**As filed with the Securities and Exchange Commission on June 24, 2022**

**Registration No. 333-**



**UNITED STATES**

**SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**



**FORM S-8**

**REGISTRATION STATEMENT**

***Under***

***The Securities Act of 1933***



**FORTE BIOSCIENCES, INC.**

**(Exact name of Registrant as specified in its charter)**



**Delaware**

**26-1243872**

**(State or other jurisdiction of**

**incorporation or organization)**

**(I.R.S. Employer**

**Identification Number)**

**3060 Pegasus Park Drive, Building 6**

**Dallas, Texas 75247**

**(Address of Principal Executive Offices, including zip code)**

**2017 Employee Stock Purchase Plan**

**2021 Equity Incentive Plan**

**(Full title of the plan)**

**Paul A. Wagner, Ph.D.**

**Chief Executive Officer**

**Forte Biosciences, Inc.**

**3060 Pegasus Park Drive, Building 6**

**Dallas, Texas 75247**

**(310) 618-6994**

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

***Copies to:***

**Dan Koeppen**

**Wilson Sonsini Goodrich & Rosati, P.C.**

**12235 El Camino Real**

**San Diego, California 92130**

**(858) 350-2300**



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 | ☐ | Accelerated filer | ☐ |
| Non-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. ☒



**EXPLANATORY NOTE**

This Registration Statement on Form S-8 (the “Registration Statement”) is filed by Forte Biosciences, Inc. (the “Registrant”) for the purpose of registering (i) 2,500,000 shares of common stock of the Registrant, par value $0.001 per share (“Common Stock”) reserved for issuance under the 2021 Equity Incentive Plan as adopted by the board of directors in April 2021 and approved by the stockholders at the 2021 annual meeting and (ii) 147,544 shares of Common Stock issuable to eligible employees of Registrant under the Registrant’s 2017 Employee Stock Purchase Plan.

**PART I**

**INFORMATION REQUIRED IN THE PROSPECTUS**

The information specified in Item 1 and Item 2 of Part I of Form S-8 is omitted from this Registration Statement in accordance with the provisions of Rule 428 under 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.

**PART II**

**INFORMATION REQUIRED IN REGISTRATION STATEMENT**

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

The Registrant hereby incorporates by reference into this Registration Statement the following documents previously filed with the Securities and

Exchange Commission (the “SEC”):

1. The Registrant’s Annual Report on [Form 10-K](http://www.sec.gov/ix?doc=/Archives/edgar/data/1419041/000156459022012987/fbrx-10k_20211231.htm) for the fiscal year ended December 31, 2021 filed with the SEC on March 31, 2022.
2. The Registrant’s Quarterly Report on [Form 10-Q](http://www.sec.gov/ix?doc=/Archives/edgar/data/1419041/000156459022020257/fbrx-10q_20220331.htm) for the period ended March 31, 2022, filed with the SEC on May 16, 2022.
3. The Registrant’s Current Reports on Form 8-K filed on [February 2, 2022](http://www.sec.gov/ix?doc=/Archives/edgar/data/1419041/000119312522025772/d303337d8k.htm), [March 18, 2022](http://www.sec.gov/ix?doc=/Archives/edgar/data/1419041/000119312522079036/d322296d8k.htm), [April 1, 2022](http://www.sec.gov/ix?doc=/Archives/edgar/data/1419041/000119312522092360/d345612d8k.htm), [May 16, 2022](http://www.sec.gov/ix?doc=/Archives/edgar/data/1419041/000119312522151007/d358978d8k.htm), [June 2, 2022](http://www.sec.gov/ix?doc=/Archives/edgar/data/1419041/000119312522166208/d348649d8k.htm) and [June 7, 2022](http://www.sec.gov/ix?doc=/Archives/edgar/data/1419041/000119312522168911/d274694d8k.htm) (other than information furnished rather than filed).
4. All other reports filed with the Commission pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), since the end of the fiscal year covered by the Registrant’s Annual Report referred to in (1), (2) and (3) above.
5. The description of the Registrant’s common stock contained in the Company’s Annual Report on [Form 10-K](http://www.sec.gov/Archives/edgar/data/1419041/000156459020007402/toca-10k_20191231.htm) filed with the Commission on February 27, 2020, pursuant to Section 12(b) of the Exchange Act, including any amendment or report filed for the purpose of updating such description.

All documents filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act on or after the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement that indicates that all securities offered have been sold or that deregisters all securities then remaining unsold shall be deemed to be incorporated by reference in this Registration Statement and to be part hereof from the date of filing of such documents; *provided*, *however*, that documents or information deemed to have been furnished and not filed in accordance with the rules of the SEC shall not be deemed incorporated by reference into this Registration Statement. 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 subsequently filed document which also is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such 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 Named Experts and Counsel.**

Not applicable.

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

The Registrant’s amended and restated certificate of incorporation provides that to the fullest extent permitted by applicable law, the Registrant is authorized to provide indemnification of (and advancement of expenses to) directors, officers and agents of the Registrant (and any other persons to which applicable law permits the Registrant to provide indemnification) through bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise in excess of the indemnification and advancement otherwise permitted by such applicable law. If applicable law is amended after approval by the stockholders of the Registrant’s amended and restated certificate of incorporation to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director to the Registrant shall be eliminated or limited to the fullest extent permitted by applicable law as so amended.

The Registrant’s amended and restated bylaws provide that the Registrant shall indemnify its directors and officers to the extent not prohibited by the Delaware General Corporate Law (“DGCL”) or any other applicable law; provided, however, that the Registrant may modify the extent of such indemnification by individual contracts with its directors and officers; and, provided, further, that the Registrant shall not be required to indemnify any director or officer in connection with any proceeding (or part thereof) initiated by such person unless (i) such indemnification is expressly required to be made by law, (ii) the proceeding was authorized by the Registrant’s Board of Directors, (iii) such indemnification is provided by the Registrant, in its sole discretion, pursuant to the powers vested in the Registrant under the DGCL or any other applicable law or (iv) such indemnification is otherwise required to be made the amended and restated bylaws. The Registrant’s amended and restated bylaws also permit it to advance expenses to any director or officer who was or is a party or is threatened to be made a party to any action by reason of such status.

The rights conferred in the amended and restated certificate of incorporation and amended and restated bylaws are not exclusive, and the Registrant is authorized to enter into indemnification agreements with its directors, officers, employees, and agents and to obtain insurance to indemnify such persons.

The Registrant has entered into indemnification agreements with its directors and executive officers that provide the maximum indemnity allowed to directors and executive officers by Section 145 of the DGCL and also to provide for certain additional procedural protections, in addition to the indemnification provided for in its amended and restated certificate of incorporation and bylaws, and intends to enter into indemnification agreements with any new directors and executive officers in the future.

The Registrant has purchased and currently intends to maintain insurance on behalf of each and any person who is or was a director or officer of the Registrant against any loss arising from any claim asserted against him or her and incurred by him or her in any such capacity, subject to certain exclusions.

See also the undertakings set out in response to Item 9 herein.

**Item 7. Exemption from Registration Claimed.**

Not applicable.

**Item 8. Exhibits.**

The Registrant has filed the exhibits listed on the accompanying Exhibit Index of this Registration Statement.

**EXHIBIT INDEX**

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Exhibit** |  |  |  |  |  |  |  |  |  |  |  |  |  | **Incorporated by Reference** | | | | |  |
| **Number** |  |  |  |  | **Exhibit Description** | | | | | |  |  | |  | |  | |  |  |
|  |  | **Form** |  | **File No.** |  | **Exhibit** |  | **Filing Date** |  |
| 4.1 |  | [Specimen common stock certificate of the Registrant](http://www.sec.gov/Archives/edgar/data/1419041/000119312517107559/d312753dex41.htm) | | | | | | | | | | S-1/A | | 333-216574 |  | 4.1 |  | April 3, 2017 |  |
| 5.1\* |  | Opinion of Wilson Sonsini Goodrich & Rosati, P.C. | | | |  |  | | | | |  |  |  |  |  |  |  |  |
| 10.1 | [2021](http://www.sec.gov/Archives/edgar/data/1419041/000156459022012987/fbrx-ex1032_71.htm) | | [Equity Incentive Plan](http://www.sec.gov/Archives/edgar/data/1419041/000156459022012987/fbrx-ex1032_71.htm) | | | | | | | | | 10-K | | 001-38052 10.32 | | |  | March 31, 2022 |  |
|  |  |  |  |  |  | | |  |  |  | |  | |  |  |  |  |  |  |
| 10.2 | [2017](http://www.sec.gov/Archives/edgar/data/1419041/000119312517107559/d312753dex104.htm) | | [Employee Stock Purchase Plan](http://www.sec.gov/Archives/edgar/data/1419041/000119312517107559/d312753dex104.htm) | | | | | | | | | S-1/A | | 333-216574 |  | 10.4 |  | April 3, 2017 |  |
|  |  |  | | |  | | |  |  |  | |  |  |  |  |  |  |  |  |
| 23.1\* |  | Consent of Independent Registered Public Accounting Firm. | | | | | | |  | | |  |  |  |  |  |  |  |  |
| 23.3\* |  | Consent of Wilson Sonsini Goodrich & Rosati, P.C. (included in Exhibit 5.1 hereto). | | | | | | | | | |  |  |  |  |  |  |  |  |
| 24.1\* |  | Power of Attorney (included on the signature page hereto). | | | | | |  | |  | |  |  |  |  |  |  |  |  |

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;

1. 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; and
2. 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) do not apply if the information required to be included in a post-effective amendment bythose paragraphs is contained in periodic 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 this Registration Statement.

1. 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.
2. 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 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 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 of 1933, as amended, 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 Dallas, State of Texas, on June 24, 2022.

**FORTE BIOSCIENCES, INC.**

By: /s/ Paul A. Wagner, Ph.D.



Paul A. Wagner, Ph.D.

Chief Executive Officer

**POWER OF ATTORNEY**

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Paul A. Wagner Ph.D. and Antony Riley, and each of them, as such individual’s true and lawful attorney in fact and agent with full power of substitution, for such individual in any and all capacities, to sign any and all amendments to this Registration Statement on Form S-8 (including post-effective amendments), 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, proxy 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 for all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorney in fact, proxy and agent, or the individual’s substitute, 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** | |  | **Title** |  | **Date** |
| /s/ Paul A. Wagner, Ph.D. | |  | Director and Chief Executive Officer | | June 24, 2022 |
| Paul A. Wagner, Ph.D. | |  | (Principal Executive Officer) | |  |
| /s/ Antony Riley | |  | Chief Financial Officer | | June 24, 2022 |
| Antony Riley | |  | (Principal Financial and Accounting Officer) | |  |
| /s/ Stephen Doberstein, Ph.D. | |  | Director | | June 24, 2022 |
| Stephen Doberstein, Ph.D. | |  |  |  |  |
| /s/ Lawrence Eichenfield, M.D. | |  | Director | | June 24, 2022 |
| Lawrence Eichenfield, M.D. | |  |  |  |  |
| /s/ Barbara Finck, M.D. | |  | Director | | June 24, 2022 |
| Barbara Finck, M.D. | |  |  |  |  |
| /s/ Steven Kornfeld | |  | Director | | June 24, 2022 |
| Steven Kornfeld | |  |  |  |  |
| /s/ Patricia Walker, M.D, Ph.D. | |  | Director | | June 24, 2022 |
| Patricia Walker, M.D, Ph.D. | |  |  |  |  |
| /s/ Donald A. Williams | |  | Director | | June 24, 2022 |
| Donald A. Williams | |  |  |  |  |

**Exhibit 5.1**

Wilson Sonsini Goodrich & Rosati



Professional Corporation

650 Page Mill Road

Palo Alto, California 94304-1050

O: 650.493.9300

F: 650.493.6811

June 24, 2022

Forte Biosciences, Inc.

3060 Pegasus Park Dr.

Building 6

Dallas, Texas 75247

**Re: Registration Statement on Form S-8**

Ladies and Gentlemen:

We have examined the Registration Statement on Form S-8 (the “Registration Statement”) to be filed by Forte Biosciences, Inc., a Delaware corporation (the “Company”), with the Securities and Exchange Commission on or about the date hereof, in connection with the registration under the Securities Act of 1933, as amended, of (i) 2,500,000 shares of your common stock, par value $0.001 per share (“Common Stock”), reserved for future issuance pursuant to the Forte Biosciences, Inc. 2021 Equity Incentive Plan, as amended and (ii) 147,544 shares of Common Stock reserved for issuance pursuant to the Company’s 2017 Employee Stock Purchase Plan, as amended. As your legal counsel, we have reviewed the actions proposed to be taken by you in connection with the issuance and sale of the Shares to be issued under such plans (which plans are referred to herein as the “Plans” and which shares of Common Stock are referred to herein as the “Shares”).

It is our opinion that the Shares, when issued and sold in the manner referred to in the Plans and pursuant to the agreements that accompany the Plans, will be legally and validly issued, fully paid and nonassessable.

We consent to the use of this opinion as an exhibit to the Registration Statement, and further consent to the use of our name wherever appearing in the Registration Statement and any amendments thereto.

Very truly yours,

/s/ Wilson Sonsini Goodrich & Rosati, P.C.

WILSON SONSINI GOODRICH & ROSATI

Professional Corporation

AUSTIN BEIJING BOSTON

BRUSSELS HONG KONG LONDON LOS ANGELES

NEW YORK PALO ALTO

SAN DIEGO SAN FRANCISCO SEATTLE SHANGHAI WASHINGTON, DC

WILMINGTON, DE

**Exhibit 23.1**

**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, 2022, with respect to the consolidated financial statements of Forte Biosciences, Inc. as of December 31, 2021 and 2020 and for each of the two years in the period ended December 31, 2021, included in the Annual Report on Form 10-K for the year ended December 31, 2021.

/s/ Mayer Hoffman McCann P.C.

San Diego, California

June 24, 2022

**Exhibit 107**

**Calculation of Filing Fee Tables**

**Form S-8**

(Form Type)

**Forte Biosciences, Inc.**

(Exact name of registrant as specified in its charter)

**Table 1 – Newly Registered Securities**

|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  |  |  |  |  |  | Proposed | Maximum |  |  |  |
|  |  |  |  |  |  | Maximum |  |  |  |
|  |  |  |  | Fee |  | Offering | Aggregate |  | Amount of |  |
|  |  | Security Class |  | Calculation | Amount | Price Per | Offering |  | Registration |  |
| Security Type |  | Title |  | Rule | Registered(1) | Unit | Price | Fee Rate | Fee |  |
| Equity |  | Common |  |  |  |  |  |  |  |  |
|  |  | Stock, par |  |  |  |  |  |  |  |  |
|  |  | value $0.001 |  |  |  |  |  |  |  |  |
|  |  | per share, |  |  |  |  |  |  |  |  |
|  |  | reserved for |  |  |  |  |  |  |  |  |
|  |  | issuance |  |  |  |  |  |  |  |  |
|  |  | under the |  |  |  |  |  |  |  |  |
|  |  | Registrant’s |  | Rule |  |  |  |  |  |  |
|  |  | 2021 Equity |  | 457(c) |  |  |  | $92.70 per |  |  |
|  |  | Incentive |  | and Rule |  |  |  |  |  |
|  |  | Plan |  | 457(h) | 2,500,000(2) | $1.22(3) | $3,050,000.00 | $1,000,000 | $282.74 |  |
| Equity |  | Common |  |  |  |  |  |  |  |  |
|  |  | Stock, par |  |  |  |  |  |  |  |  |
|  |  | value $0.001 |  |  |  |  |  |  |  |  |
|  |  | per share, |  |  |  |  |  |  |  |  |
|  |  | reserved for |  |  |  |  |  |  |  |  |
|  |  | issuance |  |  |  |  |  |  |  |  |
|  |  | under the |  |  |  |  |  |  |  |  |
|  |  | Registrant’s |  |  |  |  |  |  |  |  |
|  |  | 2017 |  |  |  |  |  |  |  |  |
|  |  | Employee |  | Rule |  |  |  |  |  |  |
|  |  | Stock |  | 457(c) |  |  |  | $92.70 per |  |  |
|  |  | Purchase |  | and Rule |  |  |  |  |  |
|  |  | Plan |  | 457(h) | 147,544(4) | $1.04(5) | $153,003.13 | $1,000,000 | $14.18 |  |
|  | Total Offering Amounts | | | |  |  | $3,203,003.13 |  | $296.92 |  |
|  |  | Total Fee Offsets(6) | | |  |  |  |  | — |  |
|  |  | Net Fee Due | |  |  |  |  |  | $296.92 |  |

1. Pursuant to Rule 416(a) of 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 under the 2021 Equity Incentive Plan (the “2021 EIP”) and the 2017 Employee Stock Purchase Plan (the “2017 ESPP”), by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without receipt of consideration that increases the number of the Registrant’s outstanding shares of common stock.
2. Represents 2,500,000 shares of common stock reserved for issuance under the 2021 EIP.
3. Estimated pursuant to Rule 457(c) and 457(h) solely for the purpose of calculating the total registration fee on the basis of $1.22 per share, which represents the average of the high and low prices of the Registrant’s common stock as reported on The Nasdaq Capital Market on June 21, 2022 (such date being within five business days of the filing date of this Registration Statement).
4. Represents 147,544 shares of common stock reserved for issuance pursuant to future awards as a result of the annual evergreen increase under the 2017 ESPP.
5. Estimated pursuant to Rule 457(c) and 457(h) under the Securities Act, solely for the purpose of calculating the registration fee, on the basis of 85% of $1.22, which represents the average of the high and low prices of the Registrant’s common stock as reported on The Nasdaq Capital Market on June 21, 2022 (such date being within five business days of the filing date of this Registration Statement). Pursuant to the 2017 ESPP, the purchase price of the shares of common stock reserved for issuance thereunder will be 85% of the lower of the fair market value of the common stock on (i) the enrollment date or (ii) the exercise date.
6. The Registrant does not have any fee offsets.