

**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)

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

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

**78257**  
(Zip Code)

**bioAffinity Technologies, Inc.  
2024 Incentive Compensation Plan**  
(Full title of the plan)

**Maria Zannes**  
**President and Chief Executive Officer**  
**22211 W Interstate 10  
Suite 1206  
San Antonio, Texas 78257  
(210) 698-5334**  
(Name and address of agent for service)  
(Telephone number, including area code, of agent for service)

With copies to:  
Leslie Marlow, Esq.  
Melissa Palat Murawsky, Esq.  
Blank Rome LLP  
1271 Avenue of the Americas  
New York, New York 10020  
(212) 885-5358

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 checked="" 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.

**PART I**

**INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS**

The document(s) containing the information specified in Part I of Form S-8 will be sent or given to participants as specified by Rule 428(b)(1) of the Securities Act.

**PART II**

**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 3. Incorporation of Documents by Reference.**

The following documents, as filed with the Securities and Exchange Commission (the "Commission"), are incorporated by reference into this Registration Statement by the Registrant:

- the Registrant's Annual Report on [Form 10-K](#) for the fiscal year ended December 31, 2023 filed on April 1, 2024 (including information specifically incorporated by reference therein from the Registrant's Definitive Proxy Statement on [Schedule 14A](#) filed on April 15, 2024);
- the Registrant's Quarterly Report on [Form 10-Q](#) for the quarter ended March 31, 2024 filed on May 15, 2024;

(c) the Registrant's Current Reports on Form 8-K filed on [January 31, 2024](#), [March 8, 2024](#), [March 13, 2024](#) and [June 5, 2024](#);

(d) the description of the Registrant's common stock set forth in the Registrant's registration statement on [Form 8-A](#) (Commission File No. 001-41463) filed with the SEC on August 23, 2022, including any amendments thereto or reports filed for the purposes of updating this description.

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

To the extent that any information contained in any Current Report on Form 8-K, or any exhibit thereto, is or was furnished to, rather than filed with, the Commission, such information or exhibit is specifically not incorporated by reference.

#### **Item 4. Description of Securities.**

Not applicable.

#### **Item 5. Interests of Named Experts and Counsel.**

Not applicable.

1

---

#### **Item 6. Indemnification of Directors and Officers.**

bioAffinity Technologies, Inc. is incorporated under the laws of the State of Delaware. Reference is made to Section 102(b)(7) of the Delaware General Corporation Law (the "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 the corporation would have the power to indemnify the person against such liability under Section 145 of the DGCL.

In addition, as permitted by Delaware law, the Registrant's certificate of incorporation, as amended (the "Charter") includes provisions that eliminate the personal liability of the Registrant's directors for monetary damages resulting from breaches of certain fiduciary duties as a director, except to the extent such an exemption from liability thereof is not permitted under the DGCL. The effect of these provisions is to restrict the Registrant's rights and the rights of the Registrant's stockholders in derivative suits to recover monetary damages against a director for breach of fiduciary duties as a director, subject to certain exceptions in which case the director would be personally liable. If Delaware law is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of the Registrant's directors will be eliminated or limited to the fullest extent permitted by Delaware law, as so amended. The Registrant's Charter does not eliminate the duty of care owed by the Registrant's directors and officers and, in appropriate circumstances, equitable remedies, such as injunctive or other forms of non-monetary relief, remain available under Delaware law. This provision also does not affect the responsibilities of directors and officers under any other laws, such as the federal securities laws or other state or federal laws.

The Registrant's Charter also 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.

2

---

The Registrant's Charter and amended and restated bylaws ("Bylaws") provide that the Registrant shall indemnify each of the Registrant's directors, 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 the Registrant to provide broader indemnification rights than the DGCL permitted the Registrant to provide prior to such amendment) against any and all liability and loss suffered and expenses (including attorneys' fees) reasonably 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 and Bylaws further provide for the advancement of expenses.

In addition, the Registrant's Bylaws provide that the right 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 Bylaws authorize us to provide insurance for the Registrant's directors, officers, employees and agents against any liability, whether the Registrant would have the power to indemnify such person against such liability under the DGCL or the Bylaws.

The Registrant maintains a general liability insurance policy which covers certain liabilities of directors and officers of the Registrant 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.

The following exhibits are filed as part of this Registration Statement or, where so indicated have been previously filed and are incorporated herein by reference.

- 3.1 [Certificate of Incorporation of the Registrant as filed with the Delaware Secretary of State on March 26, 2014 \(Incorporated by reference as Exhibit 3.1 to the Registrant's Annual Report on Form 10-K for the year ended December 31, 2023 \(File No. 001-41463\) filed with the SEC on April 1, 2024\).](#)
- 3.2 [Amended and Restated Bylaws of Registrant \(Incorporated by reference as Exhibit 3.6 to the Registrant's Form S-1/A \(File No. 333-264463\) filed with the SEC on June 16, 2022\).](#)
- 3.3 [Certificate of Amendment to the Certificate of Incorporation of Registrant, as filed with the Delaware Secretary of State on May 31, 2016 \(Incorporated by reference as Exhibit 3.3 to the Registrant's Annual Report on Form 10-K for the year ended December 31, 2023 \(File No. 001-41463\) filed with the SEC on April 1, 2024\).](#)
- 3.4 [Certificate of Designation of Series A Convertible Preferred Stock of the Registrant filed with the Delaware Secretary of State on July 13, 2017 \(Incorporated by reference as Exhibit 3.4 to the Registrant's Form S-1/A \(File No. 333-264463\) filed with the SEC on May 25, 2022\).](#)
- 3.5 [Certificate of Amendment to the Certificate of Incorporation of Registrant, as filed with the Delaware Secretary of State on November 29, 2021 \(Incorporated by reference as Exhibit 3.5 to the Registrant's Annual Report on Form 10-K for the year ended December 31, 2023 \(File No. 001-41463\) filed with the SEC on April 1, 2024\).](#)

---

3

- 3.6 [Certificate of Amendment to the Certificate of Incorporation of Registrant, as filed with the Delaware Secretary of State on June 23, 2022 \(Incorporated by reference as Exhibit 3.2 to the Registrant's Form S-1/A \(File No. 333-264463\) filed with the SEC on May 25, 2022\).](#)
- 3.7 [Certificate of Amendment to the Certificate of Incorporation of Registrant, as filed with the Delaware Secretary of State on June 6, 2023 \(Incorporated by reference as Exhibit 3.1 to the Registrant's Current Report on Form 8-K \(File No. 001-41463\) filed with the SEC on June 7, 2023\).](#)
- 4.1 [bioAffinity Technologies, Inc. 2024 Incentive Compensation Plan \(Incorporated by reference as Exhibit 10.1 to the Registrant's Current Report on Form 8-K \(File No. 001-41463\) filed with the SEC on June 5, 2024\).](#)
- 5.1 [Opinion of Blank Rome LLP.](#)
- 23.1 [Consent of WithumSmith+Brown, PC.](#)
- 23.2 [Consent of Blank Rome LLP \(included in Exhibit 5.1\).](#)
- 24.1 [Power of Attorney \(included on the signature page of this Registration Statement\).](#)
- 107.1 [Filing Fee Table.](#)

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

provided, however, that paragraphs (a)(1)(i) and (a)(1)(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 this Registration Statement.

---

4

(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.

(3) 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.

(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 in 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, 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, 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 June 5, 2024.

#### bioAffinity Technologies, Inc.

By: /s/ Maria Zannes

Maria Zannes  
President and Chief Executive Officer

### POWER OF ATTORNEY

Each of the undersigned officers and directors of the Company hereby constitutes and appoints Michael Dougherty and Maria Zannes, and each of them, as his or her true and lawful attorneys-in-fact and agents, severally, with full power of substitution and resubstitution, in his or her name and on his or her behalf, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement, and to file the same, with all exhibits thereto and all documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-facts and agents full power of authority to do and perform each and every act and thing requisite or necessary to be done in and about the premises, as fully to all intents and purposes as he or she might or could do in person, thereby ratifying and confirming all that said attorneys-in-fact and agents, or their substitute or substitutes, may lawfully do or cause to be done.

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(s)</u>	<u>Date</u>
<u>/s/ Maria Zannes</u> Maria Zannes	President and Chief Executive Officer (Principal Executive Officer) and Director	June 5, 2024.
<u>/s/ Michael Dougherty</u> Michael Dougherty	Chief Financial Officer (Principal Financial and Accounting Officer)	June 5, 2024.
<u>/s/ Steven Girgenti</u> Steven Girgenti	Director	June 5, 2024.
<u>/s/ Robert A. Anderson</u> Robert A. Anderson	Director	June 5, 2024.
<u>/s/ Stuart Diamond</u> Stuart Diamond	Director	June 5, 2024.
<u>/s/ Peter S. Knight</u> Peter S. Knight	Director	June 5, 2024.
<u>/s/ Gary Rubin</u> Gary Rubin	Director	June 5, 2024.
<u>/s/ Roby Joyce, MD</u> Roby Joyce, MD	Director	June 5, 2024.
<u>/s/ Jamie Platt</u> Jamie Platt	Director	June 5, 2024.



1271 Avenue of the Americas | New York, New York 10020  
Blankrome.com

June 5, 2024

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

Gentlemen and Ladies:

We have acted as counsel to bioAffinity Technologies, Inc., a Delaware corporation (the "Company"), in connection with the preparation of a Registration Statement on Form S-8 (the "Registration Statement") to be filed by the Company under the Securities Act of 1933, as amended (the "Act"), relating to the offer and sale of up to 2,000,000 shares of the Company's common stock, par value \$0.007 per share (the "Award Shares"), issuable upon the grant, exercise or vesting of awards ("Awards") under the Company's 2024 Incentive Compensation Plan (the "Plan"). This opinion is furnished pursuant to the requirements of Item 601(b)(5) of Regulation S-K.

In rendering this opinion, we have examined copies of only the following documents: (i) the Company's Certificate of Incorporation and Amended and Restated Bylaws, each as amended as of the date hereof; (ii) resolutions adopted by the Board of Directors and stockholders of the Company; (iii) the Registration Statement; and (iv) the Plan. We have not performed any independent investigation other than the document examination described. We have assumed and relied, as to questions of fact and mixed questions of law and fact, on the truth, completeness, authenticity and due authorization of all certificates, documents, and records examined and the genuineness of all signatures.

In rendering this opinion, we have assumed that (i) the Award Shares will be issued in accordance with the terms and conditions of the Plan, (ii) at the time of issuance of any Award Shares, there shall be a sufficient number of duly authorized and unissued shares of the Company's common stock to accommodate the issuance of the Award Shares and (iii) the per share consideration received by the Company in exchange for the issuance of any Award Shares shall not be less than the par value per share of the Company's common stock.

This opinion is limited to the laws of the State of Delaware. In rendering this opinion, we have assumed compliance with all other laws, including federal laws and state securities laws.

Based upon and subject to the foregoing and the qualifications and limitations set forth below, we are of the opinion that the Award Shares, when sold, paid for and issued as contemplated by the terms of the Plan, will be validly issued, fully paid and nonassessable.

This opinion is given as of the date hereof. We assume no obligation to update or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention or any changes in laws that may hereafter occur.

This opinion is strictly limited to the matters stated herein and no other or more extensive opinion is intended, implied or to be inferred beyond the matters stated herein.

We hereby consent to the filing of this opinion as Exhibit 5.1 to the Registration Statement. In giving this consent, we do not thereby concede that we come within the categories of persons whose consent is required by the Act or the General Rules and Regulations promulgated thereunder.

Very truly yours,

/s/ Blank Rome LLP  
BLANK ROME LLP

---

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We hereby consent to the incorporation by reference in the Prospectus constituting a part of this Registration Statement on Form S-8 of our report dated April 1, 2024, which includes an explanatory paragraph relating to bioAffinity Technologies, Inc.'s ability to continue as a going concern, relating to the consolidated financial statements of bioAffinity Technologies, Inc. appearing in the entity's Form 10-K as of and for the years ended December 31, 2023 and 2022.

/s/ WithumSmith+Brown, PC

New York, New York  
June 5, 2024

---

## Calculation of Filing Fee Table

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

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

Newly Registered Securities

Security Type	Security Class Title	Fee Calculation Rule	Amount Registered(1)	Proposed Maximum Offering Price Per Unit(2)	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
Equity	Common stock, par value \$.007 per share ("Common Stock")	Rule 457(c) and Rule 457(h)	2,000,000	\$ 0.24	\$ 480,000	\$ 0.00014760	\$ 70.85
	<b>Total Offering Amounts</b>				\$ 480,000		\$ 70.85
	<b>Total Fee Offsets</b>						—
	<b>Net Fee Due</b>						\$ 70.85

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended ("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) Estimated in accordance with Rules 457(c) and (h) of the Securities Act solely for the purpose of calculating the registration fee based on the average of the high and low prices of the Registrant's Common Stock as reported on the Nasdaq Capital Market on June 3, 2024.