

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

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): May 1, 2020

WAITR HOLDINGS INC.
(Exact name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

214 Jefferson Street, Suite 200
Lafayette, Louisiana
(Address of Principal Executive Offices)

001-37788
(Commission File Number)

26-3828008
(IRS Employer
Identification No.)

70501
(Zip Code)

Registrant's Telephone Number, Including Area Code: (337) 534-6881

Not Applicable
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instructions A.2. below):

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, Par Value \$0.0001 Per Share	WTRH	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§ 230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§ 240.12b-2 of this chapter).

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 13(a) of the Exchange Act. ☐

Item 1.01 Entry into a Material Definitive Agreement.

Limited Waiver and Conversion Agreement

In connection with the at-the-market offering (the “ATM Offering”) being conducted by Waitr Holdings Inc. (the “Company”) pursuant to the Company’s effective registration statement on Form S-3 (Registration Statement No. 333-230721), the Company, Waitr Inc. (the “C&G Borrower”), Waitr Intermediate Holdings, LLC (“Intermediate”), the lenders party thereto and Luxor Capital Group, LP (“Luxor LP”) entered into a Limited Waiver and Conversion Agreement (the “Agreement”), dated as of May 1, 2020 (the “Agreement Date”), pursuant to which (i) the lenders under that certain Credit and Guaranty Agreement, dated as of November 15, 2018, as subsequently amended (the “C&G Agreement”), by and among the C&G Borrower, Intermediate, Luxor LP and the lenders from time to time party thereto have agreed to waive any requirements to prepay the term loans outstanding under the C&G Agreement (the “C&G Term Loans”) as a result of the ATM Offering and (ii) (a) the C&G Borrower has agreed to prepay the C&G Term Loans in the amount of \$12.5 million on the date that is 60 days following the Effective Date (as defined in the Agreement) and (b) the Company has agreed to permit the lenders (the “Credit Agreement Lenders”) under that certain credit agreement, dated as of November 15, 2018, as subsequently amended (the “Credit Agreement”), by and among the Company, Luxor LP and the lenders party thereto to, and the Credit Agreement Lenders have agreed to, convert a portion of the outstanding principal amount of the convertible promissory notes issued to the Credit Agreement Lenders under the Credit Agreement (the “Notes”) in the amount of \$12.5 million into shares of common stock of the Company, par value \$0.0001 (“Common Stock”), at a conversion rate of 746.269 shares of Common Stock per \$1,000 principal amount of the Notes (calculated based on the closing price of \$1.34 per share of Common Stock on The Nasdaq Global Select Market on April 30, 2020, the date immediately preceding the Agreement Date) (the “Conversion Shares”), notwithstanding the conversion rate then in effect pursuant to the terms of the Notes. The Conversion Shares will be subject to a customary lock-up for a period of 45 days.

The foregoing description of the Agreement does not purport to be complete and is qualified in its entirety by the full text of the Agreement, which is attached hereto as Exhibit 10.1 and is incorporated herein by reference.

Item 2.02 Results of Operations and Financial Condition.

On May 7, 2020, the Company issued a press release announcing first quarter 2020 financial results and a business update for the Company. A copy of the press release is attached hereto as Exhibit 99.1 and incorporated herein by reference.

The information in this Item 2.02, including Exhibit 99.1, is intended to be furnished and shall not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (“Exchange Act”), or otherwise subject to the liabilities of that section, nor shall it be incorporated by reference into any filing under the Securities Act of 1933, as amended (the “Securities Act”), or the Exchange Act, except expressly set forth by specific reference in such filing.

Item 3.02 Unregistered Sales of Equity Securities.

The disclosure set forth under Item 1.01 above is incorporated herein by reference.

The issuance of the Conversion Shares will be made pursuant to Section 3(a)(9) of the Securities Act of 1933, as amended.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit Number	Description
10.1	Limited Waiver and Conversion Agreement, dated as of May 1, 2020, by and among Waitr Holdings Inc., Waitr Inc., Waitr Intermediate Holdings, LLC, the Lenders party thereto and Luxor Capital Group, LP
99.1	Press release dated May 7, 2020

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

WAITR HOLDINGS INC.

Date: May 7, 2020

By: /s/ Karl D. Meche
Name: Karl D. Meche
Title: Chief Accounting Officer

**LIMITED WAIVER
AND
CONVERSION AGREEMENT**

This LIMITED WAIVER AND CONVERSION AGREEMENT (this “Agreement”) is made as of May 1, 2020 by and among WAITR HOLDINGS INC., a Delaware corporation (the “CA Borrower”), WAITR INC., a Delaware corporation (the “C&G Borrower”), WAITR INTERMEDIATE HOLDINGS, LLC, a Delaware limited liability company (“Holdings”), the LENDERS (as defined herein) and LUXOR CAPITAL GROUP, LP (“Luxor LP”).

WHEREAS, the C&G Borrower, Holdings, Luxor LP, as administrative agent, collateral agent and lead arranger (in such capacities, the “C&G Administrative Agent”) and the lenders from time to time party thereto (the “C&G Lenders”) are parties to that certain Credit and Guaranty Agreement, dated as of November 15, 2018 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time prior to the date hereof (including as amended pursuant to (i) that certain Amendment No. 1 to Credit and Guaranty Agreement dated as of January 17, 2019 and (ii) that certain Amendment No. 2 to Credit and Guaranty Agreement dated as of May 21, 2019), the “C&G Agreement”);

WHEREAS, the CA Borrower, Luxor LP, as administrative agent and lead arranger (in such capacities, the “CA Administrative Agent” and, together with the C&G Administrative Agent, the “Administrative Agent”), and the lenders party thereto (the “CA Lenders” and, together with the C&G Lenders, the “Lenders”) are parties that certain Credit Agreement, dated as of November 15, 2018 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time prior to the date hereof (including as amended pursuant to (i) that certain Amendment No. 1 to Credit Agreement dated as of January 17, 2019 and (ii) that certain Amendment No. 2 to Credit Agreement dated as of May 21, 2019), the “Credit Agreement”);

WHEREAS, the C&G Borrower and the CA Borrower have informed the Administrative Agent and the Lenders that the CA Borrower plans to conduct an “at-the-market” offering from time to time following the date hereof of shares of common stock of the CA Borrower (“Common Stock”) having an aggregate offering price of up to \$30,000,000 (the “ATM Offering”);

WHEREAS, the C&G Borrower has requested that the C&G Lenders waive any requirements to prepay the term loan outstanding under the C&G Agreement (the “C&G Term Loan”) under Section 2.9(c) thereof solely with respect to and arising directly as a result of the ATM Offering;

WHEREAS, in consideration of the aforementioned prepayment waiver, the C&G Borrower and the CA Borrower have agreed that, regardless of whether any shares of Common Stock are actually sold in the ATM Offering, (i) the C&G Borrower will prepay the C&G Term Loan in the amount of \$12,500,000 on the date that is sixty (60) days following the Effective Date (as defined below) (the “Prepayment Date”) and (ii) the CA Lenders will be permitted to convert on such date or dates provided below a portion of the outstanding principal amount of the convertible promissory notes issued pursuant to the Credit Agreement (the “Convertible Notes”) in the amount of \$12,500,000 into shares of Common Stock at a Conversion Rate (as defined in the Convertible Notes) of 746.269 shares of Common Stock per \$1,000 principal amount of the Convertible Notes, calculated based on the closing price of \$1.34 per share of the Common Stock on The Nasdaq Global Select Market on April 30, 2020, notwithstanding the Conversion Rate in effect pursuant to the terms of the Convertible Notes (the “Waiver Conversion Rate”) in accordance with Section 3 of the Convertible Notes; and

WHEREAS, the C&G Borrower, the CA Borrower, Holdings, the Administrative Agent, and the Lenders have agreed to the aforementioned upon and subject to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the premises set forth above, the terms and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the C&G Borrower, the CA Borrower, Holdings, the Administrative Agent, and the Lenders hereby agree as follows:

SECTION 1. Defined Terms. Capitalized terms used but not otherwise defined herein shall have the respective meanings assigned to such terms in the C&G Agreement and the Credit Agreement, as applicable.

SECTION 2. Limited Waiver. Subject to the satisfaction of all of the conditions set forth in Section 7 below, effective as of the Effective Date, the Administrative Agent and the Lenders party hereto constituting Required Lenders hereby waive any requirements to prepay the C&G Term Loan pursuant to Section 2.9(c) of the C&G Agreement solely with respect to and arising directly as a result of the ATM Offering and any related capital contributions to Holdings or any of its Subsidiaries. The waiver set forth in this Section 2 is a limited waiver, shall be limited precisely as written, and, except as expressly provided herein, shall not be deemed or otherwise construed to (i) constitute a waiver of any other term or provision of the C&G Agreement or any of the other Credit Documents or (ii) operate as a waiver of any right, power or remedy of any C&G Lender or the C&G Administrative Agent under any of the Credit Documents.

SECTION 3. C&G Term Loan Prepayment. The C&G Borrower hereby agrees to make a one-time prepayment of the C&G Term Loan in an amount equal to \$12,500,000 on the Prepayment Date, such prepayment to be applied in the same manner as set forth in Section 2.10(a) of the C&G Agreement.

SECTION 4. Conversion of Convertible Notes. Notwithstanding the Conversion Rate in effect pursuant to the terms of the Convertible Notes, the CA Borrower hereby agrees to permit the CA Lenders to, and the CA Lenders hereby agree to, convert the Convertible Notes in an amount equal to \$12,500,000 (the “Conversion Amount”) at the Waiver Conversion Rate in accordance with Section 3 of the Convertible Notes (such Common Stock to be issued thereby, the “Conversion Shares”) on the Effective Date; provided, however, that if, as a result of Section 3(c) of the Convertible Notes, the Convertible Notes may not be converted into the entire amount of the Conversion Shares on the Effective Date, then the Convertible Notes shall be converted on the Effective Date to the fullest extent possible in accordance with said Section 3(c), and the balance of the Conversion Amount that is not so converted shall be converted as soon as permitted from time to time pursuant to said Section 3(c) on the terms set forth in this Section 4. It is understood and agreed by the parties that the conversion of the Convertible Notes provided for hereunder shall have the effect of lowering the principal amount of the Convertible Notes in an amount equal to the principal of the Convertible Notes so converted into Conversion Shares.

SECTION 5. Lock-Up. The CA Lenders hereby agree that, during the Lock-Up Period, the CA Lenders shall not:

(a) Sell, offer to sell, contract or agree to sell, hypothecate, pledge, grant any option to purchase or otherwise dispose of or agree to dispose of, directly or indirectly, or establish or increase a put equivalent position or liquidate or decrease a call equivalent position within the meaning of Section 16 of the Securities Exchange Act of 1934, as amended, with respect to any portion of the Conversion Shares;

(b) Enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of any of the Conversion Shares, whether any such transaction is to be settled by delivery of Conversion Shares or such other securities, in cash or otherwise; or

(c) Publicly announce any intention to effect any transaction specified in clause (a) and (b).

As used herein, the term “Lock-Up Period means the earlier of (i) 45 days after the Effective Date or (ii) the date the CA Borrower consummates a liquidation, merger, stock exchange or other similar transaction that results in all of the CA Borrower’s stockholders having the right to exchange their shares of Common Stock for cash, securities or other property.

SECTION 6. Representations and Warranties of the Credit Parties and CA Borrower. By its execution and delivery of this Agreement, each Credit Party and CA Borrower that is a party hereto hereby represents and warrants that each of the representations and warranties contained in Section 4 of each of the C&G Agreement and the Credit Agreement (which are incorporated herein by this reference, *mutatis mutandis*) are true and correct in all material respects on and as of the Effective Date (except for those representations and warranties that are conditioned by materiality, which are true and correct in all respects) to the same extent as though made on and as of such date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties were true and correct in all material respects (except for those representations and warranties that are conditioned by materiality, which were true and correct in all respects) on and as of such earlier date.

SECTION 7. Conditions of Effectiveness. This Agreement shall become effective on and as of the date (such date, the “Effective Date”) upon which all of the following conditions set forth in this Section 7 shall have been satisfied:

(a) Receipt by Administrative Agent of counterparts of this Agreement duly executed by each Credit Party, CA Borrower, and the Lenders constituting the Required Lenders and the Administrative Agent.

(b) Receipt by the CA Borrower of an executed notice of conversion form attached hereto as Exhibit A and the form of undertaking attached hereto as Exhibit B.

(c) On the Effective Date after giving effect to this Agreement, (i) each of the representations and warranties contained in Section 4 of each of the C&G Agreement and Credit Agreement are true and correct in all material respects on and as of the Effective Date (except for those representations and warranties that are conditioned by materiality, which are true and correct in all respects) to the same extent as though made on and as of such date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties were true and correct in all material respects (except for those representations and warranties that are conditioned by materiality, which were true and correct in all respects) on and as of such earlier date, (ii) no event shall have occurred and be continuing or would result from the consummation of this Agreement or the ATM Offering that would constitute an Event of Default under the C&G Agreement or the Credit Agreement.

SECTION 8. Credit Document. The parties hereto acknowledge and agree that, on and after the Effective Date, this Agreement shall constitute a Credit Document for all purposes of the C&G Agreement and the Credit Agreement.

SECTION 9. Reference to and Effect on the C&G Agreement and the Credit Agreement. The C&G Agreement, the Credit Agreement and the Credit Documents shall remain in full force and effect and are hereby ratified and confirmed. Other than as expressly set forth herein, nothing in this Agreement shall be deemed to constitute a waiver by the Administrative Agent or any Lender of any Default or Event of Default, nor constitute a waiver of any provision of this Agreement, the C&G Agreement, the Credit Agreement, any Credit Document or any other documents, instruments or agreements executed and/or delivered in connection herewith or therewith, whether now existing or hereafter arising, or of any right,

power or remedy that Administrative Agent or Lenders may have under any of the C&G Agreement, the Credit Agreement, Credit Documents or applicable law. Upon the Effective Date, this Agreement, the C&G Agreement, the Credit Agreement and the other Credit Documents constitute the entire agreement among the parties hereto with respect to the subject matter hereof and thereof and supersede all other prior agreements and understandings, both written and verbal, among the parties hereto with respect to the subject matter hereof.

SECTION 10. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York, but giving effect to federal laws applicable to national banks.

SECTION 11. Headings. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

SECTION 12. Counterparts. This Agreement may be executed by one or more of the parties hereto on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement by facsimile, e-mailed .pdf or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 13. Reaffirmation. Each of the Credit Parties as debtor, grantor, pledgor, guarantor, assignor, or in any other similar capacity in which such Credit Party grants liens or security interests in its property or otherwise acts as an accommodation party or guarantor, as the case may be, (a) hereby ratifies and reaffirms all of its payment and performance obligations, contingent or otherwise, under each of the Credit Documents to which it is a party (after giving effect hereto) and (b) to the extent such Credit Party granted liens on or security interests in any of its property pursuant to any Credit Document as security for or otherwise guaranteed the Obligations under or with respect to the Credit Documents, hereby ratifies and reaffirms such guarantee and grant of security interests and liens and confirms and agrees that such security interests and liens hereafter secure all of the Obligations. Each of the CA Borrower and Credit Parties hereby consents to this Agreement and each of the transactions contemplated hereby and acknowledges that each of the C&G Agreement, the Credit Agreement and the Credit Documents (as amended through and including the date hereof) remains in full force and effect and is hereby ratified and reaffirmed.

[Signature Pages Follow]

IN WITNESS WHEREOF, this Agreement has been duly executed as of the day and year first above written.

WAITR HOLDINGS INC.

By: /s/Carl Grimstad
Name: Carl Grimstad
Title: Chief Executive Officer

WAITR INC.

By: /s/ Carl Grimstad
Name: Carl Grimstad
Title: Chief Executive Officer

WAITR INTERMEDIATE HOLDINGS, LLC

By: WAITR HOLDINGS, INC., its sole member

By: /s/Carl Grimstad
Name: Carl Grimstad
Title: Chief Executive Officer

LUXOR CAPITAL GROUP, LP
as Administrative Agent, Lead Arranger and Collateral Agent

By: /s/ Norris Nissim
Name: Norris Nissim
Title: General Counsel

Signature Page to
Limited Waiver and Conversion Agreement

LUXOR CAPITAL, LLC,
as Lender

By: Luxor Capital Group, LP,
its Manager

By: /s/ Norris Nissim
Name: Norris Nissim
Title: General Counsel

LUXOR CAPITAL PARTNERS, LP,
as Lender

By: Luxor Capital Group, LP,
its Manager

By: /s/ Norris Nissim
Name: Norris Nissim
Title: General Counsel

LUXOR CAPITAL PARTNERS OFFSHORE MASTER FUND, LP
as Lender

By: Luxor Capital Group, LP,
its Manager

By: /s/ Norris Nissim
Name: Norris Nissim
Title: General Counsel

Signature Page to
Limited Waiver and Conversion Agreement

LUXOR WAVEFRONT, LP
as Lender

By: Luxor Capital Group, LP,
its Manager

By: /s/ Norris Nissim
Name: Norris Nissim
Title: General Counsel

LUGARD ROAD CAPITAL MASTER FUND, LP
as Lender

By: Luxor Capital Group, LP,
its Manager

By: /s/Norris Nissim
Name: Norris Nissim
Title: General Counsel

Signature Page to
Limited Waiver and Conversion Agreement

EXHIBIT A
WAITR HOLDINGS INC.
NOTICE OF CONVERSION FORM

To [Name]:

The undersigned hereby irrevocably elects to exercise the right of conversion represented by the within Note ("Note") pursuant to this Notice of Conversion form ("Conversion Notice") for \$_____ of the principal amount of the Note ("Conversion Amount") to be converted into shares of Common Stock ("Conversion Shares") as provided for therein, and requests that certificates for the Conversion Shares be issued as follows:

Name

Address

Federal Tax ID or Social Security No.

and delivered by: (certified mail to the above address, or electronically (provide DWAC instructions:

_____), or

other

(specify).

and, if the Conversion Amount shall not be all of the principal outstanding amount of the Note, that a new Note for the balance of the principal amount be registered in the name of the undersigned Holder or the undersigned's assignee as below indicated and delivered to the address stated below.

Notwithstanding anything to the contrary contained herein, this Conversion Notice shall constitute a representation by the Holder of the Note submitting this Conversion Notice that, after giving effect to the conversion provided for in this Conversion Notice, such Holder (together with its Affiliates) will not have beneficial ownership (together with the beneficial ownership of such person's Affiliates) of a number of shares of Common Stock which exceeds 9.99% of the total outstanding shares of Common Stock as determined pursuant to the provisions of Section 3(c) of this Note. In determining whether the Holder (together with its Affiliates) will not have beneficial ownership (together with the beneficial ownership of the Holder's Affiliates) of a number of shares of Common Stock which exceeds 9.99%, the Company may rely on the above representation and warranty of the Holder.

Dated: _____, _____

Note: The signature must correspond with the name of the Holder as written on the first page of this Note in every particular, without alteration or enlargement or any change whatever, unless this Note has been assigned.

Signature: _____

Name (please print)

Address

Federal Identification or
Social Security No.

Assignee: _____

Exhibit B
FORM OF UNDERTAKING

The undersigned (the “Shareholder”) is delivering this certificate to Waitr Holdings Inc., a Delaware company (the “Company”), in connection with the Shareholder’s request to remove the transfer restriction legends under the Securities Act of 1933, as amended (the “Securities Act”), from certificates or book-entry notations with respect to _____ shares of common stock, par value \$.0001 per share (the “Shares”), of the Company, issued in in the name of the Shareholder.

The Shareholder hereby represents and warrants to the Company that it is sophisticated in financial matters, is familiar with the registration requirements under the Securities Act and is an institutional accredited investor under Rule 501(a) promulgated under the Securities Act because it falls within one of the categories set forth on Annex A hereto.

The Shareholder hereby covenants to the Company that the Shareholder will transfer the Shares only (a) pursuant to Rule 144 promulgated under the Securities Act, (b) in a transaction otherwise exempt from the registration requirements of the Securities Act if the transferee executes and delivers to the Company a certificate in the form of this certificate prior to or concurrently with such transfer or (c):

1. at such time or times as the Registration Statement on Form S-3 (File No. 333-228722) initially filed with the Securities and Exchange Commission (“SEC”) on February 2, 2019 and declared effective by the SEC on February 14, 2019, is effective and the prospectus that forms a part of the Registration Statement (the “Prospectus”) is current (and the Shareholder has not received oral or written notice from the Company that the Prospectus is suspended or otherwise may not be used for transfers of the Shares);
2. pursuant to and in the manner contemplated by the Registration Statement, including the “Plan of Distribution” contained therein; and
3. otherwise in compliance with the Securities Act, including the rules and regulations promulgated thereunder.

Any notice to the Shareholder pursuant to paragraph 1 above shall be delivered orally, by email, fax or overnight or standard postal delivery to:

[Address]
[Telephone]
[Facsimile]
[Email]

The Shareholder further covenants to provide the Company with any update to the Shareholder’s contact information set forth above to the extent necessary for purposes of any notification to be delivered to the Shareholder hereunder. Any such notice shall be delivered via email to [] and [].

The Company’s legal counsel is authorized to rely on this certificate for purposes of preparing and delivering any legal opinion(s) required in connection with the removal of the transfer restriction legends from the Shares.

Very truly yours,

Name of Shareholder:

Signature:

Name of Signatory:

Title of Signatory:

Annex A

Institutional Accredited Investor Categories

- ☐ Any bank, registered broker or dealer, insurance company, registered investment company, business development company, or small business investment company
- ☐ Any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions for the benefit of its employees, if such plan has total assets in excess of \$5,000,000
- ☐ Any employee benefit plan, within the meaning of the Employee Retirement Income Security Act of 1974, if a bank, insurance company, or registered investment adviser makes the investment decisions, or if the plan has total assets in excess of \$5,000,000
- ☐ a corporation, similar business trust, partnership or any organization described in Section 501(c)(3) of the Internal Revenue Code, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$5,000,000
- ☐ Any trust with assets in excess of \$5,000,000, not formed to acquire the securities offered, whose purchase is directed by a sophisticated person
- ☐ Any entity in which all of the equity owners are accredited investors meeting one or more of the above tests

Waitr Reports First Quarter 2020 Results and Provides Business Update

LAFAYETTE, LA, May 7, 2020 — Waitr Holdings Inc. (Nasdaq: WTRH) (“Waitr” or the “Company”), a leader in on-demand food ordering and delivery, today reported financial results for the first quarter of 2020.

First Quarter 2020 Highlights

- Net loss for the first quarter of 2020 was \$2.1 million, or a loss of \$0.03 per diluted share, compared to a loss of \$24.7 million, or a loss of \$0.38 per diluted share, in the first quarter of 2019.
- Adjusted EBITDA¹ for the first quarter of 2020 was \$3.7 million, compared to a loss of \$9.9 million in the first quarter of 2019.

“Since the COVID-19 outbreak intensified in the United States, we have implemented a number of measures to protect our local communities, diners, restaurant partners, drivers and employees,” said Carl Grimstad, Chairman and CEO of Waitr. “We began offering no-contact delivery for all restaurant orders, provided gloves, hand sanitizer and masks to our drivers, and continued to pay any employee or driver who is quarantined or contracts the coronavirus. We also successfully transitioned our customer support and corporate staff to work remotely.”

“We also have taken a number of steps to enhance our offerings and support our restaurant partners and local communities during this time,” added Mr. Grimstad. “We expanded our offerings to include delivery of groceries in 10 markets, including no-contact service, and we started delivering alcohol in some markets. We have been constantly working with new and existing restaurant partners to boost their delivery potential and sustain their businesses in the current environment. We have provided restaurants with free marketing and promotions, discounted delivery fees, cleaning spray and other support. Waitr also recently added a donation feature to its app, the proceeds from which will go to Feeding America and other similar charities to help feed the needy. We are also delivering food to the elderly, children and underprivileged during this unprecedented time of need via partnerships with local food banks and charities.”

“From a financial perspective, earlier this year, we implemented several strategic initiatives with a focus on improving revenue per order, cost per order, cash flow and profitability,” continued Mr. Grimstad. “These actions allowed us to stabilize and position the Company for the long term and allowed us to see our first profitable month in February 2020 and realize \$3.7 million of Adjusted EBITDA in the first quarter of 2020. All of our drivers are now independent contractors, and the response from drivers has been overwhelmingly positive. Driver supply remains at a high level while new restaurants are signing up for our services more rapidly than previous quarters. We now have agreements with all Landry’s locations across the country as well as with Five Guys in all of our markets.”

Business Update

As the COVID-19 pandemic became more widespread in the U.S., we initially experienced a decrease in orders in mid-March; however, orders rebounded towards the end of March and continued to grow in April to levels higher than pre-pandemic levels. As a result, we expect April revenue will be approximately \$20 million and Adjusted EBITDA for April 2020 to be in excess of \$4 million. Since the end of the quarter, we have reached an agreement with our debt holder, Luxor Capital, for the Company to repay \$12.5 million of our senior secured credit facility. In a show of confidence in the business, Luxor Capital has also agreed

¹ Adjusted EBITDA is a non-GAAP financial measure. A reconciliation of GAAP net loss to Adjusted EBITDA is included under “Non-GAAP Financial Measure”.

to convert \$12.5 million of their convertible notes into our common stock. After the \$25.0 million prepayment and conversion, the Company’s long-term debt outstanding will be approximately \$107.8 million. While the current economic environment remains inherently uncertain, we are encouraged by our financial results and believe the current situation has only further proved the importance of our services.”

First Quarter 2020 Financial Results

- Revenue for the first quarter of 2020 was \$44.2 million, compared to \$48.0 million in the first quarter of 2019, a decrease of 8%. The decrease was a result of closures of certain non-core markets along with competitive market pressures. The decrease was partially offset by improved revenue per order from modifications to the Company’s fee structure initiated in January 2020. Revenue per order for the first quarter of 2020 was \$12.94, a 28% increase over the first quarter 2019 revenue per order of \$10.11.
- Operations and support expense decreased by \$9.8 million, or 27%, to \$26.4 million for the first quarter of 2020, compared to \$36.2 million for the first quarter of 2019, primarily as a result of cost savings initiatives implemented.
- Sales and marketing expense decreased by \$7.5 million, or 73%, to \$2.8 million for the first quarter of 2020, compared to \$10.3 million for the first quarter of 2019, primarily as a result of decreased advertising spend as well as consolidation and reduction of sales and marketing staff.
- Research and development expense decreased to \$1.5 million for the first quarter of 2020, in comparison to \$1.9 million for the first quarter of 2019, as a result of increased software development activities during the first quarter of 2020, the costs for which were capitalized.
- General and administrative expense decreased by 43% to \$10.8 million for the first quarter of 2020 from \$18.9 million for the first quarter of 2019. General and administrative expense for the three months ended March 31, 2019 included \$6.9 million of business combination-related professional and other costs associated with the Bite Squad Merger. The decrease in general and administrative expense during the first quarter of 2020 was also due to decreased stock-based compensation expenses.
- Depreciation and amortization expense decreased to \$2.1 million in the first quarter of 2020 from \$4.1 million in the first quarter of 2019 primarily as a result of the write-down of the carrying value of intangible assets to their implied fair values in September 2019 in connection with the Company’s goodwill impairment analysis.

First Quarter and April 2020 Key Business Metrics²

- Average Daily Orders for the first quarter of 2020 were 37,576. Average Daily Orders for April 2020 were approximately 44,700, a 19% increase over first quarter 2020.
- Active Diners as of March 31, 2020 were over 2 million.

² Key Business Metrics are defined on page 35 of our Annual Report on Form 10-K for the year ended December 31, 2019, filed on March 16, 2020

Liquidity Update

As of March 31, 2020, the Company had cash on hand of \$39.4 million, of which \$3.2 million was reserved under a compensating balance arrangement with a bank. The Company had total long-term debt outstanding at March 31, 2020 of \$132.8 million, consisting of \$70.8 million of term loans, \$61.6 million of convertible notes and \$0.4 million of promissory notes. The term loans and convertible notes mature in November 2022. Outstanding short-term debt as of March 31, 2020 totaled \$1.6 million.

The combination of the effects of implementing several strategic initiatives focused on improving revenue per order, cost per order, cash flow and profitability, along with proceeds from the sales of common stock pursuant to the at-the-market offering launched by the Company in March 2020 resulted in increases in working capital and liquidity from December 31, 2019. As of April 30, 2020, we had cash on hand of approximately \$53 million.

Other Information

Waitr will not be hosting a conference call to discuss the first quarter 2020 operational and financial results.

About Waitr Holdings Inc.

Founded in 2013 and based in Lafayette, Louisiana, Waitr is a leader in on-demand food ordering and delivery. Waitr, and its sister brand Bite Squad, connects local restaurants and grocery stores to hungry diners in underserved U.S. markets. Together they are a convenient way to discover, order and receive great food from local restaurants, grocery stores and national chains. As of March 31, 2020, Waitr and Bite Squad operated in small and medium sized markets in the United States in over 600 cities.

Cautionary Note Concerning Forward-Looking Statements

This press release contains “forward-looking statements,” as defined by the federal securities laws, including statements regarding the Company’s financial results, implementation of strategic initiatives and future performance of the Company. Forward-looking statements reflect Waitr’s current expectations and projections about future events at the time, and thus involve uncertainty and risk. The words “believe,” “expect,” “anticipate,” “will,” “could,” “would,” “should,” “may,” “plan,” “estimate,” “intend,” “predict,” “potential,” “continue,” and the negatives of these words and other similar expressions generally identify forward-looking statements. Such forward-looking statements are subject to various risks and uncertainties, including the impact of the coronavirus (COVID-19) pandemic on the Company’s business and operations, and those described under the section entitled “Risk Factors” in Waitr’s Annual Report on Form 10-K for the year ended December 31, 2019, filed with the SEC on March 16, 2020, as such factors may be updated from time to time in Waitr’s periodic filings with the SEC, which are accessible on the SEC’s website at www.sec.gov. Additional information will be set forth in Waitr’s Quarterly Report on Form 10-Q for the three months ended March 31, 2020, which will be filed with the SEC on May 7, 2020, and should be read in conjunction with these financial results. Accordingly, there are or will be important factors that could cause actual outcomes or results to differ materially from those indicated in these statements. These factors should not be construed as exhaustive and should be read in conjunction with the other cautionary statements that are included in this release and in Waitr’s filings with the SEC. While forward-looking statements reflect Waitr’s good faith beliefs, they are not guarantees of future performance. Waitr disclaims any obligation to publicly update or revise any forward-looking statement to reflect changes in underlying assumptions or factors, new information, data or methods, future events or other changes after the date of this press release, except as required by applicable law. You should not place undue reliance on any forward-looking statements, which are based only on information currently available to Waitr (or to third parties making the forward-looking statements).

Waitr has thus far been able to operate effectively during the COVID-19 pandemic. However, the potential impacts and duration of the COVID-19 pandemic on the global economy and on the Company’s business, in particular, may be difficult to assess or predict. The pandemic has resulted in, and may continue to result in, significant disruption of global financial markets, which may reduce the Company’s ability to access capital and continue to operate effectively. The COVID-19 pandemic could also reduce the demand for the Company’s services. In addition, a recession or further financial market correction resulting from the spread of COVID-19 could adversely affect demand for the Company’s services. To the extent that the COVID-19 pandemic adversely impacts the Company’s business, results of operations, liquidity or financial condition, it may also have the effect of heightening many of the other risks described in the risk factors in the Company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2019.

Non-GAAP Financial Measure

Adjusted EBITDA is a financial measure that is not calculated in accordance with generally accepted accounting principles in the United States of America (“GAAP”).

We define Adjusted EBITDA as net loss adjusted to exclude interest expense, income taxes, depreciation and amortization, acquisition and restructuring costs, stock-based compensation expense, impairments of intangible assets and goodwill and gains and losses associated with derivatives and debt extinguishments and when applicable, other expenses that do not reflect our core operations. We use this non-GAAP financial measure as a key performance measure because we believe it facilitates operating performance comparisons from period to period by excluding potential differences primarily caused by variations in capital structures, tax positions, the impact of acquisitions and restructuring, the impact of depreciation and amortization expense on our fixed assets and the impact of stock-based compensation expense. Adjusted EBITDA is not a measurement of our financial performance under GAAP and should not be considered as an alternative to performance measures derived in accordance with GAAP.

See “Non-GAAP Financial Measure/Adjusted EBITDA” below for a reconciliation of net loss to Adjusted EBITDA for the first quarters ended March 31, 2020 and 2019.

Contacts:

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CONSOLIDATED STATEMENTS OF OPERATIONS
(In thousands, except share and per share amounts)
(Unaudited)

	Three Months Ended March 31,			
	2020		2019	
REVENUE	\$	44,243	\$	48,032
COSTS AND EXPENSES:				
Operations and support		26,365		36,183
Sales and marketing		2,826		10,323
Research and development		1,470		1,940
General and administrative		10,778		18,918
Depreciation and amortization		2,064		4,116
Intangible and other asset impairments		—		18
Loss on disposal of assets		8		5
TOTAL COSTS AND EXPENSES		43,511		71,503
INCOME (LOSS) FROM OPERATIONS		732		(23,471)
OTHER EXPENSES (INCOME) AND LOSSES (GAINS), NET				
Interest expense		2,914		1,605
Interest income		(60)		(339)
Other income		(37)		(50)
NET LOSS BEFORE INCOME TAXES		(2,085)		(24,687)
Income tax expense		17		62
NET LOSS	\$	(2,102)	\$	(24,749)
LOSS PER SHARE:				
Basic and diluted	\$	(0.03)	\$	(0.38)
Weighted average common shares outstanding – basic and diluted		76,884,717		64,525,610

CONSOLIDATED BALANCE SHEETS
(In thousands, except per share data)
(Unaudited)

	March 31, 2020	December 31, 2019
<u>ASSETS</u>		
CURRENT ASSETS		
Cash	\$ 39,376	\$ 29,317
Accounts receivable, net	3,362	3,272
Capitalized contract costs, current	409	199
Prepaid expenses and other current assets	5,083	8,329
TOTAL CURRENT ASSETS	48,230	41,117
Property and equipment, net	3,608	4,072
Capitalized contract costs, noncurrent	1,543	772
Goodwill	106,734	106,734
Intangible assets, net	24,869	25,761
Other noncurrent assets	484	517
TOTAL ASSETS	\$ 185,468	\$ 178,973
<u>LIABILITIES AND STOCKHOLDERS' EQUITY</u>		
LIABILITIES:		
CURRENT LIABILITIES		
Accounts payable	\$ 5,082	\$ 4,384
Restaurant food liability	5,021	5,612
Accrued payroll	7,414	5,285
Short-term loans	1,578	3,612
Deferred revenue, current	80	414
Income tax payable	68	51
Other current liabilities	12,125	12,630
TOTAL CURRENT LIABILITIES	31,368	31,988
Long-term debt	125,707	123,244
Accrued workers' compensation liability	394	463
Deferred revenue, noncurrent	2	45
Other noncurrent liabilities	324	325
TOTAL LIABILITIES	157,795	156,065
STOCKHOLDERS' EQUITY:		
Common stock, \$0.0001 par value	8	8
Additional paid in capital	392,004	385,137
Accumulated deficit	(364,339)	(362,237)
TOTAL STOCKHOLDERS' EQUITY	27,673	22,908
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	\$ 185,468	\$ 178,973

CONSOLIDATED CASH FLOW STATEMENTS
(In thousands)
(Unaudited)

	Three Months Ended March 31,	
	2020	2019
Cash flows from operating activities:		
Net loss	\$ (2,102)	\$ (24,749)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:		
Non-cash interest expense	2,396	388
Non-cash advertising expense	—	142
Stock-based compensation	848	2,033
Equity issued in exchange for services	—	30
Loss on disposal of assets	8	5
Depreciation and amortization	2,064	4,116
Intangible and other asset impairments	—	18
Amortization of capitalized contract costs	68	583
Other non-cash income	(12)	—
Changes in assets and liabilities:		
Accounts receivable	(90)	(2,883)
Capitalized contract costs	(1,049)	(1,007)
Prepaid expenses and other current assets	3,246	961
Accounts payable	698	(49)
Restaurant food liability	(591)	7,428
Deferred revenue	(378)	347
Income tax payable	17	62
Accrued payroll	2,129	2,168
Accrued workers' compensation liability	(69)	(176)
Other current liabilities	(155)	(2,093)
Other noncurrent liabilities	(1)	(11)
Net cash provided by (used in) operating activities	7,027	(12,687)
Cash flows from investing activities:		
Purchases of property and equipment	(70)	(627)
Acquisition of Bite Squad, net of cash acquired	—	(192,419)
Other acquisitions	(242)	—
Collections on notes receivable	21	22
Internally developed software	(671)	(59)
Proceeds from sale of property and equipment	3	21
Net cash used in investing activities	(959)	(193,062)
Cash flows from financing activities:		
Proceeds from issuance of stock	6,584	—
Equity issuance costs	(114)	(600)
Proceeds from Additional Term Loans	—	42,080
Payments on short-term loans	(2,028)	(658)
Proceeds from exercise of stock options	8	1
Taxes paid related to net settlement on stock-based compensation	(459)	(799)
Net cash provided by financing activities	3,991	40,024
Net change in cash	10,059	(165,725)
Cash, beginning of period	29,317	209,340
Cash, end of period	\$ 39,376	\$ 43,615
Supplemental disclosures of cash flow information:		
Cash earned during the period for interest	\$ 48	\$ —
Cash paid during the period for interest	518	1,215
Supplemental disclosures of non-cash investing and financing activities:		
Stock issued as consideration in Bite Squad acquisition	—	126,573
Stock issued in connection with Additional Term Loans	—	3,884

NON-GAAP FINANCIAL MEASURE
ADJUSTED EBITDA
(In thousands)
(Unaudited)

	Three Months Ended March 31,	
	2020	2019
NET LOSS	\$ (2,102)	\$ (24,749)
Interest expense	2,914	1,605
Income taxes	17	62
Depreciation and amortization	2,064	4,116
Stock-based compensation	848	2,063
Intangible and other asset impairments	—	18
Business combination related expenditures	—	6,949
ADJUSTED EBITDA	\$ 3,741	\$ (9,936)