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# Section 1: S-8 (REGISTRATION STATEMENT)

As filed with the Securities and Exchange Commission on May 30, 2019

Registration No. 333-

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

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

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Purple Innovation, Inc.  
(Exact Name of Registrant as Specified in Its Charter)

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Delaware  
(State or Other Jurisdiction of  
Incorporation or Organization)

47-4078206

(I.R.S. Employer  
Identification No.)

123 East 200 North  
Alpine, UT  
(Address of Principal Executive Offices)

84004  
(Zip Code)

Inducement Stock Option Agreement  
(Full Title of the Plan)

Casey McGarvey  
Chief Legal Officer  
123 East 200 North  
Alpine, UT 84004  
(Name and Address of Agent For Service)

(801) 756-2600  
(Telephone Number, Including Area Code, of Agent For Service)

*Copies to:*

Nolan S. Taylor  
Michael R. Newton  
111 South Main Street, Suite 2100  
Salt Lake City, UT 84111  
(801) 933-7360

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   
Non-accelerated filer

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

<b>Title of Securities to be Registered</b>	<b>Amount to be Registered(1)</b>	<b>Proposed Maximum Offering Price Per Share</b>	<b>Proposed Maximum Aggregate Offering Price(2)</b>	<b>Amount of Registration Fee</b>
Class A Common Stock, par value \$.0001 per share	538,020(3)	\$ 5.9499	\$ 3,201,165.20	\$ 387.98

- (1) In accordance with Rule 416 under the Securities Act of 1933, as amended (the "Securities Act"), 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) In accordance with Rule 457(h) under the Securities Act, the proposed maximum aggregate offering price for the shares of Class A Common Stock ("Class A Stock") of Purple Innovation, Inc. (the "Registrant") has been computed based upon the price at which the inducement options described below may be exercised.
  - (3) Represents shares of Class A Stock available for future issuance upon the exercise of an inducement stock option award granted on October 1, 2018 outside of the Registrant's 2017 Equity Incentive Plan to Joseph B. Megibow to induce Mr. Megibow to accept employment with the Registrant.
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### **EXPLANATORY NOTE**

This Registration Statement on Form S-8 (the "Registration Statement") is being filed for the purpose of registering 538,020 shares of the Registrant's Class A Stock issuable under a previously announced inducement stock option award granted on October 1, 2018.

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## PART I

### INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The information called for in Part I of Form S-8 is not being filed with or included in this Registration Statement (by incorporation by reference or otherwise) in accordance with the rules and regulations of the Securities and Exchange Commission (the "Commission").

## PART II

### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

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

The following documents, which have been filed with the Commission by the Registrant, 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:

- The Registrant's Annual Report on [Form 10-K](#) for the year ended December 31, 2018, filed with the Commission on March 14, 2019.
- The Registrant's Definitive Proxy Statement on [Schedule 14A](#), filed with the Commission on April 22, 2019.
- The Registrant's Quarterly Report on Form [Form 10-Q](#) for the quarter ended March 31, 2019, filed with the Commission on May 7, 2019.
- The Registrant's Current Reports on Form 8-K filed with the Commission on [January 14, 2019](#), [January 31, 2019](#), [February 27, 2019](#), [March 18, 2019](#), [May 14, 2019](#) and [May 17, 2019](#).
- The description of the Registrant's Class A Stock contained in its Registration Statement on [Form 8-A](#), filed with the Commission on July 29, 2015, and any amendment or report filed with the Commission for the purpose of updating the description.

All documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the date of this Registration Statement and prior to the filing of a post-effective amendment which 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 in this Registration Statement and to be part hereof from the date of the filing of such documents. The Registrant is not, however, incorporating by reference any documents or portions thereof, whether specifically listed above or filed in the future, that are not deemed "filed" with the Commission, including any information furnished pursuant to Items 2.02 or 7.01 of Form 8-K or related exhibits furnished pursuant to Item 9.01 of Form 8-K.

Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for the 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 modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement. Under no circumstances will any information furnished under Items 2.02 or 7.01 of Form 8-K be deemed incorporated herein by reference unless such Current Report on Form 8-K expressly provides to the contrary.

**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 Company’s Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws provide for indemnification of the Company’s 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 Company’s Amended and Restated Certificate of Incorporation provides for such limitation of liability to the fullest extent permitted by the DGCL.

The Company maintains standard policies of insurance under which coverage is provided (1) to the Company’s 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 Company, and (2) to the Company with respect to payments which may be made by the Company to such officers and directors pursuant to any indemnification provision contained in the Company’s Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws or otherwise as a matter of law.

**Item 7. Exemption from Registration Claimed.**

Not applicable.

**Item 8. Exhibits.**

<b>Exhibit Number</b>	<b>Description</b>
4.1	<a href="#"><u>Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on February 8, 2018)</u></a>
4.2	<a href="#"><u>Amended and Restated Bylaws (incorporated by reference to Exhibit 3.2 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on February 8, 2018)</u></a>
4.3	<a href="#"><u>Form of Class A Common Stock certificate (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on February 8, 2018)</u></a>
5.1	<a href="#"><u>Opinion of Dorsey &amp; Whitney LLP*</u></a>
23.1	<a href="#"><u>Consent of BDO USA, LLP*</u></a>
23.2	<a href="#"><u>Consent of Dorsey &amp; Whitney LLP (included in Exhibit 5.1 to this Registration Statement)</u></a>
24.1	<a href="#"><u>Power of Attorney (included with the signatures in Part II of this Registration Statement)</u></a>
99.1	<a href="#"><u>Employment Agreement between the Company and Joseph B. Megibow dated September 25, 2018 (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on September 25, 2018)</u></a>
99.2	<a href="#"><u>Option Grant Agreement between the Company and Joseph B. Megibow dated October 1, 2018*</u></a>

\* Filed herewith.

**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;

(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 percent 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) above 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 Exchange Act (15 U.S.C. 78m or 78o(d)) 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 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, each filing of the registrant's annual report pursuant to Section 13(a) or 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 thereof.

(c) 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 foregoing provisions, or otherwise, the registrant 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 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 and will be governed by the final adjudication of such issue.

## 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 Alpine, state of Utah, on May 30, 2019.

### PURPLE INNOVATION, INC.

By: /s/ Joseph B. Megibow  
Joseph B. Megibow  
Chief Executive Officer

### POWER OF ATTORNEY AND SIGNATURES

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Joseph B. Megibow and Craig L. Phillips and each of them, his or her true and lawful attorneys-in-fact and agents, with full power of substitution and re-substitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments to the registration statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting each of said attorneys-in-fact and agents full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as full to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or their 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 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/ Joseph B. Megibow</u> Joseph B. Megibow	Chief Executive Officer and Director (Principal Executive Officer)	May 30, 2019
<u>/s/ Craig L. Phillips</u> Craig L. Phillips	Interim Chief Financial Officer (Principal Financial and Accounting Officer)	May 30, 2019
<u>/s/ Pano Anthos</u> Pano Anthos	Director	May 30, 2019
<u>/s/ Gary DiCamillo</u> Gary DiCamillo	Director	May 30, 2019
<u>/s/ Adam Gray</u> Adam Gray	Director	May 30, 2019
<u>/s/ Claudia Hollingsworth</u> Claudia Hollingsworth	Director	May 30, 2019
<u>/s/ Gary Kiedaisch</u> Gary Kiedaisch	Director	May 30, 2019
<u>/s/ Terry Pearce</u> Terry Pearce	Director	May 30, 2019
<u>/s/ Tony Pearce</u> Tony Pearce	Director	May 30, 2019

## Section 2: EX-5.1 (OPINION OF DORSEY & WHITNEY LLP)

Purple Innovation, Inc.  
123 East 200 North  
Alpine, UT 84004

Re: Registration Statement on Form S-8

Ladies and Gentlemen:

We have acted as counsel to Purple Innovation, Inc., a Delaware corporation (the “Company”), in connection with a Registration Statement on Form S-8 (the “Registration Statement”) filed by the Company with the Securities and Exchange Commission (the “Commission”) under the Securities Act of 1933, as amended (the “Securities Act”), relating to 538,020 shares of Class A Common Stock, par value \$0.0001 per share, of the Company (the “Shares”) that may be issued pursuant to an Option Grant Agreement between the Company and Joseph B. Megibow dated October 2, 2018 (the “Plan”).

We have examined such documents and have reviewed such questions of law as we have considered necessary or appropriate for the purposes of our opinions set forth below. In rendering our opinions set forth below, we have assumed the authenticity of all documents submitted to us as originals, the genuineness of all signatures and the conformity to authentic originals of all documents submitted to us as copies. We have also assumed the legal capacity for all purposes relevant hereto of all natural persons. As to questions of fact material to our opinions, we have relied upon certificates or comparable documents of officers and other representatives of the Company and of public officials.

Based on the foregoing, we are of the opinion that the Shares, when issued and delivered in accordance with the terms of the Plan, will be validly issued, fully paid and non-assessable.

Our opinions expressed above are limited to the Delaware General Corporation Law.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement. In giving this consent, we do not admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission thereunder.

Very truly yours,

/s/ Dorsey & Whitney LLP

NST/DFM  
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### **Section 3: EX-23.1 (CONSENT OF BDO USA, LLP)**

**Exhibit 23.1**

#### Consent of Independent Registered Public Accounting Firm

Purple Innovation, Inc.  
Alpine, Utah

We hereby consent to the incorporation by reference in the Prospectus constituting a part of this Registration Statement of our report dated March 14, 2019, relating to the consolidated financial statements of Purple Innovation, Inc. appearing in the Company’s Annual Report on Form 10-K for the year ended December 31, 2018.

/s/ BDO USA, LLP  
Salt Lake City, Utah

May 30, 2019

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### **Section 4: EX-99.2 (OPTION GRANT AGREEMENT BETWEEN THE COMPANY AND JOSEPH B. MEGIBOW DATED OCTOBER 21, 2018)**

**Exhibit 99.2**

Purple Innovation, Inc.

2017 EQUITY INCENTIVE PLAN

Option Grant Agreement

This Grant Agreement evidences (i) the grant of a Nonqualified Stock Option (the “Initial Grant”) outside of the Purple Innovation, Inc. 2017 Equity Incentive Plan (the “Plan”) as an inducement grant in accordance with the Nasdaq inducement grant exception found in Nasdaq Listing Rule 5635 (c)(4) and (ii) an agreement to grant Nonqualified Stock Options in the future (the “Future Grants”) pursuant to the provisions of the Plan, to the individual whose name appears below (the “Participant”), covering the specific number of shares of stock set forth below and on the following express terms and conditions (capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Plan):

1. Name of Participant: Joseph B. Megibow
  2. Initial Grant. The Initial Grant is comprised of an option to purchase 538,020 Common Shares of Purple Innovation, Inc. (the “Company”). The grant date of the Initial Grant is October 1, 2018 (the “Initial Grant Date”).
  3. Future Grants. Provided that the Participant continues to be employed by the Company or any of its subsidiaries, the Company shall automatically grant to Participant an option to purchase 179,340 Common Shares on each of the following dates, or, if such date is a weekend or holiday, the next following business day (each a “Future Grant Date”):
    - October 1, 2019
    - October 1, 2020
    - October 1, 2021
  4. Exercise Price per Share:
    - (a) *Initial Grant*. The exercise price of the Initial Grant shall be the greater of (i) the closing price of the Company’s Common Shares on the Initial Grant Date or (ii) the trailing sixty (60) day volume weighted average price of the Company’s Common Shares determined as of the Initial Grant Date.
    - (b) *Future Grants*. The exercise price of each Future Grant shall be equal to the trailing thirty (30) day volume weighted average price of the Company’s Common Shares determined as of the respective Future Grant Date.
  5. Vesting and Exercisability:
    - (a) *Vesting*. The Initial Grant and each Future Grant shall be subject to four-year monthly vesting following an initial 25% “cliff”; the date of the 25% one year “cliff” is the first anniversary of the grant date for such grant. Vesting of the remaining 75% will occur on the first day of each calendar month thereafter. “Cliff” means herein that no vesting will occur until the date when the first 25% vests and the remaining 75% begins to vest monthly.
    - (b) *Termination*. If Participant’s employment with the Company is terminated for Cause (as defined in the Participant’s Employment Agreement dated September 21, 2018), all of the Participant’s options issued under the Initial Grant or any Future Grant, whether vested or unvested, then outstanding shall be immediately forfeited and cancelled without payment.
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6. Change in Control: Notwithstanding the foregoing, upon a Change in Control (as defined in the Participant's Employment Agreement dated September 21, 2018), the options issued under the Initial Grant or any Future Grant that are then outstanding shall vest in the manner provided in the Plan.
7. Clawback: The Initial Grant and each Future Grant is subject to any Company clawback policy as may be adopted or amended from time to time.
8. Exercise: With respect to the Initial Grant and any Future Grant, the Exercise Price shall be payable, at the Participant's election (A) in cash; (B) if there is a public market for the Common Shares at the time of exercise, by means of a broker-assisted "cashless exercise" pursuant to which the Company is delivered a copy of irrevocable instructions to a stockbroker to sell the Common Shares otherwise deliverable upon the exercise of the option and to deliver promptly to the Company an amount equal to the Exercise Price or (C) by a "net exercise" method whereby the Company withholds from the delivery of the Common Shares for which such option was exercised that number of Common Shares having a Fair Market Value equal to the aggregate Exercise Price for the Common Shares for which such option was exercised. Any fractional Common Shares shall be settled in cash.
9. Expiration/Termination of Option: Each option shall have a term of five years. In the event of the Participant's death, Disability, Retirement or termination of employment (with and without Cause), each option shall be treated in the manner set forth in Section 7 of the Plan.

The Participant hereby acknowledges receipt of a copy of the Plan as presently in effect. The text and all of the terms and provisions of the Plan are incorporated herein by reference with respect to each grant, and each such option is subject to these terms and provisions in all respects. At any time when the Participant wishes to exercise an option, in whole or in part, the Participant shall submit to the Company a written notice of exercise, specifying the exercise date and the number of Common Shares to be exercised. Upon exercise, the Participant shall remit to the Company the exercise price in cash or in such other form as permitted under this Agreement or the Plan, plus an amount sufficient to satisfy the required withholding tax obligation of the Company, if any, that arises in connection with such exercise.

Purple Innovation, Inc.

By: <u>/s/ Terry V. Pearce</u>	<u>10/1/2018</u>
Terry V. Pearce	Dated
Chief Executive Officer and	
Chairman of the Board	

Agreed to and Accepted by:

<u>/s/ Joseph B. Megibow</u>	<u>10/1/2018</u>
Joseph B. Megibow	Dated

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