

CESCA THERAPEUTICS INC.

Form S-8

September 19, 2018

As filed with the Securities and Exchange Commission on September 19, 2018

Registration

No. 333-

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

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FORM S-8

REGISTRATION STATEMENT

UNDER  
THE SECURITIES ACT OF 1933

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**CESCA THERAPEUTICS INC.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of  
incorporation or organization)

**94-3018487**

(I.R.S. Employer Identification No.)

**2711 Citrus Road**

**Rancho Cordova, California**

(Address of Principal Executive Offices)

**95742**

(Zip Code)

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**CESCA THERAPEUTICS INC.**

**2016 EQUITY INCENTIVE PLAN (AS AMENDED and restated)**

(Full title of the plan)

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With a copy to:

**Vivian Liu**

**Curt P. Creely, Esquire**

**Chief Operating Officer** **Foley & Lardner LLP**  
**2711 Citrus Road** **100 North Tampa Street, Suite**  
**Rancho Cordova, California 95742** **2700**  
**(916) 858-5100** **Tampa, Florida 33602**  
(Name, address and telephone number, **Phone: (813) 229-2300**  
including area **Fax: (813) 221-4210**  
code, of agent for service)

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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.

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#### CALCULATION OF REGISTRATION FEE

<b>Title of</b>	<b>Amount</b>	<b>Proposed</b>	<b>Proposed</b>	
<b>Securities to be</b>	<b>to be</b>	<b>Maximum</b>	<b>Maximum</b>	<b>Amount of</b>
<b>Registered</b>	<b>Registered<sup>(1)</sup></b>	<b>Offering Price</b>	<b>Aggregate Offering</b>	<b>Registration Fee</b>
		<b>Per Share<sup>(2)</sup></b>	<b>Price</b>	
Common Stock, par value \$0.001 per share	725,000 shares	\$0.44	\$319,000	\$39.72

Represents 725,000 additional shares of common stock of the Company, \$0.001 par value, available for issuance under the Cesca Therapeutics Inc. 2016 Equity Incentive Plan (as amended and restated) (the “Plan”). Pursuant to (1) Rule 416 under the Securities Act of 1933, as amended (the “Securities Act”), this registration statement shall be deemed to cover such indeterminate number of additional shares as may be issued under the Plan as a result of the anti-dilution provisions contained therein.

Estimated solely for the purposes of calculating the registration fee under Rules 457(c) and 457(h) under the Securities Act, and based on the average of the high and low sales prices of a share of common stock of the  
(2) Company, as reported on the Nasdaq Capital Market on September 13, 2018, which is within five business days prior to the filing date of this registration statement.

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**Part I**

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

The documents containing the information specified in Part I of Form S-8 will be sent or given to the participants in the Cesca Therapeutics Inc. 2016 Equity Incentive Plan (as amended and restated) (the “Plan”), as required by Rule 428(b)(1) under the Securities Act of 1933, as amended (the “Securities Act”). Such documents need not be filed with the Securities and Exchange Commission (“Commission”) either as part of this registration statement or as prospectuses or prospectus supplements pursuant to Rule 424 under the Securities Act. These documents and the documents incorporated by reference in this registration statement pursuant to Item 3 of Part II of Form S-8, 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 filed by Cesca Therapeutics Inc. (the “Company” or the “Registrant”) with the Commission pursuant to the Securities Act or the Securities Exchange Act of 1934, as amended (the “Exchange Act”), are incorporated by reference herein:

1. The Company’s Annual Report on Form 10-K for the fiscal year ended June 30, 2017, filed with the Commission on September 22, 2017, as amended by the Company’s Form 10-K/A (Amendment No. 1) filed with the Commission on October 20, 2017;

2. The Company’s Transition Report on Form 10-K for the transition period from July 1, 2017 to December 31, 2017, filed with the Commission on March 22, 2018;

3. The Company’s Quarterly Reports on Form 10-Q for the quarters ended September 30, 2017, March 31, 2018, and June 30, 2018, filed with the Commission on November 14, 2017, May 14, 2018, and August 14, 2018, respectively;

The Company's Current Reports on Form 8-K filed on July 11, 2017 (as amended by the Form 8-K/A filed on September 22, 2017), August 4, 2017, August 25, 2017, September 19, 2017 (as amended by the Form 8-K/A filed on September 22, 2017), November 15, 2017, November 29, 2017, December 1, 2017, January 5, 2018, March 16, 2018, March 28, 2018, April 18, 2018, May 7, 2018, May 18, 2018, May 22, 2018, June 4, 2018, June 4, 2018, June 12, 2018, June 13, 2018, June 28, 2018, and August 29, 2018;

5. Any other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since June 30, 2017; and

6. The description of the Company's common stock in Item 1 of the Registration Statement on Form 8-A for registration of the Company's common stock pursuant to Section 12(g) of the Exchange Act, as updated by the description included in the Company's Current Report on Form 8-K filed on May 18, 2017, including any other amendment or report filed for the purpose of updating such description.

Notwithstanding the foregoing, information furnished under Items 2.02 and 7.01 of any Current Report on Form 8-K, including the related exhibits under Item 9.01, is not incorporated herein by reference.

All documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of filing of this registration statement and prior to such time as the Company files a post-effective amendment to this registration statement which indicates that all securities offered hereby 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 a part hereof from the date of filing of such documents.

Any statement contained in a document incorporated or deemed incorporated herein by reference 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 herein by reference 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 Named Experts and Counsel.**

Not applicable.

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

Section 102(b)(7) of the Delaware General Corporation Law (the “Delaware Law”) enables a corporation, in its original certificate of incorporation or an amendment thereto, to eliminate or limit the personal liability of a director for monetary damages for breach of the director’s fiduciary duty, except (i) for any breach of the director’s duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) pursuant to Section 174 of the Delaware Law (providing for liability of directors for unlawful payment of dividends or unlawful stock purchases or redemptions), or (iv) for any transaction from which the director derived an improper personal benefit. The Company’s Sixth Amended and Restated Certificate of Incorporation, as amended (“Certificate of Incorporation”), contains such a provision.

In addition, Section 145 of the Delaware Law provides that a corporation may indemnify any persons, including officers and directors, who are, or are threatened to be made, party to any threatened, pending or completed legal 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 such person is or was an officer, director, employee or agent of the corporation, or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided such officer, director, employee or agent acted in good faith and in a manner the person reasonably believed to be in or not opposed to the corporation’s best interests and, with respect to criminal proceedings, had no reasonable cause to believe that the person’s conduct was unlawful. A Delaware corporation may indemnify officers or directors in an action by or in the right of the corporation under the same conditions, except that no indemnification is permitted without judicial approval if the officer or director is adjudged to be liable to the corporation. Where an officer or director is successful on the merits or otherwise in the defense of any action referred to above, the corporation must indemnify him or her against expenses (including attorneys’ fees) that he or she actually and reasonably incurred.

The Company's Certificate of Incorporation and Restated Bylaws provide for indemnification of directors and officers to the fullest extent permitted by the Delaware Law.

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

Not applicable.

**Item 8. Exhibits.**

The Company files herewith or incorporates by reference the exhibits identified below:

<b><u>Exhibit Number</u></b>	<b><u>Exhibit Description</u></b>
3.1	<u>Sixth Amended and Restated Certificate of Incorporation, as amended.</u> <sup>(1)</sup>
3.2	<u>Restated Bylaws of Cesca Therapeutics Inc.</u> <sup>(2)</sup>
5.1	<u>Opinion of Foley &amp; Lardner LLP.</u>
10.1	<u>Cesca Therapeutics Inc. 2016 Equity Incentive Plan, as amended and restated.</u>
23.1	<u>Consent of Marcum LLP.</u>
23.2	<u>Consent of Moss Adams LLP.</u>
23.3	<u>Consent of Foley &amp; Lardner LLP.</u> <sup>(3)</sup>
24.1	<u>Powers of Attorney.</u> <sup>(4)</sup>

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<sup>(1)</sup> Incorporated herein by reference to Exhibit 3.1 to the Registration Statement on Form S-8 filed with the Commission on May 18, 2017.

<sup>(2)</sup> Incorporated herein by reference to Exhibit 99.1 to the Form 8-K filed with the Commission on October 30, 2014.

<sup>(3)</sup> Included in Exhibit 5.1.

<sup>(4)</sup> Included on the signature page to this Registration Statement.

**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 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% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

(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) above 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 the registration statement.

(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 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 that is incorporated by reference in this registration statement shall be deemed to be a new registration statement relating to the securities offered herein, 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 Rancho Cordova, State of California, on September 19, 2018.

### **Cesca Therapeutics Inc.**

By:                               /s/ Xiaochun Xu  
  Xiaochun Xu  
  Chief Executive Officer

KNOW ALL MEN BY THESE PRESENTS, that the undersigned hereby constitutes and appoints Xiaochun Xu and Vivian Liu and each of them, the true and lawful attorneys-in-fact of the undersigned, 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 this registration statement and any or all amendments to this registration statement, including post-effective amendments, and registration statements filed pursuant to Rules 413 or 462 under the Securities Act, and to file or cause to be filed the same, with all exhibits thereto, and other documents in connection therewith, with the Commission, granting unto said attorneys-in-fact full power and authority to do and perform each and every act and thing requisite and 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, hereby ratifying and confirming all that said attorneys or attorneys-in-fact or any of them or their substitute or substitutes may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons on September 19, 2018 in the capacities indicated.

<u>Signature</u>	<u>Title</u>
/s/ Xiaochun Xu Xiaochun Xu	Chief Executive Officer and Chairman of the Board of Directors (Principal Executive Officer)
/s/ Jeff Cauble Jeff Cauble	Principal Financial and Accounting Officer (Principal Financial Officer and Principal Accounting Officer)
/s/ Russell Medford	Director

Russell Medford

/s/ Joseph Thomis    Director  
Joseph Thomis

/s/ Mark Westgate    Director  
Mark Westgate

/s/ James Xu         Director  
James Xu

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