

POTBELLY CORP  
Form S-8  
August 04, 2016

As filed with the Securities and Exchange Commission on August 4, 2016

Registration No. 333-

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

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

**Potbelly Corporation**

**(Exact name of registrant as specified in its charter)**

<b>Delaware</b>	<b>36-4466837</b>
<b>(State or other jurisdiction of</b>	<b>(I.R.S. Employer</b>
<b>incorporation or organization)</b>	<b>Identification No.)</b>
<b>Amended and Restated Potbelly Corporation 2013 Long-Term Incentive Plan</b>	

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**(Full title of the plan)**

**Matthew J. Revord**

**Senior Vice President, Chief Legal Officer, General Counsel and Secretary**

**Potbelly Corporation**

**111 N. Canal, Suite 850, Chicago, Illinois 60606**

**(Name and address of agent for service)**

**312-951-0600**

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

*copy to:*

**Edward S. Best**

**Mayer Brown LLP**

**71 South Wacker Drive**

**Chicago, Illinois 60606**

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

Large accelerated filer

Accelerated filer

Non-accelerated filer  (Do not check if a smaller reporting company)

Smaller reporting company

**CALCULATION OF REGISTRATION FEE**

<b>Title of securities to be registered</b>	<b>Amount to be registered (1)</b>	<b>Proposed maximum offering price per share (3)</b>	<b>Proposed maximum aggregate price</b>	<b>Amount of registration fee</b>
Common Stock \$0.01 par value	1,000,000 (2)	\$12.24	\$12,240,000	\$1,232.57

- (1) In accordance with Rule 416 under the Securities Act of 1933, as amended, this registration statement shall be deemed to cover any additional securities that may from time to time be offered or issued to prevent dilution resulting from stock splits, stock dividends or similar transactions.
- (2) The Registrant is registering 1,000,000 additional shares issuable under the Amended and Restated Potbelly Corporation 2013 Long-Term Incentive Plan pursuant to this Registration Statement.
- (3) Estimated solely for the purpose of calculating the registration fee pursuant to Rules 457(c) and 457(h) of the Securities Act of 1933, as amended, and 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 August 2, 2016.

## EXPLANATORY NOTE

Potbelly Corporation (the Registrant) is filing this Registration Statement to register 1,000,000 additional shares of its common stock, par value \$0.01 per share, reserved for issuance under the Amended and Restated Potbelly Corporation 2013 Long-Term Incentive Plan. This Registration Statement is being filed pursuant to General Instruction E of Form S-8 under the Securities Act. Upon the filing and effectiveness of this Registration Statement, the total number of shares of Common Stock registered pursuant to the Amended and Restated Potbelly Corporation 2013 Long-Term Incentive Plan is 2,500,000.

The contents of the Registrant's previously filed registration statements on Form S-8 relating to the Potbelly Corporation 2013 Long-Term Incentive Plan (No. 333-191917 filed with the Securities and Exchange Commission (the Commission) on October 25, 2013) are incorporated by reference into this Registration Statement, except that the provisions contained in Part II of such earlier registration statements are modified as set forth in this Registration Statement.

## Part II

### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

#### Item 3. Incorporation of Documents by Reference.

The following documents filed with the Commission by us are incorporated by reference in this Registration Statement:

- (a) The Registrant's Annual Report on Form 10-K for the fiscal year ended December 27, 2015, filed with the Commission on February 24, 2016 (Commission File No. 001-36104 (the Annual Report));
- (b) The Registrant's Quarterly Reports on Form 10-Q for the fiscal quarter ended March 27, 2016 filed with the Commission on May 4, 2016 and for the fiscal quarter ended June 26, 2016 filed with the Commission on August 3, 2016;
- (c) The Registrant's Current Reports on Form 8-K filed with the Commission on February 19, 2016, May 17, 2016 and August 4, 2016; and
- (d) The description of the Common Stock set forth under the heading Description of Registrant's Securities to be Registered contained in the Registrant's Registration Statement on Form 8-A (File No. 001-36104 filed with the Commission pursuant to Section 12 of the Exchange Act on September 30, 2013).

In addition, all documents subsequently filed with the Commission 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 which indicates that all securities offered herein have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference into this Registration Statement and to be a part hereof from the date of filing of such documents. In no event, however, will any information that the Registrant discloses under Item 2.02 or 7.01 of any Current Report on Form 8-K that the Registrant may from time to time furnish to the Commission be incorporated by reference into, or otherwise become a part of, this Registration Statement.

Any statement contained in this Registration Statement or any 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 or is deemed to be incorporated by reference herein is inconsistent with or modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed to constitute a part of this Registration Statement, except as so modified or superseded.

**Item 8. Exhibits.**

See Exhibit Index which is incorporated herein by reference.

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**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, 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 Chicago, State of Illinois, on August 4, 2016.

**POTBELLY CORPORATION**

By: /s/ Aylwin Lewis  
 Aylwin Lewis  
*Chief Executive Officer and President*

**POWER OF ATTORNEY**

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Aylwin Lewis, Michael Coyne and Matthew Revord, and each of them, as such person's true and lawful attorney in fact and agent with full power of substitution, for such person in any and all capacities, to sign any and all amendments to this Registration Statement on Form S-8 (including post-effective amendments), 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, proxy 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 for all intents and purposes as such person might or could do in person, hereby ratifying and confirming all that said attorney in fact, proxy and agent, or such person's substitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement on Form S-8 has been signed below by the following persons in the capacities and on the dates indicated.

<b>Name</b>	<b>Position</b>	<b>Date</b>
/s/ Aylwin Lewis	Director, Chief Executive Officer and President (Principal Executive Officer)	August 4, 2016
Aylwin Lewis		
/s/ Michael Coyne	Senior Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)	August 4, 2016
Michael Coyne		
/s/ Peter Bassi	Director	August 4, 2016
Peter Bassi		
/s/ Ann-Marie Campbell	Director	August 4, 2016
Ann-Marie Campbell		
/s/ Susan Chapman-Hughes	Director	August 4, 2016

Susan Chapman-Hughes

/s/ Dan Ginsberg

Director

August 4, 2016

Dan Ginsberg



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<b>Name</b>	<b>Position</b>	<b>Date</b>
/s/ Marla Gottschalk	Director	August 4, 2016
Marla Gottschalk		
/s/ Harvey Kanter	Director	August 4, 2016
Harvey Kanter		
/s/ Carl Warschausky	Director	August 4, 2016
Carl Warschausky		

**EXHIBIT INDEX**

<b>Exhibit</b>	
<b>Number</b>	<b>Description of Document</b>
4.1	Seventh Amended and Restated Certificate of Incorporation of Potbelly Corporation (filed as Exhibit 3.1 to Form S-1 (File No. 333-190893) filed on August 29, 2013 and incorporated herein by reference)
4.2	Amended and Restated By-laws of Potbelly Corporation (filed as Exhibit 3.2 to Form S-1 (File No. 333-190893) filed on August 29, 2013 and incorporated herein by reference)
4.4	Amended and Restated Potbelly Corporation 2013 Long-Term Incentive Plan (filed as Exhibit 10.1 to Form 8-K (File No. 001-36104) filed on August 4, 2016 and incorporated herein by reference)
5.1	Opinion of Mayer Brown LLP as to the legality of the common stock
23.1	Consent of Deloitte & Touche LLP, independent registered public accounting firm
23.2	Consent of Mayer Brown LLP (included in Exhibit 5.1)
24.1	Powers of Attorney (included in this Registration Statement under Signatures )