

Registration No. 333-

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

FORM S-8

**REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

BIORESTORATIVE THERAPIES, INC.
(Exact Name of Registrant as Specified in Its Charter)

Nevada
(State or Other Jurisdiction of Incorporation or Organization)

30-1341024
(I.R.S. Employer Identification No.)

40 Marcus Drive, Suite One, Melville, New York 11747
(Address of Principal Executive Offices) (Zip Code)

BioRestorative Therapies, Inc. 2021 Stock Incentive Plan
(Full Title of the Plan)

Lance Alstodt
Chief Executive Officer
BioRestorative Therapies, Inc.
40 Marcus Drive, Suite One
Melville, New York 11747
(Name and Address of Agent for Service)

Copy to:
Fred S. Skolnik, Esq.
Certilman Balin Adler & Hyman, LLP
90 Merrick Avenue
East Meadow, New York 11554
(516) 296-7048

(631) 760-8100
(Telephone Number, Including Area Code, of Agent for Service)

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 _____
Non-accelerated filer X

Accelerated filer _____
Smaller reporting company X
Emerging growth company _____

EXPLANATORY NOTE

This Registration Statement covers an additional 1,325,000 shares of common stock, \$0.0001 par value per share (“Common Stock”), of BioRestorative Therapies, Inc., a Nevada corporation (the “Registrant”), available for issuance under the Registrant’s 2021 Stock Incentive Plan (the “2021 Plan”). This Registration Statement shall also cover any additional shares of Common Stock of the Registrant that become issuable under the 2021 Plan by reason of any stock dividend, stock split, recapitalization or similar transaction that results in an increase in the number of outstanding shares of Common Stock of the Registrant.

STATEMENT PURSUANT TO GENERAL INSTRUCTION E TO FORM S-8

Pursuant to General Instruction E to Form S-8 under the Securities Act, this Registration Statement is filed by the Registrant to register an additional 1,325,000 shares of Common Stock as to which options or awards may be granted under the 2021 Plan.

On April 30, 2021, the Registrant filed a [Registration Statement on Form S-8 \(File Number 333-255681\)](#) (the “Prior Registration Statement”) in order to register 1,175,000 shares of Common Stock issuable under the 2021 Plan (giving retroactive effect to the 1-for-4,000 reverse split of the Registrant’s shares of common stock effected as of October 27, 2021).

Pursuant to General Instruction E to Form S-8, the contents of the Prior Registration Statement, including the documents incorporated by reference therein, are hereby incorporated by reference into this Registration Statement, except to the extent supplemented, amended or superseded by the information set forth herein.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

Incorporated herein by reference are the following documents filed by the Registrant with the Securities and Exchange Commission (the “Commission”) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”) (to the extent filed and not furnished):

- (a) [Annual Report on Form 10-K for the year ended December 31, 2022.](#)
- (b) [Current Report on Form 8-K filed January 5, 2023.](#)

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

Item 5. Interests of Named Experts and Counsel.

Certain legal matters in connection with the offering of the securities registered hereunder are being passed upon for the Registrant by Certilman Balin Adler & Hyman, LLP, 90 Merrick Avenue, East Meadow, New York 11554, a stockholder of the Registrant.

Item 6. Indemnification of Directors and Officers.

The Registrant is governed by Chapter 78 of the Nevada Revised Statutes (the “NRS”). Section 78.7502(1) of the NRS provides that a corporation may, and the Registrant’s Articles and By-Laws provide that the Registrant shall, 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 (an “Action”), by reason of the fact that he is or was a director, officer, employee or agent of the corporation or is or was serving at the request of the corporation in such capacity in another corporation, partnership, joint venture, trust or other enterprise (the “Indemnified Party”), against expenses (including attorney’s fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he 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 conduct was unlawful; provided, however, no indemnification shall be made in respect of any Actions by or in the right of the corporation if the Indemnified Party shall have been adjudged by a court of competent jurisdiction, after exhaustion of any appeals, to be liable to the corporation, unless and only to the extent that the court shall determine that, despite the adjudication of liability but in view of all circumstances, such person is fairly and reasonably entitled to indemnity.

Under the NRS, the directors have a fiduciary duty to the Registrant that is not eliminated by this provision of the Articles and, in appropriate circumstances, equitable remedies such as injunctive or other forms of non-monetary relief will remain available. In addition, each director will continue to be subject to liability under the NRS for breach of the director’s duty of loyalty to the Registrant for acts or omissions which are found by a court of competent jurisdiction to not be in good faith or involve intentional misconduct, for knowing violations of law, for actions leading to improper personal benefit to the director, and for payment of dividends or approval of stock repurchases or redemptions that are prohibited by the NRS. This provision also does not affect the directors’ responsibilities under any other laws, such as the federal securities laws or state or federal environmental laws.

Furthermore, Section 78.7502(3) of the NRS provides that determination of an Indemnified Party’s eligibility for indemnification by the Registrant shall be made on a case-by-case basis by: (i) the stockholders; (ii) the board of directors by a majority vote of a quorum consisting of directors who were not parties to the action, suit or proceeding; (iii) independent legal counsel’s written opinion if: (1) a majority vote of a quorum consisting of directors who were not parties to the action, suit or proceeding so orders; or (2) a quorum consisting of directors who were not parties to the action, suit or proceeding cannot be obtained.

Lastly, Section 78.752(1) of the NRS empowers a corporation to purchase and maintain insurance or make other financial arrangements with respect to liability arising out of the actions or omissions of directors, officers, employees or agents in their capacity or status as such, whether or not the corporation has the authority to indemnify him against such liability.

The Registrant's Amended and Restated Articles of Incorporation ("Articles") provide that, to the fullest extent permitted by the NRS, no director or officer shall be personally liable to the Registrant or to its stockholders for monetary damages for breach of fiduciary duty as a director or an officer, except to the extent that such exemption from liability or limitation thereof is not permitted under the NRS currently in effect or as the same may be amended. If the NRS is amended to further eliminate or limit or authorize corporate action to further eliminate or limit the liability of directors or officers, the liability of directors and officers of the Registrant shall be eliminated or limited to the fullest extent permitted by the NRS, as so amended from time to time. No repeal or modification of this provision of the Articles will apply to or have any effect on the liability or alleged liability of any director or officer of the Registrant for or with respect to any acts or omissions of such directors or officers occurring prior to such repeal or modification.

The Registrant's Bylaws provide that the Registrant will indemnify and hold harmless 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, in such manner, under such circumstances and to the fullest extent permitted by the Articles and the NRS.

Item 8. **Exhibits.**

- [5](#) [Opinion of Certilman Balin Adler & Hyman, LLP as to the legality of the additional shares of Common Stock being registered by this Registration Statement](#)
 - [23.1](#) [Consent of Friedman LLP](#)
 - [23.2](#) [Consent of Marcum LLP](#)
 - [23.3](#) [Consent of Certilman Balin Adler & Hyman, LLP \(included in the opinion filed as Exhibit 5 hereto\)](#)
 - [107](#) [Filing Fee Table](#)
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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 County of Suffolk, State of New York, on the 28th day of March 2023.

BIORESTORATIVE THERAPIES, INC.

By: /s/ Lance Alstodt
Lance Alstodt
Chief Executive Officer

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	Capacity	Date
<u>/s/ Lance Alstodt</u> Lance Alstodt	President, Chief Executive Officer and Chairman of the Board (Principal Executive Officer)	March 28, 2023
<u>/s/ Francisco Silva</u> Francisco Silva	Vice President, Research and Development, Secretary and Director	March 28, 2023
<u>/s/ Robert E. Kristal</u> Robert E. Kristal	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	March 28, 2023
<u>/s/ Nickolay Kukekov</u> Nickolay Kukekov	Director	March 28, 2023
<u>/s/ Patrick F. Williams</u> Patrick F. Williams	Director	March 28, 2023
<u>/s/ David Rosa</u> David Rosa	Director	March 28, 2023

OPINION OF CERTILMAN BALIN ADLER & HYMAN, LLP

March 28, 2023

BioRestorative Therapies, Inc.
40 Marcus Drive
Melville, New York 11747

Re: Registration of 1,325,000 shares of Common Stock,
par value \$0.0001 per share, under the
Securities Act of 1933, as amended

Gentlemen:

In our capacity as counsel to BioRestorative Therapies, Inc., a Nevada corporation (the “Company”), we have been asked to render this opinion in connection with a Registration Statement on Form S-8 being filed contemporaneously herewith by the Company with the Securities and Exchange Commission under the Securities Act of 1933, as amended (the “Registration Statement”), covering the issuance of up to an aggregate of 1,325,000 shares of common stock, par value \$0.0001 per share, of the Company (the “Common Shares”) under the Company’s 2021 Stock Incentive Plan (the “2021 Plan”).

In that connection, we have examined the Certificate of Incorporation and the By-Laws of the Company, as amended to date, the Registration Statement and the 2021 Plan and are familiar with corporate proceedings of the Company relating to the adoption of the 2021 Plan. We have also examined such other instruments and documents as we deemed relevant under the circumstances.

For purposes of the opinions expressed below, we have assumed (i) the authenticity of all documents submitted to us as original, (ii) the conformity to the originals of all documents submitted as certified, photostatic or facsimile copies and the authenticity of the originals, (iii) the legal capacity of natural persons, (iv) the due authorization, execution and delivery of all documents by all parties and the validity and binding effect thereof and (v) the conformity to the proceedings of the Board of Directors of all minutes of such proceedings. We have also assumed that the corporate records furnished to us by the Company include all corporate proceedings taken by the Company to date.

Based upon and subject to the foregoing, we are of the opinion that the Common Shares have been duly and validly authorized and, when issued pursuant to the terms of the 2021 Plan, will be duly and validly issued, fully paid and nonassessable.

We hereby consent to the use of our opinion as herein set forth as an exhibit to the Registration Statement.

This opinion is as of the date hereof, and we do not undertake, and hereby disclaim, any obligation to advise you of any changes in any of the matters set forth herein.

We are rendering this opinion only as to the matters expressly set forth herein, and no opinion should be inferred as to any other matters.

This opinion is for your exclusive use only and is to be utilized and relied upon only in connection with the matters expressly set forth herein.

Very truly yours,

CERTILMAN BALIN ADLER & HYMAN, LLP

INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM'S CONSENT

We consent to the incorporation by reference in this Registration Statement of BioRestorative Therapies, Inc. on Form S-8 of our report dated March 30, 2022, with respect to our audit of the consolidated financial statements of BioRestorative Therapies, Inc. and Subsidiary as of December 31, 2021 and for the year ended December 31, 2021, which report is included in the Annual Report on Form 10-K of BioRestorative Therapies, Inc. for the year ended December 31, 2022. We were dismissed as auditors on September 13, 2022 and, accordingly, we have not performed any audit or review procedures with respect to any financial statements incorporated by reference for the periods after the date of our dismissal.

/s/ Friedman LLP

Friedman LLP
Marlton, New Jersey
March 28, 2023

INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM'S CONSENT

We consent to the incorporation by reference in this Registration Statement of BioRestorative Therapies, Inc. on Form S-8 of our report dated March 24, 2023, with respect to our audit of the consolidated financial statements of BioRestorative Therapies, Inc. and Subsidiary as of December 31, 2022 and for the year ended December 31, 2022, which report is included in the Annual Report on Form 10-K of BioRestorative Therapies, Inc. for the year ended December 31, 2022.

/s/ Marcum LLP

Marcum LLP
Marlton, New Jersey
March 28, 2023

Calculation of Filing Fee Table

FORM S-8
(Form Type)

BIORESTORATIVE THERAPIES, INC.
(Exact Name of Registrant as Specified in its Charter)

Table 1: Newly Registered Securities

Security Type	Security Class Title	Fee Calculation Rule	Amount Registered	Proposed Maximum Offering Price Per Unit	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
Equity	Common Stock, par value \$0.0001 per share	457(h)(1)	629,017 ⁽¹⁾⁽²⁾	\$2.91 ⁽³⁾	\$1,830,439 ⁽³⁾	0.00011020	\$201.72
Equity	Common Stock, par value \$0.0001 per share	457(h)(1)	695,983 ⁽¹⁾⁽⁴⁾	\$3.20 ⁽³⁾	\$2,227,146 ⁽³⁾	0.00011020	\$245.44
Total Offering Amounts					\$4,057,585		\$447.16
Total Fee Offsets							---
Net Fee Due							\$447.16

- (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 as a result of any stock dividend, stock split, recapitalization, or other similar transaction effected without the receipt of consideration that results in an increase in the number of outstanding shares of the Registrant’s common stock.
- (2) Represents shares of Common Stock issuable upon the exercise of options which have been granted under the 2021 Plan at an exercise price of \$2.91 per share of Common Stock.
- (3) Calculated solely for purposes of the registration fee for this offering and in accordance with paragraph (h)(1) of Rule 457 of the Securities Act, on the basis of the average of the high and low prices of the Registrant’s shares of common stock as quoted on the Nasdaq Capital Market on March 23, 2023.
- (4) Represents shares of Common Stock issuable under the 2021 Plan (exclusive of the shares issuable upon the exercise of outstanding options as set forth in footnote (2)).