

Dermira, Inc.
Form S-8
February 05, 2018

As filed with the Securities and Exchange Commission on February 5, 2018

Registration No. 333-

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

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

DERMIRA, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

27-3267680
(I.R.S. Employer
Identification No.)

Dermira, Inc.

275 Middlefield Road, Suite 150

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Menlo Park, California 94025

(650) 421-7200

(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

2014 Equity Incentive Plan

2014 Employee Stock Purchase Plan

2018 Equity Inducement Plan

(Full title of the plans)

Thomas G. Wiggins

Chief Executive Officer and Chairman of the Board

Dermira, Inc.

275 Middlefield Road, Suite 150

Menlo Park, California 94025

(650) 421-7200

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Please send copies of all communications to:

Douglas N. Cogen, Esq.

Michael A. Brown, Esq.

Katherine K. Duncan, Esq.

Fenwick & West LLP

555 California Street, 12th Floor

San Francisco, California 94104

(415) 875-2300

Andrew L. Guggenhime

**Chief Operating Officer and
Chief Financial Officer**

Dermira, Inc.

275 Middlefield Road, Suite 150

Menlo Park, California 94025

(650) 421-7200

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. (Check one):

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 13(a) of the Exchange 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, \$0.001 par value per share				
Reserved for future issuance under the 2014 Equity Incentive Plan	1,671,902 ⁽²⁾	\$27.98 ⁽³⁾	\$46,779,818	\$ 5,825
Reserved for future issuance under the 2014 Employee Stock Purchase Plan	417,975 ⁽⁴⁾	\$23.79 ⁽⁵⁾	\$ 9,943,626	\$ 1,238
Reserved for future issuance under the 2018 Equity Inducement Plan	1,200,000 ⁽⁶⁾	\$27.98 ⁽³⁾	\$33,576,000	\$ 4,181
TOTAL	3,289,877	N/A	\$90,299,444	\$11,244

- (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 the Registrant's common stock that become issuable in respect of the securities identified in the above table by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without the Registrant's receipt of consideration that results in an increase in the number of the outstanding shares of the Registrant's common stock.
- (2) Represents additional shares of the Registrant's common stock reserved for issuance under the Registrant's 2014 Equity Incentive Plan (the *EIP*) resulting from the automatic annual increase in the number of authorized shares reserved and available for issuance under the EIP on January 1 of each of the first ten years following the Registrant's initial public offering equal to 4% of the total number of outstanding shares of the Registrant's common stock on December 31 of the prior year.

- (3) Estimated pursuant to Rules 457(c) and (h) of the Securities Act, solely for the purpose of calculating the registration fee, on the basis of the average of the high and low prices of the Registrant's common stock as reported on The Nasdaq Global Select Market on February 2, 2018.
- (4) Represents additional shares of the Registrant's common stock reserved for issuance under the Registrant's 2014 Employee Stock Purchase Plan (the **ESPP**) resulting from the automatic annual increase in the number of authorized shares reserved and available for issuance under the ESPP on January 1 of each of the first ten years following the Registrant's initial public offering equal to 1% of the total number of outstanding shares of the Registrant's common stock on December 31 of the prior year.
- (5) Estimated pursuant to Rules 457(c) and (h) of the Securities Act, solely for the purpose of calculating the registration fee, on the basis of the average of the high and low prices of the Registrant's common stock as reported on The Nasdaq Global Select Market on February 2, 2018. Under the ESPP, the purchase price of a share of common stock is equal to 85% of the fair market value of the Registrant's common stock on the offering date (i.e., the first business day of the offering period of up to 27 months) or the purchase date (i.e., the last business day of a six-month purchase period), whichever is less.
- (6) Represents shares of the Registrant's common stock reserved for future issuance under the Registrant's 2018 Equity Inducement Plan to be granted by the Registrant to certain employees as a material inducement to their acceptance of employment with the Registrant in accordance with Nasdaq Listing Rule 5635(c)(4).

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The information called for by Part I of Form S-8 is omitted from this Registration Statement in accordance with Rule 428 of the Securities Act of 1933, as amended (the *Securities Act*), and the instructions to Form S-8. In accordance with the rules and regulations of the Securities and Exchange Commission (the *Commission*) and the instructions to Form S-8, such documents are not being filed with the Commission either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 under the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed by the Registrant with the Commission pursuant to the Securities Exchange Act of 1934, as amended (the *Exchange Act*), are incorporated herein by reference:

- (a) the Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2016, filed with the Commission on February 28, 2017;
- (b) all other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the Registrant's Annual Report referred to in (a) above;
- (c) the Registrant's Quarterly Report on Form 10-Q for the three months ended March 31, 2017, June 30, 2017 and September 30, 2017, filed with the Commission on May 8, 2017, August 7, 2017 and November 6, 2017, respectively;
- (d) the Registrant's Current Reports on Form 8-K filed with the Commission on February 28, 2017, March 2, 2017, May 9, 2017, May 11, 2017, May 16, 2017, June 19, 2017, August 8, 2017, September 28, 2017 and November 6, 2017 (with a film number of 171179548) and the Registrant's Current Report on Form 8-K/A filed with the Commission on January 4, 2017, in each case, only to the extent that the items therein are specifically stated to be filed rather than furnished for the purposes of Section 18 of the Exchange Act; and
- (e) the description of the Registrant's common stock contained in the Registrant's Registration Statement on Form 8-A (Registration No. 001-36668) filed with the Commission on September 29, 2014 under Section 12(b) of the Exchange Act, including any amendments or reports filed for the purpose of updating such description.

All documents filed by the Registrant pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the filing of this Registration Statement and prior to the filing of a post-effective amendment, which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference into this Registration Statement and to be a part hereof from the date of filing such

documents, except as to specific sections of such documents as set forth therein. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained in any subsequently filed document, which also is deemed to be incorporated by reference herein, modifies or supersedes such statement. The Registrant's Current Reports on Form 8-K will be deemed incorporated herein by reference only to the extent that the items therein are specifically stated to be filed rather than furnished for the purposes of Section 18 of the Exchange Act.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

As of the date of this Registration Statement, Fenwick & West LLP beneficially owns an aggregate of 43,103 shares of the Registrant's common stock, representing approximately 0.10% of the Registrant's outstanding shares of common stock as of December 31, 2017.

Item 6. Indemnification of Directors and Officers.

Section 145 of the Delaware General Corporation Law authorizes a court to award, or a corporation's board of directors to grant, indemnity to directors and officers under certain circumstances and subject to certain limitations. The terms of Section 145 of the Delaware General Corporation Law are sufficiently broad to permit indemnification under certain circumstances for liabilities, including reimbursement of expenses incurred, arising under the Securities Act.

As permitted by the Delaware General Corporation Law, the Registrant's restated certificate of incorporation contains provisions that eliminate the personal liability of its directors for monetary damages for any breach of fiduciary duties as a director, except liability for the following:

any breach of the director's duty of loyalty to the Registrant or its stockholders;

acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;

under Section 174 of the Delaware General Corporation Law (regarding unlawful dividends and stock purchases); or

any transaction from which the director derived an improper personal benefit.

As permitted by the Delaware General Corporation Law, the Registrant's restated bylaws provide that:

the Registrant is required to indemnify its directors and executive officers to the fullest extent permitted by the Delaware General Corporation Law, subject to very limited exceptions;

the Registrant may indemnify its other employees and agents as set forth in the Delaware General Corporation Law;

the Registrant is required to advance expenses, as incurred, to its directors and executive officers in connection with a legal proceeding to the fullest extent permitted by the Delaware General Corporation Law, subject to very limited exceptions; and

the rights conferred in the restated bylaws are not exclusive.

The Registrant has entered into indemnification agreements with each of its current directors and executive officers to provide these directors and executive officers additional contractual assurances regarding the scope of the indemnification set forth in the Registrant's restated certificate of incorporation and restated bylaws and to provide additional procedural protections. There is no pending litigation or proceeding involving a director or executive officer of the Registrant for which indemnification is sought. The indemnification provisions in the Registrant's restated certificate of incorporation, restated bylaws and the indemnification agreements entered into between the Registrant and each of its directors and executive officers may be sufficiently broad to permit indemnification of the

Registrant's directors and executive officers for liabilities arising under the Securities Act.

The Registrant currently carries liability insurance for its directors and officers.

Two of the Registrant's directors (Fred B. Craves and Jake R. Nunn) are also indemnified by their employers with regard to their service on the Registrant's board of directors.

See also the undertakings set out in response to Item 9 of this Registration Statement.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

The following exhibits are filed herewith:

Exhibit Number	Exhibit Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
4.1	<u>Restated Certificate of Incorporation of the Registrant.</u>	10-Q	001-36668	3.1	11/12/2014	
4.2	<u>Restated Bylaws of the Registrant.</u>	10-Q	001-36668	3.2	11/12/2014	
4.3	<u>Form of Common Stock Certificate.</u>	S-1	333-198410	4.1	8/27/2014	
5.1	<u>Opinion of Fenwick & West LLP.</u>					X
23.1	<u>Consent of Independent Registered Public Accounting Firm.</u>					X
23.2	<u>Consent of Fenwick & West LLP (included in Exhibit 5.1).</u>					X
24.1	<u>Power of Attorney (included on the signature page of this Registration Statement).</u>					X
99.1	<u>2014 Equity Incentive Plan and forms of stock option award agreement, stock option exercise agreement, restricted stock agreement, stock appreciation right award agreement, restricted stock unit award agreement, performance shares award agreement and stock bonus agreement.</u>	10-Q	001-36668	10.3	11/12/2014	
99.2	<u>2014 Employee Stock Purchase Plan and form of subscription agreement.</u>	10-Q	001-36668	10.4	11/12/2014	
99.3	<u>2018 Equity Inducement Plan and forms of notice of stock option grant, stock option agreement, notice of restricted stock unit award and restricted stock unit agreement.</u>					X

Item 9. Undertakings.

A. The undersigned Registrant hereby undertakes:

(1) to file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) to include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) to reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was

registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective Registration Statement; and

(iii) to include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

provided, however, that clauses (A)(1)(i) and (A)(1)(ii) above shall not apply if the information required to be included in a post-effective amendment by those clauses is contained in periodic reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in this Registration Statement;

(2) that, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof; and

(3) to remove from registration by means of a post-effective amendment any of the securities being registered that remain unsold at the termination of the offering.

B. The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Exchange Act) that is incorporated by reference into this Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

C. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered hereby, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

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 Menlo Park, State of California, on this 5th day of February, 2018.

DERMIRA, INC.

By: /s/ THOMAS G. WIGGANS
 Thomas G. Wiggans
 Chief Executive Officer and Chairman of the Board

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Thomas G. Wiggans and Andrew L. Guggenhime, and each of them, as his or her true and lawful attorney-in-fact, proxy, and agent with the full power of substitution, for him or her in any and all capacities, to sign any and all amendments to this registration statement (including post-effective amendments to this Registration Statement on Form S-8), 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, proxies 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 for all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact, proxies and agents, or their or his or her 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 on behalf of the Registrant in the capacities and on the dates indicated.

Signature	Title	Date
/s/ THOMAS G. WIGGANS Thomas G. Wiggans	Chief Executive Officer and Chairman of the Board (Principal Executive Officer)	February 5, 2018
/s/ ANDREW L. GUGGENHIME Andrew L. Guggenhime	Chief Operating Officer and Chief Financial Officer (Principal Financial and Accounting Officer)	February 5, 2018
/s/ EUGENE A. BAUER M.D. Eugene A. Bauer	Chief Medical Officer and Director	February 5, 2018
/s/ DAVID E. COHEN, M.D., M.P.H. David E. Cohen, M.D., M.P.H.	Director	February 5, 2018

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/s/ FRED B. CRAVES	Lead Independent Director	February 5, 2018
Fred B. Craves		
/s/ MATTHEW K. FUST	Director	February 5, 2018
Matthew K. Fust		
/s/ MARK D. MCDADE	Director	February 5, 2018
Mark D. McDade		
/s/ Jake R. Nunn	Director	February 5, 2018
Jake R. Nunn		
/s/ WILLIAM R. RINGO	Director	February 5, 2018
William R. Ringo		
/s/ KATHLEEN SEBELIUS	Director	February 5, 2018
Kathleen Sebelius		