

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

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

SITO MOBILE, LTD.
(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

13-4122844
(I.R.S. Employer
Identification Number)

The Newport Corporate Center
100 Town Square Place, Suite 204
Jersey City, NJ 07310
(Address of Principal Executive Offices)

SITO Mobile, Ltd.
2017 Equity Incentive Plan
(Full title of the plan)

Thomas J. Pallack
Chief Executive Officer
SITO Mobile, Ltd.
The Newport Corporate Center
100 Town Square Place, Suite 204
Jersey City, NJ 07310
(Name and address of agent for service)

(201) 275-0555
(Telephone number, including area code, of agent for service)

Copy to:
Andrew Hulsh, Esq.
Pepper Hamilton LLP
The New York Times Building, 37th Floor
620 Eighth Avenue
New York, NY 10018-1405

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of “large accelerated filer,” “accelerated filer,” “smaller reporting company” and “emerging growth company” in Rule 12b-2 of the Exchange Act.

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company
Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

CALCULATION OF REGISTRATION FEE

Title of Securities To Be Registered	Amount To Be Registered ⁽¹⁾	Proposed Maximum Offering Price Per Share	Proposed Maximum Aggregate Offering Price	Amount Of Registration Fee
Shares of Common Stock, \$0.001 par value	150,121 shares	3.86 ⁽²⁾ \$	579,467 \$	72.14

Shares of Common Stock, \$0.001 par value ⁽³⁾	1,704,454 shares	6.01	\$	10,243,769	\$	1,275.35
Shares of Common Stock, \$0.001 par value ⁽³⁾	135,000 shares	6.66	\$	899,100	\$	111.94
Shares of Common Stock, \$0.001 par value ⁽⁴⁾	188,000 shares	6.66	\$	1,252,080	\$	155.88
Shares of Common Stock, \$0.001 par value ⁽⁴⁾	100,000 shares	6.01	\$	601,000	\$	74.82
Shares of Common Stock, \$0.001 par value ⁽⁵⁾	222,425 shares	4.02	\$	894,149	\$	111.32

- (1) Pursuant to Rule 416 under the Securities Act of 1933, as amended (the "Securities Act"), this registration statement shall be deemed to cover any additional securities to be offered or issued from stock splits, stock dividends or similar transactions.
 - (2) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(c) and Rule 457(h) of the Securities Act. The Proposed Maximum Offering Price Per Share for the 2017 Equity Incentive Plan shares that are not currently subject to outstanding awards under the 2017 Equity Incentive Plan is \$3.86, which is the average of the high and low prices for the Registrant's common stock as reported on the Nasdaq Capital Market on May 31, 2018.
 - (3) Represents shares subject to outstanding restricted stock units ("RSUs") previously granted under the 2017 Equity Incentive Plan. The corresponding proposed maximum offering price per share is calculated pursuant to Rule 457(h) and represents the closing price on the day of grant of such RSUs.
 - (4) Represents shares issuable upon exercise of outstanding options granted under the 2017 Equity Incentive Plan. The corresponding proposed maximum offering price per share is calculated pursuant to Rule 457(h) and represents the exercise price of such outstanding options.
 - (5) Represents 222,425 shares approved for issuance, subject to the filing of this registration statement, under the 2017 Equity Incentive Plan to certain executive officers, which such officers elected to receive in lieu of receipt of portions of the 2017 cash bonus payments. The corresponding proposed maximum offering price per share is calculated pursuant to Rule 457(h) and represents the per share value assigned to such shares in connection with the determination of the number of shares to be issued in lieu of cash bonus payments.
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PART I
INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Item 1. Plan Information.

The documents containing the information specified in Part I will be sent or given to employees participating in the 2017 Equity Incentive Plan (the "Plan"), as specified by Rule 428(b)(1) promulgated under the Securities Act of 1933, as amended (the "Securities Act"). In accordance with the instructions to Part I of Form S-8, such documents will not be filed with the U.S. Securities and Exchange Commission (the "SEC") either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 promulgated under the Securities Act. These documents and the documents incorporated by reference 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.

Item 2. Registrant Information and Employee Plan Annual Information.

Upon written or oral request, any of the documents incorporated by reference in Item 3 of Part II of this Registration Statement, which are also incorporated by reference in the Section 10(a) prospectus, other documents required to be delivered to eligible participants pursuant to Rule 428(b), or additional information about the Plan, will be available without charge, upon written or oral request, by contacting the Office of Investor Relations, SITO Mobile, Ltd., 100 Town Square Place, Suite 204, Jersey City, NJ 07310, Telephone: (201)-275-0555.

PART II
INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents, which have been filed with the SEC by SITO Mobile, Ltd. (the “Registrant” or the “Company”) pursuant to the Securities Act and the Securities Exchange Act of 1934, as amended (the “Exchange Act”), as applicable, are hereby incorporated by reference in, and shall be deemed to be a part of, this Registration Statement:

- a) The Registrant’s Annual Report on Form 10-K for the fiscal year ended December 31, 2017 filed with the SEC on April 2, 2018, as amended by Amendment No. 1 to Annual Report on Form 10-K/A for the fiscal year ended December 31, 2017 filed with the SEC on April 30, 2018;
- b) the Registrant’s Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2018 filed with the SEC on May 15, 2018;
- c) the Registrant’s Current Reports on Form 8-K filed with the SEC on January 12, 2018, February 7, 2018, February 20, 2018, April 2, 2018 and April 3, 2018; and
- d) the description of the Registrant’s common stock contained in the Registration Statement on Form 8-A filed with the SEC on August 6, 2015 (File No. 001-37535), including any amendment or report filed for the purpose of updating such description.

All documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act prior to the filing of a post-effective amendment that indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold shall be deemed to be incorporated by reference herein and to be a part hereof from the date of filing of such documents.

Any statement contained 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 herein (or in any other subsequently filed document which also is incorporated or 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 (“DGCL”) empowers a Delaware corporation to indemnify any persons who are, or are threatened to be made, parties to any threatened, pending or completed legal action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of such corporation), by reason of the fact that such person was an officer or director of such corporation, or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided that such officer or director acted in good faith and in a manner he reasonably believed to be in or not opposed to the corporation’s best interests, and, for criminal proceedings, had no reasonable cause to believe his conduct was illegal. A Delaware corporation may indemnify officers and directors in an action by or in the right of the corporation under the same conditions, except that no indemnification is permitted without judicial approval if the officer or director is adjudged to be liable to the corporation in the performance of his duty. Where an officer or director is successful on the merits or otherwise in the defense of any action referred to above, the corporation must indemnify him against the expenses which such officer or director actually and reasonably incurred.

The Registrant's Certificate of Incorporation, as amended and restated, and the Registrant's Amended and Restated Bylaws provide that the Registrant will indemnify its directors and officers to the fullest extent permitted by Delaware law, except that no indemnification will be provided to a director, officer, employee or agent if the indemnification sought is in connection with a proceeding initiated by such person without the authorization of the board of directors. The bylaws also provide that the right of directors and officers to indemnification shall be a contract right and shall not be exclusive of any other right now possessed or hereafter acquired under any statute, provision of the Registrant's certificate of incorporation, bylaws, agreements, vote of stockholders or disinterested directors or otherwise. The bylaws also permit the Registrant to secure insurance on behalf of any officer, director, employee or other agent for any liability arising out of his or her actions in such capacity.

In accordance with Section 102(b)(7) of the DGCL, the Registrant's Certificate of Incorporation, as amended and restated, provides that directors shall not be personally liable for monetary damages for breaches of their fiduciary duty as directors. The effect of this provision is to eliminate the personal liability of directors for monetary damages for actions involving a breach of their fiduciary duty of care, including any actions involving gross negligence. Notwithstanding this provision, the DGCL does not permit the Registrant to eliminate personal liability for (i) breaches of their duty of loyalty to the Registrant or its stockholders, (ii) acts or omissions not in good faith or which involve intentional misconduct or knowing violations of law, (iii) certain transactions under Section 174 of the DGCL (unlawful payment of dividends or unlawful stock purchases or redemptions) or (iv) transactions from which a director derives an improper personal benefit.

The Registrant has directors' and officers' liability insurance which provides, subject to certain policy limits, deductible amounts and exclusions, coverage for all persons who have been, are or may in the future be, the Registrant's directors or officers, against amounts which such persons may pay resulting from claims against them by reason of their being such directors or officers during the policy period for certain breaches of duty, omissions or other acts done or wrongfully attempted or alleged. Such policies provide coverage to certain situations where the Registrant cannot directly provide indemnification under the DGCL.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the provisions described above, or otherwise, the Registrant has been advised that, although the validity and scope of the governing statutes have not been tested in court in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

The following exhibits are filed herewith or incorporated by reference as part of this Registration Statement:

Exhibit No.	Description
5.1	Opinion of Pepper Hamilton LLP.
23.1	Consent of RBSM LLP, independent registered public accounting firm.
23.2	Consent of BDO USA LLP, independent registered public accounting firm.
23.3	Consent of Pepper Hamilton LLP (included in Exhibit 5.1).
24.1	Power of Attorney (included on the signature page to this Registration Statement).
99.1	2017 Equity Incentive Plan (incorporated by reference from Exhibit 10.11 to the Registrant's Annual Report on Form 10-K/A filed with the SEC on April 30, 2018)

Item 9. Undertakings.

The Company hereby undertakes:

- (a)(1) To file during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

- (i) to include any prospectus required by Section 10(a)(3) of the Securities Act;
- (ii) to reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in the volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement;
- (iii) to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

provided, however, that, paragraphs (a)(1)(i) and (a)(1)(ii) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by us pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") that are incorporated by reference in the registration statement;

- (2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (3) To remove from registration by means of a post-effective amendment any of the securities being registered hereby which remain unsold at the termination of the offering.
- (4) That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:
 - (i) any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;
 - (ii) any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;
 - (iii) the portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and
 - (iv) any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.
- (b) The Company hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Company's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) 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 hereof.
- (c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Company pursuant to the foregoing provisions, or otherwise, the Company has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Company of expenses incurred or paid by a director, officer or controlling person of the Company 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 Company will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act 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 Jersey City, State of New Jersey, on this 6th day of June, 2018.

SITO MOBILE, LTD.

By: /s/ Thomas J. Pallack

Thomas J. Pallack

Chief Executive Officer and President

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Thomas J. Pallack and Mark Del Priore, and each of them singly, as their true and lawful attorneys-in-fact and agent, and each of them singly, with full power of substitution and resubstitution, for them and in their 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 attorney-in-fact and agent 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 attorney-in-fact and agent, or their 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 and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Thomas J. Pallack</u> Thomas J. Pallack	Chief Executive Officer, President and Director (Principal Executive Officer)	June 6, 2018
<u>/s/ Mark Del Priore</u> Mark Del Priore	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	June 6, 2018
<u>/s/ Michael Durden</u> Michael Durden	Director	June 6, 2018
<u>/s/ Itzhak Fisher</u> Itzhak Fisher	Director	June 6, 2018
<u>/s/ Brent Rosenthal</u> Brent Rosenthal	Director	June 6, 2018
<u>/s/ Karen Seminara Patton</u> Karen Seminara Patton	Director	June 6, 2018
<u>/s/ Steven Bornstein</u> Steven Bornstein	Director	June 6, 2018

EXHIBIT INDEX

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<u>24.1</u>	<u>Power of Attorney (included on the signature page to this Registration Statement).</u>
<u>99.1</u>	<u>2017 Equity Incentive Plan (incorporated by reference from Exhibit 10.11 to the Registrant's Annual Report on Form 10-K/A filed with the SEC on April 30, 2018)</u>



The New York Times Building
 37th Floor
 620 Eighth Avenue
 New York, NY 10018-1405
 212.808.2700
 Fax 212.286.9806

June 6, 2018

SITO Mobile, Ltd.
 The Newport Corporate Center
 100 Town Square Place, Suite 204
 Jersey City, NJ 07310

Re: Registration Statement on Form S-8

Ladies and Gentlemen:

Reference is made to the registration statement on Form S-8 (the "Registration Statement") of SITO Mobile, Ltd., a Delaware corporation (the "Company"), filed on the date hereof with the U.S. Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Act"). The Registration Statement covers an aggregate of 2,500,000 shares (the "Shares") of the Company's common stock, par value \$0.001 per share, issuable pursuant to awards ("Awards") granted under the Company's 2017 Equity Incentive Plan (the "2017 Plan").

We have examined the Registration Statement, including the exhibits thereto, the originals or copies, certified or otherwise identified to our satisfaction, of the Certificate of Incorporation, as amended and restated, and the Amended and Restated Bylaws of the Company, the 2017 Plan and such other documents as we have deemed appropriate in rendering this opinion. As to matters of fact, we have relied on representations of officers of the Company. In our examination, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us, other than by the Company or its officers, as originals and the authenticity of all documents submitted to us as copies of originals. Based on the foregoing, we are of the opinion that the Shares, when issued and paid for in accordance with the terms of the 2017 Plan and the applicable Award, will be legally issued, fully paid and non-assessable.

This opinion is being furnished to you solely for submission to the Commission as an exhibit to the Registration Statement and, accordingly, may not be relied upon, quoted in any manner to, or delivered to any other person or entity, without in each instance our prior written consent.

We express no opinion herein as to the law of any state or jurisdiction other than the General Corporation Law of the State of Delaware, including statutory provisions and all applicable provisions of the State of Delaware and reported judicial decisions interpreting such laws of the State of Delaware and the federal laws of the United States of America.

Philadelphia	Boston	Washington, D.C.	Los Angeles	New York	Pittsburgh	
Detroit	Berwyn	Harrisburg	Orange County	Princeton	Silicon Valley	Wilmington

www.pepperlaw.com

We assume no obligation to supplement this opinion if any applicable law changes after the date hereof or if we become aware of any fact that might change the opinion expressed herein after the date hereof.

We hereby 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 come within the category of persons whose consent is required under Section 7 of the Act or the rules or regulations of the Commission thereunder.

Very truly yours,

/s/ Pepper Hamilton LLP

Pepper Hamilton LLP

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in this Registration Statement of our report dated April 17, 2017, on our audit of the consolidated financial statements of SITO Mobile, Ltd. as of December 31, 2016, and for the year then ended, appearing in the Annual Report on Form 10-K of SITO Mobile, Ltd. for the year ended December 31, 2017, incorporated herein by reference

/s/ RBSM LLP

New York, New York

June 6, 2018

Consent of Independent Registered Public Accounting Firm

SITO Mobile, Ltd.
Jersey City, New Jersey

We hereby consent to the incorporation by reference on Form S-8 constituting a part of this Registration Statement of our report dated April 2, 2018, relating to the consolidated financial statements, of SITO Mobile, Ltd. appearing in the Company's Annual Report on Form 10-K for the year ended December 31, 2017.

/s/ BDO USA, LLP
New York, New York
June 6, 2018
