

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM S-8

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

**SKYE BIOSCIENCE,
INC.**

(Exact name of Registrant as specified in its charter)

Nevada

(State or other jurisdiction
of incorporation or organization)

45-0692882

(I.R.S. Employer
Identification Number)

11250 El Camino Real, Suite 100, San Diego, California 92130
(Address of Principal Executive Offices) (Zip Code)

**Skye Bioscience, Inc.
2014 Amended and Restated Omnibus Incentive Plan
Skye Bioscience, Inc. 2022 Employee Stock Purchase Plan**

(Full Title of the Plan)

**Punit Dhillon
Chief Executive Officer
Skye Bioscience, Inc.**

**11250 El Camino Real, Suite 100
San Diego, CA 92130
(858) 410-0266**

(Name, Address, and Telephone number, including Area Code, of Agent for Service)

Copies to:

**Scott Lesmes
Morrison & Foerster LLP
2100 L Street NW, Suite 900
Washington, D.C. 20037
(202) 887-1563**

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.

PART I
INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The information specified in Item 1 and Item 2 of Part I of Form S-8 is omitted from this Registration Statement on Form S-8 (the "Registration Statement") in accordance with the provisions of Rule 424 under the Securities Act of 1933, as amended (the "Securities Act"), and the introductory note to Part I of Form S-8. The documents containing the information specified in Part I of Form S-8 will be delivered to the participants in the equity benefit plans covered by this Registration Statement as specified by Rule 428(b)(1) under the Securities Act. These documents, and the documents incorporated by reference into this Registration Statement pursuant to Item 3 of Part II of this Registration Statement, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

PART II
INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents, which are on file with the Securities and Exchange Commission (the "Commission"), are incorporated herein by reference:

- a. the Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2022, as filed with the Commission on [March 31, 2023](#);
- b. the Registrant's Quarterly Reports on Form 10-Q for the fiscal quarters ended March 31, 2023, June 30, 2023 and September 30, 2023, as filed with the Commission on [May 12, 2023](#), [August 7, 2023](#) and [November 14, 2023](#), respectively;
- c. the Registrant's Current Report on Form 8-K/A filed with the Commission on [September 1, 2023](#) and the Registrant's Current Reports on Form 8-K (other than information furnished rather than filed) filed with the Commission on [August 21, 2023](#), [September 7, 2023](#), [October 3, 2023](#), [November 7, 2023](#) and [December 5, 2023](#); and
- d. the description of the Registrant's common stock contained in the Registrant's Registration Statement on Form 8-A (File No. 000-55136) filed on [January 28, 2014](#), as updated by [Exhibit 4.14](#) to our Annual Report on Form 10-K for the fiscal year ended December 31, 2022, as filed with the Commission on [March 31, 2023](#), including any amendment or report filed for the purpose of updating such description.

All reports and other documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") (other than Current Reports on Form 8-K furnished pursuant to Item 2.02 or Item 7.01 of Form 8-K, including any exhibits included with such information, unless otherwise indicated therein) after the date of this Registration Statement, but prior to the filing of a post-effective amendment that indicates that all securities offered hereby have been sold or that 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. 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 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. Interests of Names Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers

Section 78.7502 of the Nevada Revised Statutes ("NRS") allows, and the Company wishes to adopt, discretionary indemnification of its directors, officers, employees, and agents as provided below.

Subsection (1) of Section 78.7502 of the NRS empowers a corporation to indemnify any person who was or is a party or is threatened to be made a party of 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) by reason of the fact that 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, or as a manager of a limited-liability company, against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him or her in connection with the action, suit, or proceeding if the person (a) is not in breach of their fiduciary duty which breach involved intentional misconduct, fraud or a knowing violation of law, or (b) acted in good faith and in a manner in which 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 the conduct was unlawful.

Subsection (2) of Section 78.7502 of the NRS empowers a corporation to 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 favor by reason of the fact that such person acted in any of the capacities set forth in subsection (1) enumerated above, against expenses, including amounts paid in settlement and attorneys' fees actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if the person (a) was not in breach of their fiduciary duty, which breach involved intentional misconduct, fraud or a knowing violation of law, or (b) 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 may be made for any claim, issue, or matter as to which such person shall have been adjudged by a court of competent jurisdiction, after exhaustion of any appeals taken therefrom, to be liable to the corporation or for amounts paid in settlement to the corporation, unless and only to the extent that the court in which the action or suit was brought or other court of competent jurisdiction determines upon application that in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for such expenses as the court deems proper.

Subsection (3) of Section 78.7502 of the NRS provides that, unless a court orders indemnification or amounts are advanced pursuant to NRS 78.751(2) or any discretionary indemnification under Subsections (1) or (2) of NRS 75.7502 must be authorized by a determination that such indemnification is proper. This determination must be made by the stockholders, the majority vote of a quorum of the board of the directors not parties to the action, suit or proceeding, or a written opinion by independent legal counsel ordered by a majority of the directors who were not parties to the action, suit, or proceeding, or a quorum of directors who were not parties to the action, suit or proceeding cannot be obtained.

Subsection (1) of Section 78.751 of the NRS provides for mandatory indemnification of any person who is a director, officer, employee or agent to the extent that the person is successful on the merits or otherwise in defense of (i) any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, including, without limitation, an action by or in the right of the corporation, by reason of the fact that 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; or (ii) any claim, issue or matter therein, against expenses actually and reasonably incurred by the person in connection with defending the action, including, without limitation, attorney's fees.

Additionally, NRS 78.138(7) provides, with limited statutory exceptions relating to a director's duty when confronted with a change or potential change in control of the corporation, or unless the articles of incorporation or an amendment thereto (in each case filed on or after October 1, 2003) provide for greater individual liability, that a director or officer is not individually liable to a corporation or its stockholders or creditors for any damages as a result of any act or failure to act in his or her capacity as a director or officer unless it is proven that: (i) the presumption that a director has acted in good faith, on an informed basis and with a view to the interest of the corporation has been overcome; (ii) the act or failure to act constituted a breach of his or her fiduciary duties as a director or officer; and (iii) the breach of those duties involved intentional misconduct, fraud or a knowing violation of law.

Pursuant to the above indemnification provisions, our amended and restated articles of incorporation and amended and restated bylaws provide that we must indemnify and advance expenses to our directors and officers to the fullest extent permitted under the NRS and other applicable law. In addition, we have entered into indemnification agreements with each of our directors and executive officers that require us to indemnify these persons to the full extent provided by the law as stated above.

Item 7. Exemption from Registration Claims.

Not applicable.

Item 8. Exhibits.

<u>Exhibit Number</u>	<u>Description</u>
4.1	Articles of Incorporation of Registrant, as amended (incorporated by reference to Exhibit 3.1 to our Report on Form 10-K filed on March 2, 2021)
4.2	Amended and Restated Bylaws of Registrant (incorporated by reference to Exhibit 3.1 to our Report on Form 10-K filed on March 2, 2021)
4.3	Certificate of Change, effective as of September 7, 2023 (incorporated by reference to Exhibit 3.1 to our Report on Form 8-K filed on September 7, 2023).
4.4	Certificate of Correction to the Certificate of Change (incorporated by reference to Exhibit 3.2 to our Report on Form 8-K filed on September 7, 2023).
4.5	Certificate of Amendment to Articles of Incorporation (incorporated by reference to Exhibit 3.1 to our Report on Form 8-K filed on November 7, 2023).
4.6	Skye Bioscience, Inc. 2014 Omnibus Amended and Restated Incentive Plan (incorporated by reference to Appendix D to the Registrant's Definitive Proxy Statement filed on August 31, 2022).
4.7	Amendment No. 1 to the Amended and Restated Skye Bioscience, Inc. 2014 Omnibus Incentive Plan (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on October 3, 2023).
4.8	Skye Bioscience, Inc. 2022 Employee Stock Purchase Plan (incorporated by reference to Appendix C to the Registrant's Definitive Proxy Statement filed on August 31, 2022).
5.1*	Opinion of Fennemore Craig, P.C.
23.1*	Consent of Fennemore Craig, P.C. (included in Exhibit 5.1).
23.2*	Consent of Marcum LLP
23.3*	Consent of Mayer Hoffman McCann P.C.
24.1*	Power of Attorney (included on signature page of this Registration Statement).
107*	Filing Fee Table

* Filed herewith.

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 of 1933;

(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)(1)(i) and (a)(1)(ii) of this section 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 Securities Exchange Act of 1934 that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, 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 of 1933, each filing of the registrant's annual report pursuant to section 13(a) or section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the 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 of 1933 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 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 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 Diego, state of California, on December 21, 2023.

SKYE BIOSCIENCE, INC.

By: /s/ Kaitlyn Arsenault

Name: Kaitlyn Arsenault

Title: Chief Financial Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Punit Dhillon and/or Kaitlyn Arsenault as his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him or her and in his or her name, place, and stead, 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 other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agent, 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 attorney-in-fact and agent, or any of them, or his/her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

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

Signature	Position	Date
<u>/s/ Punit Dhillon</u> Punit Dhillon	Chief Executive Officer, Chairman of the Board, and Director (Principal Executive Officer)	December 21, 2023
<u>/s/ Kaitlyn Arsenault</u> Kaitlyn Arsenault	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	December 21, 2023
<u>/s/ Deborah Charych</u> Deborah Charych	Director	December 21, 2023
<u>/s/ Dr. Margaret Dalesandro</u> Dr. Margaret Dalesandro	Director	December 21, 2023
<u>/s/ Paul Grayson</u> Paul Grayson	Director	December 21, 2023
<u>/s/ Andrew Schwab</u> Andrew Schwab	Director	December 21, 2023
<u>/s/ Dr. Praveen Tyle</u> Praveen Tyle	Director	December 21, 2023
<u>/s/ Dr. Keith Ward</u> Keith Ward	Director	December 21, 2023

Calculation of Filing Fee Table

Form S-8
(Form Type)

Skye Bioscience, Inc.
(Exact Name of Registrant as Specified in its Charter)

Table 1: Newly Registered Securities

Security Type	Title of Securities to be Registered	Fee Calculation Rule	Amount to be Registered (1)	Proposed Maximum Offering Price Per Share(2)	Proposed Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
Equity	Common stock \$0.001 par value per share, reserved for issuance under the 2014 Amended and Restated Omnibus Incentive Plan	457(c), 457(h)	1,719,559	\$ 2.87	\$ 4,935,134.33	\$0.00014760	\$ 728.43
Equity	Common stock \$0.001 par value per share, reserved for issuance under the 2022 Employee Stock Purchase Plan	457(c), 457(h)	112,000	\$ 2.87	\$ 321,440.00	\$0.00014760	\$ 47.44
Total Offering Amounts			1,831,559	\$ 2.87	\$ 5,256,574.33		\$ 775.87
Total Fee Offsets							N/A
Net Fee Due							\$ 775.87

- (1) Pursuant to Rule 416(a) of the Securities Act of 1933, as amended, this Registration Statement shall also cover any additional shares of the Registrant's common stock that become issuable under the Skye Bioscience, Inc. 2014 Amended and Restated Omnibus Incentive Plan ("2014 Plan") and Skye Bioscience, Inc. 2022 Employee Stock Purchase Plan ("2022 Plan") by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without the Registrant's receipt of consideration that increases the number of the Registrant's outstanding shares of common stock.
- (2) Estimated in accordance with paragraphs (c) and (h) of Rule 457 solely for the purpose of calculating the registration fee on the basis of \$2.87, which represents the average of the high and low price per share of the Registrant's common stock on December 14, 2023, as reported on the OTCQB, an over-the-counter quotation system.

7800 Rancharrah Parkway
Reno, NV 89511
PH (775) 788-2200 | FX (775) 786-1177
fennemorelaw.com

December 21, 2023

Skye Bioscience, Inc.
11250 El Camino Real
Suite 100
San Diego, CA 92130

Re: Registration Statement on U.S. Securities Exchange Commission form S-8

Ladies and Gentlemen:

We have acted as special Nevada counsel for Skye Bioscience, Inc., a Nevada corporation (the “*Company*”). Our opinion is provided below regarding certain matters in connection with the registration under the Securities Act of 1933, as amended (the “*Act*”), by the Company, by means of a registration statement on Form S-8 (as it may be amended and supplemented, the “*Registration Statement*”), filed with the United States Securities and Exchange Commission (the “*Commission*”) relating to the registration of 1,719,559 shares of common stock, par value \$0.001 per share of the Company, issuable pursuant to the Skye Bioscience, Inc. 2014 Amended and Restated Omnibus Incentive Plan as amended by that certain First Amendment to the 2014 Amended and Restated Omnibus Incentive Plan (collectively, the “*Plan*”), and 112,000 shares of common stock, par value \$0.001 per share of the Company, issuable pursuant to the Skye Bioscience, Inc. 2022 Employee Stock Purchase Plan (the “*ESPP*”), as set forth on Table 1 of Exhibit 107 to the Registration Statement (collectively the “*Shares*”).

In connection with this opinion, we have examined and relied upon (i) the Registration Statement, (ii) the Plan, (iii) the First Amendment to the Plan, (iv) the ESPP and (v) the Company’s Articles of Incorporation and Bylaws, each as amended and currently in effect, and the originals or copies certified to our satisfaction of such other documents, records, certificates, memoranda and other instruments as in our judgment are necessary or appropriate to enable us to render the opinion expressed below.

FENNEMORE.

Skye Bioscience, Inc.
December 21, 2023
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We have examined originals or copies of such corporate records and certificates of public officials as we have deemed necessary or advisable for purposes of this opinion. We have relied upon the certificates of all corporate officials with respect to the accuracy of all matters contained therein. We have assumed the authenticity of all documents submitted to us as originals, the genuineness of all signatures, the legal capacity of natural persons and the conformity to originals of all copies of all documents submitted to us. We have assumed that at the time of issuance of the Shares, the Company will have sufficient authorized, but unissued, shares of its common stock available to allow for such issuance.

On the basis of the foregoing, and in reliance thereon, we are of the opinion that the Shares have been duly authorized and, when issued and delivered pursuant to the Plan or the ESPP, as applicable, or pursuant to stock options or other instruments that have been issued pursuant to the Plan, the Shares will be validly issued, fully paid and nonassessable.

Our opinion is limited to the laws of the State of Nevada. We express no opinion as to the effect of the law of any other jurisdiction. Our opinion is rendered as of the date hereof, and we assume no obligation to advise you of changes in law or fact (or the effect thereof on the opinions expressed herein) that hereafter may come to our attention.

We hereby consent to the inclusion of this opinion as Exhibit 5.1 to the Registration Statement and to the references to our firm therein. In giving our consent, we do not admit that we are in the category of persons whose consent is required under Section 7 of the Act or the rules and regulations thereunder.

Very truly yours,

/s/ Fennemore Craig, P.C.

Fennemore Craig, P.C.

INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM'S CONSENT

We consent to the incorporation by reference in this Registration Statement of Skye Bioscience, Inc. on Form S-8 of our report dated March 31, 2023, which includes an explanatory paragraph as to the Company's ability to continue as a going concern, with respect to our audit of the consolidated financial statements of Skye Bioscience, Inc. as of December 31, 2022 and for the year ended December 31, 2022 appearing in the Annual Report on Form 10-K of Skye Bioscience, Inc. for the year ended December 31, 2022

/s/ Marcum LLP

Marcum LLP
East Hanover, NJ
December 21, 2023

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 25, 2022, with respect to the consolidated financial statements of Skye Bioscience, Inc., formerly known as Emerald Bioscience, Inc. and Subsidiaries (Company) as of December 31, 2021 and for the year then ended (which report includes an explanatory paragraph regarding the existence of substantial doubt about the Company's ability to continue as a going concern), included in the Company's Annual Report on Form 10-K for the year ended December 31, 2022.

/s/ Mayer Hoffman McCann P.C.

Irvine, California
December 21, 2023