

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

**FORM S-8
REGISTRATION STATEMENT**
*Under
The Securities Act of 1933*

WAITR HOLDINGS INC.
(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

26-3828008
(I.R.S. Employer
Identification Number)

214 Jefferson Street, Suite 200
Lafayette, Louisiana 70501
337-534-6881
(Address, including zip code, of Registrant's principal executive offices)

Waitr Holdings Inc.
Amended and Restated 2018 Omnibus Incentive Plan
(Full title of the plans)

Leo Bogdanov
Chief Financial Officer
214 Jefferson Street, Suite 200
Lafayette, Louisiana 70501
337-534-6881
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

JC Anderson
Lathrop GPM LLP
80 South Eighth Street
500 IDS Center
Minneapolis, MN 55402
(212) 632-3230

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 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 | <input type="checkbox"/> | | Accelerated filer | <input checked="" type="checkbox"/> |
| Non-accelerated filer | <input type="checkbox"/> | | Smaller reporting company | <input checked="" type="checkbox"/> |
| | | | Emerging growth company | <input checked="" type="checkbox"/> |

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.

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 | Amount of Registration Fee(3) |
|--|----------------------------|--|---|-------------------------------|
| Common stock, par value \$0.0001 per share (4) | 25,530,736 | \$5.28 | \$134,802,286.08 | \$17,497.34 |

- (1) Pursuant to Rule 416 promulgated under the Securities Act of 1933, as amended (the “Securities Act”), this Registration Statement shall also cover any additional shares of the Registrant’s common stock that become issuable by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without receipt of consideration that increases the number of outstanding shares of the Registrant’s common stock.
 - (2) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(c) and Rule 457(h) promulgated under the Securities Act. The offering price per share and the 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 July 31, 2020.
 - (3) Calculated by multiplying the estimated aggregate offering price of the securities being registered by 0.0001298.
 - (4) Represents additional shares of common stock that have or will become available for issuance under the Waitr Holdings Inc. 2018 Omnibus Incentive Plan.
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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 participants as specified in Rule 428(b)(1) of the Securities Act. These documents and the documents incorporated by reference into this registration statement pursuant to Item 3 of Part II of this registration statement, 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 have been filed by us with the U.S. Securities and Exchange Commission (the "SEC") and are incorporated herein by reference:

- our Annual Report on [Form 10-K](#) for the fiscal year ended December 31, 2019, filed with the SEC on March 16, 2020;
- our Quarterly Reports on Form 10-Q, for the fiscal quarter ended March 31, 2020, filed with the SEC on [May 7, 2020](#) and for the fiscal quarter ended June 30, 2020, filed with the SEC on [August 6, 2020](#);
- our Current Reports on Form 8-K filed with the SEC on [January 3, 2020](#), [March 20, 2020](#), [April 28, 2020](#), [May 1, 2020](#), [May 7, 2020](#) (excluding Item 2.02), [May 27, 2020](#), [June 17, 2020](#) and [July 15, 2020](#); and
- the description of our shares of common stock and warrants contained in our Registration Statement on Form 8-A, as filed with the SEC on [May 24, 2016](#) and amended on [November 19, 2018](#), including any amendment or report filed for the purpose of updating such description.

All documents subsequently filed by us pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), other than current reports furnished under Item 2.02 or Item 7.01 of Form 8-K and exhibits furnished on such form that relate to such items, prior to the filing of a post-effective amendment to this Registration Statement which indicates that all of the shares of common stock offered have been sold or which deregisters all of such shares 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 the filing of such documents.

For purposes of this Registration Statement, any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

Section 145 of the Delaware General Corporation Law (the “DGCL”) provides that a corporation may indemnify directors and officers as well as other employees and individuals against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with any threatened, pending or completed actions, suits or proceedings in which such person is made a party by reason of such person being or having been a director, officer, employee or agent of the Registrant. The DGCL provides that Section 145 is not exclusive of other rights to which those seeking indemnification may be entitled under any bylaws, agreement, vote of stockholders or disinterested directors or otherwise. The Registrant’s Certificate of Incorporation and Bylaws provide for indemnification by the Registrant of its directors and officers to the fullest extent permitted by the DGCL.

Section 102(b)(7) of the DGCL permits a corporation to provide in its Certificate of Incorporation that a director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (1) for any breach of the director’s duty of loyalty to the corporation or its stockholders, (2) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (3) for unlawful payments of dividends or unlawful stock repurchases, redemptions or other distributions or (4) for any transaction from which the director derived an improper personal benefit. The Registrant’s Certificate of Incorporation provides for such limitation of liability to the fullest extent permitted by the DGCL.

The Registrant expects to enter into indemnification agreements with each of its directors and executive officers to provide contractual indemnification in addition to the indemnification provided in our Certificate of Incorporation. Each indemnification agreement provides for indemnification and advancements by the Registrant of certain expenses and costs relating to claims, suits or proceedings arising from his or her service to the Registrant or, at our request, service to other entities, as officers or directors to the maximum extent permitted by applicable law. We believe that these provisions and agreements are necessary to attract qualified directors.

The Registrant also maintains standard policies of insurance under which coverage is provided (1) to its directors and officers against loss arising from claims made by reason of breach of duty or other wrongful act, while acting in their capacity as directors and officers of the Registrant, and (2) to the Registrant with respect to payments which may be made by the Registrant to such officers and directors pursuant to any indemnification provision contained in the Registrant’s Certificate of Incorporation and Bylaws or otherwise as a matter of law.

Item 7. Exemption from Registration Claimed.

Not Applicable.

Item 8. Exhibits.

| <u>Exhibit Number</u> | <u>Exhibit Title</u> |
|-----------------------|--|
| 4.1 | <u>Third Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 of the Form 8-A/A (File No. 001-37788) filed by the Registrant on November 19, 2018).</u> |
| 4.2 | <u>Amended and Restated Bylaws (incorporated by reference to Exhibit 3.2 of the Form 8-A/A (File No. 001-37788) filed by the Registrant on November 19, 2018).</u> |
| 4.3 | <u>Specimen Common Stock Certificate (incorporated by reference to Exhibit 4.1 of the Form 8-A/A (File No. 001-37788) filed by the Registrant on November 19, 2018).</u> |
| 4.4 | <u>Form of Warrant (incorporated by reference to Exhibit 4.3 of the Form 8-A/A (File No. 001-37788) filed by the Registrant on November 19, 2018)</u> |
| 4.5 | <u>Waitr Holdings Inc. Amended and Restated 2018 Omnibus Incentive Plan (incorporated by reference to Exhibit 10.1 of the Current Report on Form 8-K (File No. 001-37788) filed by the Registrant on June 17, 2020).</u> |
| 5.1* | <u>Opinion of Lathrop GPM LLP</u> |
| 23.1* | <u>Consent of Moss Adams LLP</u> |
| 23.2* | <u>Consent of Lathrop GPM LLP (included in Exhibit 5.1 to the Registration Statement)</u> |
| 24.1* | <u>Powers of Attorney (included on the signature page of the Registration Statement)</u> |

* Filed herewith

Item 9. Undertakings.

1. The undersigned Registrant hereby undertakes:
 - (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. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent No more than a 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective Registration Statement.
 - (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)(i) and (a)(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 herein.
 - (b) 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 herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
 - (c) 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.
2. 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 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
3. 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 Securities Act of 1933 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 of 1933 and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Lafayette, State of Louisiana, on August 6, 2020.

WAITR HOLDINGS INC.

By: /s/ Carl A. Grimstad

Name: Carl A. Grimstad

Title: Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Carl A. Grimstad and Leo Bogdanov, or each of them, his true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement on Form S-8, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission (the "SEC"), and generally to do all such things in their names and behalf in their capacities as officers and directors to enable the registrant to comply with the provisions of the Securities Act of 1933, as amended, and all requirements of the SEC, 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 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, as amended, this Registration Statement has been signed by the following persons in the capacities indicated.

| <u>Signature</u> | <u>Capacity in Which Signed</u> | <u>Date</u> |
|---|---|----------------|
| <u>/s/ Carl A. Grimstad</u> Carl A. Grimstad | Chief Executive Officer and Chairman of the Board (Principal Executive Officer) | August 6, 2020 |
| <u>/s/ Leo Bogdanov</u> Leo Bogdanov | Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer) | August 6, 2020 |
| <u>/s/ Tilman J. Fertitta</u> Tilman J. Fertitta | Director | August 6, 2020 |
| <u>/s/ Jonathan Green</u> Jonathan Green | Director | August 6, 2020 |
| <u>/s/ Charles Holzer</u> Charles Holzer | Director | August 6, 2020 |
| <u>/s/ Christopher Meaux</u> Christopher Meaux | Director | August 6, 2020 |
| <u>/s/ Buford Ortale</u> Buford Ortale | Director | August 6, 2020 |
| <u>/s/ Pouyan Salehi</u> Pouyan Salehi | Director | August 6, 2020 |
| <u>/s/ Steven L. Scheinthal</u> Steven L. Scheinthal | Director | August 6, 2020 |
| <u>/s/ William Gray Stream</u> William Gray Stream | Director | August 6, 2020 |

LATHROP GPM LLP
500 IDS Center
80 South Eighth Street
Minneapolis, Minnesota 55402
(612) 632-3000

August 6, 2020

Waitr Holdings Inc.
214 Jefferson Street, Suite 200
Lafayette, Louisiana 70501

Ladies and Gentlemen:

In connection with the Registration Statement on Form S-8 under the Securities Act of 1933, as amended (the “**Registration Statement**”), relating to the registration of 25,530,736 shares of common stock, par value \$0.0001 per share (the “**Shares**”), of Waitr Holdings Inc., a Delaware corporation (the “**Company**”), pursuant to the Waitr Holdings Inc. Amended and Restated 2018 Omnibus Incentive Plan (the “**Plan**”), we have examined such corporate records and other documents, including the Registration Statement, and have reviewed such matters of law as we have deemed relevant hereto, and, based upon such examination and review, it is our opinion that all necessary corporate action on the part of the Company has been taken to authorize the issuance and sale of the Shares and that, when issued and sold as contemplated in the Plan, the Shares will be legally and validly issued, fully paid and nonassessable under the current laws of the State of Delaware.

In rendering the opinions set forth above, we have assumed the genuineness of all signatures, legal capacity of natural persons, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as duplicates or certified or conformed copies and the authenticity of the originals of such latter documents. We have also assumed that the Company’s Board of Directors, or a duly authorized committee thereof, will have approved the issuance of each Plan award prior to the issuance thereof. As to any facts material to this opinion which we did not independently establish or verify, we have relied upon oral or written statements and representations of officers and other representatives of the Company and others.

The opinions expressed herein are based upon and limited to the General Corporation Law of the State of Delaware (including the statutory provisions, the applicable provisions of the Delaware Constitution and reported judicial decisions interpreting the foregoing). We express no opinion herein as to any other laws, statutes, regulations or ordinances.

This opinion is being furnished in connection with the requirements of Item 601(b)(5) of Regulation S-K under the Securities Act of 1933, as amended.

We consent to the filing of this opinion as an exhibit to the Registration Statement. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act of 1933, as amended.

Very truly yours,

/s/ Lathrop GPM LLP

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in this Registration Statement on Form S-8 of Waitr Holdings Inc. of our report dated March 16, 2020, relating to the consolidated financial statements of Waitr Holdings Inc. as of December 31, 2019 and 2018, and for each of the three years in the period ended December 31, 2019, included in the 2019 Annual Report on Form 10-K of Waitr Holdings Inc., filed with the Securities and Exchange Commission.

/s/ Moss Adams LLP

Los Angeles, California

August 6, 2020