securities Act of 1933, as amended (the "Securities Act"), in connection with the offering by the Company of up to 5,500,000 shares of the Company's Common Stock, par value \$0.001 per share (the "Shares"). The Shares subject to the Registration Statement are reserved for issuance pursuant to future awards under the Biora Therapeutics, Inc. 2018 Equity Incentive Plan (Fifth Amended and Restated) (the "Plan").

In arriving at the opinion expressed below, we have examined originals, or copies certified or otherwise identified to our satisfaction as being true and complete copies of the originals, of such documents, corporate records, certificates of officers of the Company and of public officials and other instruments as we have deemed necessary or advisable to enable us to render the opinion set forth below. In our examination, we have assumed without independent investigation the genuineness of all signatures, the legal capacity and competency of all natural persons, the authenticity of all documents submitted to us as originals and the conformity to original documents of all documents submitted to us as copies. As to any facts material to this opinion, we have relied to the extent we deemed appropriate and without independent investigation upon statements and representations of officers and other representatives of the Company and others. We have also assumed that there are no agreements or understandings between or among the Company and any participants in the Plan that would expand, modify or otherwise affect the terms of the Plan or the respective rights or obligations of the participants thereunder.

Based upon the foregoing, and subject to the assumptions, exceptions, qualifications and limitations set forth herein, we are of the opinion that the Shares, when issued against payment therefor in accordance with the terms set forth in the Plan as set forth in the Registration Statement, will be validly issued, fully paid and non-assessable.

Abu Dhabi • Beijing • Brussels • Century City • Dallas • Denver • Dubai • Frankfurt • Hong Kong • Houston • London • Los Angeles  
Munich • New York • Orange County • Palo Alto • Paris • San Francisco • Singapore • Washington, D.C.

Biora Therapeutics, Inc.

July 28, 2023

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We render no opinion herein as to matters involving the laws of any jurisdiction other than the Delaware General Corporation Law (the “DGCL”). We are not admitted to practice in the State of Delaware; however, we are generally familiar with the DGCL as currently in effect and have made such inquiries as we consider necessary to render the opinions above. This opinion is limited to the effect of the current state of the DGCL and the facts as they currently exist. We assume no obligation to revise or supplement this opinion in the event of future changes in such law or the interpretations thereof or such facts.

We consent to the filing of this opinion as an exhibit to the Registration Statement, and we further consent to the use of our name under the caption “Legal Matters” in the Registration Statement and the prospectus that forms a part thereof. In giving these consents, we do not thereby admit that we are within 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/ Gibson, Dunn & Crutcher LLP

**Consent of Independent Registered Public Accounting Firm**

We consent to the use of our report dated March 30, 2023, with respect to the consolidated financial statements of Biora Therapeutics, Inc., incorporated herein by reference. Our report also contains an explanatory paragraph that states that the Company has suffered recurring losses from operations and has an accumulated deficit that raise substantial doubt about its ability to continue as a going concern. The consolidated financial statements do not include any adjustments that might result from the outcome of that uncertainty.

/s/ KPMG LLP

San Diego, California  
July 28, 2023

## CALCULATION OF FILING FEE TABLE

## Form S-8

## Biora Therapeutics, Inc.

Table 1 – Newly Registered Securities

Security Type	Security Class Title (1)	Fee Calculation Rule	Amount Registered (2)	Proposed Maximum Offering Price Per Unit	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
Equity	Common Stock, par value \$0.001 per share	457(a)	5,500,000	\$3.70(3)	\$20,350,000(3)	\$110.20 per \$1,000,000	\$2,242.57
<b>Total Offering Amounts</b>			5,500,000		\$20,350,000		\$2,242.57
<b>Total Fee Offsets</b>							\$0
<b>Net Fee Due</b>							\$ 2,242.57

- (1) In addition to the number of shares of the common stock, par value \$0.001 per share (the “Common Stock”) of Biora Therapeutics, Inc. (the “Company” or “Registrant”) stated above, pursuant to Rule 416(c) under the Securities Act of 1933, as amended (the “Securities Act”), this registration statement also covers an indeterminate number of options and other rights to acquire Common Stock, that may be granted pursuant to the Biora Therapeutics, Inc. 2018 Equity Incentive Plan (Fifth Amended and Restated) (the “Plan”).
- (2) Pursuant to Rule 416(a) under the Securities Act, this registration statement also covers any additional securities that may from time to time be offered or issued in respect of the securities registered by this registration statement to prevent dilution as a result of any stock dividend, stock split, recapitalization or other similar transaction, and any other securities with respect to which the outstanding shares are converted or exchanged.
- (3) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(c) and Rule 457(h) under the Securities Act, based upon the average of the high and low prices of the Registrant’s Common Stock on The Nasdaq Global Market on July 25, 2023.