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

FORM 10-Q

(Mark One)

☒ QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended September 30, 2023

or

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission File Number 001-37893

FLUENT, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

77-0688094

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

300 Vesey Street, 9th Floor
New York, New York
(Address of principal executive offices)

10282
(Zip Code)

(646) 669-7272

(Registrant's telephone number, including area code)

Not Applicable

(Former name, former address and former fiscal year, if changed since last report)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.0005 par value per share	FLNT	The NASDAQ Stock Market, LLC

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. ☒ Yes ☐ No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). ☒ Yes ☐ No

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	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input checked="" type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
		Emerging growth company	<input 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 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act): Yes ☐ No ☒

As of November 10, 2023, the registrant had 81,237,158 shares of common stock, \$0.0005 par value per share, outstanding.

FLUENT, INC.

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PART I - FINANCIAL INFORMATION

Unless otherwise indicated or required by the context, all references in this Quarterly Report on Form 10-Q to "we," "us," "our," "Fluent," or the "Company," refer to Fluent, Inc. and its consolidated subsidiaries.

ITEM 1. FINANCIAL STATEMENTS.

FLUENT, INC. CONSOLIDATED BALANCE SHEETS (Amounts in thousands, except share and per share data) (unaudited)

	September 30, 2023	December 31, 2022
ASSETS:		
Cash and cash equivalents	\$ 20,513	\$ 25,547
Accounts receivable, net of allowance for doubtful accounts of \$ 177 and \$544, respectively	48,515	63,164
Prepaid expenses and other current assets	8,069	3,506
Total current assets	77,097	92,217
Property and equipment, net	687	964
Operating lease right-of-use assets	3,833	5,202
Intangible assets, net	27,710	28,745
Goodwill	1,261	55,111
Other non-current assets	1,502	1,730
Total assets	\$ 112,090	\$ 183,969
LIABILITIES AND SHAREHOLDERS' EQUITY:		
Accounts payable	\$ 11,841	\$ 6,190
Accrued expenses and other current liabilities	25,746	35,626
Deferred revenue	492	1,014
Current portion of long-term debt	31,799	5,000
Current portion of operating lease liability	2,295	2,389
Total current liabilities	72,173	50,219
Long-term debt, net	—	35,594
Operating lease liability	2,220	3,743
Other non-current liabilities	2,207	458
Total liabilities	76,600	90,014
Contingencies (Note 10)		
Shareholders' equity:		
Preferred stock — \$0.0001 par value, 10,000,000 Shares authorized; Shares outstanding — 0 shares for both periods	—	—
Common stock — \$0.0005 par value, 200,000,000 Shares authorized; Shares issued — 85,803,727 and 84,385,458, respectively; and Shares outstanding — 81,192,158 and 80,085,306, respectively (Note 7)	43	42
Treasury stock, at cost — 4,611,569 and 4,300,152 Shares, respectively (Note 7)	(11,407)	(11,171)
Additional paid-in capital	426,473	423,384
Accumulated deficit	(379,619)	(318,300)
Total shareholders' equity	35,490	93,955
Total liabilities and shareholders' equity	\$ 112,090	\$ 183,969

See notes to consolidated financial statements

FLUENT, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS
(Amounts in thousands, except share and per share data)
(unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Revenue	\$ 66,239	\$ 89,046	\$ 225,638	\$ 276,470
Costs and expenses:				
Cost of revenue (exclusive of depreciation and amortization)	50,148	65,270	167,960	202,859
Sales and marketing	4,426	4,254	13,454	12,590
Product development	4,511	4,622	14,064	13,979
General and administrative	8,725	10,877	24,991	33,852
Depreciation and amortization	2,658	3,398	8,112	10,037
Goodwill impairment and write-off of intangible assets	29,705	—	55,405	55,528
Loss (gain) on disposal of property and equipment	—	(2)	—	19
Total costs and expenses	100,173	88,419	283,986	328,864
Income (loss) from operations	(33,934)	627	(58,348)	(52,394)
Interest expense, net	(936)	(517)	(2,420)	(1,331)
Income (loss) before income taxes	(34,870)	110	(60,768)	(53,725)
Income tax (expense) benefit	1,243	3,003	(551)	(2,119)
Net income (loss)	(33,627)	3,113	(61,319)	(55,844)
Basic and diluted income (loss) per share:				
Basic	\$ (0.41)	\$ 0.04	\$ (0.74)	\$ (0.69)
Diluted	\$ (0.41)	\$ 0.04	\$ (0.74)	\$ (0.69)
Weighted average number of shares outstanding:				
Basic	82,880,536	81,592,316	82,511,454	81,327,639
Diluted	82,880,536	81,699,966	82,511,454	81,327,639

See notes to consolidated financial statements

FLUENT, INC.
CONSOLIDATED STATEMENTS OF CHANGES IN SHAREHOLDERS' EQUITY
(Amounts in thousands, except share and per share data)
(unaudited)

	Common stock		Treasury stock		Additional paid-in capital	Accumulated deficit	Total shareholders' equity
	Shares	Amount	Shares	Amount			
Balance at June 30, 2023	85,751,226	\$ 43	4,611,569	\$ (11,407)	\$ 425,491	\$ (345,992)	\$ 68,135
Vesting of restricted stock units and issuance of stock under incentive plans	52,501	—	—	—	—	—	—
Share-based compensation	—	—	—	—	982	—	982
Net loss	—	—	—	—	—	(33,627)	(33,627)
Balance at September 30, 2023	<u>85,803,727</u>	<u>\$ 43</u>	<u>4,611,569</u>	<u>\$ (11,407)</u>	<u>\$ 426,473</u>	<u>\$ (379,619)</u>	<u>\$ 35,490</u>
Balance at December 31, 2022	84,385,458	\$ 42	4,300,152	\$ (11,171)	\$ 423,384	\$ (318,300)	\$ 93,955
Vesting of restricted stock units and issuance of stock under incentive plans	1,418,269	1	—	—	(1)	—	—
Increase in treasury stock resulting from shares withheld to cover statutory taxes	—	—	311,417	(236)	—	—	(236)
Share-based compensation	—	—	—	—	3,090	—	3,090
Net loss	—	—	—	—	—	(61,319)	(61,319)
Balance at September 30, 2023	<u>85,803,727</u>	<u>\$ 43</u>	<u>4,611,569</u>	<u>\$ (11,407)</u>	<u>\$ 426,473</u>	<u>\$ (379,619)</u>	<u>\$ 35,490</u>

	Common stock		Treasury stock		Additional paid-in capital	Accumulated deficit	Total shareholders' equity
	Shares	Amount	Shares	Amount			
Balance at June 30, 2022	84,146,082	\$ 42	4,300,152	\$ (11,171)	\$ 421,172	\$ (253,925)	\$ 156,118
Vesting of restricted stock units and issuance of stock under incentive plans	96,880	—	—	—	—	—	—
Share-based compensation	—	—	—	—	818	—	818
Net income	—	—	—	—	—	3,113	3,113
Balance at September 30, 2022	<u>84,242,962</u>	<u>\$ 42</u>	<u>4,300,152</u>	<u>\$ (11,171)</u>	<u>\$ 421,990</u>	<u>\$ (250,812)</u>	<u>\$ 160,049</u>
Balance at December 31, 2021	83,057,083	\$ 42	4,091,823	\$ (10,723)	\$ 419,059	\$ (194,968)	\$ 213,410
Vesting of restricted stock units and issuance of restricted stock	1,185,879	—	—	—	211	—	211
Increase in treasury stock resulting from shares withheld to cover statutory taxes	—	—	208,329	(448)	—	—	(448)
Share-based compensation	—	—	—	—	2,720	—	2,720
Net loss	—	—	—	—	—	(55,844)	(55,844)
Balance at September 30, 2022	<u>84,242,962</u>	<u>\$ 42</u>	<u>4,300,152</u>	<u>\$ (11,171)</u>	<u>\$ 421,990</u>	<u>\$ (250,812)</u>	<u>\$ 160,049</u>

See notes to consolidated financial statements

FLUENT, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(Amounts in thousands)
(unaudited)

	Nine Months Ended September 30,	
	2023	2022
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net loss	\$ (61,319)	\$ (55,844)
Adjustments to reconcile net loss to net cash provided by operating activities:		
Depreciation and amortization	8,112	10,037
Non-cash loan amortization expense	330	201
Share-based compensation expense	2,958	2,652
Goodwill impairment	55,405	55,400
Write-off of intangible assets	—	128
Loss on disposal of property and equipment	—	19
Provision for bad debt	(51)	275
Changes in assets and liabilities, net of business acquisitions:		
Accounts receivable	14,700	2,406
Prepaid expenses and other current assets	(4,563)	277
Other non-current assets	228	52
Operating lease assets and liabilities, net	(248)	(127)
Accounts payable	5,651	(1,212)
Accrued expenses and other current liabilities	(10,869)	(7,497)
Deferred revenue	(522)	456
Other	(117)	(89)
Net cash provided by operating activities	9,695	7,134
CASH FLOWS FROM INVESTING ACTIVITIES:		
Capitalized costs included in intangible assets	(4,093)	(3,316)
Business acquisitions, net of cash acquired	(1,250)	(971)
Acquisition of property and equipment	(25)	(10)
Net cash used in investing activities	(5,368)	(4,297)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Repayments of long-term debt	(8,750)	(3,750)
Debt financing costs	(375)	—
Taxes paid related to net share settlement of vesting of restricted stock units	(236)	(448)
Net cash used in financing activities	(9,361)	(4,198)
Net decrease in cash and cash equivalents	(5,034)	(1,361)
Cash and cash equivalents at beginning of period	25,547	34,467
Cash and cash equivalents at end of period	<u>\$ 20,513</u>	<u>\$ 33,106</u>
SUPPLEMENTAL DISCLOSURE INFORMATION		
Cash paid for interest	\$ 2,234	1,162
Cash paid for income taxes	\$ 114	603
Share-based compensation capitalized in intangible assets	\$ 72	68
SUPPLEMENTAL DISCLOSURE OF NON-CASH INVESTING AND FINANCING ACTIVITIES		
Contingent payments in connection with TAPP consolidation	\$ 2,915	\$ —
Deferred payment in connection with True North acquisition	\$ —	\$ 860
Contingent consideration in connection with True North acquisition	\$ —	\$ 250
Equity issued in connection with True North acquisition	\$ —	\$ 211

See notes to consolidated financial statements

FLUENT, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(Amounts in thousands, except share and per share data)
(unaudited)

1. Summary of significant accounting policies

(a) Basis of preparation

The accompanying unaudited consolidated financial statements have been prepared by Fluent, Inc., a Delaware corporation (the "Company" or "Fluent"), in accordance with accounting principles generally accepted in the United States ("GAAP") and applicable rules and regulations of the Securities and Exchange Commission (the "SEC") regarding interim financial reporting. Certain information and note disclosures normally included in annual financial statements prepared in accordance with GAAP have been condensed or omitted pursuant to those rules and regulations.

The accompanying unaudited consolidated financial statements reflect all normal recurring adjustments necessary to present fairly the financial position, results of operations, and cash flows for the interim periods ended September 30, 2023 and 2022, respectively, but are not necessarily indicative of the results of operations to be anticipated for any future interim periods or for the full year ending December 31, 2023.

From time to time, the Company may enter into relationships or investments with other entities, and, in certain instances, the entity in which the Company has a relationship or investment may qualify as a variable interest entity ("VIE"). The Company consolidates a VIE in its financial statements if the Company is deemed to be the primary beneficiary of the VIE. The primary beneficiary is the party that has the power to direct activities that most significantly impact the operations of the VIE and has the obligation to absorb losses or the right to benefits from the VIE that could potentially be significant to the VIE.

The information included in this Quarterly Report on Form 10-Q should be read in conjunction with the consolidated financial statements and accompanying notes included in the Company's Annual Report on Form 10-K for the year ended December 31, 2022 ("2022 Form 10-K") filed with the SEC on March 15, 2023. The consolidated balance sheet as of December 31, 2022 included herein was derived from the audited financial statements as of that date and included in the 2022 Form 10-K.

Going concern

In accordance with ASC 205-40, *Presentation of Financial Statements – Going Concern*, management must evaluate whether there are conditions and events, considered in the aggregate, that raise substantial doubt about the Company's ability to continue as a going concern for one year after the date these accompanying unaudited financial statements are issued (the "issuance date"). As part of this evaluation, management may consider the potential mitigating impact of its plans that have not been fully implemented as of the issuance date if (a) it is probable that management's plans will be effectively implemented on a timely basis, and (b) it is probable that the plans, when implemented, will alleviate the relevant conditions or events that raise substantial doubt about the Company's ability to continue as a going concern within one year after the issuance date.

The Company has experienced a decline in its operating results, driven primarily by the continued economic slowdown and uncertainty, as well as the impacts of the recently imposed regulatory requirements (see Note 10, *Contingencies*). As a result, as of September 30, 2023, the Company was not in compliance with the total leverage ratio covenant under its Credit Agreement (see Note 5, *Long-term debt, net*) and such event of default continued until the Waiver (defined below) became effective. The Company has also projected a continued decline in its operating results, driven primarily by the same factors described above. Therefore, the Company does not expect to be in compliance with certain financial covenants under the Credit Agreement during certain quarters in the twelve months following the issuance date. If the Company is not in compliance with its covenants, under the Credit Agreement, it will be an event of default that would give lenders the right to accelerate maturities under the Credit Agreement. While the Company had cash and cash equivalents of \$20.5 million as of September 30, 2023 and had positive cash flow from operations in the prior two fiscal years and for the nine months ended September 30, 2023, management does not expect the Company's cash resources would be adequate to meet its obligations as they become due within the one-year period after the issuance date if maturities under the Credit Agreement were accelerated. These circumstances raise substantial doubt about the Company's ability to continue as a going concern.

As discussed in Note 5, *Long-term debt, net*, on November 15, 2023, Fluent, LLC (the "Borrower") entered into a Temporary Waiver Under Credit Agreement (the "Waiver") to the Credit Agreement that is effective through the earlier of January 15, 2024 or an occurrence of any other event of default (the "Termination date"). In addition to temporarily waiving the event of default resulting from the breach of the total leverage ratio covenant during the three months ended September 30, 2023, the Waiver imposed new financial reporting obligations on the Borrower, including the delivery of the Company's 2024 budget by November 22, 2023 for review by the business consultant retained by counsel to Citizens Bank. The Company intends for that budget to inform modified financial covenant levels and other provisions, as appropriate, for the quarters ending December 31, 2023 through December 31, 2024, which would be accomplished with an amendment to the Credit Agreement. The Borrower and Citizens Bank have previously entered into amendments to the Credit Agreement as needed, and management expects to be able to enter into a new amendment prior to the Termination date.

In light of the recent challenges the Company has faced in achieving its financial targets, the Company plans to implement cost reductions and focus resources on new growth opportunities that will enable the Company to meet its projected budget.

While management believes its plans to enter into a new amendment to the Credit Agreement with financial covenant levels that the Company can satisfy will alleviate the conditions or events that raise substantial doubt about the Company's ability to continue as a going concern, successfully entering into it is not entirely within the Company's control. In addition, there is no guarantee that the planned cost reductions or growth opportunities will be successfully executed or have the expected benefits. As there can be no assurance that the Company will be able to effectively implement its plans within one year after the issuance date, based on the factors above, management concluded that there is substantial doubt about the Company's ability to continue as a going concern through such one-year period.

The accompanying unaudited financial statements do not include any adjustments relating to the possible future effects on the recoverability and classification of recorded assets and classification of liabilities that might result should the Company be unable to continue as a going concern.

Principles of consolidation

The consolidated financial statements include the financial statements of the Company and its subsidiaries. All significant transactions among the Company and its subsidiaries have been eliminated upon consolidation.

(b) Recently issued and adopted accounting standards

Accounting pronouncements not listed below were assessed and determined to be not applicable or are expected to have minimal impact on the Company's consolidated financial statements.

In January 2016, the Financial Accounting Standards Board issued Accounting Standards Updates No. 2016-13, *Financial Instruments—Credit Losses* and additional changes, modifications, clarifications, or interpretations thereafter, which require a reporting entity to estimate credit losses on certain types of financial instruments, and present assets held at amortized cost and available-for-sale debt securities at the amounts expected to be collected. The new guidance was effective for annual and interim periods beginning after December 15, 2022, and early adoption was permitted. The Company completed its assessment of the new guidance and determined it had no material impact on its consolidated financial statements.

FLUENT, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)
(Amounts in thousands, except share and per share data)
(unaudited)

(c) Revenue recognition

Revenue is generated when control of goods or services is transferred to customers, in the amounts that reflect the consideration the Company expects to be entitled to in exchange for those goods or services. The Company's performance obligation is typically to (a) deliver data records based on predefined qualifying characteristics specified by the customer, (b) generate conversions based on predefined user actions (for example, a click, a registration or the installation of an app) and subject to certain qualifying characteristics specified by the customer, (c) verify user interest or transfer calls to advertiser clients as a part of the contact center operation, or (d) deliver media spend as a part of the business of AdParlor, LLC, a wholly-owned subsidiary of the Company.

Revenue is recognized upon satisfaction of the associated performance obligation. The Company elected the "right to invoice" practical expedient under Accounting Standards Codification ("ASC") 606-10-55-18 as a measure for revenue to be recognized, as it corresponds directly with the amounts that reflects the consideration the Company expects to be entitled to in exchange for those goods or services.

If a customer pays consideration before the Company's performance obligations are satisfied, such amounts are classified as deferred revenue on the consolidated balance sheets. As of September 30, 2023 and December 31, 2022, the balance of deferred revenue was \$492 and \$1,014, respectively. The majority of the deferred revenue balance as of December 31, 2022 was recognized as revenue during the first quarter of 2023.

When there is a delay between the period in which revenue is recognized and when a customer invoice is issued, revenue is earned, and the related amounts are recorded as unbilled revenue within accounts receivable on the consolidated balance sheets. As of September 30, 2023 and December 31, 2022, unbilled revenue included in accounts receivable was \$ 23,374 and \$26,878, respectively. In line with industry practice, the unbilled revenue balance is recorded based on the Company's internally tracked conversions, net of estimated variances between this amount and the amount tracked and subsequently confirmed by customers. Substantially all amounts included within the unbilled revenue balance are invoiced to customers within the month directly following the period of service. Historical estimates related to unbilled revenue have not been materially different from actual revenue billed.

(d) Use of estimates

The preparation of consolidated financial statements in accordance with GAAP requires the Company's management to make estimates and assumptions relating to the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the consolidated financial statements, and the reported amounts of revenue and expenses during the reporting periods. Significant items subject to such estimates and assumptions include the allowance for doubtful accounts, useful lives of intangible assets, recoverability of the carrying amounts of goodwill and intangible assets, the portion of revenue subject to estimates for variances between internally-tracked conversions and those confirmed by the customer, purchase accounting, valuation of variable interest entity, accruals for contingencies, and income tax provisions. These estimates are often based on complex judgments and assumptions that management believes to be reasonable but are inherently uncertain and unpredictable. Actual results could differ from these estimates.

(e) Fair value

Fair value is defined as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date.

Valuation techniques used to measure fair value must maximize the use of observable inputs and minimize the use of unobservable inputs. Accounting standards describe a fair value hierarchy based on the following three levels of inputs, of which the first two are considered observable and the last unobservable, that may be used to measure fair value:

- Level 1 — Quoted prices in active markets for identical assets, liabilities, or funds.
- Level 2— Inputs other than Level 1 that are observable, either directly or indirectly, such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

FLUENT, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)
(Amounts in thousands, except share and per share data)
(unaudited)

- Level 3 — Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

The fair value of the Company's cash, cash equivalents, accounts receivable, accounts payable and accrued liabilities approximate their carrying values because of the short-term nature of these instruments.

As of September 30, 2023, the Company regards the fair value of its long-term debt to approximate its carrying value. The fair value assessment represents a Level 2 measurement. See Note 5, *Long-term debt, net*.

The fair value of certain long-lived non-financial assets and liabilities may be required to be measured on a nonrecurring basis in certain circumstances, including when there is evidence of impairment. As of September 30, 2023, certain non-financial assets have been measured at fair value subsequent to their initial recognition. The Company determined the estimated fair value to be a Level 3 measurement, as certain inputs used to determine fair value are unobservable. See Note 4, *Goodwill*, for further discussion of impairment charges.

2. Income (loss) per share

Basic income (loss) per share is computed by dividing net income (loss) by the weighted average number of common shares outstanding during the period, in addition to restricted stock units ("RSUs") that are vested but not delivered. Diluted income (loss) per share reflects the potential dilution that could occur if securities or other contracts to issue common stock are exercised or converted into common stock and is calculated using the treasury stock method for stock options, restricted stock units, restricted stock, warrants and deferred common stock. Stock equivalent shares are excluded from the calculation in loss periods, as their effects would be anti-dilutive.

For the three and nine months ended September 30, 2023 and 2022, basic and diluted income (loss) per share were as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Numerator:				
Net income (loss)	\$ (33,627)	\$ 3,113	\$ (61,319)	\$ (55,844)
Denominator:				
Weighted average shares outstanding	81,160,944	79,898,219	80,798,223	79,620,308
Weighted average restricted shares vested not delivered	1,719,592	1,694,097	1,713,231	1,707,331
Total basic weighted average shares outstanding	82,880,536	81,592,316	82,511,454	81,327,639
Dilutive effect of assumed conversion of restricted stock units	—	107,650	—	—
Total diluted weighted average shares outstanding	82,880,536	81,699,966	82,511,454	81,327,639
Basic and diluted income (loss) per share:				
Basic	\$ (0.41)	\$ 0.04	\$ (0.74)	\$ (0.69)
Diluted	\$ (0.41)	\$ 0.04	\$ (0.74)	\$ (0.69)

Based on exercise prices compared to the average stock prices for the three and nine months ended September 30, 2023 and 2022, certain stock equivalents, including restricted stock units and stock options, have been excluded from the diluted weighted average share calculations due to their anti-dilutive nature.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Restricted stock units	5,499,375	1,220,790	5,499,375	1,780,022
Stock options	1,831,000	2,139,000	1,831,000	2,139,000
Total anti-dilutive securities	7,330,375	3,359,790	7,330,375	3,919,022

FLUENT, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)
(Amounts in thousands, except share and per share data)
(unaudited)

3. Intangible assets, net

Intangible assets, net, other than goodwill, consist of the following:

	Amortization period (in years)	September 30, 2023	December 31, 2022
Gross amount:			
Software developed for internal use	3	\$ 18,407	13,740
Acquired proprietary technology	3-5	16,972	15,965
Customer relationships	5-10	39,168	38,068
Trade names	4-20	16,657	16,657
Domain names	20	195	195
Databases	5-10	31,292	31,292
Non-competition agreements	2-5	1,768	1,768
		<u>124,459</u>	<u>117,685</u>
Total gross amount			
Accumulated amortization:			
Software developed for internal use		(11,018)	(8,097)
Acquired proprietary technology		(14,978)	(14,305)
Customer relationships		(36,726)	(35,156)
Trade names		(6,689)	(6,038)
Domain names		(75)	(68)
Databases		(25,495)	(23,508)
Non-competition agreements		(1,768)	(1,768)
Total accumulated amortization		<u>(96,749)</u>	<u>(88,940)</u>
Net intangible assets:			
Software developed for internal use		7,389	5,643
Acquired proprietary technology		1,994	1,660
Customer relationships		2,442	2,912
Trade names		9,968	10,619
Domain names		120	127
Databases		5,797	7,784
Total intangible assets, net		<u>\$ 27,710</u>	<u>\$ 28,745</u>

The gross amounts associated with software developed for internal use primarily represent capitalized costs of internally developed software. The amounts relating to acquired proprietary technology, customer relationships, trade names, domain names, databases and non-competition agreements primarily represent the fair values of intangible assets acquired as a result of the acquisition of Fluent, LLC, effective December 8, 2015 (the "Fluent, LLC Acquisition"); the acquisition of Q Interactive, LLC, effective June 8, 2016 (the "Q Interactive Acquisition"); the acquisition of substantially all the assets of AdParlor Holdings, Inc. and certain of its affiliates, effective July 1, 2019 (the "AdParlor Acquisition"); the acquisition of a 50% interest in Winopoly, LLC (the "Initial Winopoly Acquisition"), effective April 1, 2020; the acquisition of a 100% interest in True North Loyalty, LLC, (the "True North Acquisition"), effective January 1, 2022 (see Note 11, *Business acquisition*), and the consolidation of TAPP Influencers Corp. ("TAPP") effective January 9, 2023 (see Note 12, *Variable Interest Entity*).

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During the second quarter of 2023, the Company determined that the effects of the recently imposed regulatory requirements on the Company constituted a triggering event. The Company also then determined that the decline in the market value of its publicly traded stock, which resulted in a corresponding decline in its market capitalization, along with the operating results for the third quarter of 2023, also constituted a triggering event. The Company conducted an interim test of the recoverability of its long-lived assets, which compared projected undiscounted cash flows to the carrying value of the asset group. The results of this approach indicated that its long-lived assets were not impaired as of June 30, 2023 or September 30, 2023.

Amortization expenses of \$2,559 and \$3,292 for the three months ended September 30, 2023 and 2022, respectively, and \$7,810 and \$9,651 for the nine months ended September 30, 2023 and 2022, respectively, are included in depreciation and amortization expenses in the consolidated statements of operations. As of September 30, 2023, intangible assets with a carrying amount of \$ 919, included in the gross amount of software developed for internal use, have not commenced amortization, as they are not ready for their intended use.

As of September 30, 2023, estimated amortization expenses related to the Company's intangible assets for the remainder of 2023 and through 2028 and thereafter are as follows:

Year	September 30, 2023
Remainder of 2023	\$ 2,777
2024	7,547
2025	7,101
2026	2,886
2027	828
2028 and thereafter	6,571
Total	\$ 27,710

4. Goodwill

Goodwill represents the difference between the purchase price and the estimated fair value of net assets acquired, when accounted for under business combination accounting. As of September 30, 2023, the total balance of goodwill was \$ 1,261, a decrease of \$53,850 from December 31, 2022, as a result of a non-cash impairment charge of \$55,405, offset by a 1,555 increase in goodwill related to the TAPP consolidation, which was within the non-cash impairment charge (see Note 12, *Variable Interest Entities*). The balance also relates to the Fluent LLC Acquisition, the Q Interactive Acquisition, the AdParlor Acquisition, the Initial Winopoly Acquisition, and the True North Acquisition (see Note 11, *Business acquisition*).

In accordance with ASC 350, *Intangibles - Goodwill and Other*, goodwill is assessed at least annually for impairment, or when events or changes in circumstances indicate that the carrying amount of such assets may not be recoverable, by assessing qualitative factors or performing a quantitative analysis in determining whether it is more likely than not that its fair value exceeds the carrying value. The measurement date of the Company's annual goodwill impairment test is set to October 1.

For the three months ended March 31, 2023, the Company completed its quarterly triggering event assessments and determined that the decline in the market value of its publicly-traded stock, which resulted in a corresponding decline in its market capitalization, constituted a triggering event. The Company therefore conducted an interim test of the fair value of the Fluent reporting unit's goodwill for potential impairment as of March 31, 2023. The Company considered a combination of income and market approaches to determine the fair value of the Fluent reporting unit. The Company determined that a market-based approach, which considered the Company's implied market multiple applied to management's forecast and further adjusted for a control premium, provided the best indication of fair value of the Fluent reporting unit. The results of this market-based approach indicated that the Fluent reporting unit's carrying value exceeded its fair value by 20%. The Company therefore concluded that the Fluent reporting unit's goodwill of \$ 51,614 was impaired and recorded a non-cash impairment charge of \$25,700.

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For the three months ended June 30, 2023, the Company completed its quarterly triggering event assessments and determined that the effect of the recently imposed regulatory requirements and the effect of the continued economic slowdown on the Company's expected operating results had each constituted a triggering event. The Company therefore conducted an interim test of the fair value of the Fluent reporting unit's goodwill for potential impairment related to both triggering events as of June 30, 2023. The Company applied a combination of income and market approaches to determine the fair value of the Fluent reporting unit. The results of this approach indicated that the fair value exceeded its carrying value by 5%. The Company therefore concluded that the Fluent reporting unit's goodwill of \$27,469 was not impaired.

For the three months ended September 30, 2023, the Company completed its quarterly triggering event assessments and determined that the decline in the market value of its publicly-traded stock, which resulted in a corresponding decline in its market capitalization, along with the impact of the continued economic slowdown on the Company's expected operating results had both constituted a triggering event. The Company therefore conducted an interim test of the fair value of the Fluent reporting unit's goodwill for potential impairment related to both triggering events and All Others for potential impairment related to the economic slowdown. The Company applied a combination of income and market approaches to determine the fair value of the Fluent reporting unit and All Others. The results of this approach indicated that the Fluent reporting unit's carrying value and All Others carrying value exceeded its fair value by 32% and 29%, respectively. The Company therefore concluded that the Fluent reporting unit's goodwill was impaired and recorded a non-cash impairment for the remainder of the goodwill balance of \$27,469. In addition, the All Other goodwill of \$3,497 was also concluded to be impaired, and the Company recorded a non-cash impairment charge of \$2,236.

5. Long-term debt, net

Long-term debt, net of unamortized discount and financing costs, related to the Credit Facility consisted of the following:

	September 30, 2023	December 31, 2022
Credit Facility due 2026 (less unamortized discount and financing costs of \$ 701 and \$656, respectively)	\$ 31,799	\$ 40,594
Less: Current portion of long-term debt	(31,799)	(5,000)
Long-term debt, net (non-current)	<u>\$ -</u>	<u>\$ 35,594</u>

Credit Facility

On March 31, 2021, Fluent, LLC (the "Borrower") entered into a credit agreement (as amended, modified, extended, restated, replaced, or supplemented from time to time, the "Credit Agreement") with certain subsidiaries of the Borrower as guarantors, the lenders thereto, and Citizens Bank, N.A. ("Citizens Bank") as administrative agent, lead arranger and bookrunner. The original Credit Agreement provided for a term loan in the aggregate principal amount of \$50,000 funded on the closing date (the "Term Loan"), along with an undrawn revolving credit facility of up to \$ 15,000 (the "Revolving Loans," and together with the Term Loan, the "Credit Facility").

On May 15, 2023, the Borrower and Citizens Bank entered into a third amendment to the Credit Agreement, which amended certain provisions by adding an additional tier of applicable margin to the selected rates and providing for additional notice of certain material events and, for the remaining fiscal quarters of 2023, established the following, in each case pursuant to the terms and conditions under the Credit Agreement: (i) adjustments to the pricing floor and certain EBITDA add-backs; (ii) monthly financial reporting requirements; (iii) additional financial covenant testing conditions on Fluent's ability to draw on the Revolving Loans; (iv) additional tiers to certain financial covenants and added a minimum cash liquidity financial covenant; (v) additional restrictions on the ability to (a) make loans and advances to officers, directors and employees; (b) invest in certain subsidiaries and joint ventures; and (c) make additional loans, investments or permitted acquisitions; and (vi) additional unrestricted cash requirements before the Company is permitted to pay dividends, make distributions or redeem or repurchase equity interests.

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On August 21, 2023, the Borrower and Citizens Bank entered into a fourth amendment to the Credit Agreement (the "Fourth Amendment"), which (i) adjusted certain financial covenants for the remaining fiscal quarters of 2023, including prohibiting the Company from drawing on the Revolving Loans until the issuance of the December 31, 2023 annual financial statements, (ii) temporarily adjusted interest rates, (iii) permitted Citizens Bank to retain a business consultant at the Borrower's expense to advise on the credit parties' financial and operating performance; (iv) required weekly liquidity reports to Citizens Bank, and (v) required a \$5,000 prepayment of the Term Loan and a reduction in the maximum amount of the Revolving Loans by the same amount to \$10,000. The \$5,000 prepayment amount was paid as of September 30, 2023. In evaluating the amendments under ASC 470-50, *Debt-Modifications and Extinguishments*, the Company determined that the amendment should be treated as a debt modification with no gain or loss recognized.

On November 15, 2023, the Borrower and Citizens Bank entered into a Waiver to the Credit Agreement, pursuant to which Citizens Bank agreed to waive through the Termination date its rights and remedies arising from the Company's breach of the total leverage ratio covenant during the quarter ending September 30, 2023. The Waiver also added new reporting requirements, temporarily increased the applicable margin, and extended the term of the business consultant through January 15, 2024. The Borrower must also provide a 2024 budget that has been reviewed by the business consultant retained by counsel to Citizens Bank. The Company intends for that budget to inform modified financial covenant levels and other provisions, as appropriate, for the quarters ending December 31, 2023 through December 31, 2024, which would be accomplished with an amendment to the Credit Agreement.

All obligations under the the Credit Agreement currently mature on March 31, 2026, and interest is payable monthly. Scheduled principal amortization of the Term Loan is \$1,250 per quarter, which commenced with the fiscal quarter ended June 30, 2021. At September 30, 2023, the Company was in compliance with all of the financial covenants under the Credit Agreement except for the total leverage ratio covenant. As discussed above, this covenant breach was waived through the Termination date by the Waiver. However, based on projections, the Company does not expect to be in compliance with certain financial covenants during certain quarters in the next twelve months. If the Company is not in compliance with financial covenants, it will be an event of default that would give the lenders the right to accelerate maturities. Accordingly, all borrowings under the Credit Agreement have been classified as current as of September 30, 2023.

Borrowings under the Credit Agreement bear interest at a rate per annum equal to the benchmark selected by the Borrower, which may be based on the Alternative Base Rate, (as defined in the Credit Agreement), LIBOR (as defined in the Credit Agreement) rate (subject to a floor of 0.25%) prior to the election as of December 31, 2022 or Term SOFR (as defined in the Credit Agreement) (subject to a floor of 0.00%) subsequent to the election, plus a margin applicable to the selected benchmark. The applicable margin is between 0.75% and 2.25% for borrowings based on the Alternative Base Rate and 1.75% and 3.25% for borrowings based on Term SOFR, depending upon the Borrower's total leverage ratio. The opening interest rate of the Credit Facility was 2.50% (LIBOR + 2.25%), which increased to 8.92% (Term SOFR + 0.1% + 3.50%) as of September 30, 2023.

The Credit Agreement also contains certain customary conditions applicable to extensions of credit, including that representations and warranties made in the Credit Agreement be materially true and correct at the time of such extension (once such extensions are no longer prohibited by the Fourth Amendment or a later amendment).

Maturities

As of September 30, 2023, scheduled future maturities of the Credit Agreement are as follows, reflective of the debt being accelerated as of the termination date if a new amendment is not reached:

Year	September 30, 2023
Remainder of 2023	\$ 1,250
2024	31,250
Total maturities	\$ 32,500

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6. Income taxes

The Company is subject to federal and state income taxes in the United States. The tax provision for interim periods is determined using an estimate of the Company's annual effective tax rate ("AETR"). The Company updates its estimated AETR on a quarterly basis and, if the estimate changes, a cumulative adjustment is made.

As of September 30, 2023 and December 31, 2022, the Company recorded a full valuation allowance against net deferred tax assets and intends to continue maintaining a full valuation allowance on these net deferred tax assets until there is sufficient evidence to support the release of all or a portion of these allowances. Release of some or all of the valuation allowance would result in the recognition of certain deferred tax assets and an increase in deferred tax benefit for any period in which such a release may be recorded. However, the exact timing and amount of any valuation allowance release are subject to change, depending upon the level of profitability that the Company is able to achieve and the net deferred tax assets available.

For the nine months ended September 30, 2023, the Company's effective income tax expense rate of 0.9% differed from the statutory federal income tax rate of 21% primarily due to the projected federal and state cash tax expense expected to result in taxable income for full-year 2023 after the impact of a non-deductible goodwill impairment against pre-tax year-to-date losses, offset by the benefit of federal research and development credits. For the nine months ended September 30, 2022, the Company's effective income tax expense rate of 4.0% differed from the statutory federal income tax rate of 21% primarily due to the projected federal and state cash tax expense expected to result in taxable income for full-year 2022 after the impact of a non-deductible goodwill impairment against pre-tax year-to-date losses, offset by the benefit of federal research and development credits.

The Company assesses its income tax positions and records tax benefits for all years subject to examination based upon its evaluation of the facts, circumstances, and information available as of the reporting dates. For those tax positions where it is more-likely-than-not that a tax benefit will be sustained, the Company has recorded the largest amount of tax benefit with a greater than 50% likelihood of being realized upon ultimate settlement with a taxing authority that has full knowledge of all relevant information. For those income tax positions where it is not more-likely-than-not that a tax benefit will be sustained, no tax benefit has been recognized in the Company's financial statements.

As of September 30, 2023 and December 31, 2022, the balance of unrecognized tax benefits was \$1,480. The unrecognized tax benefits, if sustained, would benefit the Company's tax provision. As of September 30, 2023, the Company has not accrued any interest or penalties with respect to its uncertain tax positions.

The Company does not anticipate a significant increase or reduction in unrecognized tax benefits within the next twelve months.

7. Common stock, treasury stock and warrants

Common stock

As of September 30, 2023 and December 31, 2022, the number of issued shares of common stock was 85,803,727 and 84,385,458, respectively, which included shares of treasury stock of 4,611,569 and 4,300,152, respectively.

For the nine months ended September 30, 2023, the change in the number of issued shares of common stock was the result of an aggregate 1,418,269 shares of common stock issued upon vesting of RSUs, including 311,417 shares of common stock withheld to cover statutory taxes upon such vesting, which are reflected in treasury stock, as discussed below.

Treasury stock

As of September 30, 2023 and December 31, 2022, the Company held shares of treasury stock of 4,611,569 and 4,300,152, respectively, with a cost of \$11,407 and \$11,171, respectively.

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The Company's share-based incentive plans allow employees the option to either make cash payment or forfeit shares of common stock upon vesting to satisfy federal and state statutory tax withholding obligations associated with equity awards. The forfeited shares of common stock may be taken into treasury stock by the Company or sold on the open market. For the nine months ended September 30, 2023, 311,417 shares of common stock were withheld to cover statutory taxes owed by certain employees for this purpose, all of which were taken into treasury stock. See Note 8, *Share-based compensation*.

8. Share-based compensation

On June 8, 2022, the stockholders of the Company approved the Fluent, Inc. 2022 Omnibus Equity Incentive Plan (the "2022 Plan") that authorized for issuance 15,422,523 shares of the Company's common stock. As of September 30, 2023, the Company had 5,598,650 shares of common stock available for grants pursuant to the 2022 Plan, which includes 946,071 shares of common stock previously available for issuance under the 2018 Stock Incentive Plan.

The primary purpose of the 2022 Plan and prior plans is to attract, retain, reward, and motivate certain individuals by providing them with opportunities to acquire or increase their ownership interests in the Company. In October 2022, the Company issued to certain of its senior officers and employees, restricted stock units ("RSUs") (time-based vesting), long-term incentive grants (performance and time-based vesting RSUs), or performance share units ("PSUs") (achievement of performance targets settled in cash) under the 2022 Plan.

Stock options

The Compensation Committee of the Company's Board of Directors approved the grant of stock options to certain Company executives, which were issued on February 1, 2019, December 20, 2019, March 1, 2020, and March 1, 2021. Subject to continuing service, 50% of the shares subject to these stock options will vest if the Company's stock price remains above 125.00%, 133.33%, 133.33% and 133.33%, respectively, of the exercise price for 20 consecutive trading days, and the remaining 50% of the shares subject to these stock options will vest if the Company's stock price remains above 156.25%, 177.78%, 177.78% and 177.78%, respectively, of the exercise price for 20 consecutive trading days; provided, that no shares will vest prior to the first anniversary of the grant date. As of September 30, 2023, the first condition for the stock options issued on February 1, 2019, December 20, 2019 and March 1, 2020 had been met and the second condition for the stock options issued on December 20, 2019 and March 1, 2020 had been met. Any shares that remain unvested as of the fifth anniversary of the grant date will vest in full on such date. The fair value of the stock options granted was estimated at the trading day before the date of grant using a Monte Carlo simulation model. The key assumptions utilized to calculate the grant-date fair values for these awards are summarized below:

Issuance Date	February 1, 2019	December 20, 2019	March 1, 2020	March 1, 2021
Fair value lower range	\$ 2.81	\$ 1.58	\$ 1.46	\$ 4.34
Fair value higher range	\$ 2.86	\$ 1.61	\$ 1.49	\$ 4.43
Exercise price	\$ 4.72	\$ 2.56	\$ 2.33	\$ 6.33
Expected term (in years)	1.0 - 1.3	1.0 - 1.6	1.0 - 1.5	1.0 - 1.3
Expected volatility	65%	70%	70%	80%
Dividend yield	—%	—%	—%	—%
Risk-free rate	2.61%	1.85%	1.05%	1.18%

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For the nine months ended September 30, 2023, details of stock option activity were as follows:

	Number of options	Weighted average exercise price per share	Weighted average remaining contractual term (in years)	Aggregate intrinsic value
Outstanding as of December 31, 2022	2,139,000	\$ 4.37	6.3	\$ —
Granted	—	—	—	—
Exercised	—	—	—	—
Forfeited	(308,000)	—	—	—
Outstanding as of September 30, 2023	1,831,000	\$ 4.32	5.6	\$ —
Options exercisable as of September 30, 2023	1,088,000	\$ 3.88	5.6	\$ —

The aggregate intrinsic value amounts in the table above represent the difference between the closing price of the Company's common stock at the end of the reporting period and the corresponding exercise prices, multiplied by the number of in-the-money stock options as of the same date.

For the nine months ended September 30, 2023, the unvested balance of stock options was as follows:

	Number of stock options	Weighted average exercise price per share	Weighted average remaining contractual term (in years)
Unvested as of December 31, 2022	897,000	\$ 4.91	6.3
Granted	—	—	—
Forfeited	(154,000)	—	—
Vested	—	—	—
Unvested as of September 30, 2023	743,000	\$ 4.95	5.6

Compensation expense recognized for stock options of \$0 and \$0 for the three months ended September 30, 2023 and 2022, respectively, and \$0 and \$125 for the nine months ended September 30, 2023 and 2022, respectively, was recorded in sales and marketing, product development and general and administrative expenses in the consolidated statements of operations. As of September 30, 2023, there was \$0 of unrecognized share-based compensation with respect to outstanding stock options.

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Restricted stock units and restricted stock

For the nine months ended September 30, 2023, details of unvested RSU activity were as follows:

	Number of units	Weighted average grant-date fair value
Unvested as of December 31, 2022	4,223,156	\$ 5.37
Granted	3,487,110	\$ 0.89
Vested and delivered	(1,106,852)	\$ 3.09
Withheld as treasury stock ⁽¹⁾	(311,417)	\$ 1.82
Vested not delivered ⁽²⁾	(19,592)	\$ 1.41
Forfeited	(773,030)	\$ 1.49
Unvested as of September 30, 2023	5,499,375	\$ 4.09

- (1) As discussed in Note 7, *Common stock, treasury stock and warrants*, the increase in treasury stock was due to shares withheld to cover statutory withholding taxes upon the delivery of shares following vesting of RSUs. As of September 30, 2023, there were 4,611,569 outstanding shares of treasury stock.
- (2) Vested not delivered represents vested RSUs with delivery deferred to a future time. For the nine months ended September 30, 2023, there was a net increase in the vested not delivered balance as a result of the vesting of the 19,592 shares that were deferred due to timing of delivery of certain shares. As of September 30, 2023, 1,719,592 outstanding RSUs were vested not delivered.

Compensation expense recognized for RSUs of \$982 and \$818 for the three months ended September 30, 2023 and 2022, respectively, and \$3,090 and \$2,595 for the nine months ended September 30, 2023 and 2022, respectively, was recorded in sales and marketing, product development and general and administrative in the consolidated statements of operations, and intangible assets, net in the consolidated balance sheets. The fair value of the RSUs and restricted stock was estimated using the closing prices of the Company's common stock on the dates of grant.

As of September 30, 2023, unrecognized share-based compensation expense associated with the granted RSUs and stock options amounted to \$ 4,757, which is expected to be recognized over a weighted average period of 1.3 years.

For the three and nine months ended September 30, 2023 and 2022, share-based compensation for the Company's stock options, RSUs, and common stock awards were allocated to the following accounts in the consolidated financial statements:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Sales and marketing	\$ 123	\$ 107	\$ 419	\$ 420
Product development	158	125	485	383
General and administrative	680	569	2,114	1,849
Share-based compensation expense	961	801	3,018	2,652
Capitalized in intangible assets	21	17	72	68
Total share-based compensation	\$ 982	\$ 818	\$ 3,090	\$ 2,720

As of September 30, 2023, the Company recorded a liability of \$ 15 related to PSUs that are to be settled in cash.

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9. Segment information

The Company identifies operating segments as components of an entity for which discrete financial information is available and is regularly reviewed by the chief operating decision maker ("CODM") in making decisions regarding resource allocation and performance assessment. The profitability measure employed by CODM is earnings before interest, taxes, depreciation, and amortization ("EBITDA"). As of September 30, 2023, the Company had two operating segments with two corresponding reporting units, "Fluent" and "All Other," and one reportable segment. "Fluent," for the purposes of segment reporting, represents the consolidated operating results of the Company excluding "All Other." "All Other" represents the operating results of AdParlor, LLC and is included for purposes of reconciliation of the respective balances below to the consolidated financial statements.

Summarized financial information concerning the Company's segments for the three and nine months ended September 30, 2023 and 2022 are shown in the following tables below:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Fluent segment revenue(1):				
United States	44,041	\$ 53,853	\$ 127,149	\$ 169,197
International	20,060	33,209	92,199	99,841
Fluent segment revenue	<u>64,101</u>	<u>87,062</u>	<u>219,348</u>	<u>269,038</u>
All Other segment revenue(1):				
United States	2,138	\$ 1,984	\$ 6,290	\$ 7,360
International	—	—	—	72
All Other segment revenue	<u>2,138</u>	<u>\$ 1,984</u>	<u>\$ 6,290</u>	<u>\$ 7,432</u>
Segment EBITDA				
Fluent segment EBITDA	\$ (28,879)	\$ 4,192	\$ (47,773)	\$ (42,055)
All Other segment EBITDA	(2,397)	(167)	(2,463)	(302)
Total EBITDA	<u>(31,276)</u>	<u>4,025</u>	<u>(50,236)</u>	<u>(42,357)</u>
Depreciation and amortization	2,658	3,398	8,112	10,037
Total income (loss) from operations	<u>\$ (33,934)</u>	<u>\$ 627</u>	<u>\$ (58,348)</u>	<u>\$ (52,394)</u>

(1) Revenue aggregation is based upon location of the customer.

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	<u>September 30,</u> <u>2023</u>	<u>December 31,</u> <u>2022</u>
Total assets:		
Fluent	\$ 99,807	\$ 168,486
All Other	12,283	15,483
Total assets	<u>\$ 112,090</u>	<u>\$ 183,969</u>

As of September 30, 2023, long-lived assets are all located in the United States.

For the nine months ended September 30, 2023, the Company identified an international customer within the Fluent segment with revenue in the amount of \$47,658 which represents 21% of consolidated revenue.

10. Contingencies

In the ordinary course of business, the Company is subject to loss contingencies that cover a range of matters. An estimated loss from a loss contingency, such as a legal proceeding or claim, is accrued if it is probable that a liability has been incurred and the amount of the loss can be reasonably estimated. In determining whether a loss should be accrued, the Company evaluates, among other factors, the degree of probability and the ability to reasonably estimate the amount of any such loss. The Company does not accrue liabilities when the likelihood that the liability has been incurred is probable, but the amount cannot be reasonably estimated.

On March 31, 2022, the Company reached a settlement for \$1,700 with the New York State Department of Taxation and Finance (the "Tax Department") following a sales and use tax audit covering the period from December 1, 2010 to November 30, 2019. The Tax Department had asserted that revenue derived from certain of the Company's customer acquisition and list management services were subject to sales tax, as a result of being deemed taxable information services. The settlement amount was paid on April 1, 2022. Since March 1, 2022, the Company has been collecting and remitting New York sales tax on certain types of revenue from New York-based clients.

On January 28, 2020, Fluent received a Civil Investigative Demand from the Federal Trade Commission ("FTC") regarding compliance with the FTC Act and the Telemarketing Sales Rule. On October 18, 2022, the FTC staff sent the Company a draft complaint and proposed consent order seeking injunctive relief and a civil monetary penalty. On January 12, 2023, the Company made an initial proposal of \$5,000 for the civil monetary penalty contingent on successful negotiation of the remaining outstanding injunctions and other provisions. The Company accrued the same amount for the year ending December 31, 2022. On May 26, 2023, Fluent agreed to the terms of a Stipulated Order for Permanent Injunction, Monetary Judgment, Civil Penalty Judgment, and Other Relief (the "FTC Consent Order"). The FTC Consent Order imposed a civil penalty of \$2,500, required additional changes to the Company's employment opportunities marketplace and programmatic advertising business, and resulted in the implementation of compliance measures across the business. The same day, Fluent transferred the amount of the civil penalty to a third-party escrow account. On July 17, 2023, the FTC filed its Complaint for Civil Penalties, Permanent Injunction, Monetary Relief, and Other Relief and, together with Fluent, filed a Joint Motion for Entry of Proposed Stipulated Order in the United States District Court for the Southern District of Florida. The FTC Consent Order was entered by the Court on August 11, 2023, and the escrow funds were released on August 15, 2023. The Company maintains insurance policies that cover certain legal costs, which include those incurred related to the FTC investigation. As of September 30, 2023, the Company had recognized \$5,799 as contra-expense to general and administrative expenses with a remaining current asset of \$1,777 related to these insurance policies.

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(Amounts in thousands, except share and per share data)
(unaudited)

On October 6, 2020, the Company received notice from the Pennsylvania Office of the Attorney General ("PAAG") that it was reviewing the Company's business practices relating to telemarketing. After the Company and the PAAG were unable to reach agreement on a proposed Assurance of Voluntary Compliance, the Commonwealth of Pennsylvania filed a complaint for permanent injunction, civil penalties, and other relief in the United States District Court for the Western District of Pennsylvania on November 2, 2022. On May 18, 2023, the parties entered into a settlement and jointly filed a Consent Petition of Final Decree, wherein the Company agreed to injunctive relief and to pay the PAAG \$250 for investigatory costs, all of which was paid as of June 30, 2023.

The Company has been involved in a Telephone Consumer Protection Act class action, *Daniel Berman v. Freedom Financial Network*, which was originally filed in 2018. On May 31, 2023, the parties entered into an Amended Class Action Settlement Agreement (the "Berman Settlement Agreement"), which includes injunctive provisions and payment to plaintiffs of \$9,750 for legal fees and a consumer redress fund. On July 28, 2023, the Court preliminarily approved the Berman Settlement Agreement, and the Company contributed \$3,100, payable following the final approval of the settlement. The final approval of the settlement is expected in mid- 2024. The Company's contribution amounts were accrued as of December 31, 2022. This amount is payable \$1,100 in cash and \$2,000 pursuant to an interest-bearing note with a two-year term provided by co-defendant, Freedom Financial Network.

11. Business acquisition

True North Acquisition

On January 1, 2022, the Company acquired a 100% membership interest in True North Loyalty, LLC for a deemed purchase price of \$ 2,321, which consisted of (i) \$1,000 in cash at closing, (ii) \$860 of deferred payments due at both the first and second anniversary of the closing date adjusted for net working capital, and (iii) contingent consideration with a fair value at the closing date of \$250, payable in common stock based upon the achievement of specified revenue targets over the five-year period following the completion of the acquisition. The Company also issued 100,000 shares of fully-vested common stock to the sellers valued at \$211. Certain seller parties entered into employment and non-competition agreements with the Company in connection with the True North Acquisition. True North Loyalty, LLC is a subscription-based business that utilizes call center operations and other media channels to market recurring revenue services to consumers. In accordance with ASC 805, the Company determined that the True North Acquisition constituted the purchase of a business.

Since January 1, 2022, the Company has used the excess earnings method, a variation of the income approach, to amortize: (i) the fair value of the acquired customer relationships related to subscribers of \$170 over a one-year period and (ii) the fair value of the acquired customer relationships related to call centers of \$1,180, over a five-year period. The amount of the purchase price in excess of the fair value of the net assets acquired was recorded as goodwill in the amount of \$1,092 and primarily relates to intangible assets that do not qualify for separate recognition, including assembled workforce and synergies. For tax purposes, the goodwill is not deductible.

FLUENT, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)
(Amounts in thousands, except share and per share data)
(unaudited)

12. Variable Interest Entity

A VIE is an entity that either (i) has insufficient equity to permit the entity to finance its activities without additional subordinated financial support, or (ii) has equity investors who lack the characteristics of a controlling financial interest. The primary beneficiary is the party that has the power to direct activities that most significantly impact the operations of the VIE and has the obligation to absorb losses or the right to benefits from the VIE that could potentially be significant to the VIE. The Company assesses whether we are the primary beneficiary of a VIE at the inception of the arrangement and as of the reporting date.

On January 9, 2023, the Company entered into employment agreements with certain key employees of TAPP, an influencer-based business, which uses as an application to utilize its relationship with influencers to bring consumers to advertising clients. The Company is also a customer of TAPP and accounts for the majority of TAPP's revenues. By virtue of TAPP's key employees being employed by the Company and the significance of the Company to TAPP's financial performance, the Company determined that TAPP qualified as a VIE in which the Company had a variable interest and that the Company is the primary beneficiary as a result of its significant influence and control over certain activities that most significantly impact its economic performance. As a result, the Company consolidates the TAPP operations. As the Company does not have an equity interest, 100% of the net assets and results of the operations of TAPP are attributable to non-controlling interests.

As the Company gained control of TAPP, in accordance with ASC 805, Business Combinations, it was then determined that TAPP constituted a business. The deemed fair value of the consideration was \$4,165, which consisted of \$1,250 of initial cash and \$2,915 which was contingent based upon achievement of specified revenue and media margin targets over three years. The fair value of assets acquired, which excluded the immaterial net-working capital, were determined to be the publisher contracts of \$1,100, which were valued using the 'with or without' method, a variation of the income approach, to be amortized over a period of one year and industry-based trade secrets of \$1,510, which were valued using the excess earnings method, a variation of the income approach, to be amortized over a period of four years. The amount of the purchase price in excess of the fair value of the net assets acquired was recorded as goodwill in the amount of 1,555 and primarily represents workforce and expected cash flow generation for the TAPP business that does not qualify for separate recognition as intangible assets included within the Fluent operating segment. For tax purposes, the value of the acquisition payments is treated as ordinary compensation for services rendered, deductible when paid and included in the employees' wages. At and for the nine months ended September 30, 2023, the assets and revenues of TAPP totaled a de minimis percentage of the Company's total assets and revenue.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.

This Quarterly Report on Form 10-Q contains certain forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 ("PSLRA"), Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended, (the "Exchange Act"), about our expectations, beliefs, or intentions regarding our business, financial condition, results of operations, strategies, the outcome of litigation, or prospects. Forward-looking statements are those that do not relate strictly to historical or current matters, but instead relate to anticipated or expected events, activities, trends, or results as of the date they are made. These forward-looking statements can be identified by the use of terminology such as "anticipate," "believe," "estimate," "expect," "intend," "project," "will," or the negative thereof or other variations thereon or comparable terminology. Because forward-looking statements relate to matters that have not yet occurred, these statements are inherently subject to risks and uncertainties that could cause our actual results to differ materially from any future results expressed or implied by the forward-looking statements. Many factors could cause our actual activities or results to differ materially from the activities and results anticipated in forward-looking statements, including, without limitation, those discussed in Part I, Item 1A of the Company's Annual Report on Form 10-K for the year ended December 31, 2022 filed on March 15, 2023 (the "2022 Form 10-K"), those contained in this Quarterly Report on Form 10-Q, and such other factors contained in our other filings we make with the Securities and Exchange Commission (the "SEC"). We do not undertake any obligation to update forward-looking statements, except as required by law and intend that all forward-looking statements be subject to the safe harbor provisions of the PSLRA.

These forward-looking statements are only predictions and reflect our views as of the date they are made with respect to future events and financial performance. The following discussion should be read in conjunction with the 2022 Form 10-K and the consolidated financial statements and related notes included in this Quarterly Report on Form 10-Q

Overview

Fluent, Inc. ("we," "us," "our," "Fluent," or the "Company"), is an industry leader in data-driven digital marketing services. We primarily perform customer acquisition services by operating highly scalable digital marketing campaigns, through which we connect our advertiser clients with consumers they are seeking to reach. We deliver data and performance-based marketing executions to our clients, which include over 500 consumer brands, direct marketers, and agencies across a wide range of industries, including Media & Entertainment, Financial Products & Services, Health & Wellness, Retail & Consumer, and Staffing & Recruitment.

We attract consumers at scale to our owned digital media properties primarily through promotional offerings where they are rewarded for completing activities within our platforms. To register on our sites, consumers provide their names, contact information and opt-in permission to present them with relevant offers on behalf of our clients. Approximately 90% of these users engage with our media on their mobile devices or tablets. Our always-on, real-time capabilities enable users to access our media whenever and wherever they choose.

Once users have registered on our sites, we integrate our proprietary direct marketing technologies to engage them with surveys, polls, and other experiences, through which we gather information about their lifestyles, preferences, purchasing histories and other matters. Based on these insights, we serve targeted, relevant offers to them on behalf of our clients. As new users register and engage on our sites and existing registrants re-engage, the enrichment of our database expands our addressable client base and improves the effectiveness of our performance-based campaigns.

Since our inception, we have amassed a large, proprietary database of first-party, self-declared user information and preferences. We solicit our users' consent to be contacted by us and/or our advertisers via various contact methods including email, telephone, SMS/text and push messaging. We then leverage their self-declared data in our performance offerings primarily in two ways: (1) to serve advertisements that we believe will be relevant to users based on the information they provide when they engage with our sites, and (2) to provide our clients that purchase access to our data with users' contact information so that such clients may communicate with them directly. We may also leverage our existing technology and database to drive new revenue streams, including syndication models, (e.g., Adflow), and other revenue streams, including utilization-based models (e.g., programmatic advertising).

We generate revenue by delivering measurable online marketing results to our clients. We differentiate ourselves from other marketing alternatives by our abilities to provide clients with a cost-effective and measurable return on advertising spend ("ROAS"), a measure of profitability of sales compared to the money spent on ads, to manage highly targeted and highly fragmented online media sources and to provide access to our owned digital media properties and technology platforms. We are predominantly paid on a negotiated or market-driven "per click," "per lead," or other "per action" basis that aligns with the customer acquisition cost targets of our clients. We bear the costs of sourcing traffic from publishers for our owned digital media properties that ultimately generate qualified clicks, leads, calls, app downloads or customers for our clients.

Through AdParlor, LLC, we conduct our non-core business which offers clients various social media strategies through the planning and buying of media on different platforms.

Third Quarter Financial Summary

Three months ended September 30, 2023, compared to three months ended September 30, 2022:

- Revenue decreased 26% to \$66.2 million, compared to \$89.0 million
- Net loss was \$33.6 million, or \$0.41 per share, compared to net income of \$3.1 million or \$0.04 per share
- Gross profit (exclusive of depreciation and amortization) was \$16.1 million, a decrease of 32% as compared to the three months ended September 30, 2022, and representing 24% of revenue for the three months ended September 30, 2023
- Media margin decreased 31% to \$19.3 million, compared to \$28.1 million, representing 29.2% of revenue for the three months ended September 30, 2023
- Adjusted EBITDA decreased to negative \$1.7 million, representing (2.6%) of revenue, based on net loss of \$33.6 million, compared to positive \$5.9 million, based on net income of \$3.1 million
- Adjusted net loss was \$4.1 million, or \$0.05 per share, compared to adjusted net income of \$5.0 million, or \$0.06 per share

Nine months ended September 30, 2023, compared to nine months ended September 30, 2022:

- Revenue decreased 18% to \$225.6 million, compared to \$276.5 million
- Net loss was \$61.3 million, or \$0.74 per share, compared to net loss of \$55.8 million or \$0.69 per share
- Gross profit (exclusive of depreciation and amortization) was \$57.7 million, a decrease of 22% as compared to nine months ended September 30, 2022, and representing 26% of revenue for the nine months ended September 30, 2023
- Media margin decreased 22% to \$67.2 million, compared to \$86.3 million, representing 29.8% of revenue for the nine months ended September 30, 2023
- Adjusted EBITDA decreased to \$4.3 million, representing 1.9% of revenue, based on net loss of \$61.3 million, compared to \$20.1 million, based on net loss of \$55.8 million
- Adjusted net loss was \$6.8 million, or \$0.08 per share, compared to adjusted net income of \$6.6 million, or \$0.08 per share

Media margin, adjusted EBITDA, and adjusted net income (loss) are non-GAAP financial measures. See "Definitions, Reconciliations and Uses of Non-GAAP Financial Measures" below.

Trends Affecting our Business

Development, Acquisition and Retention of High-Quality Targeted Media Traffic

Our business depends on identifying and accessing media sources that are of high quality and on our ability to attract targeted users to our media properties. As our business has grown, we have attracted larger and more sophisticated clients to our platform. To further increase our value proposition to clients and to fortify our leadership position in the evolving regulatory landscape of our industry, we implemented a Traffic Quality Initiative in 2020. Generating high quality traffic will remain a focus moving forward, and it is now part of a broader initiative to improve the consumer experience.

Starting in 2022, we increased our spend with major digital media platforms, revised our bidding strategies for affiliate traffic, and developed partnerships to expand traffic from social media platforms, including the growing influencer sector. We also pursued strategic initiatives that enable us to grow revenue with existing user traffic volume, while attracting users to our media properties via email and SMS messages. These efforts have continued in 2023, as we continue to focus on improved monetization of consumer traffic through improved customer relationship management and internal capabilities that allow us to re-engage consumers who have registered on our owned media properties. Through these initiatives, our business has become less dependent on the volume of users to generate revenue growth.

We believe that significant value has been, and will continue to be, created by improving the quality of traffic sourced to our media properties, through increased user participation rates on our sites, leading to higher conversion rates, resulting in increased monetization, and ultimately increasing revenue and media margin. Media margin, a non-GAAP measure, is the portion of gross profit (exclusive of depreciation and amortization) reflecting variable costs paid for media and related expenses and excluding non-media cost of revenue.

Since 2022, we have experienced challenges growing our traffic volume because of several factors including the volatility of affiliate supply sources, changes in search engine algorithms, email and text message blocking algorithms, and increased competition for available media. In response to these challenges, we invested in strategic internal efforts to secure additional traffic from social media, including the growing influencer sector and Adflow, our e-commerce post-sales solution. The mix and profitability of our media channels, strategies, and partners is likely to continue to be dynamic and reflect evolving market trends and the regulatory environment.

Advertiser Trends & Seasonality

We deliver data and performance-based marketing executions to our clients across a wide range of industries, including Media & Entertainment, Financial Products & Services, Health & Wellness, Retail & Consumer, and Staffing & Recruitment. Both data and performance-based spend continued to be challenged in 2023 by general economic uncertainty. We experienced slowdowns in the first nine-months of 2023 in certain sectors of the Media & Entertainment, Staffing & Recruitment, and Financial Products & Services industries. Additionally, in the third quarter of 2023 our largest client in the gaming sector pulled back pricing and spend as they refocused on ROAS rather than growth. Although the Company is addressing this pullback by scaling other clients in the marketplace from the gaming sector and other sectors of the Media & Entertainment industry, the gap was not fully absorbed by other bidders.

To offset these challenges, we continue to work with a select group of advertisers to define high performing consumer segments and strategically price paid conversions to help clients drive higher ROAS. This initiative has driven increased budgets from clients in the Media & Entertainment industry, which, collectively, represents a large component of our revenue mix.

Additionally, our results are subject to fluctuations as a result of seasonality and cyclicity in our clients' businesses. Specifically, Adflow and our businesses that benefit from Medicare and ACA open enrollment benefit from strong fourth quarters. Other factors affecting our business may include macroeconomic conditions that impact the digital advertising industry, the various client verticals we serve, and general market conditions.

Business Practices & Compliance

During the current fiscal year, we continued to be impacted by slowing economic conditions and uncertainty. Additionally, as a result of the FTC Consent Order described in Part II, Item 1 – Legal Proceedings, below, we made additional changes to our employment opportunities marketplace and programmatic advertising businesses and have implemented industry-leading compliance measures across the entire business, which have had negative impacts on our revenues and media margin in the third quarter of 2023. In the medium term, although there can be no assurance, we expect that the increased industry-wide regulatory scrutiny will eliminate the competitive advantage that less compliance-focused competitors currently enjoy as a result of the changes we have implemented, and that our industry-leading compliance will be a competitive advantage enabling us to recapture market share from our competitors. Additionally, our legal fees related to the FTC Consent Order have continued to decrease, and we received an insurance reimbursement for prior legal fees incurred. In response to the regulatory requirements, we will continue to refocus investment into businesses unaffected by the FTC Consent Order, such as the Rewards and Adflow businesses.

Current Economic Conditions

We are subject to risks and uncertainties caused by events with significant macroeconomic impacts. Inflation, rising interest rates and reduced consumer confidence have caused our clients and their customers to be cautious in their spending. The full impact of these macroeconomic events and the extent to which these macro factors may impact our business, financial condition, and results of operations in the future remains uncertain. In light of the challenging macro-economic environment, we have reviewed our strategic investments for 2023 and paused or eliminated lower priority projects while also streamlining our organization through targeted workforce reductions.

Please see *Item 1A. Risk Factors in the 2022 Form 10-K*, for more information or further discussion of the possible impact of unfavorable conditions on our business.

Definitions, Reconciliations and Uses of Non-GAAP Financial Measures

We report the following non-GAAP measures:

Media margin is defined as that portion of gross profit (exclusive of depreciation and amortization) reflecting the variable costs paid for media and related expenses and excluding non-media cost of revenue. Gross profit (exclusive of depreciation and amortization) represents revenue minus cost of revenue (exclusive of depreciation and amortization). Media margin is also presented as percentage of revenue.

Adjusted EBITDA is defined as net income (loss) excluding (1) income taxes, (2) interest expense, net, (3) depreciation and amortization, (4) share-based compensation expense, (5) goodwill impairment, (6) write-off of intangible assets, (7) loss (gain) on disposal of property and equipment, (8) acquisition-related costs, (9) restructuring and other severance costs, and (10) certain litigation and other related costs.

Adjusted net income (loss) is defined as net income (loss) excluding (1) share-based compensation expense, (2) goodwill impairment, (3) write-off of intangible assets, (4) loss (gain) on disposal of property and equipment (5) acquisition-related costs, (6) restructuring and other severance costs, and (7) certain litigation and other related costs. Adjusted net income (loss) is also presented on a per share (basic and diluted) basis.

Below is a reconciliation of media margin from gross profit (exclusive of depreciation and amortization) for the three and nine months ended September 30, 2023 and 2022, respectively, which we believe is the most directly comparable GAAP measure:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Revenue	\$ 66,239	\$ 89,046	\$ 225,638	\$ 276,470
Less: Cost of revenue (exclusive of depreciation and amortization)	50,148	65,270	167,960	202,859
Gross profit (exclusive of depreciation and amortization)	\$ 16,091	\$ 23,776	\$ 57,678	\$ 73,611
Gross profit (exclusive of depreciation and amortization) % of revenue	24%	27%	26%	27%
Non-media cost of revenue (1)	3,229	4,290	9,510	12,713
Media margin	\$ 19,320	\$ 28,066	\$ 67,188	\$ 86,324
Media margin % of revenue	29.2%	31.5%	29.8%	31.2%

(1) Represents the portion of cost of revenue (exclusive of depreciation and amortization) not attributable to variable costs paid for media and related expenses.

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Below is a reconciliation of adjusted EBITDA from net income (loss) for the three and nine months ended September 30, 2023 and 2022, respectively, which we believe is the most directly comparable GAAP measure:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Net income (loss)	\$ (33,627)	\$ 3,113	\$ (61,319)	\$ (55,844)
Income tax expense	(1,243)	(3,003)	551	2,119
Interest expense, net	936	517	2,420	1,331
Depreciation and amortization	2,658	3,398	8,112	10,037
Share-based compensation expense	961	801	2,958	2,652
Goodwill impairment	29,705	—	55,405	55,400
Write-off of intangible assets	—	—	—	128
Loss (gain) on disposal of property and equipment	—	(2)	—	19
Acquisition-related costs(1)(2)	516	536	1,701	1,673
Restructuring and other severance costs	(24)	—	456	38
Certain litigation and other related costs	(1,624)	504	(5,982)	2,502
Adjusted EBITDA	\$ (1,742)	\$ 5,864	\$ 4,302	\$ 20,055

(1) Balance includes compensation expense related to non-competition agreements entered into as a result of certain acquisitions.

(2) Balance includes earn-out expense of (\$21) and \$89 for the three and nine months ended September 30, 2023, respectively, as a result of certain acquisitions.

Below is a reconciliation of adjusted net income (loss) and adjusted net income (loss) per share from net income (loss) for the three and nine months ended September 30, 2023 and 2022, respectively, which we believe is the most directly comparable GAAP measure.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
(In thousands, except share and per share data)				
Net income (loss)	\$ (33,627)	\$ 3,113	\$ (61,319)	\$ (55,844)
Share-based compensation expense	961	801	2,958	2,652
Goodwill impairment	29,705	—	55,405	55,400
Write-off of intangible assets	—	—	—	128
Loss (gain) on disposal of property and equipment	—	(2)	—	19
Acquisition-related costs(1)(2)	516	536	1,701	1,673
Restructuring and other severance costs	(24)	—	456	38
Certain litigation and other related costs	(1,624)	504	(5,982)	2,502
Adjusted net income (loss)	\$ (4,093)	\$ 4,952	\$ (6,781)	\$ 6,568
Adjusted net income (loss) per share:				
Basic	\$ (0.05)	\$ 0.06	\$ (0.08)	\$ 0.08
Diluted	\$ (0.05)	\$ 0.06	\$ (0.08)	\$ 0.08
Weighted average number of shares outstanding:				
Basic	82,880,536	81,592,316	82,511,454	81,327,639
Diluted	82,880,536	81,699,966	82,511,454	81,379,159

(1) Balance includes compensation expense related to non-competition agreements entered into as a result of certain acquisitions.

(2) Balance includes earn-out expense of (\$21) and \$89 for the three and nine months ended September 30, 2023, respectively, as a result of certain acquisitions.

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We present media margin, media margin as a percentage of revenue, adjusted EBITDA, adjusted net income (loss), and adjusted net income (loss) per share as supplemental measures of our financial and operating performance because we believe they provide useful information to investors. More specifically:

Media margin, as defined above, is a measure of the efficiency of the Company's operating model. We use media margin and the related measure of media margin as a percentage of revenue as primary metrics to measure the financial return on our media and related costs, specifically to measure the degree by which the revenue generated from our digital marketing services exceeds the cost to attract the consumers to whom offers are made through our services. Media margin is used extensively to manage our operating performance, including evaluating operational performance against budgeted media margin and understanding the efficiency of our media and related expenditures. We also use media margin for performance evaluations and compensation decisions regarding certain personnel.

Adjusted EBITDA, as defined above, is another primary metric by which we evaluate the operating performance of our business, on which certain operating expenditures and internal budgets are based and by which, in addition to media margin and other factors, our senior management is compensated. The first three adjustments represent the conventional definition of EBITDA, and the remaining adjustments are items recognized and recorded under GAAP in particular periods but might be viewed as not necessarily coinciding with the underlying business operations for the periods in which they are so recognized and recorded. These adjustments include certain litigation and other related costs associated with legal matters outside the ordinary course of business, including costs and accruals related to matters as described below (See Part II, Item 1 — Legal Proceedings). We consider items one-time in nature if they are non-recurring, infrequent or unusual and have not occurred in the past two years or are not expected to recur in the next two years, in accordance with SEC rules. There were no adjustments for one-time items in the periods presented by this Quarterly Report on Form 10-Q.

Adjusted net income (loss), as defined above, and the related measure of adjusted net income (loss) per share exclude certain items that are recognized and recorded under GAAP in particular periods but might be viewed as not necessarily coinciding with the underlying business operations for the periods in which they are so recognized and recorded. We believe adjusted net income (loss) affords investors a different view of the overall financial performance as compared to adjusted EBITDA and the GAAP measure of net income (loss).

Media margin, adjusted EBITDA, adjusted net income (loss), and adjusted net income (loss) per share are non-GAAP financial measures with certain limitations regarding their usefulness. They do not reflect our financial results in accordance with GAAP, as they do not include the impact of certain expenses that are reflected in our consolidated statements of operations. Accordingly, these metrics are not indicative of our overall results or indicators of past or future financial performance. Further, they are not financial measures of profitability and are neither intended to be used as a proxy for the profitability of our business nor to imply profitability. The way we measure media margin, adjusted EBITDA, and adjusted net income (loss) may not be comparable to similarly titled measures presented by other companies and may not be identical to corresponding measures used in our various agreements.

Comparison of Our Results of Operations for the Three and Nine Months Ended September 30, 2023 and 2022

Revenue

(In thousands)	Three Months Ended September 30,			Nine Months Ended September 30,		
	2023	2022	% Change	2023	2022	% Change
Revenue	\$ 66,239	\$ 89,046	(26%)	\$ 225,638	\$ 276,470	(18%)

Three months ended September 30, 2023 compared to the three months ended September 30, 2022

Revenue for the three months ended September 30, 2023 decreased \$22.8 million, or 26%, to \$66.2 million, compared to \$89.0 million for the three months ended September 30, 2022. The decrease was largely attributable to declines in the US Rewards business due to a reduction in client spend. In addition, revenue from the employment opportunities marketplace declined due to the changes in business practices that reflect the recently imposed regulatory requirements in connection with the FTC Consent Order described in Part II, Item 1 – Legal Proceedings, below.

Nine months ended September 30, 2023 compared to the nine months ended September 30, 2022

Revenue for the nine months ended September 30, 2023 decreased \$50.8 million, or 18%, to \$225.6 million, compared to \$276.5 million for the nine months ended September 30, 2022. The decrease was largely attributable to declines in the US Rewards business due to a reduction in client spend. In addition, revenue from the employment opportunities marketplace declined due to decreased demand related to the slowing labor market and changes in business practices that reflect the recently imposed regulatory requirements in connection with the FTC Consent Order described in Part II, Item 1 – Legal Proceedings, below. The revenue decline was partially offset by growth in our Influencer based platform and new initiatives.

Cost of revenue (exclusive of depreciation and amortization)

(In thousands)	Three Months Ended September 30,			Nine Months Ended September 30,		
	2023	2022	% Change	2023	2022	% Change
Cost of revenue (exclusive of depreciation and amortization)	\$ 50,148	\$ 65,270	(23%)	\$ 167,960	\$ 202,859	(17%)

Three months ended September 30, 2023 compared to the three months ended September 30, 2022

Cost of revenue for the three months ended September 30, 2023 (exclusive of depreciation and amortization) decreased \$15.1 million, or 23%, to \$50.1 million, compared to \$65.3 million for the three months ended September 30, 2022. The decrease was attributable to the same factors causing the decline in revenue for the quarter over quarter period. Our cost of revenue primarily consists of media and related costs associated with acquiring traffic from third-party publishers and digital media platforms for our owned and operated websites. The costs also include enablement costs associated with our call centers and tracking costs related to our consumer data. In addition, there are indirect costs which include fulfillment costs related to rewards earned by consumers who complete the requisite number of advertiser offers, along with call center software and hosting costs.

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The total cost of revenue for the three months ended September 30, 2023 (exclusive of depreciation and amortization) as a percentage of revenue increased to 76% compared to 73% for the three months ended September 30, 2022. The increase was largely attributable to the increase in the cost of media as a percentage of revenue.

Nine months ended September 30, 2023 compared to the nine months ended September 30, 2022

Cost of revenue for the nine months ended September 30, 2023 (exclusive of depreciation and amortization) decreased \$34.9 million, or 17% to \$168.0 million, compared to \$202.9 million for the nine months ended September 30, 2022. The decrease was primarily attributable to the same factors causing the decline in revenue for the year over year period. The total cost of revenue for the nine months ended September 30, 2023(exclusive of depreciation and amortization) as a percentage of revenue increased to 74% compared to 73% for the nine months ended September 30, 2022. The increase was largely attributable to the increase in the cost of media as a percentage of revenue.

In the normal course of executing paid media campaigns to source consumer traffic, we regularly evaluate new channels, strategies, and partners, in an effort to identify actionable opportunities which can then be optimized over time. Traffic acquisition costs incurred with the major digital media platforms have historically been higher than affiliate traffic sources. For the nine months ended September 30, 2023, digital media spend continued to be driven by strategic test and learn initiatives that began in the second quarter of 2022. The mix and profitability of our media channels, strategies, and partners will likely reflect evolving market dynamics and the impact of our Traffic Quality Initiative and the increased compliance obligations as a result of the FTC Consent Order. As we evaluate and scale new media channels, strategies, and partners, we may determine that certain sources initially able to provide us profitable quality traffic may not be able to maintain our quality standards over time, and we may need to discontinue, or direct a modification of the practices of, such sources, which could reduce profitability. The improved traffic quality being sourced is the foundation to support sustainable long-term growth and positioning us as an industry leader. Past levels of cost of revenue (exclusive of depreciation and amortization) may therefore not be indicative of future costs, which may increase or decrease as these uncertainties in our business play out.

Sales and marketing

(In thousands)	Three Months Ended September 30,			Nine Months Ended September 30,		
	2023	2022	% Change	2023	2022	% Change
Sales and marketing	\$ 4,426	\$ 4,254	4%	\$ 13,454	\$ 12,590	7%

Three months ended September 30, 2023 compared to the three months ended September 30, 2022

Sales and marketing expenses for the three months ended September 30, 2023 increased \$0.2 million, or 4%, to \$4.4 million, compared to \$4.3 million for the three months ended September 30, 2022. For the three months ended September 30, 2023 and 2022, sales and marketing expense consisted mainly of employee salaries and benefits of \$3.9 million and \$3.6 million, advertising costs of \$0.1 and \$0.3 million, and non-cash share-based compensation expenses of \$0.1 and \$0.1 million, respectively. The increase was primarily due to salary increases partially offset by lower marketing costs incurred.

Nine months ended September 30, 2023 compared to the nine months ended September 30, 2022

Sales and marketing expenses for the nine months ended September 30, 2023 increased \$0.9 million, or 7%, to \$13.5 million, compared to \$12.6 million for the nine months ended September 30, 2022. For the nine months ended September 30, 2023 and 2022, sales and marketing expense consisted mainly of employee salaries and benefits of \$11.4 million and \$10.7 million, advertising costs of \$0.7 and \$0.8 million, non-cash share-based compensation expenses of \$0.4 and \$0.4 million, and travel and entertainment of \$0.3 and \$0.3 million, respectively. The increase was primarily due to salary increases partially offset by reductions in advertising costs.

Product development

(In thousands)	Three Months Ended September 30,			Nine Months Ended September 30,		
	2023	2022	% Change	2023	2022	% Change
Product development	\$ 4,511	\$ 4,622	(2%)	\$ 14,064	\$ 13,979	1%

Three months ended September 30, 2023 compared to the three months ended September 30, 2022

Product development expense for the three months ended September 30, 2023 decreased \$0.1 million, or 2%, to \$4.5 million, compared to \$4.6 million for the three months ended September 30, 2022. For the three months ended September 30, 2023 and 2022, product and development expense consisted mainly of salaries and benefits of \$3.4 million and \$3.3 million, software license and maintenance costs of \$0.5 million and \$0.4 million, professional fees of \$0.3 million and \$0.6 million, and non-cash share-based compensation expense of \$0.2 million and \$0.1 million, respectively. The decrease in product development expense is primarily due to lower consulting fees.

Nine months ended September 30, 2023 compared to the nine months ended September 30, 2022

Product development expense for the nine months ended September 30, 2023 increased \$0.1 million, or 1%, to \$14.1 million, compared to \$14.0 million for the nine months ended September 30, 2022. For the nine months ended September 30, 2023 and 2022, product and development expense consisted mainly of salaries and benefits of \$10.3 million and \$10.1 million, software license and maintenance costs of \$1.4 million and \$1.2 million, professional fees of \$1.3 million and \$2.0 million, and non-cash share-based compensation expense of \$0.5 million and \$0.4 million, respectively. The slight increase in product development expenses reflects an increase in software license and maintenance costs and other operating costs, mainly offset by the decline in consulting fees.

General and administrative

(In thousands)	Three Months Ended September 30,				Nine Months Ended September 30,			
	2023	2022	% Change		2023	2022	% Change	
General and administrative	\$ 8,725	\$ 10,877	(20%)	\$	\$ 24,991	\$ 33,852	(26%)	

Three months ended September 30, 2023 compared to the three months ended September 30, 2022

General and administrative expenses for the three months ended September 30, 2023 decreased \$2.2 million, or 20%, to \$8.7 million, compared to \$10.9 million for the three months ended September 30, 2022. For the three months ended September 30, 2023 and 2022, general and administrative expense consisted mainly of employee salaries and benefits of \$4.4 million and \$5.1 million, professional fees of \$2.1 million and \$1.6 million, office overhead of \$1.0 million and \$1.1 million, non-cash share-based compensation expense of \$0.7 million and \$0.6 million, software license and maintenance costs of \$0.7 million and \$0.6 million, acquisition-related costs of \$0.5 million and \$0.5 million, and certain litigation and related costs of (\$1.6) million and \$0.5 million, respectively. The decrease was mainly the result of a decrease in litigation related costs due to insurance reimbursements of previously incurred legal fees related to the FTC Consent Order and lower salaries due to a decline of headcount and certain employee salary reductions, partially offset by increased consulting fees.

Nine months ended September 30, 2023 compared to the nine months ended September 30, 2022

General and administrative expenses for the nine months ended September 30, 2023 decreased \$8.9 million, or 26%, to \$25.0 million, compared to \$33.9 million for the nine months ended September 30, 2022. For the nine months ended September 30, 2023 and 2022, general and administrative expense consisted mainly of employee salaries and benefits of \$13.9 million and \$16.0 million, professional fees of \$5.0 million and \$4.3 million, office overhead of \$3.2 million and \$3.4 million, non-cash share-based compensation expense of \$2.1 million and \$1.8 million, software license and maintenance costs of \$1.9 million and \$1.8 million, acquisition-related costs of \$1.7 million and \$1.7 million, and certain litigation and related costs of (\$6.0) million and \$2.5 million, respectively. The decrease was mainly the result of a decline in litigation related costs due to the lower-than-expected regulatory settlement reached in the second quarter of 2023, even as legal fees had increased to reach the settlement, along with insurance reimbursements for previously incurred legal fees related to the FTC Consent Order and lower salary costs due to restructuring in the first quarter of 2023 and fourth quarter of 2022. These increases were partially offset by increased consulting fees and strategic employee training expenses.

During the first quarter of 2023, the Company implemented reductions in the workforce that resulted in the termination of approximately 20 employees. These reductions in workforce were implemented following management's determination to reduce headcount and decrease the Company's overhead to more effectively align resources to the Company's core business operations. In connection with these reductions in workforce, the Company incurred \$0.5 million in exit-related restructuring costs, consisting primarily of one-time termination benefits and associated costs, to be fully settled in cash by March 31, 2024.

Depreciation and amortization

(In thousands)	Three Months Ended September 30,			Nine Months Ended September 30,		
	2023	2022	% Change	2023	2022	% Change
Depreciation and amortization	\$ 2,658	\$ 3,398	(22%)	\$ 8,112	\$ 10,037	(19%)

Three months ended September 30, 2023 compared to the three months ended September 30, 2022

Depreciation and amortization expenses for the three months ended September 30, 2023 decreased \$0.7 million, or 22%, to \$2.7 million, compared to \$3.4 million for the three months ended September 30, 2022. This decrease was mainly due to certain intangible assets that fully amortized as compared to the three months ended September 30, 2022, partly offset by the amortization of the acquired intangibles related to TAPP Influencers Corp ("TAPP").

Nine months ended September 30, 2023 compared to the nine months ended September 30, 2022

Depreciation and amortization expenses for the nine months ended September 30, 2023 decreased \$1.9 million, or 19%, to \$8.1 million, compared to \$10.0 million for the nine months ended September 30, 2022. This decrease was mainly due to certain intangible assets that had fully amortized as compared to the nine months ended September 30, 2022, partly offset by the amortization of the acquired intangibles related to TAPP.

Goodwill impairment

(In thousands)	Three Months Ended September 30,			Nine Months Ended September 30,		
	2023	2022	% Change	2023	2022	% Change
Goodwill impairment	\$ 29,705	—	0%	\$ 55,405	\$ 55,400	0%

Three months ended September 30, 2023 compared to the three months ended September 30, 2022

For the three months ended September 30, 2023, the Company recognized \$29.7 of goodwill impairment related to both the Fluent and All Other Reporting Unit, compared to none for the three months ended September 30, 2022.

Nine months ended September 30, 2023 compared to the nine months ended September 30, 2022

For the nine months ended September 30, 2023, the Company recognized a \$55.4 million impairment loss related to goodwill related to both the Fluent and All Other Reporting Unit, compared to \$55.4 million related to the Fluent reporting unit for the nine months ended September 30, 2022.

Write-off of intangible assets

(In thousands)	Three Months Ended September 30,			Nine Months Ended September 30,		
	2023	2022	% Change	2023	2022	% Change
Write-off of intangible assets	—	—	—	—	\$ 128	(100%)

Three months ended September 30, 2023 compared to the three months ended September 30, 2022

For the three months ended September 30, 2023 and 2022, the Company did not recognize write-offs of intangible assets.

Nine months ended September 30, 2023 compared to the nine months ended September 30, 2022

For the nine months ended September 30, 2023, the Company did not recognize write-offs of intangible assets, compared to \$0.1 million for the write-offs of intangible assets related to software developed for internal use for the nine months ended September 30, 2022.

Loss (gain) on disposal of property and equipment

(In thousands)	Three Months Ended September 30,			Nine Months Ended September 30,		
	2023	2022	% Change	2023	2022	% Change
Loss (gain) on disposal of property and equipment	—	\$ (2)	(100%)	—	\$ 19	(100%)

Three months ended September 30, 2023 compared to the three months ended September 30, 2022

The Company recognized no gain or loss on disposal of property and equipment for the three months ended September 30, 2023, compared to de minimis gain on disposal for the three months ended September 30, 2022.

Nine months ended September 30, 2023 compared to the nine months ended September 30, 2022

The Company recognized no gain or loss on disposal of property and equipment for the nine months ended September 30, 2023, compared to de minimis loss on disposal for the nine months ended September 30, 2022.

Interest expense, net

(In thousands)	Three Months Ended September 30,			Nine Months Ended September 30,		
	2023	2022	% Change	2023	2022	% Change
Interest expense, net	\$ 936	\$ 517	81%	\$ 2,420	\$ 1,331	82%

Three months ended September 30, 2023 compared to the three months ended September 30, 2022

Interest expense, net, for the three months ended September 30, 2023 increased \$0.4 million, compared to the three months ended September 30, 2022, which was driven by a higher average interest rate on the Term Loan described below under "Liquidity and Capital Resources" below.

Nine months ended September 30, 2023 compared to the nine months ended September 30, 2022

Interest expense, net, for the nine months ended September 30, 2023 increased \$1.1 million, compared to the nine months ended September 30, 2022, which was driven by a higher average interest rate on the Term Loan described below under "Liquidity and Capital Resources."

Income (loss) before income taxes

(In thousands)	Three Months Ended September 30,			Nine Months Ended September 30,		
	2023	2022	% Change	2023	2022	% Change
Income (loss) before income taxes	\$ (34,870)	\$ 110	NM	\$ (60,768)	\$ (53,725)	13%

NM - Not Meaningful

Three months ended September 30, 2023 compared to the three months ended September 30, 2022

Loss before income taxes for the three months ended September 30, 2023 was \$34.9 million, compared to income before income taxes of \$0.1 million for the three months ended September 30, 2022. The change in income (loss) before income taxes of \$35.0 million was primarily due to a decline in revenues of \$22.8 million and goodwill impairment of \$29.7 million that occurred in the current period, partially offset by a decline in cost of revenue of \$15.1 million and an overall decrease in operating expenses of \$2.1 million driven in part by the contra-expense related to the insurance reimbursement for prior legal fees.

Nine months ended September 30, 2023 compared to the nine months ended September 30, 2022

Loss before income taxes for the nine months ended September 30, 2023 was \$60.8 million, compared to loss before income taxes of \$53.7 million for the nine months ended September 30, 2022. The increase in loss before income taxes of \$7.0 million was primarily due to a decline in revenues of \$50.8, partially offset by a decline in cost of revenue of \$34.9 million and a decrease in operating expenses of \$7.9 million driven in part by the contra-expense related to the insurance reimbursement for prior legal fees.

Income tax (expense) benefit

(In thousands)	Three Months Ended September 30,			Nine Months Ended September 30,		
	2023	2022	% Change	2023	2022	% Change
Income tax (expense) benefit	1,243	3,003	(59%)	\$ (551)	\$ (2,119)	(74%)

Three months ended September 30, 2023 compared to the three months ended September 30, 2022

Income tax benefit for the three months ended September 30, 2023, was \$1.2 compared to \$3.0 for the three months ended September 30, 2022, primarily driven by the impact of a non-deductible goodwill impairment against pre-tax year-to-date losses offset by the benefit of federal research and development credits.

Nine months ended September 30, 2023 compared to the nine months ended September 30, 2022

Income tax expense for the nine months ended September 30, 2023 was \$0.6 million, compared to \$2.1 for the nine months ended September 30, 2022, primarily driven by the impact of a non-deductible goodwill impairment against pre-tax year-to-date losses offset by the benefit of federal research and development credits.

As of September 30, 2023 and 2022, we recorded a full valuation allowance against our net deferred tax assets. We intend to maintain a full valuation allowance against the net deferred tax assets until there is sufficient evidence to support the release of all or some portion of such allowances. Release of some or all of the valuation allowance would result in the recognition of certain deferred tax assets and an increase in deferred tax benefit for any period in which such a release may be recorded, however, the exact timing and amount of any valuation allowance release are subject to change, depending upon the level of profitability that we are able to achieve and the net deferred tax assets available.

Net income (loss)

(In thousands)	Three Months Ended September 30,			Nine Months Ended September 30,		
	2023	2022	% Change	2023	2022	% Change
Net income (loss)	\$ (33,627)	\$ 3,113	NM	\$ (61,319)	\$ (55,844)	10%

Three months ended September 30, 2023 compared to the three months ended September 30, 2022

Net loss for the three months ended September 30, 2023 was \$33.6 million compared to net income of \$3.1 million for the three months ended September 30, 2022 due to a decline in revenues and a goodwill impairment that occurred in the current period, partly offset by declines in cost of revenue and operating expenses as discussed above.

Nine months ended September 30, 2023 compared to the nine months ended September 30, 2022

Net loss for the nine months ended September 30, 2023 was \$61.3 million compared to net loss of \$55.8 million for the nine months ended September 30, 2022, due to a decline in revenues, partially offset by a decline in cost of revenue and a decrease in operating expenses as discussed above.

Liquidity and Capital Resources

Cash provided by operating activities. For the nine months ended September 30, 2023, net cash provided by operating activities was \$9.7 million, compared to net cash provided by operating activities of \$7.1 million for the nine months ended September 30, 2022. Net loss in the current period of \$61.3 million represents a decrease of \$5.5 million, as compared with net loss of \$55.8 million in the prior period. Adjustments to reconcile net loss to net cash provided by operating activities of \$66.8 million in the current period decreased by \$1.9 million, as compared with \$68.7 million in the prior period, primarily due to a lower depreciation and amortization in the current period as compared to the prior period. Changes in assets and liabilities sourcing cash of \$4.3 million in the current period, as compared with consuming cash of \$5.7 million in the prior period, primarily due to ordinary-course changes in working capital, largely involving the timing of receipt of amounts owing from clients and disbursements of amounts payable to vendors.

Cash used in investing activities. For the nine months ended September 30, 2023 and 2022, net cash used in investing activities was \$5.4 million and \$4.3 million, respectively. The increase was mainly due to the increase in investment in capitalized software along with the impact of the TAPP consolidation that occurred in the current period ended September 30, 2023, compared to the True North Loyalty, LLC acquisition that occurred in the prior period ended September 30, 2022.

Cash used in financing activities. Net cash used in financing activities for the nine months ended September 30, 2023 and 2022 was \$9.4 million and \$4.2 million, respectively. The change was due to the \$5.0 million prepayment made on the debt along with the fees paid related to the debt modification, slightly offset by the decline in taxes paid related to share settlements of vesting of restricted stock units.

As of September 30, 2023, we had noncancelable operating lease commitments of \$4.8 million and long-term debt with a \$32.5 million principal balance. For the nine months ended September 30, 2023, we funded our operations using available cash.

As of September 30, 2023, we had cash and cash equivalents of \$20.5 million, a decrease of \$5.0 million from \$25.5 million as of December 31, 2022. Assuming maturity dates under the Credit Agreement are not accelerated, as noted below, we believe that we will have sufficient cash resources to finance our operations and expected capital expenditures for the next twelve months and beyond regardless of our inability to access the Revolving Loans described below.

As of September 30, 2023, we were in compliance with our financial covenants except for the total leverage ratio covenant under the Credit Agreement. See below for details related to the Temporary Waiver Under Credit Agreement (the "Waiver") entered into related to such non-compliance. We have projected a continued decline in our operating results, driven primarily by the continued economic slowdown and uncertainty, as well as the impacts of the recently imposed regulatory requirements. Therefore, we do not expect to be in compliance with certain of our financial covenants for the next twelve months. If we are not in compliance with financial covenants, it will be an event of default that would give the lenders the right to accelerate maturities. We had cash and cash equivalents of \$20.5 million as of September 30, 2023, and had positive cash flow from operations in the prior two fiscal years and for the nine months ended September 30, 2023. In addition, we plan to reduce costs and focus resources on new growth opportunities. However, even with that, we may need to obtain additional liquidity if the debt were to become accelerated or we do not meet our 2024 budget, raising substantial doubt about the ability to continue as a going concern.

The Waiver requires that the Borrower provide a 2024 budget to Citizens Bank, that has been reviewed by the business consultant retained by counsel to Citizens Bank. We intend for that budget to inform modified financial covenant levels and other provisions, as needed, for the quarters ending December 31, 2023 through December 31, 2024, which would be accomplished with an amendment to the Credit Agreement. We and Citizens Bank have previously entered into amendments to the Credit Agreement as needed, and we expect to be able to enter into a new amendment prior to the Termination Date (defined below).

While we believe our plans will alleviate the conditions or events that raise substantial doubt about our ability to continue as a going concern, successfully entering into a new amendment to the Credit Agreement with financial covenant levels we can satisfy is not entirely within our control. In addition, there is no guarantee that the planned cost reductions or growth opportunities will be successfully executed or have the expected benefits. As there can be no assurance that we will be able to effectively implement our plans within one year after the date of issuance of the unaudited consolidated financial statements included in this Quarterly Report on Form 10-Q, management concluded that there is substantial doubt about our ability to continue as a going concern through such one-year period.

We may explore the possible acquisition of businesses, products and/or technologies that are complementary to our existing business. We continue to identify and prioritize additional technologies, which we may wish to develop internally or through licensing or acquisition from third parties. While we may engage from time to time in discussions with respect to potential acquisitions, there can be no assurance that any such acquisitions will be made or that we will be able to successfully integrate any acquired business with our then current business or realize anticipated cost synergies. In order to finance such acquisitions and working capital, it may be necessary for us to raise additional funds through public or private financings. Any equity or debt financings, if available at all, may be on terms which are not favorable to us and, in the case of equity financings, may result in dilution to shareholders.

On March 31, 2021, Fluent, LLC (the "Borrower"), entered into a credit agreement (as amended, modified, extended, restated, replaced, or supplemented from time to time, the "Credit Agreement") with certain subsidiaries of the Borrower as guarantors, the lenders thereto, and Citizens Bank, N.A. ("Citizens Bank") as administrative agent, lead arranger and bookrunner. The original Credit Agreement provided for a term loan in the aggregate principal amount of \$50,000 funded on the closing date (the "Term Loan"), along with an undrawn revolving credit facility of up to \$15,000 (the "Revolving Loans," and together with the Term Loan, the "Credit Facility").

On May 15, 2023, the Borrower and Citizens Bank entered into a third amendment to the Credit Agreement, which amended certain provisions by adding an additional tier of applicable margin to the selected rates and providing for additional notice of certain material events and, for the remaining fiscal quarters of 2023, established the following, in each case pursuant to the terms and conditions under the Credit Agreement, (i) adjustments to the pricing floor and certain EBITDA add-backs; (ii) monthly financial reporting requirements; (iii) additional financial covenant testing conditions on Fluent's ability to draw on the Revolving Loans; (iv) additional tiers to certain financial covenants and added a minimum cash liquidity financial covenant; (v) additional restrictions on the ability to (a) make loans and advances to officers, directors and employees; (b) invest in certain subsidiaries and joint ventures; and (c) make additional loans, investments or permitted acquisitions; and (vi) additional unrestricted cash requirements before the Company is permitted to pay dividends, make distributions or redeem or repurchase equity interests.

Additionally, on August 21, 2023, the Borrower and Citizens Bank entered into a fourth amendment to the Credit Agreement, which (i) adjusted certain financial covenants for the remaining fiscal quarters of 2023, including prohibiting the Company from drawing on the Revolving Loans until the issuance of the December 31, 2023 annual financial statements, (ii) temporarily adjusted interest rates, (iii) permitted the Citizens Bank to retain a business consultant at the Borrower's expense to advise on the credit parties' financial and operating performance; (iv) required weekly liquidity reports to Citizens Bank, and (v) required a \$5 million prepayment of the Term Loan and a \$5 million reduction to the maximum availability of the Revolving Loans to \$10 million. The \$5 million prepayment amount was paid as of September 30, 2023.

On November 15, 2023, the Borrower and Citizens Bank entered into a Waiver to the Credit Agreement, pursuant to which Citizens Bank agreed to waive through the earlier of January 15, 2024 or an occurrence of any other event of default (the "Termination date") its rights and remedies arising from the Company's breach of the total leverage covenant during the quarter ending September 30, 2023. The Waiver added new reporting requirements, temporarily increased the applicable margin, and extended the term of the business consultant through January 15, 2024. The Borrower must also provide a 2024 budget that has been reviewed by the business consultant retained by counsel to Citizens Bank. We intend for that to inform modified financial covenant levels and other provisions, as needed, for the quarters ending December 31, 2023 through December 31, 2024, which would be accomplished with an amendment to the Credit Agreement.

All obligations under the Credit Agreement currently mature on March 31, 2026, and interest is payable monthly. Scheduled principal amortization of the Term Loan is \$1,250 per quarter, which commenced with the fiscal quarter ended June 30, 2021. At September 30, 2023, the Company was in compliance with all of the financial covenants under the Credit Agreement except for the total leverage ratio covenant. As discussed above, this covenant breach was waived through the Termination date by the Waiver. However, based on projections, we do not expect to be in compliance with certain financial covenants during certain quarters in the next twelve months. If the Company is not in compliance with financial covenants, it will be an event of default that would give the lenders the right to accelerate maturity. Accordingly, all borrowings under the Credit Agreement have been classified as current as of September 30, 2023.

Borrowings under the Credit Agreement bear interest at a rate per annum equal to the benchmark selected by the Borrower, which may be based on the Alternative Base Rate, (as defined in the Credit Agreement), LIBOR (as defined in the Credit Agreement) rate (subject to a floor of 0.25%) prior to the election as of December 31, 2022 or Term SOFR (as defined in the Credit Agreement) (subject to a floor of 0.00%) subsequent to the election, plus a margin applicable to the selected benchmark. The applicable margin is between 0.75% and 2.25% for borrowings based on the Alternative Base Rate and 1.75% and 3.25% for borrowings based on Term SOFR, depending upon the Borrower's total leverage ratio. The opening interest rate of the Credit Facility was 2.50% (LIBOR + 2.25%), which increased to 8.92% (Term SOFR + 0.1% + 3.50%) as of September 30, 2023.

The Credit Agreement also contains certain customary conditions applicable to extensions of credit, including that representations and warranties made in the Credit Agreement be materially true and correct at the time of such extension (once such extensions are no longer prohibited by the Fourth Amendment or a later amendment).

Critical Accounting Policies and Estimates

Management's discussion and analysis of financial condition and results of operations are based upon our consolidated financial statements, which have been prepared in accordance with GAAP. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosure of contingent assets and liabilities. We periodically evaluate our estimates, including those related to revenue recognition, allowance for doubtful accounts, useful lives of intangible assets, recoverability of the carrying amounts of goodwill and intangible assets, share-based compensation, income taxes, and contingencies. We base our estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions. All amounts below are presented in thousands.

As disclosed in Note 4, *Goodwill*, the Company engaged a third party to assist in conducting an interim test of the fair value of its goodwill for potential impairment for the three months ended March 31, 2023. The Company considered a combination of income and market approaches to determine the fair value of the Fluent reporting unit. The Company determined that a market-based approach, due to the decline in value of its publicly traded stock, provided the best indication of fair value of the Fluent reporting unit. The market approach considers the Company's implied market multiple applied to management's forecast and further adjusted for a control premium. If we were to experience an additional decline in market capitalization or assumptions in management's forecast, there would be an increased risk of impairment of goodwill. Based on the results of this market-based approach as of March 31, 2023, the Company concluded that its carrying value exceeded its estimated fair value by 20%. As such, the Company concluded that its goodwill of \$51,614 for the Fluent reporting unit was impaired and recorded a non-cash impairment charge of \$25,700 for the first quarter of 2023.

Additionally, the Company engaged a third party to assist in conducting an interim test of the fair value of its goodwill for potential impairment for the three months ended June 30, 2023. The Company determined that a combination of income approach and the market approach provided the best indication of fair value of the Fluent reporting unit. The income approach and market approach utilize accounting estimates and assumptions, changes in which could materially impact our financial condition or operating performance if actual results differ from such estimates and assumptions. The critical assumptions in the income approach include forecasted revenues and profitability, long-term growth rates, and discount rates. The market approach considers the Company's implied market multiple applied to management's forecasted profitability and is further adjusted for control premium. Management exercises judgment in developing these assumptions. If we were to experience sales declines, a significant change in operating margins which may impact our cash flows, an increase in our discount rates, a decline in the Company's market capitalization, and/or a decrease in our projected long-term growth rates, there would be an increased risk of impairment of goodwill and/or other assets. Based on the results of this approach as of June 30, 2023, the Company concluded that its fair value exceeded its estimated carrying value by 5%. As such the Company concluded that its goodwill of \$27,469 for the Fluent reporting unit was not impaired. If there is a reduction in operating results or a decline in the market value of the Company's publicly-traded stock, this could result in future impairment charges, which could affect the financial results.

Further, the Company engaged a third party to assist in conducting an interim test of the fair value of its goodwill for potential impairment for the three months ended September 30, 2023. The Company determined that a combination of income approach and the market approach provided the best indication of fair value of the Fluent reporting unit and All Other. The income approach and market approach utilize accounting estimates and assumptions, changes in which could materially impact our financial condition or operating performance if actual results differ from such estimates and assumptions. The critical assumptions in the income approach include forecasted revenues and profitability, long-term growth rates, and discount rates. The market approach for the Fluent reporting unit considers the Company's implied market multiple applied to management's forecasted profitability and is further adjusted for control premium. The market approach for All Other considers the enterprise values of comparable companies applied to management's forecasted profitability and is further adjusted for control premium. Management exercises judgment in developing these assumptions. If we were to experience sales declines, a significant change in operating margins which may impact our cash flows, an increase in our discount rates, a decline in the Company's market capitalization, and/or a decrease in our projected long-term growth rates, there would be an increased risk of impairment of goodwill and/or other assets. The results of this approach indicated that the Fluent reporting unit's carrying value and All Others carrying value exceeded its fair value by 32% and 29%, respectively. The Company therefore concluded that the Fluent reporting unit's goodwill was impaired and recorded a non-cash impairment for the remainder of the goodwill balance of \$27,469. In addition, the All Other goodwill of \$3,497 was also concluded to be impaired and the Company recorded a non-cash impairment charge of \$2,236.

For additional information, please refer to our 2022 Form 10-K. There have been no additional material changes to Critical Accounting Policies and Estimates disclosed in the 2022 Form 10-K.

Recently issued accounting and adopted standards

See Note 1(b), "*Recently issued and adopted accounting standards*," in the Notes to Consolidated Financial Statements included elsewhere in this Quarterly Report on Form 10-Q.

Item 3. Quantitative and Qualitative Disclosures About Market Risk.

As a smaller reporting company, we are not required to provide the information required by this Item.

Item 4. Controls and Procedures.

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of the Company's Chief Executive Officer and Interim Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act") as of September 30, 2023. We maintain disclosure controls and procedures that are designed to provide reasonable assurance that information required to be disclosed in our reports filed or submitted under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and that such information is accumulated and communicated to our management, including the Company's Chief Executive Officer and Interim Chief Financial Officer, as appropriate, to allow for timely decisions regarding required disclosure. Our management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

Based on the evaluation of disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act), the Company's Chief Executive Officer and Interim Chief Financial Officer carried out an evaluation of the effectiveness of the Company's disclosure controls and procedures as of September 30, 2023 and concluded they were not effective as of that date. As previously reported in our June 30, 2023 Quarterly Form 10-Q, in connection with management's assessment of the effectiveness of our internal control over financial reporting, management identified a material weakness in our internal control over financial reporting as of June 30, 2023 relating to our ability to timely account for non-routine, non-recurring, unusual or complex financial transactions, which is in the process of being remediated as of September 30, 2023.

Notwithstanding the identified material weakness, management believes the consolidated financial statements included in this Quarterly Report on Form 10-Q fairly represent in all material respects our financial condition, results of operations and cash flows at and for the periods presented in accordance with U.S. GAAP.

Remediation Efforts to Address Material Weakness

With the oversight of the Audit Committee of the Board of Directors, we developed a remediation plan to enhance our processes to timely account for non-routine, non-recurring, unusual or complex transactions.

Beginning in the third quarter of 2023, we improved our quarterly communication with key internal process owners to ensure non-routine, non-recurring, unusual or complex transactions are identified timely during and subsequent to the reporting period. We also began requiring additional certifications from such process owners prior to issuance of the financial statements. For those non-routine, non-recurring, unusual or complex transactions identified, we will engage third-party professionals for assistance, as needed. Lastly, we strengthened our quarterly review checklists to better ensure all items are identified and properly disclosed within the financial statement.

As part of our ongoing monitoring effort of our internal control over financial reporting, we will report the progress and status of the above remediation efforts to the Audit Committee on a periodic basis throughout the year. Once placed in operation for a sufficient period of time, we will subject these process changes to appropriate tests, before concluding that the material weakness above has been effectively remediated.

Changes in Internal Control Over Financial Reporting

Except as noted above, there were no changes to our internal control over financial reporting during the quarter ended September 30, 2023 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II - OTHER INFORMATION

Item 1. Legal Proceedings.

Other than as disclosed below under "Certain Legal Matters," the Company is not currently a party to any legal proceeding, investigation or claim which, in the opinion of the Company's management, is likely to have a material adverse effect on the business, financial condition, results of operations or cash flows of the Company. Legal fees associated with such legal proceedings are expensed as incurred. We review legal proceedings and claims on an ongoing basis and follow appropriate accounting guidance, including Financial Accounting Standards Board Accounting Standards Codification 450, *Contingencies*, when making accrual and disclosure decisions. We establish accruals for those contingencies where the incurrence of a loss is probable and can be reasonably estimated, and we disclose the amount accrued and the amount of a reasonably possible loss in excess of the amount accrued, if such disclosure is necessary for our financial statements to not be misleading. To estimate whether a loss contingency should be accrued by a charge to income, we evaluate, among other factors, the probability of an unfavorable outcome and the ability to make a reasonable estimate of the amount of the loss. We do not accrue liabilities when the likelihood that the liability has been incurred is probable, but the amount cannot be reasonably estimated.

In addition, we may be involved in litigation from time to time in the ordinary course of business. We do not believe that the ultimate resolution of any such matters will have a material adverse effect on our business, financial condition, results of operations or cash flows. However, the results of such matters cannot be predicted with certainty, and we cannot assure you that the ultimate resolution of any legal or administrative proceeding or dispute will not have a material adverse effect on our business, financial condition, results of operations and cash flows.

Certain Legal Matters

On March 31, 2022, the Company reached a settlement for \$1.7 million with the New York State Department of Taxation and Finance (the "Tax Department") following a sales and use tax audit covering the period from December 1, 2010 to November 30, 2019. The Tax Department had asserted that revenue derived from certain of the Company's customer acquisition and list management services were subject to sales tax, as a result of being deemed taxable information services. The settlement amount was paid on April 1, 2022. Since March 1, 2022, the Company has been collecting and remitting New York sales tax on certain types of revenues from New York-based clients.

On January 28, 2020, Fluent received a Civil Investigative Demand from the Federal Trade Commission ("FTC") regarding compliance with the FTC Act and the Telemarketing Sales Rule. On October 18, 2022, the FTC staff sent the Company a draft complaint and proposed consent order seeking injunctive relief and a civil monetary penalty. On January 12, 2023, the Company made an initial proposal of \$5.0 million for the civil monetary penalty contingent on successful negotiation of the remaining outstanding injunctions and other provisions. The Company accrued the same amount for the year ending December 31, 2022. On May 26, 2023, Fluent agreed to the terms of a Stipulated Order for Permanent Injunction, Monetary Judgment, Civil Penalty Judgment, and Other Relief (the "FTC Consent Order"). The FTC Consent Order imposed a civil penalty of \$2.5 million, required additional changes to the Company's employment opportunities marketplace and programmatic advertising business, and resulted in the implementation of compliance measures across the business. The same day, Fluent transferred the amount of the civil penalty to a third-party escrow account. On July 17, 2023, the FTC filed its Complaint for Civil Penalties, Permanent Injunction, Monetary Relief, and Other Relief and, together with Fluent, filed a Joint Motion for Entry of Proposed Stipulated Order in the United States District Court for the Southern District of Florida. The FTC Consent Order was entered by the Court on August 11, 2023, and the escrow funds were released on August 15, 2023. The Company maintains insurance policies that cover certain legal costs, which include those incurred related to the FTC investigation. As of September 30, 2023, the Company had recognized \$5.8 million as contra-expense to general and administrative expenses with a remaining current asset of \$1.8 million related to these insurance policies.

On October 6, 2020, the Company received notice from the Pennsylvania Office of the Attorney General ("PAAG") that it was reviewing the Company's business practices relating to telemarketing. After the Company and the PAAG were unable to reach agreement on a proposed Assurance of Voluntary Compliance, the Commonwealth of Pennsylvania filed a complaint for permanent injunction, civil penalties, and other relief in the United States District Court for the Western District of Pennsylvania on November 2, 2022. On May 18, 2023, the parties entered into a settlement and jointly filed a Consent Petition for Final Decree, wherein the Company agreed to injunctive relief and to pay the PAAG \$0.25 million for investigatory costs, all of which was paid as of June 30, 2023.

The Company has been involved in a Telephone Consumer Protection Act class action, *Daniel Berman v. Freedom Financial Network*, which was originally filed in 2018. On May 31, 2023, the parties entered into an Amended Class Action Settlement Agreement (the "Berman Settlement Agreement"), which includes injunctive provisions and payment to plaintiffs of \$9.75 million for legal fees and a consumer redress fund. On July 28, 2023, the Court preliminarily approved the Berman Settlement Agreement, and the Company contributed \$3.1 million, payable following the final approval of the settlement. The final approval of the settlement is expected in mid-2024. The Company's contribution amounts were accrued as of December 31, 2022. This amount is payable \$1.1 million in cash and \$2.0 million pursuant to an interest-bearing note with a two-year term provided by a co-defendant, Freedom Financial Network.

Item 1A. Risk Factors.

Our business, financial condition, results of operations, and cash flows may be impacted by a number of factors, many of which are beyond our control, including those set forth in our 2022 Form 10-K, the occurrence of any one of which could have a material adverse effect on our actual results.

Except as set forth below, there have been no material changes to the risk factors previously disclosed in our 2022 Form 10-K and Quarterly Report on Form 10-Q for the quarter ended June, 30, 2023. The risk factors below update all risk factors in our 2022 Form 10-K related to the matters discussed in the risk factors below.

There can be no assurance that our common stock will continue to be listed on The Nasdaq Stock Market, which could limit investors' ability to make transactions in our common stock and the price of our common stock and our ability to access the capital markets.

The Company was notified on May 1, 2023, by The Nasdaq Stock Market LLC ("Nasdaq") that the Company was not in compliance with the minimum bid price requirement set forth in Nasdaq Listing Rule 5450(a)(1) (the "Minimum Bid Price Requirement"). The closing bid price for the Company's common stock, par value \$0.0005 per share, had been less than \$1.00 per share for the previous 30 consecutive business days. In accordance with Nasdaq Listing Rule 5810(c)(3)(A), the Company was provided an initial period of 180 calendar days, or until October 30, 2023 (the "Initial Compliance Period"), to regain compliance with the Minimum Bid Price Requirement. On October 18, 2023, the Company transferred the listing of its common stock from The Nasdaq Global Market to The Nasdaq Capital Market, at which time it was afforded the remainder of the Initial Compliance Period.

On October 31, 2023, the Company received a letter from Nasdaq notifying the Company that the Nasdaq Listing Qualifications Staff (the "Nasdaq staff") had determined that the Company was eligible for an additional 180 calendar day period, or until April 29, 2024 (the "Additional Compliance Period"), to regain compliance with the Minimum Bid Price Requirement. The Company was afforded the Additional Compliance Period under Nasdaq Listing Rule 5810(c)(3)(A)(ii) based on the Company meeting the continued listing requirement for market value of publicly held shares and all other applicable requirements for initial listing on The Nasdaq Capital Market, with the exception of the Minimum Bid Price Requirement, and the Company's written notice to Nasdaq of its intention to cure the deficiency during the Additional Compliance Period by effecting a reverse stock split, if necessary.

If at any time during the Additional Compliance Period, the closing bid price of the Company's common stock is at least \$1.00 per share for a minimum of ten consecutive business days, the Nasdaq staff will provide written confirmation of compliance with the Minimum Bid Price Requirement and the matter will be closed, unless the Nasdaq staff exercises its discretion to require the Company to satisfy the Minimum Bid Price Requirement for a period in excess of ten consecutive business days as described in Nasdaq Listing Rule 5810(c)(3)(H). If the Company does not demonstrate compliance with the Minimum Bid Price Requirement by April 29, 2024, it will receive written notification from the Nasdaq staff that the Company's common stock will be delisted. At that time, the Company may appeal the delisting determination to an independent hearings panel by submitting a hearing request within seven calendar days of the date of the delisting determination notice. If timely requested, the Company expects the hearing to take place within 45 days of the hearing request. A timely request for a hearing will ordinarily stay Nasdaq's suspension and delisting action pending the issuance of a written panel decision.

There can be no assurance that we will be able to regain compliance with the Minimum Bid Price Requirement or continue to satisfy other continued listing standards and maintain the listing of our common stock on Nasdaq. The suspension or delisting of our common stock, or the commencement of delisting proceedings, could, among other things, materially impair our stockholders' ability to buy and sell shares of our common stock and could have an adverse effect on the market price of, and the efficiency of the trading market for, our common stock. Although we may effect a reverse stock split of our issued and outstanding common stock in the future, there can be no assurance that such reverse stock split will enable us to regain compliance with the Nasdaq Minimum Bid Price Requirement.

The Hamas-Israel and Russia-Ukraine conflicts, other areas of geopolitical tension around the world or the worsening of those conflicts or tensions, and any related challenging macroeconomic conditions globally and in various countries in which we and our customers operate may materially adversely affect our customers, vendors, or partners, and the duration and extent to which these factors may impact our future business and operations, results of operations, financial condition and cash flows remain uncertain.

The Hamas-Israel and Russia-Ukraine conflicts, other areas of geopolitical tension around the world or the worsening of those conflicts or geopolitical tensions, and any related challenging macroeconomic conditions globally, could decrease the spending of our existing and potential new customers, adversely affect demand for our products, cause one or more of our customers, vendors, and partners to file for bankruptcy protection or go out of business, impact expected spending and pricing levels from existing and potential new customers, and negatively impact collections of accounts receivable, all of which could adversely affect our business, results of operations and financial condition. A significant portion of our customers in the Media & Entertainment industry is located in Israel, and we are therefore particularly exposed to these risks.

Any of the negative impacts of geopolitical tension around the world and any related challenging macroeconomic conditions may have a material adverse effect on our business and operations, results of operations, financial condition and cash flows. Any of these negative impacts, alone or in combination with others, also could exacerbate many of the other risk factors discussed in *Part II, Item 1A. Risk Factors* in the 2022 Form 10-K or this Quarterly Report on Form 10-Q, including volatility in the trading prices of our common stock. The full extent to which these factors may negatively affect our business and operations, results of operations, financial condition and cash flows will depend on future developments that are highly uncertain and cannot be predicted, including the scope, severity and duration of the Hamas-Israel and Russia-Ukraine conflicts, other areas of geopolitical tension around the world and any economic downturns and the actions taken by governmental authorities and other third parties in response.

Covenants in our Credit Agreement impose restrictions that may limit our operating and financial flexibility.

The Credit Agreement contains negative covenants that, among other things, limit our ability to incur indebtedness, grant liens on our assets, enter into certain investments, consummate fundamental change transactions, engage in mergers or acquisitions or dispose of assets, enter into certain transactions with affiliates, make changes to our fiscal year, enter into certain restrictive agreements, and make certain restricted payments (including dividends and stock repurchases, which are generally prohibited except in a few circumstances and/or up to specified amounts). The Credit Agreement also contains customary events of default provisions, including for payment default, covenant default, cross default to other material indebtedness, and judgment default. Each of these limitations are subject to various conditions, thresholds, or grace periods.

In addition, the Credit Agreement contains affirmative covenants, including certain financial covenants that require us to maintain minimum total leverage ratios and fixed charge coverage ratios. The applicable interest rate on the facility may increase if our total leverage ratio increases to specified amounts that would result in our interest expenses rising. Subject to the terms and conditions set forth in the Credit Agreement, we are required to make annual mandatory prepayments of 10% of the original principal amount of the facility and make other prepayments in certain circumstances prior to March 31, 2026, the Maturity Date of the facility.

These covenants could materially adversely affect our ability to finance our future operations or capital needs. Furthermore, they may restrict our ability to expand and pursue our business strategies and otherwise conduct our business. Our ability to comply with these covenants may be affected by circumstances and events beyond our control, such as prevailing economic conditions and changes in regulations, and we cannot provide any assurance that we will be able to comply with such covenants. The restrictions also limit our ability to obtain future financings or to withstand a future downturn in our business or the economy in general. Complying with these covenants may also cause us to take actions that may make it more difficult for us to successfully execute our business strategy and compete against companies that are not subject to such restrictions.

A breach of any covenant in the Credit Agreement would result in a default under the Credit Agreement after the expiration of any applicable grace periods. A default, if not cured or waived, could result in the acceleration of the debt outstanding under the Credit Agreement. In the second and third quarters of 2023, we entered into amendments to the Credit Agreement to prevent or waive breaches of certain financial covenants. Based on projections, we do not expect to be in compliance with all financial covenants for the next twelve months. Under the most recent Waiver discussed in this report, we must provide a 2024 budget that has been reviewed by the business consultant retained by counsel to the lead arranger. We intend for that budget to inform modified financial covenant levels and other provisions, as needed, for the quarters ending December 31, 2023 through December 31, 2024, which would be accomplished with an amendment to the Credit Agreement. There is no assurance that such an amendment will provide for modified financial covenant levels that we will satisfy, or that we will be able to obtain an amendment or waiver to the Credit Agreement in the case of future events of default (including but not limited to those related to financial covenants). Any amendment or waiver will likely require concessions from the Company, such as prepayments, the imposition of other covenants or restrictions, limitations on future borrowing, or the payment of lender expenses. If the debt is accelerated, we may not be able to make all of the required payments or borrow sufficient funds to refinance such debt. Even if new financing were available at such time, it may not be on terms that are acceptable to us or as favorable to us as our current agreements. If our debt is in default for any reason, our business, financial condition, and results of operations could be materially and adversely affected.

There is substantial doubt about our ability to continue as a going concern

In light of the potential for acceleration of the maturities under the Credit Agreement and other factors discussed in this report, management has concluded that there is substantial doubt about the Company's ability to continue as a going concern through the one-year period after the date of issuance of the financial statements included in this Quarterly Report on Form 10-Q. For more information see Note 1(a), "*Basis of preparation – Going concern uncertainty*," in the Notes to Consolidated Financial Statements included elsewhere in this Quarterly Report on Form 10-Q. Our ability to continue as a going concern is contingent upon effective implementation of management's plans intended to alleviate the substantial doubt; in particular, our ability to enter into a new amendment to the Credit Agreement that provides for financial covenant levels we can satisfy, as well as our ability to reduce costs and grow our business over the next twelve months. However, there is no assurance that we will be successful in entering into such amendment to the Credit Agreement or that our planned cost reductions and resources focused on new growth opportunities will be successfully executed or have the expected benefits.

If our current plans are not successful, we may need to consider all strategic alternatives, including restructuring or refinancing our debt, seeking additional equity or debt financing, reducing or delaying our business activities and strategic initiatives, selling assets, and other strategic transactions and/or other measures. In addition, the perception that we may not be able to continue as a going concern may cause publishers, vendors, advertisers and other clients (or potential clients), and others, to review their business relationships and terms with us. If we seek additional financing to fund our operations and there remains substantial doubt about our ability to continue as a going concern, financing sources may be unwilling to provide such funding to us on commercially reasonable terms, or at all. Uncertainty regarding our ability to continue as a going concern could also have a material and adverse impact on the price of our common stock, which could negatively impact our ability to obtain stock-based financing or enter into strategic transactions. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.

None.

Item 3. Defaults Upon Senior Securities.

None.

Item 4. Mine Safety Disclosures.

Not Applicable.

Item 5. Other Information.

Because this Quarterly Report on Form 10-Q is being filed within four business days after the applicable triggering events, the information below is being disclosed under this Item 5 instead of under Item 1.01 (Entry into a Material Definitive Agreement), Item 2.03 (Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of Registrant) and Item 3.03 (Material Modification to Rights of Security Holders) of Form 8-K.

On November 15, 2023, the Borrower and Citizens Bank entered into a Temporary Waiver Under Credit Agreement (the "Waiver") to the Credit Agreement, pursuant to which Citizens Bank agreed to waive through the earlier of January 15, 2024 or an occurrence of any other event of default (the "Termination date") its rights and remedies arising from the Company's breach of the total leverage covenant during the quarter ending September 30, 2023. The Waiver also added new reporting requirements, temporarily increased the applicable margin, and extended the term of the business consultant through January 15, 2024. The Borrower must also provide a 2024 budget that has been reviewed by the business consultant retained by counsel to Citizens Bank. The Company intends for that budget to inform modified financial covenant levels and other provisions, as needed, for the quarters ending December 31, 2023 through December 31, 2024, which would be accomplished with an amendment to the Credit Agreement.

Item 6. Exhibits.

The following exhibits are filed as part of, or incorporated by reference into, this Quarterly Report on Form 10-Q.

Exhibit No.	Exhibit Description	Incorporated by Reference				Filed
		Form	File No.	Exhibit	Filing Date	Herewith
3.1	Certificate of Domestication	8-K	001-37893	3.1	3/26/2015	
3.2	Certificate of Incorporation	8-K	001-37893	3.2	3/26/2015	
3.3	Certificate of Amendment to the Certificate of Incorporation	8-K	001-37893	3.1	9/26/2016	
3.4	Certificate of Amendment to the Certificate of Incorporation	8-K	001-37893	3.1	4/16/2018	
3.5	Amended and Restated Bylaws	8-K	001-37893	3.2	2/19/2019	
10.1	Fourth Amendment to Credit Agreement	10-Q	001-37893	10.6	8/21/2023	
10.2	Temporary Waiver Under Credit Agreement					X
31.1	Certification of Chief Executive Officer filed pursuant to Exchange Act Rules 13a-14(a) and 15d-14(a) of the Securities and Exchange Act of 1934 as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.					X
31.2	Certification of Interim Chief Financial Officer filed pursuant to Exchange Act Rules 13a-14(a) and 15d-14(a) of the Securities and Exchange Act of 1934 as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.					X
32.1*	Certification by Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.					X
32.2*	Certification by Interim Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.					X
101.INS	Inline XBRL Instance Document (the Instance Document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document)					X
101.SCH	Inline XBRL Taxonomy Extension Schema Document					X
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document					X
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document					X
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document					X
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document					X
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)					
*	This certification is deemed not filed for purposes of Section 18 of the Exchange Act or otherwise subject to the liability of that section, nor shall it be deemed incorporated by reference into any filing under the Securities Act or the Exchange Act.					

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Fluent, Inc.

November 15, 2023

By: /s/ Ryan Perfit
Ryan Perfit
Interim Chief Financial Officer
(Principal Financial and Accounting Officer)

TEMPORARY WAIVER UNDER CREDIT AGREEMENT

THIS TEMPORARY WAIVER UNDER CREDIT AGREEMENT (this "Temporary Waiver") is entered into as of November 15, 2023 (the "Effective Date") by and among FLUENT, LLC, a Delaware limited liability company (the "Borrower"), the Required Lenders party hereto, and CITIZENS BANK, N.A., a national banking association, as administrative agent for the Lenders under the Credit Agreement (as hereinafter defined) (in such capacity, the "Administrative Agent"). Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement (as defined below).

WHEREAS, the Borrower, the Guarantors, certain banks and financial institutions from time to time party to the Credit Agreement (the "Lenders") and the Administrative Agent are parties to that certain Credit Agreement, dated as of March 31, 2021 (as amended by that certain First Amendment to Credit Agreement, dated as of September 3, 2021, that certain Second Amendment to Credit Agreement, Waiver, Acknowledgment and Joinder, dated as of December 19, 2022, that certain Third Amendment to Credit Agreement, dated as of May 15, 2023, that certain Fourth Amendment to Credit Agreement, dated as of August 21, 2023, and as the same may be further amended, modified, extended, restated, replaced or supplemented from time to time, including by this Amendment, the "Credit Agreement");

WHEREAS, those certain Events of Default listed on Exhibit A attached hereto have occurred and are continuing (the "Specified Events of Default");

WHEREAS, counsel to the Administrative Agent has engaged a financial advisor to assist counsel to the Administrative Agent in evaluating and assessing the Borrowers' preparation of an annual operating budget, including cash flow projections of the Parent and its Subsidiaries for the four fiscal quarter period ending on December 31, 2024, prepared on a quarterly basis (the "2024 Budget"), and to provide the Administrative Agent and the Lenders with its evaluation of the 2024 Budget; and

WHEREAS, the Borrower has requested that the Administrative Agent and Required Lenders temporarily waive the Specified Events of Default, and, subject to the satisfaction of the conditions set forth herein, the Administrative Agent and the Required Lenders signatory hereto are willing to do so, on a temporary basis, in accordance with the terms hereof.

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, and intending to be legally bound, the parties hereto agree as follows:

SECTION 1. Acknowledgment and Temporary Waiver.

(a) Each Credit Party acknowledges that: (i) each of the Specified Events of Default has occurred and is continuing and has not been cured; and (ii) if the Specified Events of Default are not waived, an Event of Default shall be deemed to be continuing.

(b) Subject to the terms and conditions set forth in this Temporary Waiver, including without limitation the conditions to effectiveness set forth in Section 3 below, the limitations set forth in Section 4 below, and the covenants set forth in Section 5 below, and at the request of the Credit Parties, the Administrative Agent and the Lenders party hereto hereby temporarily waive the Specified Events of Default from the date hereof until the earlier of (the "Waiver Termination Date"): (1) the occurrence of any other Event of Default; or (2) January 15, 2024. As used herein, the term "Waiver Period" shall mean the period beginning on the Waiver Effective Date (as defined below) and ending on the Waiver Termination Date. Upon the Waiver Termination Date: (a) the waiver set forth in this Section 1(b) shall be deemed of no further force and effect; and (b) the Specified Events of Default shall be deemed to be continuing.

(c) Acknowledgment of Rights and Remedies.

(i) Each Credit Party (i) acknowledges that the Specified Events of Default have occurred and are continuing; and (ii) acknowledges and agrees that but for the terms of this Temporary Waiver, the Administrative Agent may, with the consent or at the direction of the Required Lenders, proceed to enforce its rights and remedies, on behalf of the Lenders, under the Credit Documents to collect the Obligations owing under the Credit Agreement and the other Credit Documents.

(ii) Each Credit Party acknowledges that on and after the Waiver Termination Date, the Administrative Agent may, with the consent or at the direction of the Required Lenders, proceed on behalf of the Lenders and in accordance with the terms of the Credit Agreement and any other Credit Documents, whether with respect to the Specified Events of Default or other Events of Default, if any, to enforce any or all of its rights and remedies under or in respect of this Temporary Waiver, the Credit Agreement, any of the other Credit Documents or applicable law, including, without limitation, the right: (i) to commence any legal or other action to collect any or all of the Obligations from any or all of the Credit Parties and any other person liable therefor and/or any Collateral; (ii) to foreclose or otherwise realize on any or all of the Collateral and/or as appropriate, set-off or apply to the payment of any or all of the Obligations, any or all of the Collateral; (iii) to vote Collateral consisting of equity interests by proxy; (iv) to exercise dominion over cash in deposit accounts; (v) to take any other enforcement action or otherwise exercise any or all rights and remedies provided for by any or all of the Credit Agreement, the other Credit Documents or applicable law; and (vi) to reject any subsequent waiver, financial restructuring or other proposal made by or on behalf of the Credit Parties, or any of them, or any creditor or equity holder, in each case in accordance with the Credit Documents.

(d) No Permanent Waiver or Amendment. Except as expressly set forth herein, nothing in this Temporary Waiver, nor any of the Required Lenders' or the Administrative Agent's entry into this Temporary Waiver or any of the documents referenced herein, their negotiations with any party with respect to any Credit Document, their conduct of any analysis or investigation of any Collateral for the Obligations or any Credit Document, their acceptance of any payment from any Credit Party or any other party, or any other action or failure to act on the part of the Administrative Agent or the Lenders, shall: (i) constitute an extension, modification or permanent waiver of, or give rise to any obligation on the part of the Administrative Agent and the Lenders to extend, modify or permanently waive, any term, condition or other aspect of the Credit Agreement or the other Credit Documents; (iii) extend the terms of the Credit Agreement or the due date of any of the Obligations; or (iv) give rise to any defenses or counterclaims to the right of the Administrative Agent and the Lenders, from and after the Waiver Termination Date, to compel payment of the Obligations or to otherwise enforce their rights and remedies described in the Credit Agreement, the other Credit Documents, or otherwise provided by applicable law. Except as expressly limited herein, the Administrative Agent and the Required Lenders hereby expressly reserve all of their rights and remedies described in the Credit Agreement and the other Credit Documents, or otherwise provided by applicable law that may exist by virtue of the Specified Events of Default, and from and after the Waiver Termination Date, the Administrative Agent and the Lenders shall be entitled to enforce such rights and remedies according to the original terms of the Credit Documents. This Temporary Waiver shall not constitute a course of dealing with the parties hereto at variance with the Credit Agreement such as to require further notice by the Administrative Agent or the Lenders to require strict compliance with the terms of the Credit Agreement and the other Credit Documents in the future. The Credit Parties acknowledge and expressly agree that the Administrative Agent and the Required Lenders reserve the right to, and do in fact, require strict compliance with all terms and provisions of the Credit Agreement and the other Credit Documents.

SECTION 2. Domestic Unrestricted Cash. Notwithstanding anything to the contrary in the Credit Agreement, during the period beginning December 25, 2023 through and including the Waiver Termination Date (the "Cash Modification Period"), the Credit Parties shall not be required to comply with Section 5.9(d) of the Credit Agreement; provided, that, at all times during the Cash Modification Period, each Credit Party shall, and shall cause each of its Subsidiaries, to (i) maintain Domestic Unrestricted Cash on the balance sheet of the Credit Parties and their Subsidiaries (but excluding any cash received on such date in connection with any Loan or other incurrence of Indebtedness) in an amount equal to or greater than \$10,000,000 and (ii) on each Monday (or if such Monday is not a Business Day, the next succeeding Business Day), furnish to Administrative Agent (which will promptly be distributed to Lenders) an officer's certificate prepared by the chief financial officer or other Responsible Officer of the Borrower with knowledge as to the financial condition of the Credit Parties and their Subsidiaries (x) stating that, as of the Friday preceding the delivery of such officer's certificate, the Credit Parties and their Subsidiaries are in compliance with Section 2 of this Temporary Waiver, and (y) attaching account balances as of the Friday preceding the delivery of such officer's certificate, and the failure to do so shall constitute an immediate Event of Default under the Credit Agreement, which is not a Specified Event of Default.

SECTION 3. Conditions to Effectiveness. Notwithstanding any other provision of this Temporary Waiver and without affecting in any manner the rights of the Administrative Agent and the Lenders hereunder, it is understood and agreed that this Temporary Waiver shall not become effective, and the Credit Parties shall have no rights under this Temporary Waiver, until satisfaction of the following conditions precedent (the date on which all such conditions precedent are satisfied, the "Waiver Effective Date"):

(a) the Administrative Agent shall have received executed counterparts to this Temporary Waiver from each of the Credit Parties, the Required Lenders and the Required Revolving Lenders;

(b) Payment by the Borrower of (i) all outstanding fees and expenses required to be paid under the Credit Agreement, including, but not limited to, fees and expenses of the Administrative Agent and its advisors (including, but not limited to, counsel and financial advisors) and (ii) the fee due and payable pursuant to that certain Fee Letter dated as of the date hereof;

(c) Payment by Borrower of a wavier fee to the Administrative Agent for the benefit of the Lenders party hereto in the aggregate amount of \$106,250.00 on a *pro rata* basis; and

(d) the representations and warranties in Section 7 of this Temporary Waiver being true and accurate.

SECTION 4. Limitations to this Temporary Waiver. Each Credit Party hereby agrees that, notwithstanding the waiver set forth in Section 1(b), it shall not, nor will it permit any Subsidiary to, without the prior written consent of the Administrative Agent, during the Waiver Period:

- (a) create or incur any new Indebtedness pursuant to Section 6.1(i) of the Credit Agreement;
- (b) create or incur any new Indebtedness pursuant to Section 6.1(j) of the Credit Agreement;
- (c) create, incur, or assume any new Liens pursuant to Section 6.2(cc) of the Credit Agreement;
- (d) permit the sale, lease or transfer of property or assets pursuant to Section 6.4(a)(iv)(A)(3) of the Credit Agreement;
- (e) permit the sale, lease or transfer of property or assets pursuant to Section 6.4(a)(vi) of the Credit Agreement;
- (f) permit the sale, lease or transfer of property or assets pursuant to Section 6.4(a)(viii) of the Credit Agreement;
- (g) permit the sale, lease or transfer of property or assets pursuant to Section 6.4(a)(xiv) of the Credit Agreement;
- (h) make any Investment pursuant to Section 6.5(e) of the Credit Agreement;
- (i) make any Investment pursuant to Section 6.5(g) of the Credit Agreement;
- (j) make any Investment pursuant to Section 6.5(h)(i) of the Credit Agreement;
- (k) make any Investment pursuant to Section 6.5(h)(ii) of the Credit Agreement;
- (l) make any Investment pursuant to Section 6.5(k) of the Credit Agreement;
- (m) make any Investment pursuant to Section 6.5(p) of the Credit Agreement;
- (n) make any Investment pursuant to Section 6.5(q) of the Credit Agreement;

- (o) directly or indirectly, declare, order, make or set apart any sum for or pay any Restricted Payment pursuant to Section 6.9(d) of the Credit Agreement;
- (p) directly or indirectly, declare, order, make or set apart any sum for or pay any Restricted Payment pursuant to Section 6.9(e) of the Credit Agreement;
- (q) directly or indirectly, declare, order, make or set apart any sum for or pay any Restricted Payment pursuant to Section 6.9(h) of the Credit Agreement; and
- (r) directly or indirectly, declare, order, make or set apart any sum for or pay any Restricted Payment pursuant to Section 6.9(i) of the Credit Agreement.

Failure to comply with the foregoing shall constitute an immediate Event of Default under the Credit Agreement.

SECTION 5. Covenants. As a material inducement to the execution by the Administrative Agent and the Required Lenders of this Temporary Waiver, in addition to the Credit Parties' other covenants set forth in the Credit Agreement and the other Credit Documents, each Credit Party agrees, as applicable, that it shall comply with each of the following covenants on and after the Effective Date and that the failure to comply with any of such covenants after the applicable due date shall constitute an immediate Event of Default under the Credit Agreement, which is not a Specified Event of Default:

- (a) In addition to any and all reporting requirements set forth in the Credit Agreement, the Borrower shall provide to the Administrative Agent (for subsequent distribution to Lenders) the following during the Waiver Period, which in each case shall be in form and substance acceptable to Administrative Agent in its sole discretion:
 - (i) On each Monday, a thirteen-week cash report for the subsequent week setting forth all forecasted receipts and disbursements on a weekly basis ("Cash Forecast") and a variance report (A) comparing the Credit Parties' actual cash receipts, disbursements, and cash flows for the immediate preceding week to projected cash receipts, disbursements, and cash flows for such week as set forth in the immediately prior Cash Forecast, (B) comparing the material variances to the amounts set forth in the applicable Cash Forecast, and (C) including footnotes or other similar notations describing any material differences in the actual versus forecasted results (and the Credit Parties' shall provide the Administrative Agent access to the Credit Parties' management team to discuss material variances);
 - (ii) On or prior to the fifteenth (15th) day of each calendar month (commencing on December 15, 2023), (A) a copy of the projected Consolidated statements of income for the Parent and its Subsidiaries for such monthly period and for the portion of the fiscal year ending with such period, in each case setting forth in comparative form Consolidated figures for the corresponding period or periods of the preceding fiscal year and including management discussion and analysis of operating results inclusive of operating metrics in comparative form and (ii) a certificate of a Responsible Officer substantially in the form of Exhibit 5.2(b) of the Credit Agreement stating that (x) such financial statements present fairly in all material respects the financial position of the Credit Parties and their Subsidiaries on a consolidated basis for the periods indicated in conformity with GAAP (subject, in the case of interim statements, to normal recurring year end audit adjustments and the absence of footnotes) applied on a consistent basis and (y) such Responsible Officer has obtained no knowledge of any Default or Event of Default except as specified in such certificate and such certificate shall include the calculations in reasonable detail required to indicate compliance with Section 5.9 of the Credit Agreement as of the last day of such monthly period;

(iii) On or prior to November 22, 2023, in accordance with Section 5.1(c) of the Credit Agreement, the 2024 Budget, together with a summary of the material assumptions made in the preparation of such 2024 Budget.

SECTION 6. Revolving Loans, Swingline Loans, and Letters of Credit. Notwithstanding any of the waivers set forth in this Temporary Waiver, the Credit Parties acknowledge and agree that they will not request any additional Revolving Loans, Swingline Loans or Letters of Credit from any Lender and that notwithstanding the temporary waiver set forth in Section 1(b) hereof, as a condition to the Lenders providing the waivers set forth in Section 1(b) hereof, no Lender is obligated to provide nor shall any Lender provide any Revolving Loans, Swingline Loans or Letters of Credit pursuant to the Credit Agreement during the Waiver Period.

SECTION 7. Representations. To induce the Required Lenders and the Administrative Agent to enter into this Temporary Waiver, each Credit Party hereby represents and warrants to the Lenders and the Administrative Agent that:

(a) Each of the Credit Parties has full power and authority and the legal right to make, deliver and perform this Temporary Waiver and has taken all necessary limited liability company, partnership or corporate action, as applicable, to authorize the execution, delivery and performance by it of the Temporary Waiver. The Temporary Waiver has been duly executed and delivered on behalf of each Credit Party. The Temporary Waiver constitutes a legal, valid and binding obligation of each Credit Party, enforceable against such Credit Party in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

(b) The execution, delivery and performance by each Credit Party of this Temporary Waiver (a) will not violate any Requirement of Law or any Contractual Obligation of any Credit Party, except those as to which waivers or consents have been obtained or those where such violation could not reasonably be expected to have a Material Adverse Effect, (b) will not conflict with, result in a breach of or constitute a default under (i) the articles of incorporation, bylaws, articles of organization, operating agreement or other organization documents of the Credit Parties, (ii) any material Contractual Obligation to which such Person is a party or (iii) any order, injunction, writ or decree of any Governmental Authority to which such Person or its property is subject, except in the case of clause (b)(ii) and (b)(iii) where such conflict could not reasonably be expected to have a Material Adverse Effect and (c) will not result in, or require, the creation or imposition of any Lien on any Credit Party's properties or revenues pursuant to any Requirement of Law or Contractual Obligation other than the Liens arising under or contemplated in connection with the Credit Documents or Permitted Liens.

(c) After giving effect to this Temporary Waiver, the representations and warranties contained in the Credit Agreement and the other Credit Documents are true and correct in all material respects, and no Event of Default has occurred and is continuing as of the date hereof other than the Specified Events of Default.

SECTION 8. Miscellaneous.

(a) Continuing Effectiveness of Credit Documents. All terms of the Credit Agreement and the other Credit Documents shall be and remain in full force and effect and shall constitute the legal, valid, binding and enforceable (except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability) obligations of the Credit Parties party thereto.

(b) Reaffirmation of Obligations and Acknowledgment of Indebtedness. Each Credit Party hereby acknowledges that the Credit Documents and the Obligations constitute the valid and binding obligations of such Credit Party enforceable against such Credit Party, and each Credit Party hereby reaffirms its obligations under the Credit Documents. Additionally, each Credit Party hereby acknowledges that, as of the date hereof: (a) the Borrower is indebted to the Lenders in the principal amount of at least \$32,500,000.00 with respect to the Term Loans; (b) the Borrower is indebted to the Lenders in the principal amount of at least \$0.00 respect to the Revolving Loans (inclusive of outstanding Letters of Credit); and (c) the aggregate face amount of all issued and outstanding Letters of Credit is \$1,479,746.67.

(c) Acknowledgment of Perfection of Security Interest. Each Credit Party hereby acknowledges that, as of the date hereof, the security interests and liens granted to the Administrative Agent and the Lenders under the Security Agreement and the other Credit Documents are in full force and effect, are properly perfected and are enforceable in accordance with the terms of the Security Agreement and the other Credit Documents and extends to all of the Obligations.

(d) Effect of Agreement. Except as set forth expressly herein, all terms of the Credit Agreement and the other Credit Documents shall be and remain in full force and effect and shall constitute the legal, valid, binding and enforceable (except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability) obligations of the Credit Parties to the Lenders and the Administrative Agent. The execution, delivery and effectiveness of this Temporary Waiver shall not, except as expressly provided herein, operate as a waiver of any right, power or remedy of the Lenders under the Credit Agreement, nor constitute a waiver of any provision of the Credit Agreement or any Default or Event of Default other than the Specified Events of Default. This Temporary Waiver shall constitute a Credit Document for all purposes of the Credit Agreement.

(e) Governing Law. This Temporary Waiver shall be governed by, and construed in accordance with, the internal laws of the State of New York.

(f) No Novation. This Temporary Waiver is not intended by the parties to be, and shall not be construed to be, a novation of the Credit Agreement and the other Credit Documents or an accord and satisfaction in regard thereto.

(g) Counterparts. This Temporary Waiver may be executed by one or more of the parties hereto in any number of separate counterparts, each of which shall be deemed an original and all of which, taken together, shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of this Temporary Waiver by facsimile transmission, electronic transmission (including delivery of an executed counterpart in .pdf format) shall be as effective as delivery of a manually executed counterpart hereof.

(h) Binding Nature. This Temporary Waiver shall be binding upon and inure to the benefit of the parties hereto, their respective successors, successors-in-titles, and assigns. No third party beneficiaries are intended in connection with this Temporary Waiver.

(i) Entire Understanding. This Temporary Waiver sets forth the entire understanding of the parties with respect to the matters set forth herein, and shall supersede any prior negotiations or agreements, whether written or oral, with respect thereto.

(j) Release. Each Credit Party hereby releases, acquits, and forever discharges the Administrative Agent and each of the Lenders, and each and every past and present subsidiary, affiliate, stockholder, officer, director, agent, servant, employee, representative, and attorney of the Administrative Agent and the Lenders, from any and all claims, causes of action, suits, debts, liens, obligations, liabilities, demands, losses, costs and expenses (including reasonable attorneys' fees) of any kind, character, or nature whatsoever, known or unknown, fixed or contingent, which such Credit Party may have or claim to have now or which may hereafter arise out of or connected with any act of commission or omission of the Administrative Agent or the Lenders existing or occurring prior to the date of this Temporary Waiver or any instrument executed prior to the date of this Temporary Waiver including, without limitation, any claims, liabilities or obligations arising with respect to the Credit Agreement or the other of the Credit Documents. The provisions of this paragraph shall be binding upon each Credit Party and shall inure to the benefit of the Administrative Agent, the Lenders, and their respective heirs, executors, administrators, successors and assigns.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Temporary Waiver under Credit Agreement to be executed as of the date first above written.

BORROWER:

FLUENT, LLC

By: _____
Name:
Title:

[Signature Page to Temporary Waiver]

CITIZENS BANK, N.A., as a Lender, Issuing Lender, Swingline Lender and
as Administrative Agent on behalf of the Lenders

By: _____

Name:

Title:

[Signature Page to Temporary Waiver]

BANKUNITED, N.A., as a Lender

By: _____

Name:

Title:

[Signature Page to Temporary Waiver]

FIRST-CITIZENS BANK & TRUST COMPANY (successor by purchase to the Federal Deposit Insurance Corporation as receiver for Silicon Valley Bridge Bank, N.A. (as successor to Silicon Valley Bank)), as a Lender

By: _____

Name:

Title:

[Signature Page to Temporary Waiver]

Exhibit A

Specified Events of Default

1. The Credit Parties failed to comply with the Total Leverage Ratio covenant for the fiscal quarter ended September 30, 2023, as required by Section 5.9(a) of the Credit Agreement, which constitutes an Event of Default pursuant to Section 7.1(c)(i) of the Credit Agreement.
2. The Credit Parties failed to provide written notice of the name change of Fluent Insurance Agency, LLC to Purpose Insurance Agency, LLC, pursuant to Section 6.7 of the Credit Agreement, which constitutes an Event of Default pursuant to Section 7.1(c)(i) of the Credit Agreement.

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Donald Patrick, certify that:

- (1) I have reviewed this Quarterly Report on Form 10-Q of Fluent, Inc.;
- (2) Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
- (3) Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
- (4) The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
- (5) The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

November 15, 2023

By: /s/ Donald Patrick
Donald Patrick
Chief Executive Officer
(Principal Executive Officer)

**CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Ryan Perfit, certify that:

- (1) I have reviewed this Quarterly Report on Form 10-Q of Fluent, Inc.;
- (2) Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
- (3) Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
- (4) The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
- (5) The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

November 15, 2023

By: /s/ Ryan Perfit
Ryan Perfit
Interim Chief Financial Officer
(Principal Financial and Accounting Officer)

**CERTIFICATION PURSUANT
TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the accompanying Quarterly Report on Form 10-Q of Fluent, Inc. for the quarter ended September 30, 2023 (the "Report"), the undersigned hereby certifies in his capacity as Chief Executive Officer, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, to my knowledge and belief, that:

- (1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of Fluent, Inc.

November 15, 2023

By: /s/ Donald Patrick
Donald Patrick
Chief Executive Officer
(Principal Executive Officer)

The certification set forth above is being furnished as an Exhibit solely pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and is not being filed as part of the Report or as a separate disclosure document of Fluent, Inc. or the certifying officers.

**CERTIFICATION PURSUANT
TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the accompanying Quarterly Report on Form 10-Q of Fluent, Inc. for the quarter ended September 30, 2023 (the "Report"), the undersigned hereby certifies in his capacity as Interim Chief Financial Officer, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, to my knowledge and belief, that:

- (1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of Fluent, Inc.

November 15, 2023

By: /s/ Ryan Perfit
Ryan Perfit
Interim Chief Financial Officer
(Principal Financial and Accounting Officer)

The certification set forth above is being furnished as an Exhibit solely pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and is not being filed as part of the Report or as a separate disclosure document of Fluent, Inc. or the certifying officers.