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

FORM S-8

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

BIOAFFINITY TECHNOLOGIES, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation or organization)

46-5211056
(I.R.S. Employer
Identification No.)

22211 W Interstate 10, Suite 1206
San Antonio, Texas 78257
(Address of Principal Executive Offices)

bioAffinity Technologies, Inc. 2014 Equity Incentive Plan

(Full title of the plans)

Maria Zannes
Chief Executive Officer
22211 W Interstate 10
Suite 1206
San Antonio, Texas 78257
(Name and address of agent for service)

(210) 698-5334
(Telephone number, including area code, of agent for service)

Copies to:
Wilhelm E. Liebmann, Esq.
Dykema Gossett PLLC
112 E Pecan Street, Suite 1800
San Antonio, Texas 78205

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer or a smaller reporting company. See definition of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act (check one):

Large accelerated filer
Non-accelerated filer

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.

**PART II
INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

Item 3. Incorporation of Documents by Reference.

The following documents, previously filed by the Registrant with the U.S. Securities and Exchange Commission ("SEC"), are hereby incorporated in this Registration Statement by reference as of their filing date with the SEC:

- Annual Report on [Form 10-K](#) for the year ended December 31, 2022, filed with the SEC on March 31, 2023;
- Current Report on [Form 8-K](#), filed with the SEC on January 4, 2023;
- Current Report on [Form 8-K](#), filed with the SEC on January 24, 2023;
- Current Report on [Form 8-K](#), filed with the SEC on February 13, 2023;

- Current Report on [Form 8-K](#), filed with the SEC on March 24, 2023;
- Amendment to Current Report on [Form 8-K/A](#), filed with the SEC on March 24, 2023;
- Current Report on [Form 8-K](#), filed with the SEC on March 28, 2023;
- Current Report on [Form 8-K](#), filed with the SEC on April 3, 2023;
- Current Report on [Form 8-K](#), filed with the SEC on April 5, 2023; and
- The description of the Registrant's common stock, par value \$0.007 (the "Common Stock"), to be registered hereunder, set forth under the heading "Description of Securities—Common Stock" in the Registrant's Amendment No. 6 to [Form S-1](#) (File No. 333-264463), filed with the SEC under the Securities Act of 1933, as amended (the "Securities Act"), on August 18, 2022, which amended the Registrant's initial Registration Statement on [Form S-1](#), originally filed with the SEC on April 25, 2022, as subsequently amended, as incorporated by reference into the Registrant's Amendment No. 1 to [Form 8-A](#) (File No. 001-41463), filed with the SEC under the Securities Act on August 23, 2022.

All other documents filed by the Registrant pursuant to Sections 13(a), 13(c), 14, or 15(d) of the Securities Act of 1934 (other than Current Reports furnished under Item 2.02 or Item 7.01 of Form 8-K and exhibits furnished on such form that relate to such items) subsequent to the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement indicating that all securities offered under the Registration Statement have been sold, or deregistering all securities then remaining unsold, are also incorporated herein by reference and shall be a part hereof from the date of the filing of such documents.

Any statement contained in a document incorporated by, or deemed 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 herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interest of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Officers and Directors.

The Registrant is incorporated under the laws of the State of Delaware. Reference is made to Section 102(b)(7) of the Delaware General Corporation Law ("DGCL"), which enables a corporation in its original certificate of incorporation or an amendment thereto to eliminate or limit the personal liability of a director for violations of the director's fiduciary duty, except (1) for any breach of the director's duty of loyalty to the corporation or its stockholders, (2) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (3) pursuant to Section 174 of the DGCL, which provides for liability of directors for unlawful payments of dividends or unlawful stock purchase or redemptions, or (4) for any transaction from which the director derived an improper personal benefit.

Section 145(a) of the DGCL provides, in general, that a corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation), because such person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding, if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful.

Section 145(b) of the DGCL provides, in general, that a corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor because the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification shall be made with respect to any claim, issue or matter as to which he or she shall have been adjudged to be liable to the corporation unless and only to the extent that the adjudicating court determines that, despite the adjudication of liability but in view of all of the circumstances of the case, he or she is fairly and reasonably entitled to indemnity for such expenses which the adjudicating court shall deem proper.

Section 145(g) of the DGCL provides, in general, that a corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of his or her status as such, whether or not the corporation would have the power to indemnify the person against such liability under Section 145 of the DGCL.

The Registrant's Charter provides that no director of the Registrant shall be personally liable to the Registrant or its stockholders for monetary damages for any breach of fiduciary duty as a director, except for liability (1) for any breach of the director's duty of loyalty to the Registrant or its stockholders, (2) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (3) in respect of unlawful dividend payments or stock redemptions or repurchases or other distributions pursuant to Section 174 of the DGCL, or (4) for any transaction from which the director derived an improper personal benefit. In addition, the Registrant's Charter provides that if the DGCL is amended to authorize the further elimination or limitation of the liability of directors, then the liability of a director of the Registrant shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended.

The Registrant's Charter provides that any amendment, repeal or modification of such article unless otherwise required by law will not adversely affect any right or protection existing at the time of such repeal or modification with respect to any acts or omissions occurring before such repeal or amendment of a director serving at the time of such repeal or modification.

The Registrant's Charter provides that the Registrant shall indemnify each of its directors and executive officers, and shall have power to indemnify its other officers, employees and agents, to the fullest extent permitted by the DGCL as the same may be amended (except that in the case of an amendment, only to the extent that the amendment permits us to provide broader indemnification rights than the DGCL permitted it to provide prior to such the amendment) against any and all expenses, judgments, penalties, fines and amounts reasonably paid in settlement that are incurred by the director, officer or such employee or on the director's, officer's or employee's behalf in connection with any threatened, pending or completed proceeding or any claim, issue or matter therein, to which he or she is or is threatened to be made a party because he or she is or was serving as a director, officer or employee of the Registrant, or at the Registrant's request as a director, partner, trustee, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Registrant and, with respect to any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful. The Registrant's Charter provides for the advancement of expenses to each of the Registrant's directors and, in the discretion of the board of directors, to certain officers and employees, in advance of the final disposition of such action, suit or proceeding only upon receipt of an undertaking by such person to repay all amounts advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal that such person is not entitled to be indemnified for such expenses.

In addition, The Registrant's Charter provides that the right of each of the Registrant's directors and officers to indemnification and advancement of expenses shall not be exclusive of any other right now possessed or hereafter acquired under any statute, provision of the charter or bylaws, agreement, vote of stockholders or otherwise. Furthermore, The Registrant's Charter authorizes the Registrant to provide insurance for its directors, officers, employees and agents against any liability, whether or not the Registrant would have the power to indemnify such person against such liability under the DGCL or the Registrant's Bylaws.

The Registrant also maintains a general liability insurance policy which covers certain liabilities of its directors and officers arising out of claims based on acts or omissions in their capacities as directors or officers.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

Exhibit No.	Exhibit Title	Incorporated by Reference		
		Form	Filed Date	Exhibit No.
4.1	Amended and Restated Certificate of Incorporation of Registrant, as currently in effect.	Form S-1/A	June 16, 2022	3.3
4.2	Bylaws of the Registrant, as currently in effect.	Form S-1/A	June 16, 2022	3.6
4.3	Form of Registrant's Common Stock Certificate.	Form S-1/A	June 16, 2022	4.1
5.1	Opinion of Dykema Gossett, PLLC	Filed herewith		
23.1	Consent of Dykema Gossett, PLLC (included in Exhibit 5.1)	Filed herewith		
23.2	Consent of WithumSmith+Brown, PC, independent registered public accounting firm.	Filed herewith		
24.1	Power of Attorney (included on the signature page of this Form S-8)	Filed herewith		
99.1	2014 Equity Incentive Plan of Registrant, as amended.	Form S-1/A	May 25, 2022	10.1
107	Filing Fee Table	Filed herewith		

Item 9. Undertakings.

1. The undersigned Registrant hereby undertakes:

(a) 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 the 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 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement.

(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 paragraphs (a)(i) and (a)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in 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 the registration statement.

(b) 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 herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

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

(d) That, for the purpose of determining liability of the Registrant under the Securities Act to any purchaser in the initial distribution of the securities, the undersigned Registrant undertakes that in a primary offering of securities of the undersigned Registrant pursuant to this Registration Statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned Registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of the undersigned Registrant relating to the offering required to be filed pursuant to Rule 424;

(ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned Registrant or used or referred to by the undersigned Registrant;

(iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned Registrant or its securities provided by or on behalf of the undersigned Registrant; and

(iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

2. 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 in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

3. 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 Securities and Exchange 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, 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 City of San Antonio, Texas, on April 19, 2023.

bioAffinity Technologies, Inc.

By: /s/ Maria Zannes

Maria Zannes
Chief Executive Officer, President, and Director

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Steven Girgenti and Maria Zannes, each of them, as his or her true and lawful attorneys-in-fact and agents, each with the full power of substitution, for him or her and in their 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 sign any registration statement for the same offering covered by this Registration Statement that is to be effective upon filing pursuant to Rule 462(b) promulgated under the Securities Act, and all post-effective amendments thereto, 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 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 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 his, her or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

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

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Maria Zannes</u> Maria Zannes	President, Chief Executive Officer, and Director (Principal Executive Officer)	April 19, 2023
<u>/s/ Michael Edwards</u> Michael Edwards	Chief Financial Officer (Principal Financial and Accounting Officer)	April 19, 2023
<u>/s/ Steven Girgenti</u> Steven Girgenti	Executive Chairman and Director	April 19, 2023
<u>/s/ Robert Anderson</u> Robert Anderson	Director	April 19, 2023
<u>/s/ Stuart Diamond</u> Stuart Diamond	Director	April 19, 2023
<u>/s/ Peter S. Knight</u> Peter S. Knight	Director	April 19, 2023
<u>/s/ Mohsin Meghji</u> Mohsin Meghji	Director	April 19, 2023
<u>/s/ Gary Rubin</u> Gary Rubin	Director	April 19, 2023

April 19, 2023

bioAffinity Technologies, Inc.
22211 W Interstate 10, Suite 1206
San Antonio, Texas 78257

Gentlepersons:

We have acted as special counsel to bioAffinity Technologies, Inc., a Delaware corporation (the “*Company*”), in connection with the preparation and filing by the Company on the date hereof with the Securities and Exchange Commission (the “*Commission*”) of a Registration Statement on Form S-8 (the “*Registration Statement*”) under the Securities Act of 1933, as amended (the “*Act*”), relating to the issuance of up to 1,142,857 shares of common stock of the Company, \$0.007 par value per share (the “*Shares*”), which may be issued pursuant to the Company’s 2014 Equity Incentive Plan, as amended through the date hereof (the “*Plan*”). 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 related prospectus, other than as expressly stated herein with respect to the issue of the Shares.

In connection with this opinion, we have examined originals or copies, certified or otherwise identified to our satisfaction, of the organizational and governing documents of the Registrant, each as amended to the date hereof, the Registration Statement (including the Exhibits thereto), the Plan, the records of corporate proceedings that have occurred prior to the date hereof with respect to the Plan, the Registration Statement, such agreements, certificates of public officials, certificates of officers or other representatives of the Registrant, and such other documents, certificates, and records as we have deemed necessary as a basis for the opinion set forth below. We have also reviewed such questions of law as we have deemed necessary or appropriate. As to matters of fact relevant to the opinions expressed herein, and as to factual matters arising in connection with our examination of corporate documents, records, and other documents and writings, we relied upon certificates and other communications of corporate officers of the Registrant, without further investigation as to the facts set forth therein. It is understood that this opinion is to be used only in connection with the offer and sale of the Shares while the Registration Statement is still in effect.

We have assumed that: (i) at the time of issuance of any Shares, there will be a sufficient number of duly authorized and unissued shares of common stock to accommodate such issuance; (ii) appropriate action will be taken to register and qualify the Shares for sale under all applicable state securities laws; (iii) the Shares to be sold are issued in accordance with the terms of the Plan; (iv) the Company receives the full consideration for the Shares as stated in the Plan; and (v) the per-share consideration for each Share includes payment of cash or other lawful consideration at least equal to the par value of the Company’s common stock. It is understood that this opinion is to be used only in connection with the offer and sale of the Shares while the Registration Statement is still in effect.

Based solely upon the foregoing, and subject to the qualifications, assumptions, and other statements set forth herein, it is our opinion that the Shares have been duly authorized, and when issued and delivered in accordance with the terms of the Plan, will be validly issued, fully paid, and nonassessable.

The foregoing opinion is expressed solely with respect to the Delaware General Corporation Law. We do not express any opinion as to any other laws. No opinion is expressed herein as to any matter pertaining to the contents of the Registration Statement, other than as expressly stated herein with respect to the issuance of the Shares. We express no opinion as to any matter other than as set forth herein, and no opinion may be inferred or implied herefrom. The opinion expressed herein is given as of this date, and we do not undertake to supplement this opinion with respect to any events or changes occurring subsequent to the date of this letter.

We consent to the filing of this opinion as Exhibit 5.1 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 Securities Act of 1933, as amended, or the rules and regulations of the Commission thereunder.

Respectfully Submitted,

/s/ *Dykema Gossett PLLC*

Dykema Gossett PLLC

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 March 31, 2023, relating to the consolidated financial statements of bioAffinity Technologies, which are contained in the bioAffinity Technologies, Inc. Annual Report on Form 10-K filed with the SEC on March 31, 2023.

/s/ WithumSmith+Brown, PC

New York, New York
April 18, 2023

CALCULATION OF FILING FEE TABLE

Form S-8
(Form Type)

bioAffinity Technologies, Inc.
(Exact Name of Registrant as Specified in its Charter)

Table 1: Newly Registered Securities

Security Type	Security Class Title	Fee Calculation Rate	Amount Registered ⁽¹⁾	Proposed Maximum Offering Per Unit	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
Equity	Common Stock	457(c) and 457(h)	58,116 ⁽²⁾	\$ 1.805 ⁽³⁾	\$ 104,899.38	0.00011020	\$ 11.56
Equity	Common Stock	457(c) and 457(h)	806,392 ⁽⁴⁾	\$ 4.33 ⁽⁵⁾	\$ 3,491,677.36	0.00011020	\$ 384.78
Equity	Common Stock	457(c) and 457(h)	179,044 ⁽⁶⁾	\$ 1.805 ⁽³⁾	\$ 323,174.42	0.00011020	\$ 35.61
	Total Offering Amounts				\$ 3,919,751.16		\$ 431.95
	Total Fee Offsets ⁽⁷⁾						—
	Net Fee Due						\$ 431.95

- (1) Pursuant to Rule 416 under the Securities Act of 1933, as amended (the "Securities Act"), this Registration Statement on Form S-8 also covers an additional indeterminate amount of additional shares of Common Stock offered or sold pursuant to the bioAffinity Technologies, Inc. 2014 Equity Incentive Plan described herein, which may become issuable to prevent dilution resulting from adjustments as a result of stock dividends, stock splits, reverse stock splits, and other anti-dilution provisions.
- (2) Represents the registration of 58,116 shares of Common Stock reserved for issuance under the bioAffinity Technologies, Inc. 2014 Equity Incentive Plan.
- (3) Pursuant to Rule 457(c) and Rule 457(h) under the Securities Act, the proposed maximum offering price per share is estimated solely for the purpose of calculating the registration fee and is based upon the average of the high and low prices of the Registrant's Common Stock as quoted on the Nasdaq Stock Market on April 18, 2023, which date is within five business days prior to filing this Registration Statement.
- (4) Represents 806,392 shares of Common Stock issuable upon the exercise of options to purchase shares of the Registrant's Common Stock outstanding under the bioAffinity Technologies, Inc. 2014 Equity Incentive Plan.
- (5) Estimated in accordance with Rule 457(h) solely for the purpose of calculating the registration fee. The offering price per share and the aggregate offering price are based upon \$4.33, which is the weighted-average exercise price for Common Stock options outstanding under the bioAffinity Technologies, Inc. 2014 Equity Incentive Plan.
- (6) Represents 179,044 shares Common Stock issuable pursuant to restricted stock awards granted under the bioAffinity Technologies, Inc. 2014 Equity Incentive Plan.
- (7) The registrant is not relying on Rule 457(p) to offset some or all of the filing fee due.