

OncoCyte Corp

Form S-8

January 11, 2016

As filed with the Securities and Exchange Commission on January 11, 2016

Registration No. 333-

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

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

ONCOCYTE CORPORATION  
(Exact name of Registrant as specified in charter)

California 27-1041563  
(State or other jurisdiction of incorporation or organization) (I.R.S. Employer Identification Number)

1301 Harbor Bay Parkway, Suite 100, Alameda, California 94502  
(Address of principal executive offices) (Zip Code)

2010 Stock Option Plan  
(Full title of the plan)

RUSSELL SKIBSTED  
Chief Financial Officer  
OncoCyte Corporation  
1301 Harbor Bay Parkway, Suite 100  
Alameda, California 94502  
(Name and address of agent for service)

(510) 521-3390  
(Telephone number, including area code, of agent for service)

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Copies of all communications, including all communications sent to the agent for service, should be sent to:  
RICHARD S. SOROKO, ESQ.  
Thompson, Welch, Soroko & Gilbert LLP  
3950 Civic Center Drive, Suite 300  
San Rafael, California 94903  
Tel. (415) 448-5000

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Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting

company” in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer (Do not check if a smaller reporting company) Smaller reporting company

#### CALCULATION OF REGISTRATION FEE

| Title of securities to be registered | Amount to be registered | Proposed maximum offering price per share(1) | Proposed maximum aggregate offering price(1) | Amount of registration fee(1) |
|--------------------------------------|-------------------------|--|--|-------------------------------|
| Common Stock, no par value(2)        | 4,000,000               | \$ 7.58                                      | \$30,320,000                                 | \$3,053.22                    |
| Total Registration Fee               |                         |  |  | \$ 3,053.22                   |

(1) Determined pursuant to Rule 457(c) and (h).

(2) Includes shares issuable directly or upon the exercise of the options. Pursuant to Rule 416, this Registration Statement also includes an indeterminate number of shares of common stock that may be subject to issuance as a result of anti-dilution and other provisions of the Stock Option Plan.

PRELIMINARY NOTE: All share amounts are adjusted for a one for two reverse stock split effective November 18, 2015.

Part II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents, which have been filed by the Registrant with the Securities and Exchange Commission (the "Commission"), are incorporated herein by reference:

The Registrant's Registration Statement on Form 10 filed on November 23, 2015, as amended by Amendment No. 1 filed December 21, 2015, and Amendment No. 2 filed December 29, 2015, under the Securities Exchange Act of 1934, as amended;

The Registrant's Current Report on Form 8-K filed on January 4, 2016; and

The description of the Registrant's common stock contained in the Information Statement filed as Exhibit 99.1 to Amendment No. 2 to the Registration Statement on Form 10 filed December 29, 2015.

All other reports filed by the Registrant pursuant to Sections 13(a), 13(c), 14, or 15(d) of the Securities Exchange Act of 1934, as amended, since the end of the last fiscal year covered by such Form 10 (other than any such documents or portions thereof that are furnished under Item 2.02 or Item 7.01 of a Current Report on Form 8-K, unless otherwise indicated therein, including any exhibits included with such Items) and prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference into this Registration Statement and to be part thereof from the date of filing of such documents.

Any statement contained in this Registration Statement or 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 or incorporated by reference herein or in any subsequently filed document which 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.

None.

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Item 6. Indemnification of Directors and Officers.

Section 317 of the California Corporations Code permits indemnification of directors, officers, employees and other agents of corporations under certain conditions and subject to certain limitations. In addition, Section 204(a)(10) of the California Corporations Code permits a corporation to provide, in its articles of incorporation, that directors shall not have liability to the corporation or its shareholders for monetary damages for breach of fiduciary duty, subject to certain prescribed exceptions. Article Five of OncoCyte's Articles of Incorporation contains provisions for the indemnification of directors, officers, employees and other agents within the limitations permitted by Section 317 and for the limitation on the personal liability of directors permitted by Section 204(b)(10), subject to the exceptions required thereby.

Under Article VI of OncoCyte's bylaws, any person who is or was one of OncoCyte's directors or officers, employees, or other agents, or is or was serving at OncoCyte's request as a director, officer, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, will be considered an "agent" entitled to indemnification against expenses arising under certain proceedings. To the maximum extent permitted by the California General Corporation Law, OncoCyte will indemnify any person who was or is a party, or is threatened to be made a party, to any proceeding (other than an action by or in the right of OncoCyte) by reason of the fact that the person is or was an agent of OncoCyte, against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with the proceeding if that person acted in good faith and in a manner that person reasonably believed to be in the best interests of OncoCyte and, in the case of a criminal proceeding, had no reasonable cause to believe his conduct of was unlawful. The termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the agent did not act in good faith and in a manner which agent reasonably believed to be in the best interests of OncoCyte or that the agent had reasonable cause to believe that his conduct was unlawful.

OncoCyte will also indemnify any agents any who was or is a party or is threatened to be made a party, to any threatened, pending or completed action by or in the right of OncoCyte to procure a judgment in its favor by reason of the fact that person is or was an agent of OncoCyte, against expenses actually and reasonably incurred by the agent in connection with the defense or settlement of that action if the agent acted in good faith, in a manner that the agent believed to be in the best interests of OncoCyte and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. No indemnification shall be made:

In respect of any claim, issue or matter as to which that the agent is adjudged to be liable to OncoCyte in the performance of that person's duty to OncoCyte, unless and only to the extent that the court in which that action was brought shall determine upon application that, in view of all the circumstances of the case, that the agent is fairly and reasonably entitled to indemnity for the expenses which the court shall determine;

Of amounts paid in settling or otherwise disposing of a threatened or pending action, with or without court approval;  
or

Of expenses incurred in defending a threatened or pending action which is settled or otherwise disposed of without court approval.

To the extent that an agent of OncoCyte is successful on the merits in defense of any proceeding for which the agent is entitled to indemnification under OncoCyte's bylaws, the agent will be indemnified against expenses of the defense actually and reasonably incurred.

Except as with respect to a successful defense on the merits in a proceeding, indemnification will be provided under OncoCyte's bylaws only if authorized in the specific case on a determination that indemnification of the agent is proper in the circumstances because the agent has met the applicable standard of conduct set forth in OncoCyte's bylaws, by:

A majority vote of a quorum consisting of directors who are not parties to the proceeding;

Approval by the affirmative vote of a majority of the shares of OncoCyte entitled to vote represented at a duly held meeting at which a quorum is present or by the written consent of holders of a majority of the outstanding shares entitled to vote. For this purpose, the shares owned by the person to be indemnified shall not be considered outstanding or entitled to vote thereon; or

The court in which the proceeding is or was pending, on application made by OncoCyte or the agent or the attorney or other person rendering services in connection with the defense, whether or not such application by the agent, attorney, or other person is opposed by OncoCyte.

Expenses incurred in defending any proceeding may be advanced by OncoCyte before the final disposition of the proceeding on receipt of an undertaking by or on behalf of the agent to repay the amount of the advance unless it shall be determined ultimately that the agent is entitled to be indemnified as authorized in OncoCyte's bylaws.

OncoCyte will not provide indemnification or advance expenses on behalf of an agent in any circumstance where it appears:

That it would be inconsistent with a provision of OncoCyte's articles of incorporation, a resolution of the shareholders, or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or

That it would be inconsistent with any condition expressly imposed by a court in approving a settlement.

Item 7. Exemption from Registration Claimed.

None.

Item 8. Exhibits.

Exhibit

Numbers Description

4.1 Articles of Incorporation, as amended (1)

4.2 Bylaws, as amended (1)

4.3 Specimen of Common Share Certificate. (2)

4.4 2010 Stock Option Plan (1)

5.1 Opinion of Counsel\*

23.1 Consent of OUM & Co., LLP \*

23.2 Consent of Counsel (Included in Exhibit 5.1)

(1) Incorporated by reference to OncoCyte's Registration Statement on Form 10 filed with the Securities and Exchange Commission on November 23, 2015.

(2) Incorporated by reference to Amendment No. 1 to OncoCyte's Registration Statement on Form 10 filed with the Securities and Exchange Commission on December 21, 2015.

\* Filed herewith.

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Item 9. Undertakings.

The undersigned registrant hereby undertakes:

1(a) 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.

(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) 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 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.

(h) 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 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 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 Alameda, State of California on January 8, 2016.

ONCOCYTE  
CORPORATION  
By/s/William Annett  
Chief Executive  
Officer

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

| Signature                                  | Title   | Date            |
|--|---|-----------------|
| s/William Annett<br>WILLIAM ANNETT         | Chief Executive Officer and Director<br>(Principal Executive Officer)   | January 8 2016  |
| s/Russell Skibsted<br>RUSSELL SKIBSTED     | Chief Financial Officer<br>(Principal Financial and Accounting Officer) | January 8 2016  |
| s/Andrew Arno<br>ANDREW ARNO               | Director  | January 8 2016  |
| s/Alfred D. Kingsley<br>ALFRED D. KINGSLEY | Director  | January 8 2016  |
| ANDREW LAST                                | Director  | January __ 2016 |
| s/Aditya Mohanty<br>ADITYA MOHANTY         | Director  | January 8 2016  |
| s/Cavan Redmond<br>CAVAN REDMOND           | Director  | January 8 2016  |
| MICHAEL D. WEST                            | Director  | January __ 2016 |



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