

Sientra, Inc.
Form S-8
April 18, 2019

As filed with the Securities and Exchange Commission on April 17, 2019

Registration No. 333-

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

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

Sientra, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation or organization)

20-5551000
(I.R.S. Employer
Identification No.)

420 South Fairview Avenue, Suite 200

**Santa Barbara, CA
(Address of principal executive offices)**

**93117
(Zip code)**

2014 Equity Incentive Plan

2014 Employee Stock Purchase Plan

Inducement Plan

(Full title of the plans)

Jeffrey Nugent

Chief Executive Officer

Sientra, Inc.

420 South Fairview Avenue, Suite 200

Santa Barbara, CA 93117

(805) 562-3500

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

Copy to:

Oliver Bennett

General Counsel

Sientra, Inc.

420 South Fairview Avenue, Suite 200

Santa Barbara, CA 93117

(805) 562-3500

Michael S. Kagnoff, Esq.

DLA Piper LLP (US)

4365 Executive Drive, Suite 1100

San Diego, CA 92121

Tel: (858) 677-1400

Fax: (858) 677-1401

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. (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 Securities Act.

CALCULATION OF REGISTRATION FEE

| Title of Securities to be Registered | Proposed | | Aggregate Offering Price (5) | Amount of Registration Fee |
|--|--|--|---------------------------------|-------------------------------|
| | Maximum Amount to be Registered (1) | Proposed Maximum Offering Price per Share (5) | | |
| 2014 Equity Incentive Plan | | | | |
| Common Stock, par value \$0.01 per share | 1,145,151 shares(2) | 7.29 | \$8,348,150.79 | \$1,011.80 |
| 2014 Employee Stock Purchase Plan | | | | |
| Common Stock, par value \$0.01 per share | 286,288 shares(3) | 7.29 | \$2,087,039.52 | \$252.95 |
| Inducement Plan | | | | |
| Common Stock, par value \$0.01 per share | 350,000 shares(4) | 7.29 | \$2,551,500.00 | \$309.24 |
| Total | 1,781,439 | N/A | \$12,986,690.31 | \$1,573.99 |

- (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 (the "Common Stock") that become issuable under the 2014 Equity Incentive Plan (the "2014 Plan"), the 2014 Employee Stock Purchase Plan (the "2014 ESPP"), and the Sientra, Inc. Inducement Plan (the "Inducement Plan") by reason of any stock dividend, stock split, recapitalization or other similar transaction.
- (2) Represents 1,145,151 shares of Common Stock that became available for issuance on January 1, 2019 under the 2014 Plan pursuant to an evergreen provision of the 2014 Plan. Pursuant to such provision, an additional number of shares will automatically be added to the shares authorized for issuance under the 2014 Plan on January 1 of each calendar year, from January 1, 2015 through January 1, 2024. The number of shares added each year will be equal to: (a) 4% of the total number of shares of capital stock outstanding on December 31 of the preceding calendar year; or (b) such lesser number of shares of Common Stock as is determined by the Registrant's board of directors (the "Board") for the applicable year.
- (3)

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Represents 286,288 shares of Common Stock that became available for issuance on January 1, 2019 under the 2014 ESPP pursuant to an evergreen provision of the 2014 ESPP. The 2014 ESPP provides that an additional number of shares will automatically be added to the shares authorized for issuance under the 2014 ESPP on January 1 of each calendar year, from January 1, 2015 through January 1, 2024. The number of shares of Common Stock added each year will be equal to the lesser of: (a) 1% of the total number of shares of capital stock outstanding on December 31 of the preceding calendar year; (b) 3,000,000 shares of Common Stock; or (c) a lesser number of shares of Common Stock as is determined by the Board for the applicable year.

- (4) Represents 350,000 shares of Common Stock issuable pursuant to the Inducement Plan
- (5) Estimated solely for the purpose of computing the registration fee pursuant to Rule 457 under the Securities Act and based on the average of the high and low prices per share of the Registrant's common stock on April 12, 2019 as reported on the NASDAQ Global Select Market.

REGISTRATION OF ADDITIONAL SHARES PURSUANT TO GENERAL INSTRUCTION E

Pursuant to General Instruction E to Form S-8, this Registration Statement is being filed for the purpose of registering an additional (i) 1,145,151 shares of the Registrant's common stock to be issued pursuant to the Registrant's 2014 Equity Incentive Plan; (ii) 286,288 shares of the Registrant's common stock to be issued pursuant to the Registrant's 2014 Employee Stock Purchase Plan, which are the same class as those securities previously registered on effective Forms S-8 filed with the Securities and Exchange Commission on October 29, 2014 (File No. 333-199684), March 19, 2015 (File No. 333-202879), January 26, 2016 (File No. 333-209129), January 18, 2017 (File No. 333-215603) and March 15, 2019 (File No. 333-223666), and (iii) 350,000 shares of the Registrant's common stock to be issued pursuant to the Registrant's Inducement Award plan, which are the same class as those securities previously registered on effective Form S-8 filed with the SEC on April 11, 2016 (File No. 333-210695), January 18, 2017 (File No. 333-215603) and March 15, 2018 (File No. 333-223666). The contents of those Registration Statements, as amended, or as modified or superseded pursuant to Rule 412 under the Securities Act, are incorporated by reference into this Registration Statement.

PART II
INFORMATION REQUIRED IN THE REGISTRATION STATEMENT
Item 8. Exhibits.

| Exhibit No. | Description |
|--------------------|---|
| 4.1(1) | <u>Amended and Restated Certificate of Incorporation of the Registrant.</u> |
| 4.2(2) | <u>Amended and Restated Bylaws of the Registrant.</u> |
| 4.2(3) | <u>Form of Common Stock Certificate of the Registrant.</u> |
| 5.1 | <u>Opinion of DLA Piper LLP (US).</u> |
| 23.1 | <u>Consent of KPMG LLP, an independent registered public accounting firm.</u> |
| 23.2 | <u>Consent of DLA Piper LLP (US) (filed as a part of Exhibit 5.1).</u> |
| 24.1 | <u>Power of Attorney (contained on signature page).</u> |
| 99.1(4)# | <u>2014 Equity Incentive Plan and forms of award agreements thereunder.</u> |
| 99.2(5)# | <u>2014 Employee Stock Purchase Plan.</u> |
| 99.3(6)# | <u>Sientra, Inc. Inducement Plan.</u> |

- (1) Previously filed as Exhibit 3.2 to the Registrant's Registration Statement on Form S-1 (File No. 333-198837), originally filed with the Commission on October 20, 2014, as amended, and incorporated herein by reference.
- (2) Previously filed as Exhibit 3.4 to the Registrant's Registration Statement on Form S-1 (File No. 333-198837), originally filed with the Commission on October 20, 2014, as amended, and incorporated herein by reference.
- (3) Previously filed as Exhibit 4.1 to the Registrant's Registration Statement on Form S-1 (File No. 333-198837), originally filed with the Commission on October 20, 2014, as amended, and incorporated herein by reference.
- (4) Previously filed as Exhibit 10.3 to the Registrant's Registration Statement on Form S-1 (File No. 333-198837), originally filed with the Commission on October 20, 2014, as amended, and incorporated herein by reference.

- (5) Previously filed as Exhibit 10.5 to the Registrant's Registration Statement on Form S-1 (File No. 333-198837), originally filed with the Commission on October 20, 2014, as amended, and incorporated herein by reference.
- (6) Previously filed as Exhibit 10.20 to the Registrant's Annual Report on Form 10-K (File No. 001-36709), originally filed with the Commission on March 10, 2016, incorporated herein by reference.
- # Indicates a management contract or compensatory plan or arrangement.

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 Santa Barbara, State of California, on April 17, 2019.

SIENTRA, INC.

By: /s/ Jeffrey Nugent
 Jeffrey Nugent
 Chairman and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose individual signature appears below hereby authorizes and appoints Paul Little and Oliver Bennett, and each of them, with full power of substitution and resubstitution and full power to act without the other, as his true and lawful attorney-in-fact and agent to act in his name, place and stead and to execute in the name and on behalf of each person, individually and in each capacity stated below, and to file 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 attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing, ratifying and confirming all that said attorneys-in-fact and agents or any of them or their or his substitute or substitutes may lawfully do or cause to be done by virtue thereof.

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

| Name | Title | Date |
|--------------------|--|----------------|
| /s/ Jeffrey Nugent | Chairman and Chief Executive Officer | April 17, 2019 |
| Jeffrey Nugent | (Principal Executive Officer) | |
| /s/ Paul Little | Chief Financial Officer and Treasurer | April 17, 2019 |
| Paul Little | (Principal Financial and Accounting Officer) | |
| /s/ Nicholas Simon | Lead Independent Director | April 17, 2019 |
| Nicholas Simon | | |
| /s/ Mary M. Fisher | Director | April 17, 2019 |
| Mary M. Fisher | | |

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| | | |
|--------------------------|----------|----------------|
| /s/ Timothy Haines | Director | April 17, 2019 |
| Timothy Haines | | |
| /s/ Kevin O Boyle | Director | April 17, 2019 |
| Kevin O Boyle | | |
| /s/ Philippe A. Schaison | Director | April 17, 2019 |
| Philippe A. Schaison | | |
| /s/ Keith Sullivan | Director | April 17, 2019 |
| Keith Sullivan | | |