

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

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d)
of The Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): May 10, 2023

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

Delaware
(State or other jurisdiction
of incorporation)

001-36284
(Commission
File Number)

80-0943522
(I.R.S. Employer
Identification No.)

9955 Mesa Rim Road, San Diego, CA
(Address of principal executive offices)

92121
(Zip Code)

Registrant's telephone number, including area code: (858) 320-8200

N/A
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.0001 per share	BIOC	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

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 13(a) of the Exchange Act. ☐

Item 2.02 Results of Operations and Financial Condition.

On May 10, 2023, Biocept, Inc. (the “Company”) issued a press release announcing its financial results for the three months ended March 31, 2023. A copy of the press release and accompanying information is attached as Exhibit 99.1 to this current report.

The information in this Item 2.02, and Exhibit 99.1 attached hereto, is being furnished and shall not be deemed “filed” for the purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liabilities of that Section. The information in this current report shall not be incorporated by reference into any registration statement or other document filed with the Securities and Exchange Commission, whether filed before or after the date hereof regardless of any general incorporation language in any such filing, unless the Company expressly sets forth in such filing that such information is to be considered “filed” or incorporated by reference therein.

Item 3.01 Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing.

As reported in the Company’s Quarterly Report on Form 10-Q for the quarter ended March 31, 2023, as filed with the Securities and Exchange Commission on May 10, 2023, the Company’s stockholders’ equity as of March 31, 2023 was \$2.4 million. As a result, the Company does not satisfy one of The Nasdaq Capital Market continued listing requirements set forth in Nasdaq Stock Market Rule 5550(b) (the “Rule”).

The Company expects to receive a formal notice (the “Notice”) from The Nasdaq Stock Market LLC (“Nasdaq”) on or about May 15, 2023 to formally notify the Company of non-compliance with the Rule. The Company discussed the noncompliance with the Rule with Nasdaq on May 12, 2023.

Pursuant to the Notice and Nasdaq rules, the Company will have 45 calendar days after receipt of the Notice to submit a plan to regain compliance with the Rule. If the plan is accepted, Nasdaq may grant an extension of up to 180 calendar days from the date of the Notice for the Company to provide evidence of compliance. There can be no assurance that the Company will be able to regain compliance with the Rule.

Item 5.07 Submission of Matters to a Vote of Security Holders.

On May 11, 2023, the Company held a Special Meeting of Stockholders (the “Special Meeting”). The following is a brief description of each matter voted upon at the Special Meeting, as well as the number of votes with respect to each matter. Voting results are, when applicable, reported by rounding fractional share voting down to the nearest whole number.

Proposal 1. Approval of a Series of Alternate Amendments to our Amended and Restated Certificate of Incorporation to Authorize the Board of Directors to Implement a Reverse Stock Split of our Common Stock

The Company’s stockholders approved a series of alternate amendments to the Company’s Amended and Restated Certificate of Incorporation to effect, at the option of the Company’s Board of Directors (the “Board”), a reverse stock split of the Company’s common stock at a ratio between 1-for-15 and 1-for-30, inclusive as determined by the Board in its sole discretion. The final voting results, including 300,000,000 votes represented by the share of Series B Preferred Stock voted in the same proportion as the votes cast by shares of common stock on Proposal 1, are as follows:

Votes For	Votes Against	Abstentions	Broker Non-Votes
186,084,407	116,708,364	73,495	0

Proposal 2. Approval of the Authorization to Adjourn the Special Meeting

The Company's stockholders approved the authorization to adjourn the Special Meeting, if necessary, to solicit additional proxies if there were not sufficient votes in favor of Proposal 1, but this authorization is moot as Proposal 1 passed. The final voting results are as follows:

Votes For	Votes Against	Abstentions	Broker Non-Votes
4,574,843	2,758,298	95,195	0

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

<u>Exhibit Number</u>	<u>Description</u>
99.1	Press Release dated May 10, 2023.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

BIOCEPT, INC.

Dated: May 15, 2023

By: /s/ Samuel D. Riccitelli
Name: Samuel D. Riccitelli
Title: Interim President and Chief Executive Officer



Biocept Reports First Quarter 2023 Financial Results

SAN DIEGO (May 10, 2023) – Biocept, Inc. (Nasdaq: BIOC), a leading provider of molecular diagnostic assays, products and services, reports financial results for the three months ended March 31, 2023 and provides a business update.

“I’m exceptionally pleased with the progress being made with our FORESEE clinical trial, which is specifically designed to generate evidence of CNSide™’s clinical utility to support adoption into clinical care guidelines and further broaden physician use. Trial enrollment is running well in line with our plan, and we’ve now activated clinical sites in Dallas, Los Angeles and the San Francisco Bay Area,” said Samuel D. Riccitelli, Biocept’s Chairman, and interim President and CEO. “In our quest to gain further physician and payor acceptance, we submitted an article to a peer-reviewed journal describing our assay, its attributes, and the work to demonstrate CNSide’s performance validity. We expect two additional manuscripts to be submitted for peer-review later this year by leading neuro-oncologists detailing their experience with CNSide through case study reports.

“We have begun requiring all new customers to sign lab service agreements prior to commencing use of our assay to facilitate fair and turnkey reimbursement for CNSide testing, and we are negotiating similar agreements with current customers. Nearly half of our existing clients have engaged with us on this matter and although the program has yielded only two signed agreements to date, we are hopeful this will allow us to continue to offer CNSide in a more cost-effective manner going forward,” he added. “Additionally, our cost-control measures put in place over the past year continued to drive down expenses.

“We look forward to providing a progress report and updates on the FORESEE trial when we resume holding quarterly investor calls with reporting of second quarter financial results in mid-August,” Mr. Riccitelli concluded.

First Quarter Financial Results

Net revenues for the first quarter of 2023 were \$0.7 million, compared with \$19.9 million for the first quarter of 2022, with the decline due to lower RT-PCR COVID-19 testing volume. In February 2023 the Company ceased providing COVID-19 testing services. The number of commercial accessions delivered for the first quarters of 2023 and 2022 were 3,085 and 153,056, respectively.

Cost of revenues for the first quarter of 2023 was \$3.0 million, compared with \$10.3 million for the first quarter of 2022, with the decrease primarily associated with the cessation of COVID-19 testing services.

Research and development expenses for the first quarter of 2023 were \$1.0 million, compared with \$1.8 million for the first quarter of 2022, with the decrease primarily due to a reduction in headcount and lower purchases of materials and supplies.

General and administrative expenses for the first quarter of 2023 were \$3.0 million, compared with \$6.3 million for the first quarter of 2022. The decrease was primarily due to lower legal and outside service expenses in the 2023 quarter, and separation agreements with former executive management in the 2022 quarter.

Sales and marketing expenses for the first quarter of 2023 were \$0.7 million, compared with \$3.7 million for the first quarter of 2022, with the decrease primarily due to fewer sales representatives, lower commission expense and a decrease in outside services expenses.

Net loss attributable to common stockholders for the first quarter of 2023 was \$7.1 million, or \$0.41 per share, compared with a net loss attributable to common stockholders for the first quarter of 2022 of \$2.2 million, or \$0.13 per share.

Biocept reported cash of \$6.8 million as of March 31, 2023, compared with \$12.9 million as of December 31, 2022.

About Biocept

Biocept, Inc. develops and commercializes molecular diagnostic assays that provide physicians with clinically actionable information for treating and monitoring patients diagnosed with a variety of cancers. For more information, visit www.biocept.com. Follow Biocept on [Facebook](#), [LinkedIn](#), [Twitter](#), and [Instagram](#).

Forward-Looking Statements Disclaimer Statement

This news release contains forward-looking statements that are based upon current expectations or beliefs, as well as a number of assumptions about future events. Although we believe that the expectations reflected in the forward-looking statements and the assumptions upon which they are based are reasonable, we can give no assurance that such expectations and assumptions will prove to be correct. Forward-looking statements are generally identifiable by the use of words like “will,” “expect,” “goal,” “objective,” “believe” or “intend” or the negative of these words or other variations on these words or comparable terminology. To the extent that statements in this news release are not strictly historical, including, without limitation, statements regarding FORESEE’s potential to generate evidence of CNSide’s clinical utility to support adoption into clinical care guidelines and further broaden physician use and payor acceptance, our expectation that two additional manuscripts will be submitted for peer-review later this year by leading neuro-oncologists detailing their experience with CNSide, our hope that requiring lab service agreements will allow us to continue to offer CNSide in a more cost-effective manner going forward, future progress reports on the FORESEE trial and the timing thereof, and other statements that are not historical fact, are forward-looking, and are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. The reader is cautioned not to put undue reliance on these forward-looking statements, as these statements are subject to numerous risks and uncertainties, including that the results of the FORESEE clinical trial may not support the inclusion of CNSide in clinical care guidelines; Medicare and private payors may not provide coverage and reimbursement or may breach, rescind or modify their contracts or reimbursement policies or delay payments; our customers may choose not to enter into lab service agreements with us; risks related to our need for additional capital; and the risk that our products and services may not perform as expected. These and other factors are described in greater detail under the “Risk Factors” heading in our Annual Report on Form 10-K for the year ended December 31, 2022, filed with the Securities and Exchange Commission (SEC) on April 17, 2023, and in our Quarterly Report on Form 10-Q for the quarter ended March 31, 2023, which is being filed with the SEC today. The effects of such risks and uncertainties could cause actual results to differ materially from the forward-looking statements contained in this news release. We do not plan to update any such forward-looking statements and expressly disclaim any duty to update the information contained in this press release except as required by law. Readers are advised to review our filings with the SEC at <http://www.sec.gov/>.

Investor & Media Contact:

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Biocept, Inc.
Condensed Balance Sheets
(In thousands, except share and per share data)

	March 31, 2023 (unaudited)	December 31, 2022
Assets		
Current assets:		
Cash	\$ 6,774	\$ 12,897
Accounts receivable	1,112	2,151
Inventories, net	704	757
Prepaid expenses and other current assets	500	538
Total current assets	9,090	16,343
Fixed assets, net	2,513	2,572
Lease right-of-use asset—operating	8,339	8,486
Lease right-of-use assets—finance	2,665	3,086
Other non-current assets	386	386
Total assets	<u>\$ 22,993</u>	<u>\$ 30,873</u>
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	\$ 1,533	\$ 1,523
Accrued liabilities	1,300	2,249
Current portion of lease liability—operating	541	518
Current portion of lease liabilities—finance	1,018	1,099
Supplier financing	—	117
Total current liabilities	4,392	5,506
Non-current portion of lease liability—operating	9,013	9,175
Non-current portion of lease liabilities—finance	1,011	1,200
Payor liability	6,149	6,132
Total liabilities	20,565	22,013
Commitments and contingencies		
Stockholders' equity:		
Preferred stock, \$0.0001 par value, 5,000,000 shares authorized; 2,090 shares issued and outstanding at March 31, 2023 and December 31, 2022.	—	—
Common stock, \$0.0001 par value, 150,000,000 shares authorized; 17,787,185 shares and 17,070,071 shares issued and outstanding at March 31, 2023 and December 31, 2022, respectively.	2	2
Additional paid-in capital	308,008	307,296
Accumulated deficit	(305,582)	(298,438)
Total stockholders' equity	2,428	8,860
Total liabilities and stockholders' equity	<u>\$ 22,993</u>	<u>\$ 30,873</u>

Biocept, Inc.
Condensed Statements of Operations
(In thousands, except shares and per share data)
(Unaudited)

	For the Three Months Ended March 31,	
	2023	2022
Net revenues	\$ 673	\$ 19,945
Costs and expenses:		
Cost of revenues	3,028	10,334
Research and development expenses	1,040	1,846
General and administrative expenses	2,988	6,256
Sales and marketing expenses	715	3,658
Total costs and expenses	7,771	22,094
Loss from operations	(7,098)	(2,149)
Other expense:		
Interest expense, net	(46)	(61)
Total other expense:	(46)	(61)
Loss before income taxes	(7,144)	(2,210)
Income tax expense	—	—
Net loss	(7,144)	(2,210)
Net loss attributable to common stockholders	\$ (7,144)	\$ (2,210)
Weighted-average shares outstanding used in computing net loss per share attributable to common stockholders:		
Basic	17,620,668	16,849,964
Diluted	17,620,668	16,849,964
Net loss per common share:		
Basic	\$ (0.41)	\$ (0.13)
Diluted	\$ (0.41)	\$ (0.13)

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