

**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**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): November 7, 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

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(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 November 7, 2012, the Company issued a press release announcing its results of operations for the fiscal quarter ended September 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 November 7, 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: November 7, 2012

By: /s/ Louis J. Petrucelly  
Name: Louis J. Petrucelly  
Title: Vice President and Chief Financial Officer



Contact: Joanne Ferrara, Investor Relations  
631-773-5813  
[joanne.ferrara@falconstor.com](mailto:joanne.ferrara@falconstor.com)

## **FalconStor Software Reports Third Quarter Financial Results**

MELVILLE, N.Y., November 7, 2012—FalconStor Software, Inc. (NASDAQ: FALC), the provider of disk-based data protection solutions, today announced financial results for its third quarter ended September 30, 2012.

### **Overview**

Total revenues for the third quarter of 2012 were \$17.1 million, compared with \$18.9 million for the same period a year ago, a decline of 9%. Total revenues for the third quarter of 2012 increased 4% compared with the second quarter of 2012.

The global macroeconomic weakness continues to factor in soft IT spending, lower business confidence, and uncertainty in the marketplace, which has resulted in lower than anticipated revenues for the quarter.

“While our revenues fell short of our expectations, we are pleased that we were able to achieve sequential revenue growth during a difficult macro environment,” said Jim McNiel, president and CEO of FalconStor. “The uncertainty surrounding the global marketplace continues to cause disruptions in our business, specifically with budget freezes, elongated sales cycles, or, in some cases, lost deals due to competitive pricing and sales strategies. Finally, we believe that the steps we took during the third quarter to reduce our operating expenses in response to the current environment have left us well-positioned to execute on our plan to invest in our existing and our new product initiatives.”

### **Retention of Financial Advisor**

FalconStor has retained the investment banking firm Wells Fargo Securities, LLC as its exclusive financial advisor to assist the Company in exploring and evaluating strategic alternatives to maximize stockholder value. The Company intends to disclose developments regarding the process only when or if the Board has approved a specific transaction.

### **Financials**

GAAP loss from operations for the quarter was \$3.6 million, compared with an operating loss of \$5.1 million for the same period a year ago. GAAP net loss for the third quarter was \$3.6 million, or \$0.08 per share, compared with \$5.4 million, or \$0.12 per share in the third quarter of 2011. Included in the operating results for the third quarter of 2012 was a net reduction of \$1.4 million of investigation, litigation, and settlement costs. The net reduction of \$1.4 million resulted from the Company recording a receivable in the third quarter for the recovery of \$1.1 million of previously accrued legal fees and \$0.4 million of certain costs previously accrued associated with the class action and derivative suits, as a result of a settlement reached with one of our insurance carriers in October 2012. These amounts were partially offset by \$0.1 million of overall legal fees not recoverable through insurance. During the same period in 2011, the Company had recorded \$0.5 million of costs associated with the then outstanding government investigations and related class actions, which was comprised of overall legal fees.

Non-GAAP loss from operations was \$3.1 million in the third quarter of 2012, compared with a loss from operations of \$2.3 million for the same period a year ago. Non-GAAP net loss was \$3.1 million, or a loss of \$0.07 per share, in the third quarter of 2012, compared with a net loss of \$2.6 million, or \$0.06 per share, in the third quarter of 2011. Non-GAAP results exclude the effects of stock-based compensation, costs associated with the Company's investigations, litigation and settlement related costs, and restructuring cost.

For the nine months ended September 30, 2012, total revenues were \$52.9 million, compared with \$57.4 million for the same period a year ago. GAAP loss from operations for the nine month period was \$12.0 million compared with a loss of \$16.8 million in 2011. GAAP net loss was \$12.6 million, or \$0.27 per share, for the nine months ended September 30, 2012, compared with a loss of \$17.3 million, or \$0.37 per share, in the same period a year ago.

Non-GAAP loss from operations was \$9.4 million for the nine months ended September 30, 2012, compared with a loss of \$7.5 million in 2011. Non-GAAP net loss was \$10.1 million, or \$0.21 per share, compared with a loss of \$8.0 million, or \$0.17 per share, in the same period a year ago.

The Company closed the quarter with \$25.8 million in cash, cash equivalents, and marketable securities. Deferred revenue at September 30, 2012 was \$23.6 million, a decrease of 5% compared with the same period a year ago.

### **Conference Call**

The Company will host a conference call to discuss its financial results on Wednesday November 7, 2012 at 4:30 p.m. EST. To participate in the conference call, please dial:

Toll Free: 1-877-941-8631

International: +1-480-629-9821

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=174468092&RG=1&UID>

Meeting: FalconStor Q3 2012 Earnings

Meeting password: q3numbers

Meeting Number: 769 916 414

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

A conference call replay is scheduled to be available beginning November 7 at 6:30 p.m. EST through 11:59 p.m. EST on November 13. To listen to the replay of the call, dial toll free: 1-800-406-7325 or International: +1-303-590-3030, passcode: 4572048, or visit our website at [www.falconstor.com/investors](http://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, (ii) noncash stock-based compensation charges and any potential tax effects and (iii) restructuring costs, 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](http://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**

	<b>September 30, 2012</b>	<b>December 31, 2011</b>
	<u>(unaudited)</u>	
<b>Assets</b>		
Current assets:		
Cash and cash equivalents.....	\$ 12,154,409	\$ 16,257,694
Marketable securities.....	13,201,701	20,894,328
Accounts receivable, net.....	10,965,296	19,314,789
Prepaid expenses and other current assets.....	4,716,228	1,912,831
Inventory.....	721,827	1,769,007
Deferred tax assets, net.....	<u>175,624</u>	<u>177,798</u>
Total current assets.....	<u>41,935,085</u>	<u>60,326,447</u>
Property and equipment, net.....	4,387,606	4,364,180
Long-term marketable securities.....	489,999	611,082
Deferred tax assets, net.....	205,879	217,771
Software development costs, net.....	1,243,885	1,001,530
Other assets, net.....	2,207,272	2,183,973
Goodwill.....	4,150,339	4,150,339
Other intangible assets, net.....	<u>190,106</u>	<u>191,572</u>
Total assets.....	<u>\$ 54,810,171</u>	<u>\$ 73,046,894</u>
<b>Liabilities and Stockholders' Equity</b>		
Current liabilities:		
Accounts payable.....	\$ 1,514,250	\$ 2,883,844
Accrued expenses.....	11,063,649	17,609,766
Deferred revenue, net.....	<u>17,526,719</u>	<u>19,450,966</u>
Total current liabilities.....	30,104,618	39,944,576
Other long-term liabilities.....	4,433,219	2,587,327
Deferred revenue, net.....	<u>6,098,952</u>	<u>7,698,053</u>
Total liabilities.....	<u>40,636,789</u>	<u>50,229,956</u>
Commitments and Contingencies		
Total stockholders' equity.....	<u>14,173,382</u>	<u>22,816,938</u>
Total liabilities and stockholders' equity.....	<u>\$ 54,810,171</u>	<u>\$ 73,046,894</u>

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

	<b>Three Months Ended</b>		<b>Nine Months Ended</b>	
	<b>September 30,</b>		<b>September 30,</b>	
	<b>2012</b>	<b>2011</b>	<b>2012</b>	<b>2011</b>
Revenues:				
Product revenues .....	\$ 8,550,551	\$ 10,176,275	\$27,049,072	\$33,045,050
Support and services revenues .....	<u>8,538,462</u>	<u>8,680,115</u>	<u>25,874,214</u>	<u>24,398,610</u>
	17,089,013	18,856,390	52,923,286	57,443,660
Cost of revenues:				
Product .....	1,562,359	1,467,141	5,370,031	5,456,186
Support and service .....	<u>3,318,558</u>	<u>3,339,448</u>	<u>9,570,969</u>	<u>9,877,256</u>
Total cost of revenues .....	<u>4,880,917</u>	<u>4,806,589</u>	<u>14,941,000</u>	<u>15,333,442</u>
Gross profit.....	\$ 12,208,096	\$ 14,049,801	\$ 37,982,286	\$ 42,110,218
Operating expenses:				
Research and development costs....	4,643,102	5,033,211	14,115,388	16,383,318
Selling and marketing .....	8,272,973	9,878,069	27,302,960	28,873,468
General and administrative .....	3,461,880	2,904,767	9,590,909	8,463,762
Investigation, litigation and settlement related costs .....	(1,353,571)	531,507	(1,793,368)	4,331,298
Restructuring costs .....	<u>770,749</u>	<u>822,320</u>	<u>770,749</u>	<u>822,320</u>
Total operating expenses.....	<u>15,795,133</u>	<u>19,169,874</u>	<u>49,986,638</u>	<u>58,874,166</u>
Operating loss.....	<u>(3,587,037)</u>	<u>(5,120,073)</u>	<u>(12,004,352)</u>	<u>(16,763,948)</u>
Interest and other income (loss), net.	<u>102,059</u>	<u>(71,266)</u>	<u>(142,805)</u>	<u>379,690</u>
Loss before income taxes .....	<u>(3,484,978)</u>	<u>(5,191,339)</u>	<u>(12,147,157)</u>	<u>(16,384,258)</u>
Provision for income taxes .....	<u>83,073</u>	<u>206,837</u>	<u>490,888</u>	<u>869,221</u>
Net loss .....	<u>\$ (3,568,051)</u>	<u>\$ (5,398,176)</u>	<u>\$ (12,638,045)</u>	<u>\$ (17,253,479)</u>
Basic net loss per share.....	<u>\$ (0.08)</u>	<u>\$ (0.12)</u>	<u>\$ (0.27)</u>	<u>\$ (0.37)</u>
Diluted net loss per share.....	<u>\$ (0.08)</u>	<u>\$ (0.12)</u>	<u>\$ (0.27)</u>	<u>\$ (0.37)</u>
Weighted average basic shares outstanding .....	<u>47,542,304</u>	<u>46,779,040</u>	<u>47,353,922</u>	<u>46,563,004</u>
Weighted average diluted shares outstanding .....	<u>47,542,304</u>	<u>46,779,040</u>	<u>47,353,922</u>	<u>46,563,004</u>

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

	<b>Three Months Ended</b>		<b>Nine Months Ended</b>	
	<b>September 30,</b>		<b>September 30,</b>	
	<b>2012</b>	<b>2011</b>	<b>2012</b>	<b>2011</b>
GAAP loss from operations .....	\$ (3,587,037)	\$ (5,120,073)	\$ (12,004,352)	\$ (16,763,948)
Add: Non-cash stock option expense (1) ..	1,055,778	1,436,578	3,594,156	4,091,878
Legal related costs (3) .....	(1,353,571)	531,507	(1,793,368)	4,331,298
Restructuring costs (4) .....	<u>770,749</u>	<u>822,320</u>	<u>770,749</u>	<u>822,320</u>
Non-GAAP loss from operations .....	<u>(3,114,081)</u>	<u>(2,329,668)</u>	<u>(9,432,815)</u>	<u>(7,518,452)</u>
GAAP net loss .....	\$ (3,568,051)	\$ (5,398,176)	\$ (12,638,045)	\$ (17,253,479)
Add: Non-cash stock option expense, net of income taxes (2) .....	1,055,778	1,436,578	3,594,156	4,091,878
Legal related costs (3) .....	(1,353,571)	531,507	(1,793,368)	4,331,298
Restructuring costs (4) .....	<u>770,749</u>	<u>822,320</u>	<u>770,749</u>	<u>822,320</u>
Non-GAAP net loss .....	<u>(3,095,095)</u>	<u>(2,607,771)</u>	<u>(10,066,508)</u>	<u>(8,007,983)</u>
GAAP gross margin – Product .....	82%	86%	80%	84%
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>82%</u>	<u>86%</u>	<u>80%</u>	<u>84%</u>
GAAP gross margin – Support and Service .....	61%	62%	63%	60%
Add: Non-cash stock option expense (1) ..	<u>1%</u>	<u>1%</u>	<u>0%</u>	<u>2%</u>
Non-GAAP gross margin – Support and Service .....	<u>62%</u>	<u>63%</u>	<u>63%</u>	<u>61%</u>
GAAP operating margin .....	(21%)	(27%)	(23%)	(29%)
Add: Non-cash stock option expense (1) ..	6%	8%	7%	7%
Legal related costs (3) .....	(8%)	3%	(3%)	8%
Restructuring costs (4) .....	<u>5%</u>	<u>4%</u>	<u>1%</u>	<u>1%</u>
Non-GAAP operating margin .....	<u>(18%)</u>	<u>(12%)</u>	<u>(18%)</u>	<u>(13%)</u>
GAAP Basic EPS .....	\$ (0.08)	\$ (0.12)	\$ (0.27)	\$ (0.37)
Add: Non-cash stock option expense, net of income taxes (2) .....	0.02	0.03	0.08	0.09
Legal related costs (3) .....	(0.03)	0.01	(0.04)	0.09
Restructuring costs (4) .....	<u>0.02</u>	<u>0.02</u>	<u>0.02</u>	<u>0.02</u>
Non-GAAP Basic EPS .....	<u>(0.07)</u>	<u>(0.06)</u>	<u>(0.21)</u>	<u>(0.17)</u>
GAAP Diluted EPS .....	\$ (0.08)	\$ (0.12)	\$ (0.27)	\$ (0.37)
Add: Non-cash stock option expense, net of income taxes (2) .....	0.02	0.03	0.08	0.09
Legal related costs (3) .....	(0.03)	0.01	(0.04)	0.09
Restructuring costs (4) .....	<u>0.02</u>	<u>0.02</u>	<u>0.02</u>	<u>0.02</u>
Non-GAAP Diluted EPS .....	<u>(0.07)</u>	<u>(0.06)</u>	<u>(0.21)</u>	<u>(0.17)</u>
Weighted average basic shares Outstanding (GAAP and as adjusted) .....	<u>47,542,304</u>	<u>46,779,040</u>	<u>47,353,922</u>	<u>46,563,004</u>
Weighted average diluted shares Outstanding (GAAP and as adjusted) .....	<u>47,542,304</u>	<u>46,779,040</u>	<u>47,353,922</u>	<u>46,563,004</u>

Footnotes:

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

	<b>Three Months Ended September 30,</b>		<b>Nine Months Ended September 30,</b>	
	<b><u>2012</u></b>	<b><u>2011</u></b>	<b><u>2012</u></b>	<b><u>2011</u></b>
Cost of revenues - Product	\$ 113	\$ 1,169	\$ 212	\$ 2,641
Cost of revenues – Support and Service	53,314	111,830	103,158	385,032
Research and development costs	127,982	235,782	572,170	1,044,193
Selling and marketing	388,167	585,814	1,272,823	1,471,093
General and administrative	<u>486,202</u>	<u>501,983</u>	<u>1,645,793</u>	<u>1,188,919</u>
Total non-cash stock-based compensation expense	<u>\$ 1,055,778</u>	<u>\$ 1,436,578</u>	<u>\$ 3,594,156</u>	<u>\$ 4,091,878</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 nine months ended September 30, 2012 and 2011, the tax expense for both GAAP and Non-GAAP basis approximate the same amount.
- (3) Legal related costs represent amounts in connection with the Company's investigations, litigation and settlement related costs for each respective period presented.
- (4) Represents restructuring costs which were incurred during each respective period presented.