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

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

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**BIOCEPT, INC.**

(Exact Name of Registrant as Specified in Its Charter)

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

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

**9955 Mesa Rim Road**  
**San Diego, CA 92121**  
(Address of Principal Executive Offices)

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**Biocept, Inc. Amended and Restated 2013 Equity Incentive Plan**  
(Full Title of the Plan)

**Samuel D. Riccitelli**  
**Interim President and Chief Executive Officer**  
**Biocept, Inc.**

**9955 Mesa Rim Road**  
**San Diego, CA 92121**  
(Name and Address of Agent for Service)

**(858) 320-8200**  
(Telephone Number, Including Area Code, of Agent for Service)

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*Copy to:*

**Charles J. Bair**  
**Asa M. Henin**  
**Cooley LLP**  
**4401 Eastgate Mall**  
**San Diego, CA 92121**  
**(858) 550-6000**

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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	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input checked="" type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
		Emerging Growth Company	<input type="checkbox"/>

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.

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**INCORPORATION BY REFERENCE OF CONTENTS OF  
REGISTRATION STATEMENTS ON FORM S-8**

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 Biocept, Inc. Amended and Restated 2013 Equity Incentive Plan, as amended, under Registration Statements on Form S-8 filed with the Securities and Exchange Commission on [March 31, 2014 \(No. 333-194930\)](#), [March 11, 2015 \(No. 333-202656\)](#), [August 13, 2015 \(No. 333-206347\)](#), [August 5, 2016 \(No. 333-212960\)](#), [May 15, 2017 \(No. 333-218018\)](#), [September 10, 2018 \(No. 333-227267\)](#), [October 19, 2018 \(No. 333-227900\)](#), [August 15, 2019 \(No. 333-233285\)](#), [December 23, 2020 \(333-251676\)](#) and [November 16, 2021 \(333-261093\)](#). Pursuant to General Instruction E to Form S-8, this Registration Statement hereby incorporates by reference the contents of those Registration Statements.

**Item 8. Exhibits**

<u>Exhibits:</u>	<u>Description</u>
4.1	<a href="#">Amended and Restated Certificate of Incorporation, as amended by a Certificate of Amendment thereto (incorporated by reference to Exhibit 3.1.4 of the Registrant's Current Report on Form 8-K, filed with the SEC on February 14, 2014).</a>
4.2	<a href="#">Certificate of Amendment of Certificate of Incorporation (incorporated by reference to Exhibit 3.1 of the Registrant's Current Report on Form 8-K, filed with the SEC on September 29, 2016).</a>
4.3	<a href="#">Certificate of Amendment to Certificate of Incorporation (incorporated by reference to Exhibit 3.1 of the Registrant's Current Report on Form 8-K, filed with the SEC on July 6, 2018).</a>
4.4	<a href="#">Certificate of Amendment to Certificate of Incorporation (incorporated by reference to Exhibit 3.1 of the Registrant's Current Report on Form 8-K, filed with the SEC on September 4, 2020).</a>
4.5	<a href="#">Certificate of Designation of Preferences, Rights and Limitations of Series A Convertible Preferred Stock (incorporated by reference to Exhibit 3.1 of the Registrant's Current Report on Form 8-K, filed with the SEC on August 13, 2018).</a>
4.6	<a href="#">Amended and Restated Bylaws (incorporated by reference to Exhibit 3.2.1 of the Registrant's Registration Statement on Form S-1 (File No. 333-191323), filed with the SEC on September 23, 2013).</a>
4.7	<a href="#">Amendment to Amended and Restated Bylaws (incorporated by reference to Exhibit 3.1 of the Registrant's Current Report on Form 8-K, filed with the SEC on September 29, 2017).</a>
4.8	<a href="#">Second Amendment to Amended and Restated Bylaws (incorporated by reference to Exhibit 3.1 of the Registrant's Current Report on Form 8-K, filed with the SEC on March 24, 2022).</a>
4.9	<a href="#">Specimen Common Stock Certificate of the Registrant (incorporated by reference to Exhibit 4.2 of the Registrant's Quarterly Report on Form 10-Q, filed with the SEC on November 16, 2020).</a>
5.1	<a href="#">Opinion of Cooley LLP.</a>
23.1	<a href="#">Consent of Mayer Hoffman McCann P.C., an Independent Registered Public Accounting Firm.</a>
23.2	<a href="#">Consent of Cooley LLP. Reference is made to Exhibit 5.1.</a>
24.1	<a href="#">Power of Attorney. Reference is made to the signature page hereto.</a>
99.1	<a href="#">Biocept, Inc. Amended and Restated 2013 Equity Incentive Plan, Form of Stock Option Grant Notice, Option Agreement, Form of Restricted Stock Unit Grant Notice and Restricted Stock Unit agreement for use thereunder, as amended (incorporated by reference to Exhibit 10.8 of the Registrant's Annual Report on Form 10-K, filed with the SEC on April 5, 2022).</a>
107	<a href="#">Filing Fee Table.</a>

## 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 April 8, 2022.

### BIOCEPT, INC.

By: /s/ Samuel D. Riccitelli

Samuel D. Riccitelli

*Interim President and Chief Executive Officer*

### POWER OF ATTORNEY

KNOW ALL BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Samuel D. Riccitelli and Antonino Morales, and each of them, as his true and lawful attorneys-in-fact and agents, each with the full power of substitution, for him and in his name, place or stead, in any and all capacities, to sign any and all amendments to this Registration Statement (including post-effective amendments), and to file the same, with 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 and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
<u>/s/ Samuel D. Riccitelli</u> Samuel D. Riccitelli	Interim Chief Executive Officer, President, Chair and Director <i>(Principal Executive Officer)</i>	April 8, 2022
<u>/s/ Antonino Morales</u> Antonino Morales	Interim Chief Financial Officer and Director <i>(Principal Financial Officer and Principal Accounting Officer)</i>	April 8, 2022
<u>/s/ M. Faye Wilson</u> M. Faye Wilson	Director	April 8, 2022
<u>/s/ David F. Hale</u> David F. Hale	Director	April 8, 2022
<u>/s/ Marsha A. Chandler</u> Marsha A. Chandler	Director	April 8, 2022
<u>/s/ Bruce E. Gerhardt</u> Bruce E. Gerhardt	Director	April 8, 2022
<u>/s/ Ivor Royston</u> Ivor Royston	Director	April 8, 2022
<u>/s/ Linda Rubinstein</u> Linda Rubinstein	Director	April 8, 2022



Charles J. Bair  
+1 858 550 6142  
cbair@cooley.com

April 8, 2022

Biocept, Inc.  
9955 Mesa Rim Road  
San Diego, CA 92121

Ladies and Gentlemen:

You have requested our opinion, as counsel to Biocept, Inc., a Delaware corporation (the “*Company*”), in connection with the filing by the Company of a Registration Statement on Form S-8 (the “*Registration Statement*”) with the Securities and Exchange Commission, covering the offering of up to 1,500,000 shares (the “*Shares*”) of the Company’s Common Stock, par value \$0.0001 per share, issuable as inducement awards pursuant to the Company’s Amended and Restated 2013 Equity Incentive Plan, as amended (the “*Plan*”).

In connection with this opinion, we have examined and relied upon the Registration Statement and related prospectus, the Plan, the Company’s Amended and Restated Certificate of Incorporation, as amended, and Amended and Restated Bylaws, as amended, each as currently in effect, 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 of all signatures, the authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as copies, the accuracy, completeness and authenticity of certificates of public officials; and the due authorization, execution and delivery of all documents by all persons other than the Company where authorization, execution and delivery are prerequisites to the effectiveness of such documents. As to certain factual matters, we have relied upon a certificate of an officer of the Company and have not independently verified such matters.

Our opinion is expressed only with respect to the General Corporation Law of the State of Delaware. We express no opinion to the extent that any other laws are applicable to the subject matter hereof and express no opinion and provide no assurance as to compliance with any federal or state securities law, rule or regulation.

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 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).

COOLEY LLP 4401 EASTGATE MALL SAN DIEGO, CA 921211  
T: (858) 550-6000 F: (858) 550-6420 COOLEY.COM



Biocept, Inc.  
April 8, 2022  
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We consent to the filing of this opinion as an exhibit to the Registration Statement.

Sincerely,

Cooley LLP

By: /s/ Charles J. Bair

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Charles J. Bair

COOLEY LLP 4401 EASTGATE MALL SAN DIEGO, CA 92121  
T: (858) 550-6000 F: (858) 550-6420 COOLEY.COM

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in this Registration Statement on Form S-8 of our report dated April 5, 2022, with respect to the financial statements of Biocept, Inc., as of December 31, 2021 and 2020 and for each of the two years in the period ended December 31, 2021.

/s/ Mayer Hoffman McCann P.C.

San Diego, California  
April 8, 2022

**Calculation of Filing Fee Tables**

**Form S-8**  
(Form Type)

**Biocept, Inc.**  
(Exact name of Registrant as Specified in its Charter)

Table 1 – Newly Registered Securities								
	Security Type	Security Class Title	Fee Calculation Rule	Amount Registered(1)	Proposed Maximum Offering Price Per Unit	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
Fees to be Paid	Equity	<b>Amended and Restated 2013 Equity Incentive Plan</b>  Common Stock, \$0.0001 par value per share	457(h)(2)	1,203,690(3)	\$2.35	\$2,828,672	.0000927	\$263
Fees to be Paid	Equity	<b>Amended and Restated 2013 Equity Incentive Plan</b>  Common Stock, \$0.0001 par value per share	457(c) and 457(h)(4)	296,310(5)	\$2.09	\$619,288	.0000927	\$58
		Total Offering Amounts			–	\$3,447,960	–	–
		Total Fee Offsets			–	–	–	–
		Net Fee Due			–	–	–	\$321

- (1) Pursuant to Rule 416(a) of the Securities Act of 1933, as amended (the “Securities Act”), this registration statement shall also cover any additional shares of the Registrant’s common stock that may become issuable under the Biocept, Inc. Amended and Restated 2013 Equity Incentive Plan, as amended (the “2013 Plan”), by reason of any stock dividend, stock split, recapitalization or other similar transaction.
- (2) This estimate is made pursuant to Rule 457(h)(1) of the Securities Act solely for purposes of calculating the registration fee. The price per share and aggregate offering price are based upon the weighted-average exercise price for the Registrant’s common stock subject to these outstanding stock options.
- (3) Represents shares reserved for issuance upon the exercise of outstanding stock options, which options were granted from the 1,500,000 shares of the Registrant’s common stock added to the 2013 Plan, which shares are reserved for issuance exclusively for the grant of stock awards to employees of the Registrant who have not previously been one of the Registrant’s employees or directors, except following a bona fide period of non-employment, as an inducement material to the individual’s entering into employment with the Registrant within the meaning of Rule 5635(c) (4) of the Nasdaq Listing Rules.
- (4) This estimate is made pursuant to Rule 457(c) and Rule 457(h)(1) of the Securities Act solely for purposes of calculating the registration fee. The price per share and aggregate offering price are based upon the average of the high and low prices of the Registrant’s common stock on April 7, 2022, as reported on the Nasdaq Capital Market.

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- (5) Represents additional shares of the Registrant's common stock available for future issuance under the 2013 Plan pursuant to a 1,500,000 share increase in the number of shares of the Registrant's common stock that are reserved for issuance exclusively for the grant of stock awards to employees of the Registrant who have not previously been one of the Registrant's employees or directors, except following a bona fide period of non-employment, as an inducement material to the individual's entering into employment with the Registrant within the meaning of Rule 5635(c)(4) of the Nasdaq Listing Rules.