

QUALSTAR CORP

Form S-8

August 10, 2017

As filed with the Securities and Exchange Commission on August 9, 2017 Registration No. 333-

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

FORM S-8

**REGISTRATION STATEMENT
UNDER THE SECURITIES ACT OF 1933**

QUALSTAR CORPORATION

(Exact name of registrant as specified in its charter)

California

95-3927330

(State or other jurisdiction of incorporation or organization) (I.R.S. Employer Identification No.)

130 West Cochran Street, Unit C

93065

Simi Valley, California

(Zip Code)

(Address of principal executive offices)

**Qualstar Corporation
2017 Stock Option and Incentive Plan**

(Full title of the plan)

Louann Negrete

Chief Financial Officer

Qualstar Corporation

130 West Cochran Street, Unit C

Simi Valley, California

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(Name and address of agent for service)

(805) 583-7744

(Telephone number, including area code, of agent for service)

Copies to:

Jonathan Friedman, Esq.

**Stubbs Alderton & Markiles, LLP
15260 Ventura Boulevard, 20th Floor
Sherman Oaks, CA 91403
(818) 444-4500**

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 (Check one):

| | | |
|-------------------------|---|---------------------------|
| Large accelerated filer | | Accelerated filer |
| Non-accelerated filer | (Do not check if smaller reporting company) | 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 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 ⁽²⁾ | Amount Of Registration Fee |
|--------------------------------------|--|--|--|----------------------------|
| Common Stock, no par value per share | 200,000 ⁽³⁾ | \$7.09 | \$1,418,000 | \$164.35 |

Pursuant to Rule 416 under the Securities Act of 1933, as amended (the “Securities Act”), this Registration Statement (1) also covers such additional shares as may hereinafter be offered or issued to prevent dilution resulting from stock splits, stock dividends or similar transactions effected without the receipt of consideration.

Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(h) under the Securities Act (2) of 1933, as amended, based on a per share price of \$7.09, the average of the high and low reported sales prices of the Registrant’s common stock on the NASDAQ Capital Market on August 8, 2017.

(3) Represents 200,000 shares reserved for issuance pursuant to the 2017 Stock Option and Incentive Plan.

Part I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The information specified in Item 1 and Item 2 of Part I of Form S-8 is omitted from this Registration Statement on Form S-8 (the “*Registration Statement*”) in accordance with the provisions of Rule 428 under the Securities Act of 1933, as amended (the “*Securities Act*”), and the introductory note to Part I of Form S-8. The documents containing the information specified in Part I of Form S-8 will be delivered to the participants in the equity benefit plans covered by this Registration Statement as specified by Rule 428(b)(1) under the Securities Act.

Part II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference

The following documents, which previously have been filed by the Registrant with the Securities and Exchange Commission (the “*Commission*”) pursuant to the Securities Exchange Act of 1934, as amended (the “*Exchange Act*”), are incorporated by reference herein and shall be deemed to be a part hereof:

our Annual Report on Form 10-K for our fiscal year ended December 31, 2016 (filed on March 16, 2017);

our Quarterly Reports on Form 10-Q for our quarter ended March 31, 2017 (filed on May 10, 2017) and for our quarter ended June 30, 2017 (filed on August 8, 2017);

our Current Reports on Form 8-K, dated March 21, 2017 (filed on March 21, 2017), dated June 13, 2017 (filed on June 15, 2017) and dated August 3, 2017 (filed on August 8, 2017);

our Current Reports on Form 8-K/A, dated June 13, 2017 (filed on June 29, 2017); and

the description of our common stock contained in our registration statement on Form 8-A, as filed with the SEC on March 23, 2000, including any amendments or reports filed for the purpose of updating such description.

All documents filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act on or after the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement that indicates that all securities offered have been sold or that deregisters all securities then remaining unsold shall be deemed to be incorporated by reference in this Registration Statement and to be part hereof from the date of filing of such documents; provided, however, that documents or information deemed to have been furnished and not filed in accordance with the rules of the Commission shall not be deemed incorporated by reference into 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 for purposes of this Registration Statement to the extent that a statement contained herein or in any subsequently filed document which also 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. The Registrant's file number with the Commission is No. 001-35810.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

As permitted by the California General Corporation Law, our Restated Articles of Incorporation eliminate the liability of directors to Qualstar or its shareholders for monetary damages for breach of fiduciary duty as a director, except to the extent otherwise required by the California General Corporation Law.

Our Bylaws provide that Qualstar will indemnify each person who was or is made a party to any proceeding by reason of the fact that such person is or was a director or officer of Qualstar against all expense, liability and loss reasonably incurred or suffered by such person in connection therewith to the fullest extent authorized by the California General Corporation Law.

Our Bylaws also give Qualstar the ability to enter into indemnification agreements with each of its directors and officers. We have entered into indemnification agreements with each of our directors and officers, which provide for the indemnification of such directors and officers against any and all expenses, judgments, fines, penalties and amounts paid in settlement, to the fullest extent permitted by law.

Insofar as indemnification for liabilities arising under the Securities Act of 1933, may be permitted to directors, officers or persons controlling the registrant pursuant to the foregoing provisions, we have been informed that in the opinion of the SEC such indemnification is against the public policy as expressed in the Securities Act and is therefore unenforceable.

We have obtained liability insurance for the benefit of our directors and officers which provides coverage for losses of directors and officers for liabilities arising out of claims against such persons acting as directors or officers of the registrant (or any subsidiary thereof) due to any breach of duty, neglect, error, misstatement, misleading statement, omission or act done by such directors and officers, except as prohibited by law.

Item 7. Exemption from Registration.

Not applicable.

Item 8. Exhibits.

For a list of exhibits to this Registration Statement, see the "Exhibit Index", which is incorporated into this item by reference.

Item 9. Undertakings.

(a) The undersigned Registrant hereby undertakes:

(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 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 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

Provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Registrant pursuant to section 13 or section 15(d) of 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 of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to section 13(a) or section 15(d) of the Securities Exchange Act of 1934 (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 therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers or 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 Simi Valley, State of California, on August 9, 2017.

QUALSTAR CORPORATION

(Registrant)

By: /s/ Louann Negrete
Louann Negrete
Chief Financial Officer

POWER OF ATTORNEY

Each person whose signature appears below constitutes and appoints Steven N. Bronson and Louann Negrete, and each of them, as his true and lawful attorney-in-fact and agent with full power of substitution and resubstitution, for him and his name, place and stead, in any and all capacities, to sign any or all amendments (including post-effective amendments) to this Registration Statement and to file a new registration statement under Rule 461 or Instruction E of Form S-8 of the Securities Act of 1933, as amended, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the foregoing, 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 either of them, or their substitutes, may lawfully do or cause to be done by virtue hereof.

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

| Signature | Title | Date |
|---|---|----------------|
| /s/Steven N. Bronson Steven N. Bronson | Chief Executive Officer and Director (Principal Executive Officer) | August 9, 2017 |

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| | | |
|--|---|----------------|
| /s/ Louann Negrete Louann Negrete | Chief Financial Officer (Principal Financial and Accounting Officer) | August 9, 2017 |
| /s/David J. Wolenski Davis J. Wolenski | Director | August 9, 2017 |
| /s/Leonard Hagan Leonard Hagan | Director | August 9, 2017 |
| /s/ Nicholas A. Yarymovych Nicholas A. Yarymovych | Director | August 9, 2017 |

EXHIBIT INDEX

The following exhibits are filed as part of this Registration Statement:

| <u>Exhibit</u> <u>Number</u> | <u>Exhibit Description</u> | <u>Incorporated by Reference</u> <u>Form</u> | <u>File Number</u> | <u>Exhibit</u> | <u>Filing Date</u> | <u>Filed</u> <u>Herewith</u> |
|---------------------------------|--|---|--------------------|----------------|--------------------|---------------------------------|
| 5.1 | Opinion of Stubbs Alderton & Markiles, LLP | | | | | X |
| 23.1 | Consent of Marcum, LLP | | | | | X |
| 23.2 | Consent of SingerLewak LLP | | | | | X |
| 23.3 | Consent of Stubbs Alderton & Markiles, LLP (included in Exhibit 5.1) | | | | | X |
| 24.1 | Power of Attorney (included on signature page) | | | | | X |
| 99.1 | Qualstar Corporation 2017 Stock Option and Incentive Plan | 8-K/A | 001-35810 | 10.1 | June 29, 2017 | |

Exhibit Index