

# SECURITIES AND EXCHANGE COMMISSION

## FORM S-8

Initial registration statement for securities to be offered to employees pursuant to employee benefit plans

Filing Date: **2013-01-09**  
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### FILER

#### **XENOPORT INC**

CIK: [1130591](#) | IRS No.: [943330837](#) | State of Incorporation: **DE** | Fiscal Year End: **1231**  
Type: **S-8** | Act: **33** | File No.: [333-185940](#) | Film No.: [13520170](#)  
SIC: **2834** Pharmaceutical preparations

Mailing Address  
*3410 CENTRAL  
EXPRESSWAY  
SANTA CLARA CA 95051*

Business Address  
*3410 CENTRAL  
EXPRESSWAY  
SANTA CLARA CA 95051  
4086167200*

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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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**XENOPORT, INC.**

(Exact name of registrant as specified in its charter)

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**Delaware**  
(State of Incorporation)

**94-3330837**  
(I.R.S. Employer  
Identification No.)

**3410 Central Expressway**  
**Santa Clara, CA 95051**  
(Address of principal executive offices and zip code)

**2005 Equity Incentive Plan**  
**2005 Non-Employee Directors' Stock Option Plan**  
**2005 Employee Stock Purchase Plan**  
**2010 Inducement Award Plan**  
(Full titles of the plans)

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**Ronald W. Barrett, Ph.D.**  
**Chief Executive Officer**  
**XenoPort, Inc.**  
**3410 Central Expressway**  
**Santa Clara, CA 95051**  
**(408) 616-7200**  
(Name, address and telephone number, including area code, of agent for service)

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*Copies to:*  
**Chadwick L. Mills, Esq.**  
**COOLEY LLP**  
**3175 Hanover Street**  
**Palo Alto, CA 94304**  
**(650) 843-5000**

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 (1)	Proposed Maximum Offering Price per Share (2)	Proposed Maximum Aggregate Offering Price (2)	Amount of Registration Fee
Common Stock, par value \$0.001 per share	1,956,102 shares	\$8.64	\$16,900,721.28	\$2,305.26

- (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 common stock that become issuable under the plans set forth herein by reason of any stock dividend, stock split, recapitalization or any other similar transaction without receipt of consideration that results in an increase in the number of shares of the Registrant’s outstanding common stock (the “Common Stock”).
- (2) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(c) and (h)(1) under the Securities Act. The offering price per share and aggregate offering price are based upon the average of the high and low prices of the Registrant’s Common Stock as reported on the NASDAQ Global Select Market on January 3, 2013, for (i) shares reserved for future grant pursuant to the Registrant’s 2005 Equity Incentive Plan, (ii) shares reserved for future grant pursuant to the Registrant’s 2005 Non-Employee Directors’ Stock Option Plan, (iii) shares reserved for future grant pursuant to the Registrant’s 2005 Employee Stock Purchase Plan and (iv) shares reserved for future grant pursuant to the Registrant’s 2010 Inducement Award Plan.

Securities	Number of Shares	Offering Price Per Share	Aggregate Offering Price
Shares reserved for future grant under the 2005 Equity Incentive Plan	1,558,801(3)	\$8.64	\$13,468,040.64
Shares reserved for future grant under the 2005 Non-Employee Directors’ Stock Option Plan	135,000	\$8.64	\$1,166,400.00
Shares reserved for future grant under the 2005 Employee Stock Purchase Plan	250,000	\$8.64	\$2,160,000.00
Shares reserved for future grant under the 2010 Inducement Award Plan	12,301(4)	\$8.64	\$106,280.64
Proposed Maximum Offering Price			\$16,900,721.28
Registration Fee			\$2,305.26

- (3) The 1,558,801 shares consist of (i) 1,176,691 shares added to the 2005 Equity Incentive Plan as a result of provisions in such plan that allow for the Board of Directors to annually increase the share reserve of Common Stock available for issuance under the 2005 Equity Incentive Plan and (ii) 382,110 shares returned to the 2005 Equity Incentive Plan share reserve either as a result of forfeitures of restricted stock unit grants or as a result of shares being partially withheld by the Registrant to cover tax withholding obligations at the time of vesting of restricted stock unit grants, in each case in accordance with the provisions of the 2005 Equity Incentive Plan.
- (4) The 12,301 shares consist of shares returned to the 2010 Inducement Award Plan share reserve either as a result of forfeitures of restricted stock unit grants or as a result of shares being partially withheld by the Registrant to cover tax withholding obligations at the time of vesting of restricted stock unit grants, in each case in accordance with the provisions of the 2010 Inducement Award Plan.

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## EXPLANATORY NOTE

This Registration Statement on Form S-8 is being filed for the purpose of registering an additional (i) 1,558,801 shares of the Registrant's common stock to be issued pursuant to the Registrant's 2005 Equity Incentive Plan, (ii) 135,000 shares of the Registrant's common stock to be issued pursuant to the Registrant's 2005 Non-Employee Directors' Stock Option Plan, (iii) 250,000 shares of the Registrant's common stock to be issued pursuant to the Registrant's 2005 Employee Stock Purchase Plan and (iv) 12,301 shares of the Registrant's common stock to be issued pursuant to the Registrant's 2010 Inducement Award Plan.

### INCORPORATION BY REFERENCE OF CONTENTS OF REGISTRATION STATEMENTS ON FORM S-8

The contents of the Registration Statements on Form S-8 previously filed with the Securities and Exchange Commission on June 3, 2005 (File No. 333-125518), April 18, 2006 (File No. 333-133357), May 11, 2007 (File No. 333-142844), May 8, 2008 (File No. 333-150730), May 7, 2009 (File No. 333-159021), May 12, 2010 (File No. 333-166760), January 10, 2011 (File No. 333-171626) and January 9, 2012 (File No. 333-178947) are incorporated by reference herein.

### EXHIBITS

<b>Exhibit Number</b>	<b>Description</b>
4.1(1)	Amended and Restated Certificate of Incorporation of XenoPort, Inc.
4.2(2)	Certificate of Amendment of Amended and Restated Certificate of Incorporation of XenoPort, Inc.
4.3(3)	Amended and Restated Bylaws of XenoPort, Inc.
4.4(4)	Certificate of Designation of Series A Junior Participating Preferred Stock.
4.5(5)	Specimen Common Stock Certificate.
4.6(6)	Form of Right Certificate.
5.1	Opinion of Cooley LLP.
23.1	Consent of Independent Registered Public Accounting Firm.
23.2	Consent of Cooley LLP (included in Exhibit 5.1).
24.1	Power of Attorney (included in the signature page).
99.1.1(7)	XenoPort, Inc. 2005 Equity Incentive Plan.
99.1.2(8)	Form of Option Agreement under the 2005 Equity Incentive Plan.
99.1.3(9)	Form of Stock Unit Award Agreement under the 2005 Equity Incentive Plan.
99.1.4(10)	Form of Non-Employee Director Stock Unit Award Agreement under the 2005 Equity Incentive Plan.
99.2.1(11)	XenoPort, Inc. 2005 Non-Employee Directors' Stock Option Plan, as amended.
99.2.2(12)	Form of Stock Option Agreement under the 2005 Non-Employee Directors' Stock Option Plan.
99.3.1(13)	XenoPort, Inc. 2005 Employee Stock Purchase Plan.
99.3.2(14)	Form of 2005 Employee Stock Purchase Plan Offering Document.

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- 99.4.1(15) XenoPort, Inc. 2010 Inducement Award Plan, as amended.
- 99.4.2(16) Form of Option Agreement under the 2010 Inducement Award Plan.
- 99.4.3(17) Form of Stock Unit Award Agreement under the 2010 Inducement Award Plan.

- (1) Previously filed as Exhibit 3.1 to XenoPort, Inc.' s quarterly report on Form 10-Q (No. 000-51329) for the period ended June 30, 2005, as filed with the Securities and Exchange Commission on August 11, 2005, and incorporated by reference herein.
- (2) Previously filed as Exhibit 3.4 to XenoPort Inc.' s current report on Form 8-K (File No. 000-51329), filed with the SEC on May 18, 2012.
- (3) Previously filed as Exhibit 3.2 to XenoPort, Inc.' s quarterly report on Form 10-Q (No. 000-51329) for the period ended June 30, 2005, as filed with the Securities and Exchange Commission on August 11, 2005, and incorporated by reference herein.
- (4) Previously filed as Exhibit 3.1 to XenoPort, Inc.' s current report on Form 8-K (No. 000-51329), as filed with the Securities and Exchange Commission on December 16, 2005, and incorporated by reference herein.
- (5) Previously filed as Exhibit 4.1 to XenoPort, Inc.' s registration statement on Form S-1, as amended (No. 333-122156), as filed with the Securities and Exchange Commission on April 13, 2005, and incorporated by reference herein.
- (6) Previously filed as Exhibit 4.1 to XenoPort, Inc.' s current report on Form 8-K (No. 000-51329), as filed with the Securities and Exchange Commission on December 16, 2005, and incorporated by reference herein.
- (7) Previously filed as Exhibit 10.7 to XenoPort, Inc.' s registration statement on Form S-1, as amended (No. 333-122156), as filed with the Securities and Exchange Commission on March 2, 2005, and incorporated by reference herein.
- (8) Previously filed as Exhibit 10.8 to XenoPort, Inc.' s registration statement on Form S-1, as amended (No. 333-122156), as filed with the Securities and Exchange Commission on March 2, 2005, and incorporated by reference herein.
- (9) Previously filed as Exhibit 10.9 to XenoPort, Inc.' s quarterly report on Form 10-Q (No. 000-51329) for the period ended June 30, 2008, as filed with the Securities and Exchange Commission on August 7, 2008, and incorporated by reference herein.
- (10) Previously filed as Exhibit 10.35 to XenoPort, Inc.' s quarterly report on Form 10-Q (No. 000-51329) for the period ended March 31, 2012, as filed with the Securities and Exchange Commission on May 8, 2012, and incorporated by reference herein.
- (11) Previously filed as Exhibit 10.33 to XenoPort, Inc.' s quarterly report on Form 10-Q (No. 000-51329) for the period ended March 31, 2012, as filed with the Securities and Exchange Commission on May 8, 2012, and incorporated by reference herein.
- (12) Previously filed as Exhibit 10.34 to XenoPort, Inc.' s quarterly report on Form 10-Q (No. 000-51329) for the period ended March 31, 2012, as filed with the Securities and Exchange Commission on May 8, 2012, and incorporated by reference herein.
- (13) Previously filed as Exhibit 10.11 to XenoPort Inc.' s registration statement on Form S-1, as amended (No. 333-122156), as filed with the Securities and Exchange Commission on March 2, 2005, incorporated by reference herein.
- (14) Previously filed as Exhibit 10.12 to XenoPort Inc.' s registration statement on Form S-1, as amended (No. 333-122156), as filed with the Securities and Exchange Commission on March 2, 2005, incorporated by reference herein.
- (15) Previously filed as Exhibit 10.17 to XenoPort, Inc.' s quarterly report on Form 10-Q (No. 000-51329) for the period ended June 30, 2011, as filed with the Securities and Exchange Commission on August 5, 2011, and incorporated by reference herein.
- (16) Previously filed as Exhibit 99.3.2 to XenoPort, Inc.' s registration statement on Form S-8 (No. 333-166760), as filed with the Securities and Exchange Commission on May 12, 2010, and incorporated by reference herein.
- (17) Previously filed as Exhibit 99.3.3 to XenoPort, Inc.' s registration statement on Form S-8 (No. 333-166760), as filed with the Securities and Exchange Commission on May 12, 2010, and incorporated by reference herein.

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## 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 Santa Clara, State of California, on January 9, 2013.

### **XENOPORT, INC.**

By: /s/ Ronald W. Barrett  
Ronald W. Barrett  
Chief Executive Officer

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## POWER OF ATTORNEY

**KNOW ALL PERSONS BY THESE PRESENTS**, that each person whose signature appears below constitutes and appoints Ronald W. Barrett and William G. Harris, and each or any one of them, his or her true and lawful attorney-in-fact and agent, 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 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 requisite and necessary to be done in connection therewith, 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-in-fact and agents, or any of them, or their or his substitutes or 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
<u>/s/ Ronald W. Barrett</u> Ronald W. Barrett	Chief Executive Officer and Director (Principal Executive Officer)	January 9, 2013
<u>/s/ William G. Harris</u> William G. Harris	Senior Vice President of Finance and Chief Financial Officer (Principal Financial and Accounting Officer)	January 9, 2013
<u>/s/ Paul L. Berns</u> Paul L. Berns	Director	January 9, 2013
<u>/s/ Dennis M. Fenton</u> Dennis M. Fenton	Director	January 9, 2013
<u>/s/ John G. Freund</u> John G. Freund	Director	January 9, 2013
<u>Catherine J. Friedman</u>	Director	
<u>/s/ Jeryl L. Hilleman</u> Jeryl L. Hilleman	Director	January 9, 2013
<u>/s/ Ernest Mario</u> Ernest Mario	Director	January 9, 2013
<u>/s/ William J. Rieflin</u> William J. Rieflin	Director	January 9, 2013
<u>/s/ Wendell Wierenga</u> Wendell Wierenga	Director	January 9, 2013

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January 9, 2013

XenoPort, Inc.  
3410 Central Expressway  
Santa Clara, CA 95051

Ladies and Gentlemen:

You have requested our opinion with respect to certain matters in connection with the filing by XenoPort, Inc. (the “**Company**”) of a Registration Statement on Form S-8 (the “**Registration Statement**”) with the Securities and Exchange Commission covering the offering of up to 1,956,102 shares of the Company’ s Common Stock, \$0.001 par value per share (the “**Shares**”), pursuant to its 2005 Equity Incentive Plan, 2005 Non-Employee Directors’ Stock Option Plan, 2005 Employee Stock Purchase Plan and 2010 Inducement Award Plan (collectively, the “**Plans**”).

In connection with this opinion, we have examined the Registration Statement and related Prospectuses, the Company’ s Certificate of Incorporation and Bylaws, each as amended, and such other documents, records, certificates, memoranda and other instruments as we deem necessary as a basis for this opinion. We have assumed the genuineness and authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as copies thereof and the due execution and delivery of all documents where due execution and delivery are a prerequisite to the effectiveness thereof.

Our opinion is expressed only with respect to the federal laws of the United States of America and the General Corporation Law of the State of Delaware. We express no opinion as to whether the laws of any particular jurisdiction other than those identified above are applicable to the subject matter hereof.

On the basis of the foregoing, and in reliance thereon, we are of the opinion that the Shares, when sold and issued in accordance with the applicable Plans, the Registration Statement and the related Prospectuses, will be validly issued, fully paid and nonassessable (except as to shares issued pursuant to certain deferred payment arrangements, which will be fully paid and nonassessable when such deferred payments are made in full).

We consent to the filing of this opinion as an exhibit to the Registration Statement.

Very truly yours,

**COOLEY LLP**

By: /s/ Kenneth L. Guernsey  
Kenneth L. Guernsey

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in the Registration Statement (Form S-8) pertaining to the 2005 Equity Incentive Plan, the 2005 Non-Employee Directors' Stock Option Plan, the 2005 Employee Stock Purchase Plan and the 2010 Inducement Award Plan of XenoPort, Inc. of our reports dated February 29, 2012, with respect to the financial statements of XenoPort, Inc. and the effectiveness of internal control over financial reporting of XenoPort, Inc. included in its Annual Report (Form 10-K) for the year ended December 31, 2011, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

Redwood Shores, California

January 8, 2013