

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): July 31, 2012

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

<u>Delaware</u>	<u>0-23970</u>	<u>77-0216135</u>
(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 July 31, 2012, the Company issued a press release announcing its results of operations for the fiscal quarter ended June 30, 2012.

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>
99.1	Press release of the Company dated July 31, 2012.

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: July 31, 2012

By: /s/ Louis J. Petrucelly
Name: Louis J. Petrucelly
Title: Vice President



Contact: Joanne Ferrara, Investor Relations
631-773-5813
joanne.ferrara@falconstor.com

FalconStor Software Reports Second Quarter Financial Results

MELVILLE, N.Y., July 31, 2012—FalconStor Software, Inc. (NASDAQ: FALC), the provider of disk-based data protection solutions, today announced financial results for its second quarter ended June 30, 2012.

Total revenues for the second quarter of 2012 were \$16.5 million, compared with \$19.6 million for the same period a year ago.

As a result of the Company's increased dependence on revenues outside North America, with overseas business now accounting for over fifty percent of the Company's total revenues, the recent slowness in Asian and European markets negatively impacted the Company's second quarter results. As a result of the slower than anticipated recovery around the world, the Company must realign its existing cost structure based on the declines in revenues it has experienced. Accordingly, commencing in the third quarter, the Company engaged in a cost-reduction initiative that is expected to result in approximately \$10.0 million in gross annualized savings. This action includes approximately a 7 percent reduction in existing workforce, the elimination of select positions, and other cost savings initiatives. The cost reductions impact all levels and regions of the Company and are designed to help streamline our operations and focus our efforts and resources more efficiently in the current environment. The estimated cost of this action, which is expected to be completed by the end of the third quarter, is approximately \$0.65 million to \$0.85 million.

Also during the quarter, the Company announced the successful resolution of the investigations by the United States Attorney's Office for the Eastern District of New York and by the Securities and Exchange Commission. Total payments by the Company to settle the investigations will equal \$5.8 million.

"FalconStor is committed to innovation and the delivery of novel and disruptive data protection solutions," said Jim McNeil, president and CEO. "Our expense reductions address changing global market conditions and deliver a sustainable business model while preserving our ability to deliver new products to a demanding market."

GAAP loss from operations for the quarter was \$6.3 million, compared with an operating loss of \$6.0 million for the same period a year ago. GAAP net loss for the second quarter was \$6.6 million, or \$0.14 per share, compared with \$5.9 million, or \$0.13 per share in the second quarter of 2011. Included in the operating results for the second quarter of 2012 was \$0.9 million of costs associated with the ongoing class actions and with the finalizing of the government investigations. The \$0.9 million was comprised of \$0.4 million for certain costs associated with the possible resolution of the class actions and \$0.5 million in overall related legal fees. During the same period in 2011, the Company had recorded \$1.2 million of costs associated with the government investigations and related class actions, comprised of \$0.5 million of legal fees and an accrual of \$0.7 million for certain costs associated with the possible resolution of the then outstanding government investigations.

Non-GAAP loss from operations was \$4.4 million in the second quarter of 2012, compared with a loss from operations of \$3.4 million for the same period a year ago. Non-GAAP net loss was \$4.7 million, or a loss of \$0.10 per share, in the second quarter of 2012, compared with a net loss of \$3.4 million, or \$0.07 per share, in the second quarter of 2011. 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, 2012, total revenues were \$35.8 million, compared with \$38.6 million for the same period a year ago. GAAP loss from operations for the six month period was \$8.4 million compared with a loss of \$11.6 million in 2011. GAAP net loss was \$9.1 million, or \$0.19 per share, for the six months ended June 30, 2012, compared with a loss of \$11.9 million, or \$0.26 per share, in the same period a year ago.

Non-GAAP loss from operations was \$6.3 million for the six months ended June 30, 2012, compared with a loss of \$5.2 million in 2011. Non-GAAP net loss was \$7.0 million, or \$0.15 per share, compared with a loss of \$5.4 million, or \$0.12 per share, in the same period a year ago.

The Company closed the quarter with \$33.6 million in cash, cash equivalents, and marketable securities, down \$4.2 million from December 31, 2011. Deferred revenue at June 30, 2012 was \$26.3 million, an increase of 2% compared with the same period a year ago.

The Company will host a conference call to discuss its financial results on Tuesday, July 31, 2012 at 4:30 p.m. EDT. To participate in the conference call, please dial:

Toll Free: 1-888-549-7750

International: 1-480-629-9643

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=169747692&RG=1&UID>

Meeting: FalconStor Q2 2012 Earnings

Meeting password: q2numbers

Meeting Number: 766 612 258

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 July 31 at 6:30 p.m. EDT through 11:59 p.m. EDT on August 6. To listen to the replay of the call, dial toll free: 1-800-406-7325 or International: +1-303-590-3030, passcode: 4553102, 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, government investigations, and related legal fees and (ii) noncash stock-based compensation charges and any potential tax effects, when applicable. 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

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 (DR) 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 [DR automation](#). FalconStor solutions are available through a worldwide network of partners, including solution providers, top-tier strategic partners and major 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.

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

FalconStor Software, Inc. and Subsidiaries
CONDENSED CONSOLIDATED BALANCE SHEETS

	June 30, 2012	December 31, 2011
	<u>(unaudited)</u>	
Assets		
Current assets:		
Cash and cash equivalents.....	\$ 16,484,132	\$ 16,257,694
Marketable securities.....	16,622,687	20,894,328
Accounts receivable, net.....	10,428,659	19,314,789
Prepaid expenses and other current assets.....	1,860,686	1,912,831
Inventory	1,100,644	1,769,007
Deferred tax assets, net.....	<u>169,089</u>	<u>177,798</u>
Total current assets	<u>46,665,897</u>	<u>60,326,447</u>
Property and equipment, net.....	4,472,535	4,364,180
Long-term marketable securities.....	464,999	611,082
Deferred tax assets, net	209,843	217,771
Software development costs, net.....	1,325,948	1,001,530
Other assets, net.....	2,243,466	2,183,973
Goodwill.....	4,150,339	4,150,339
Other intangible assets, net.....	<u>177,932</u>	<u>191,572</u>
Total assets	<u>\$ 59,710,959</u>	<u>\$ 73,046,894</u>
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable.....	\$ 2,656,205	\$ 2,883,844
Accrued expenses	9,569,410	17,609,766
Deferred revenue, net	<u>19,358,548</u>	<u>19,450,966</u>
Total current liabilities.....	31,584,163	39,944,576
Other long-term liabilities	4,396,320	2,587,327
Deferred revenue, net	<u>6,919,380</u>	<u>7,698,053</u>
Total liabilities.....	<u>42,899,863</u>	<u>50,229,956</u>
Commitments and Contingencies		
Total stockholders' equity	<u>16,811,096</u>	<u>22,816,938</u>
Total liabilities and stockholders' equity	<u>\$ 59,710,959</u>	<u>\$ 73,046,894</u>

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2012	2011	2012	2011
Revenues:				
Product revenues	\$ 7,835,568	\$11,609,760	\$18,498,521	\$22,868,775
Support and services revenues.....	<u>8,630,633</u>	<u>8,018,248</u>	<u>17,335,752</u>	<u>15,718,495</u>
	16,466,201	19,628,008	35,834,273	38,587,270
Cost of revenues:				
Product	1,787,186	2,266,040	3,807,672	3,989,045
Support and service	<u>3,091,055</u>	<u>3,418,589</u>	<u>6,252,411</u>	<u>6,537,808</u>
Total cost of revenues	<u>4,878,241</u>	<u>5,684,629</u>	<u>10,060,083</u>	<u>10,526,853</u>
Gross profit.....	\$ 11,587,960	\$ 13,943,379	\$ 25,774,190	\$ 28,060,417
Operating expenses:				
Research and development costs....	4,771,691	5,245,119	9,472,286	11,350,107
Selling and marketing	9,266,762	10,521,307	19,029,987	18,995,399
General and administrative	3,018,154	2,957,460	6,129,029	5,558,995
Investigation, litigation and settlement related costs	<u>851,123</u>	<u>1,188,671</u>	<u>(439,797)</u>	<u>3,799,791</u>
Total operating expenses.....	<u>17,907,730</u>	<u>19,912,557</u>	<u>34,191,505</u>	<u>39,704,292</u>
Operating loss.....	<u>(6,319,770)</u>	<u>(5,969,178)</u>	<u>(8,417,315)</u>	<u>(11,643,875)</u>
Interest and other (loss) income, net.	<u>(105,533)</u>	<u>150,007</u>	<u>(244,864)</u>	<u>450,956</u>
Loss before income taxes	<u>(6,425,303)</u>	<u>(5,819,171)</u>	<u>(8,662,179)</u>	<u>(11,192,919)</u>
Provision for income taxes	<u>195,283</u>	<u>69,868</u>	<u>407,815</u>	<u>662,384</u>
Net loss	<u>\$ (6,620,586)</u>	<u>\$ (5,889,039)</u>	<u>\$ (9,069,994)</u>	<u>\$ (11,855,303)</u>
Basic net loss per share.....	<u>\$ (0.14)</u>	<u>\$ (0.13)</u>	<u>\$ (0.19)</u>	<u>\$ (0.26)</u>
Diluted net loss per share.....	<u>\$ (0.14)</u>	<u>\$ (0.13)</u>	<u>\$ (0.19)</u>	<u>\$ (0.26)</u>
Weighted average basic shares outstanding	<u>47,472,909</u>	<u>46,643,349</u>	<u>47,258,696</u>	<u>46,453,196</u>
Weighted average diluted shares outstanding	<u>47,472,909</u>	<u>46,643,349</u>	<u>47,258,696</u>	<u>46,453,196</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,	
	2012	2011	2012	2011
GAAP loss from operations	\$ (6,319,770)	\$ (5,969,178)	\$ (8,417,315)	\$ (11,643,875)
Add: Non-cash stock option expense (1) ..	1,090,076	1,340,353	2,538,378	2,655,300
Legal related costs (3)	<u>851,123</u>	<u>1,188,671</u>	<u>(439,797)</u>	<u>3,799,791</u>
Non-GAAP loss from operations	<u>(4,378,571)</u>	<u>(3,440,154)</u>	<u>(6,318,734)</u>	<u>(5,188,784)</u>
GAAP net loss	\$ (6,620,586)	\$ (5,889,039)	\$ (9,069,994)	\$ (11,855,303)
Add: Non-cash stock option expense, net of income taxes (2)	1,090,076	1,340,353	2,538,378	2,655,300
Legal related costs (3)	<u>851,123</u>	<u>1,188,671</u>	<u>(439,797)</u>	<u>3,799,791</u>
Non-GAAP net loss	<u>(4,679,387)</u>	<u>(3,360,015)</u>	<u>(6,971,413)</u>	<u>(5,400,212)</u>
GAAP gross margin – Product	77%	80%	79%	83%
Add: Non-cash stock option expense (1) ..	<u>0%</u>	<u>0%</u>	<u>0%</u>	<u>0%</u>
Non-GAAP gross margin - Product	<u>77%</u>	<u>80%</u>	<u>79%</u>	<u>83%</u>
GAAP gross margin – Support and Service	64%	57%	64%	58%
Add: Non-cash stock option expense (1) ..	<u>0%</u>	<u>2%</u>	<u>0%</u>	<u>2%</u>
Non-GAAP gross margin – Support and Service	<u>64%</u>	<u>59%</u>	<u>64%</u>	<u>60%</u>
GAAP operating margin	(38%)	(30%)	(23%)	(30%)
Add: Non-cash stock option expense (1) ..	7%	7%	7%	7%
Legal related costs (3)	<u>5%</u>	<u>6%</u>	<u>(1%)</u>	<u>10%</u>
Non-GAAP operating margin	<u>(27%)</u>	<u>(18%)</u>	<u>(18%)</u>	<u>(13%)</u>
GAAP Basic EPS	\$ (0.14)	\$ (0.13)	\$ (0.19)	\$ (0.26)
Add: Non-cash stock option expense, net of income taxes (2)	0.02	0.03	0.05	0.06
Legal related costs (3)	<u>0.02</u>	<u>0.03</u>	<u>(0.01)</u>	<u>0.08</u>
Non-GAAP Basic EPS	<u>(0.10)</u>	<u>(0.07)</u>	<u>(0.15)</u>	<u>(0.12)</u>
GAAP Diluted EPS	\$ (0.14)	\$ (0.13)	\$ (0.19)	\$ (0.26)
Add: Non-cash stock option expense, net of income taxes (2)	0.02	0.03	0.05	0.06
Legal related costs (3)	<u>0.02</u>	<u>0.03</u>	<u>(0.01)</u>	<u>0.08</u>
Non-GAAP Diluted EPS	<u>(0.10)</u>	<u>(0.07)</u>	<u>(0.15)</u>	<u>(0.12)</u>
Weighted average basic shares Outstanding (GAAP and as adjusted)	<u>47,472,909</u>	<u>46,643,349</u>	<u>47,258,696</u>	<u>46,453,196</u>
Weighted average diluted shares Outstanding (GAAP and as adjusted)	<u>47,472,909</u>	<u>46,643,349</u>	<u>47,258,696</u>	<u>46,453,196</u>

Footnotes:

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	<u>2012</u>	<u>2011</u>	<u>2012</u>	<u>2011</u>
Cost of revenues - Product	\$ 49	\$ 741	\$ 99	\$ 1,473
Cost of revenues – Support and Service	(21,124)	129,714	49,844	273,201
Research and development costs	125,231	329,369	444,188	808,411
Selling and marketing	398,031	462,555	884,656	885,279
General and administrative	<u>587,889</u>	<u>417,974</u>	<u>1,159,591</u>	<u>686,936</u>
Total non-cash stock-based compensation expense	<u>\$ 1,090,076</u>	<u>\$ 1,340,353</u>	<u>\$ 2,538,378</u>	<u>\$ 2,655,300</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, 2012 and 2011, 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.