

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): August 8, 2013

FALCONSTOR SOFTWARE, INC.
(Exact name of registrant as specified in its charter)

<u>Delaware</u>	0-23970	77-0216135
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

2 Huntington Quadrangle, Melville, New York 11747
Address of principal executive offices

Registrant's telephone number, including area code: 631-777-5188

(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 2.02. Results of Operations and Financial Condition

On August 8, 2013, the Company issued a press release announcing its results of operations for the fiscal quarter ended June 30, 2013.

The text of a press release issued by the Company is furnished as Exhibit 99.1 and is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits

(c) Exhibits

<u>Exhibit Number</u>	<u>Description</u>
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99.1	Press release of the Company dated August 8, 2013.
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SIGNATURE

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 hereunto duly authorized.

FALCONSTOR SOFTWARE, INC.

Dated: August 8, 2013

By: /s/ Louis J. Petrucelly

Name: Louis J. Petrucelly

Title: Executive Vice President and Chief
Financial Officer



For more information, contact:

FalconStor Software, Inc.
 Joanne Ferrara, Investor Relations
 631-773-5813
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FalconStor Software Announces Second Quarter 2013 Results

MELVILLE, N.Y., August 8, 2013—[FalconStor Software](#), Inc. (NASDAQ: FALC), a market leader in disk-based data protection, today announced financial results for its second quarter ended June 30, 2013.

“The FalconStor customer base continues to receive value in the form of optimized storage, business continuity and lower total cost of ownership,” said Gary Quinn, president and CEO of FalconStor. “We are strengthening our balance sheet, and reviewing our current product portfolio for additional investments. We are excited about our joint-efforts into the “flash memory” market segment, we are rebalancing our routes-to-market -- both by customer segment and geography -- and we look to rationalize our costs to maximize stockholder value.”

Financial and Business Highlights and Overview:

- Appointed Gary Quinn President and Chief Executive Officer in July 2013.
- Reached an agreement in principle with Hale Capital Partners on August 5, 2013 for an equity investment of up to \$15 million in the form of redeemable convertible preferred stock, subject to certain closing conditions.
- Signed an agreement to sell the Company’s investment in Tianjin Zhongke Blue Whale Technologies Co., Ltd., a Chinese joint venture, for \$3.0 million on August 7, 2013, subject to certain closing conditions.
- As a result of these strategic initiatives, the Company notified the investment banking firm Wells Fargo Securities, LLC that the Company was ending Wells Fargo’s retention as the Company’s exclusive financial advisor.
- A Joint Motion for Preliminary Approval of the Class Action lawsuit was filed with the courts on June 14, 2013. In January 2013, the parties to the Class Action reached an agreement in principle to settle the Class Action for \$5.0 million.

Financials

Total revenues for the second quarter of 2013 were \$14.0 million, a decrease of 15 percent compared with \$16.5 million in the same period a year ago. GAAP loss from operations for the second quarter of 2013 was \$4.6 million, compared with an operating loss of \$6.3 million for the second quarter of 2012. GAAP net loss for the quarter was \$5.2 million, or \$0.11 per share, compared with a net loss of \$6.6 million, or \$0.14 per share, for the same period a year ago. Included in the operating results for the second quarter of 2013 and 2012 were expenses of \$0.1 million and \$0.9 million, respectively, of investigation, litigation and settlement related costs.

Non-GAAP loss from operations was \$4.2 million for the second quarter of 2013, compared with non-GAAP loss from operations of \$4.4 million for the same period a year ago. Non-GAAP net loss was \$4.9 million, or \$0.10 per share, in the second quarter of 2013, compared with a non-GAAP net loss of \$4.7 million, or \$0.10 per share, in the second quarter of 2012. Non-GAAP results exclude the effects of stock-based compensation and costs associated with the Company’s investigations, litigation and settlement related costs.

For the six months ended June 30, 2013, total revenues were \$29.3 million, compared with \$35.8 million for the same period a year ago. GAAP loss from operations for the six month period ended June 30, 2013 was \$8.4 million compared with a GAAP loss of \$8.4 million for the six months ended June 30, 2012. GAAP net loss was \$9.6 million, or \$0.20 per share, for the six months ended June 30, 2013, compared with a loss of \$9.1 million, or \$0.19 per share, in the same period a year ago.

Non-GAAP loss from operations was \$7.1 million for the six months ended June 30, 2013, compared with a loss of \$6.3 million in 2012. Non-GAAP net loss was \$8.3 million, or \$0.17 per share, compared with a loss of \$7.0 million, or \$0.15 per share, in the same period a year ago.

The Company closed the quarter with \$21.9 million in cash, cash equivalents and marketable securities. Deferred revenue at June 30, 2013 was \$22.7 million, compared with \$24.1 million at December 31, 2012.

Conference Call

The Company will host a conference call to discuss its financial results on Thursday, August 8, 2013 at 4:30 p.m. EDT. To participate in the conference call, please dial:

Toll Free: 1-877-941-6009

International: +1-480-629-9866

To view the presentation, please copy and paste the following link into your browser and register for this meeting. Once you have registered for the meeting, you will receive an email message confirming your registration.

<https://falconstor.webex.com/falconstor/j.php?ED=187627482&RG=1&UID>

Meeting: FalconStor Q2 2013 Earnings

Meeting password: q2numbers

Meeting Number: 763105078

If you are unable to register via the Internet, please contact Joanne Ferrara, Investor Relations at 631-773-5813 or joanne.ferrara@falconstor.com.

A conference call replay is scheduled to be available beginning August 8 at 6:30 p.m. EDT through 11:59 p.m. EDT on August 14. To listen to the replay of the call, dial toll free: 1-800-406-7325 or International: +1-303-590-3030, passcode: 4630239, or visit our website at www.falconstor.com/investors.

Non-GAAP Financial Measures

The non-GAAP financial measures used in this press release are not prepared in accordance with generally accepted accounting principles and may be different from non-GAAP financial measures used by other companies. The Company's management refers to these non-GAAP financial measures in making operating decisions because they provide meaningful supplemental information regarding the Company's operating performance. In addition, these non-GAAP financial measures facilitate management's internal comparisons to the Company's historical operating results and comparisons to competitors' operating results. We include these non-GAAP financial measures (which should be viewed as a supplement to, and not a substitute for, their comparable GAAP measures) in this press release because we believe they are useful to investors in allowing for greater transparency into the supplemental information used by management in its financial and operational decision-making. The non-GAAP financial measures exclude (i) costs associated with the Company's class action and derivative lawsuits, government investigations, and related legal fees and (ii) noncash stock-based compensation charges and any potential tax effects. For a reconciliation of our GAAP and non-GAAP financial results, please refer to our Non-GAAP Operating Data GAAP Reconciliation, presented in this release.

About FalconStor Software

FalconStor Software, Inc. (NASDAQ: FALC) is a market leader in disk-based data protection. The company's mission is to transform traditional backup and disaster recovery into next-generation service-oriented data protection. Built upon an award-winning platform, FalconStor solutions deliver [disk-based backup](#), [continuous data protection](#), [WAN-optimized replication](#) and [disaster recovery automation](#). FalconStor solutions are available through a worldwide network of partners, including solution providers, top-tier strategic partners, and OEMs. Thousands of customers worldwide, from small businesses to Fortune 100 enterprises, entrust their data to FalconStor solutions. FalconStor maintains headquarters in Melville, N.Y., and offices throughout Europe and the Asia Pacific region. For more information, visit www.falconstor.com or call 1-866-NOW-FALC (866-669-3252).

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This press release includes forward-looking statements that involve risk and uncertainties that could cause actual results to differ materially from the forward-looking statements. These risks and uncertainties include: delays in product development; market acceptance of FalconStor's products and services; technological change in the data protection industry; competition in the data protection market; results and costs associated with governmental investigations; intellectual property issues; and other risk factors discussed in FalconStor's reports on Forms 10-K, 10-Q and other reports filed with the Securities and Exchange Commission.

The purchase price of the redeemable convertible preferred stock will be based on the market price of the Company's common stock at the time of closing. Such preferred stock will not be and may not be offered or sold in the United States absent registration or an applicable exemption from registration requirements. Consummation of the transaction is contingent upon the execution of definitive documentation and satisfaction of certain closing conditions, of which there can be no assurance.

Consummation of the sale of the Company's interest in Tianjin Zhongke Blue Whale Technologies Co., Ltd., is contingent upon the satisfaction of certain closing conditions, including the approvals of Chinese government agencies, of which there can be no assurance.

FalconStor and FalconStor Software are registered trademarks of FalconStor Software, Inc., in the U.S. and other countries. All other company and product names contained herein may be trademarks of their respective holders.

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FalconStor Software, Inc. and Subsidiaries
CONDENSED CONSOLIDATED BALANCE SHEETS

	<u>June 30, 2013</u> (unaudited)	<u>December 31, 2012</u>
Assets		
Current assets:		
Cash and cash equivalents	\$ 13,293,780	\$ 18,651,468
Restricted cash	750,000	750,000
Marketable securities	7,838,590	10,530,942
Accounts receivable, net	9,737,521	14,130,302
Prepaid expenses and other current assets	2,556,121	2,796,665
Inventory	904,198	642,819
Deferred tax assets, net	407,008	464,031
Total current assets	<u>35,487,218</u>	<u>47,966,227</u>
Property and equipment, net	3,930,107	3,980,679
Deferred tax assets, net	86,465	86,465
Software development costs, net	1,245,126	1,161,822
Other assets, net	2,432,546	2,185,148
Goodwill	4,150,339	4,150,339
Other intangible assets, net	178,978	174,426
Total assets	<u>\$ 47,510,779</u>	<u>\$ 59,705,106</u>
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	\$ 2,076,073	\$ 2,801,372
Accrued expenses	14,363,908	16,720,582
Deferred revenue, net	17,524,607	17,831,653
Total current liabilities	<u>33,964,588</u>	<u>37,353,607</u>
Other long-term liabilities	2,689,636	2,618,818
Deferred tax liabilities, net	175,647	167,875
Deferred revenue, net	5,174,282	6,311,865
Total liabilities	<u>42,004,153</u>	<u>46,452,165</u>
Commitments and contingencies		
Total stockholders' equity	<u>5,506,626</u>	<u>13,252,941</u>
Total liabilities and stockholders' equity	<u>\$ 47,510,779</u>	<u>\$ 59,705,106</u>

FalconStor Software, Inc. and Subsidiaries
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(Uaudited)

	Three Months Ended		Six Months Ended	
	June 30,		June 30,	
	2013	2012	2013	2012
Revenues:				
Product revenues	\$ 6,542,429	\$ 7,835,568	\$ 14,301,885	\$ 18,498,521
Support and services revenues	<u>7,431,710</u>	<u>8,630,633</u>	<u>14,957,071</u>	<u>17,335,752</u>
Total revenues	<u><u>13,974,139</u></u>	<u><u>16,466,201</u></u>	<u><u>29,258,956</u></u>	<u><u>35,834,273</u></u>
Cost of revenues:				
Product	963,102	1,787,186	2,262,756	3,807,672
Support and service	<u>2,861,992</u>	<u>3,091,055</u>	<u>5,870,395</u>	<u>6,252,411</u>
Total cost of revenues	<u><u>3,825,094</u></u>	<u><u>4,878,241</u></u>	<u><u>8,133,151</u></u>	<u><u>10,060,083</u></u>
Gross profit	\$ 10,149,045	\$ 11,587,960	\$ 21,125,805	\$ 25,774,190
Operating expenses				
Research and development costs	4,395,823	4,848,500	9,044,432	9,627,675
Selling and marketing	<u>6,879,315</u>	<u>9,189,953</u>	<u>13,719,886</u>	<u>18,874,598</u>
General and administrative	<u>3,361,881</u>	<u>3,018,154</u>	<u>6,608,948</u>	<u>6,129,029</u>
Investigation, litigation, and settlement related costs	<u>62,392</u>	<u>851,123</u>	<u>176,458</u>	<u>(439,797)</u>
Total operating expenses	<u><u>14,699,411</u></u>	<u><u>17,907,730</u></u>	<u><u>29,549,724</u></u>	<u><u>34,191,505</u></u>
Operating loss	<u><u>(4,550,366)</u></u>	<u><u>(6,319,770)</u></u>	<u><u>(8,423,919)</u></u>	<u><u>(8,417,315)</u></u>
Interest and other loss, net	<u><u>(487,176)</u></u>	<u><u>(105,533)</u></u>	<u><u>(817,966)</u></u>	<u><u>(244,864)</u></u>
Loss before income taxes	<u><u>(5,037,542)</u></u>	<u><u>(6,425,303)</u></u>	<u><u>(9,241,885)</u></u>	<u><u>(8,662,179)</u></u>
Provision for income taxes	<u><u>169,751</u></u>	<u><u>195,283</u></u>	<u><u>345,853</u></u>	<u><u>407,815</u></u>
Net loss	<u><u>\$ (5,207,293)</u></u>	<u><u>\$ (6,620,586)</u></u>	<u><u>\$ (9,587,738)</u></u>	<u><u>\$ (9,069,994)</u></u>
Basic net loss per share	<u><u>\$ (0.11)</u></u>	<u><u>\$ (0.14)</u></u>	<u><u>\$ (0.20)</u></u>	<u><u>\$ (0.19)</u></u>
Diluted net loss per share	<u><u>\$ (0.11)</u></u>	<u><u>\$ (0.14)</u></u>	<u><u>\$ (0.20)</u></u>	<u><u>\$ (0.19)</u></u>
Weighted average basic shares outstanding	<u><u>47,996,027</u></u>	<u><u>47,472,909</u></u>	<u><u>47,929,799</u></u>	<u><u>47,258,696</u></u>
Weighted average diluted shares outstanding	<u><u>47,996,027</u></u>	<u><u>47,472,909</u></u>	<u><u>47,929,799</u></u>	<u><u>47,258,696</u></u>

FalconStor Software, Inc. and Subsidiaries
Reconciliation of GAAP to Non-GAAP Financial Measures
(Unaudited)

	Three Months Ended		Six Months Ended	
	June 30,		June 30,	
	2013	2012	2013	2012
GAAP loss from operations	\$ (4,550,366)	\$ (6,319,770)	\$ (8,423,919)	\$ (8,417,315)
Add: Non-cash stock option expense (1)	240,795	1,090,076	1,131,530	2,538,378
Legal related costs (3)	62,392	851,123	176,458	(439,797)
Non-GAAP loss from operations	<u>(4,247,179)</u>	<u>(4,378,571)</u>	<u>(7,115,931)</u>	<u>(6,318,734)</u>
GAAP net loss	\$ (5,207,293)	\$ (6,620,586)	\$ (9,587,738)	\$ (9,069,994)
Add: Non-cash stock option expense, net of income taxes (2)	240,795	1,090,076	1,131,530	2,538,378
Legal related costs (3)	62,392	851,123	176,458	(439,797)
Non-GAAP net loss	<u>(4,904,106)</u>	<u>(4,679,387)</u>	<u>(8,279,750)</u>	<u>(6,971,413)</u>
GAAP gross margin - Product	85%	77%	84%	79%
Add: Non-cash stock option expense (1)	0%	0%	0%	0%
Non-GAAP gross margin - Product	<u>85%</u>	<u>77%</u>	<u>84%</u>	<u>79%</u>
GAAP gross margin - Support and Service	61%	64%	61%	64%
Add: Non-cash stock option expense (1)	1%	(0%)	1%	0%
Non-GAAP gross margin - Support and Service	<u>62%</u>	<u>64%</u>	<u>61%</u>	<u>64%</u>
GAAP operating margin	(33%)	(38%)	(29%)	(23%)
Add: Non-cash stock option expense (1)	2%	7%	4%	7%
Legal related costs (3)	0%	5%	1%	(1%)
Non-GAAP operating margin	<u>(30%)</u>	<u>(27%)</u>	<u>(24%)</u>	<u>(18%)</u>
GAAP Basic EPS	\$ (0.11)	\$ (0.14)	\$ (0.20)	\$ (0.19)
Add: Non-cash stock option expense, net of income taxes (2)	0.01	0.02	0.02	0.05
Legal related costs (3)	0.00	0.02	0.00	(0.01)
Non-GAAP Basic EPS	<u>(0.10)</u>	<u>(0.10)</u>	<u>(0.17)</u>	<u>(0.15)</u>
GAAP Diluted EPS	\$ (0.11)	\$ (0.14)	\$ (0.20)	\$ (0.19)
Add: Non-cash stock option expense, net of income taxes (2)	0.01	0.02	0.02	0.05
Legal related costs (3)	0.00	0.02	0.00	(0.01)
Non-GAAP Diluted EPS	<u>(0.10)</u>	<u>(0.10)</u>	<u>(0.17)</u>	<u>(0.15)</u>
Weighted average basic shares outstanding (GAAP and as adjusted)	<u>47,996,027</u>	<u>47,472,909</u>	<u>47,929,799</u>	<u>47,258,696</u>
Weighted average diluted shares outstanding (GAAP and as adjusted)	<u>47,996,027</u>	<u>47,472,909</u>	<u>47,929,799</u>	<u>47,258,696</u>

Footnotes:

- (1) Represents non-cash, stock-based compensation charges as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2013	2012	2013	2012
Cost of revenues - Product	\$ 50	\$ 49	\$ 99	\$ 99
Cost of revenues - Support and Service	53,936	(21,124)	104,192	49,844
Research and development costs	87,028	125,231	221,938	444,188
Selling and marketing	(11,848)	398,031	272,190	884,656
General and administrative	111,629	587,889	533,111	1,159,591
Total non-cash stock based compensation expense	<u>\$ 240,795</u>	<u>\$ 1,090,076</u>	<u>\$ 1,131,530</u>	<u>\$ 2,538,378</u>

- (2) Represents the effects of non-cash stock-based compensation expense recognized in accordance with the FASB Accounting Standards Codification, Topic 718, net of related income tax effects. For the three and six months ended June 30, 2013 and 2012, the tax expense for both GAAP and Non-GAAP basis approximate the same amount.
- (3) Legal related costs represent expenses in connection with the Company's investigations, litigation and settlement related costs for each respective period presented.