

LIVEPERSON INC  
Form 10-Q  
November 09, 2009

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

FORM 10-Q

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

For the quarterly period ended SEPTEMBER 30, 2009

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: 0-30141

LIVEPERSON, INC.  
(Exact Name of Registrant as Specified in Its Charter)

DELAWARE  
(State or Other Jurisdiction of  
Incorporation or Organization)

13-3861628  
(IRS Employer Identification No.)

462 SEVENTH AVENUE  
NEW YORK, NEW YORK  
(Address of Principal Executive Offices)

10018  
(Zip Code)

(212) 609-4200  
(Registrant's Telephone Number, Including Area Code)

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 and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definition of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one).

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Large accelerated filer   
Non-accelerated filer   
(Do not check if a smaller  
reporting company)

Accelerated filer   
Smaller reporting company

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 5, 2009, there were 48,511,550 shares of the issuer's common stock outstanding.

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FORWARD-LOOKING STATEMENTS

STATEMENTS IN THIS REPORT ABOUT LIVEPERSON, INC. THAT ARE NOT HISTORICAL FACTS ARE FORWARD-LOOKING STATEMENTS BASED ON OUR CURRENT EXPECTATIONS, ASSUMPTIONS, ESTIMATES AND PROJECTIONS ABOUT LIVEPERSON AND OUR INDUSTRY. THESE FORWARD-LOOKING STATEMENTS ARE SUBJECT TO RISKS AND UNCERTAINTIES THAT COULD CAUSE ACTUAL FUTURE EVENTS OR RESULTS TO DIFFER MATERIALLY FROM SUCH STATEMENTS. ANY SUCH FORWARD-LOOKING STATEMENTS ARE MADE PURSUANT TO THE SAFE HARBOR PROVISIONS OF THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995. IT IS ROUTINE FOR OUR INTERNAL PROJECTIONS AND EXPECTATIONS TO CHANGE AS THE YEAR OR EACH QUARTER IN THE YEAR PROGRESS, AND THEREFORE IT SHOULD BE CLEARLY UNDERSTOOD THAT THE INTERNAL PROJECTIONS AND BELIEFS UPON WHICH WE BASE OUR EXPECTATIONS MAY CHANGE PRIOR TO THE END OF EACH QUARTER OR THE YEAR. ALTHOUGH THESE EXPECTATIONS MAY CHANGE, WE ARE UNDER NO OBLIGATION TO INFORM YOU IF THEY DO. OUR COMPANY POLICY IS GENERALLY TO PROVIDE OUR EXPECTATIONS ONLY ONCE PER QUARTER, AND NOT TO UPDATE THAT INFORMATION UNTIL THE NEXT QUARTER. ACTUAL EVENTS OR RESULTS MAY DIFFER MATERIALLY FROM THOSE CONTAINED IN THE PROJECTIONS OR FORWARD-LOOKING STATEMENTS. FACTORS THAT COULD CAUSE OR CONTRIBUTE TO SUCH DIFFERENCES INCLUDE THOSE DISCUSSED IN PART II, ITEM 1A, "RISK FACTORS."

## PART I. FINANCIAL INFORMATION

## ITEM 1. FINANCIAL STATEMENTS

## LIVEPERSON, INC.

CONDENSED CONSOLIDATED BALANCE SHEETS  
(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)

	September 30, 2009 (Unaudited)	December 31, 2008 (Note 1(B))
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 36,486	\$ 25,500
Accounts receivable, net of allowance for doubtful accounts of \$370 and \$340 as of September 30, 2009 and December 31, 2008, respectively	10,442	7,574
Prepaid expenses and other current assets	2,545	1,706
Deferred tax assets, net	812	1,772
<b>Total current assets</b>	<b>50,285</b>	<b>36,552</b>
Property and equipment, net	8,986	7,473
Intangibles, net	3,211	4,319
Goodwill	23,906	24,388
Deferred tax assets, net	7,654	7,330
Deferred implementation costs	134	147
Security deposits	321	349
Other assets	1,617	1,390
<b>Total assets</b>	<b>\$ 96,114</b>	<b>\$ 81,948</b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 4,739	\$ 3,555
Accrued expenses	10,103	9,088
Deferred revenue	4,670	3,985
<b>Total current liabilities</b>	<b>19,512</b>	<b>16,628</b>
Deferred revenue, net of current	449	347
Other liabilities	1,617	1,390
<b>Total liabilities</b>	<b>21,578</b>	<b>18,365</b>
Commitments and contingencies		
Stockholders' equity:		
Preferred stock, \$.001 par value per share; 5,000,000 shares authorized, 0 shares issued and outstanding at September 30, 2009 and December 31, 2008	—	—
Common stock, \$.001 par value per share; 100,000,000 shares authorized, 48,380,800 shares issued and outstanding at September 30, 2009 and 47,357,017 shares issued and outstanding at December 31, 2008	48	47
Additional paid-in capital	187,181	180,869
Accumulated deficit	(112,523)	(117,195)
Accumulated other comprehensive loss	(170)	(138)
<b>Total stockholders' equity</b>	<b>74,536</b>	<b>63,583</b>

Total liabilities and stockholders' equity	\$	96,114	\$	81,948
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SEE ACCOMPANYING NOTES TO UNAUDITED CONDENSED  
CONSOLIDATED FINANCIAL STATEMENTS.

## LIVEPERSON, INC.

CONDENSED CONSOLIDATED STATEMENTS OF INCOME  
(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)  
UNAUDITED

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
Revenue	\$ 22,262	\$ 19,375	\$ 62,722	\$ 55,048
Operating expenses:				
Cost of revenue	5,495	5,226	15,007	15,346
Product development	3,109	3,299	8,949	9,876
Sales and marketing	6,535	6,624	19,947	18,864
General and administrative	3,312	3,399	9,991	10,034
Amortization of intangibles	118	352	662	1,134
Total operating expenses	18,569	18,900	54,556	55,254
Income (loss) from operations	3,693	475	8,166	(206)
Other income (expense):				
Financial income (expense)	75	(123)	(21)	(125)
Interest income	15	79	71	270
Total other income (expense), net	90	(44)	50	145
Income (loss) before provision for (benefit from) income taxes	3,783	431	8,216	(61)
Provision for (benefit from) income taxes	1,516	21	3,544	(68)
Net income	\$ 2,267	\$ 410	\$ 4,672	\$ 7
Basic net income per common share	\$ .05	\$ 0.01	\$ 0.10	\$ 0.00
Diluted net income per common share	\$ .05	\$ 0.01	\$ 0.10	\$ 0.00
Weighted average shares outstanding used in basic net income per common share calculation	47,968,777	47,229,252	47,684,047	47,433,924
Weighted average shares outstanding used in diluted net income per common share calculation	49,683,730	48,678,016	48,553,525	49,064,151

Income from operations for the three and nine months ended September 30, 2009 includes stock-based compensation expense related to ASC 718-10 in the amount of \$1,211 and \$3,491, respectively. Income (loss) from operations for the three and nine months ended September 30, 2008 includes stock-based compensation expense related to ASC 718-10 in the amount of \$1,014 and \$3,178, respectively. See Note 1(E).

SEE ACCOMPANYING NOTES TO UNAUDITED CONDENSED  
CONSOLIDATED FINANCIAL STATEMENTS.

## LIVEPERSON, INC.

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS  
(IN THOUSANDS)  
UNAUDITED

	Nine Months Ended September 30,	
	2009	2008
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Net income	\$ 4,672	\$ 7
Adjustments to reconcile net income to net cash provided by operating activities:		
Stock-based compensation expense	3,491	3,178
Depreciation	2,448	1,324
Amortization of intangibles	1,583	2,055
Deferred income taxes	636	(39)
Provision for doubtful accounts	30	68
<b>CHANGES IN OPERATING ASSETS AND LIABILITIES:</b>		
Accounts receivable	(2,899)	(952)
Prepaid expenses and other current assets	(833)	(523)
Deferred implementation costs	13	55
Security deposits	28	114
Accounts payable	1,309	1,054
Accrued expenses	1,581	(494)
Deferred revenue	787	408
Net cash provided by operating activities	12,846	6,255
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Purchases of property and equipment, including capitalized software	(4,091)	(5,393)
Acquisition of patents	(475)	-
Acquisition of Kasamba	—	(112)
Acquisition of Proficient	(84)	(132)
Net cash used in investing activities	(4,650)	(5,637)
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>		
Repurchase of common stock	(28)	(3,680)
Excess tax benefit from the exercise of employee stock options	1,248	-
Proceeds from issuance of common stock in connection with the exercise of options	1,603	655
Net cash provided by (used in) financing activities	2,823	(3,025)
Effect of foreign exchange rate changes on cash and cash equivalents	(33)	(42)
Net increase (decrease) in cash and cash equivalents	10,986	(2,449)
Cash and cash equivalents at the beginning of the period	25,500	26,222
Cash and cash equivalents at the end of the period	\$ 36,486	\$ 23,773

## Supplemental disclosure of non-cash investing activities:

During the nine months ended September 30, 2009, the Company settled a pre-acquisition contingency resulting in a decrease in accrued expenses in the amount of \$566.



Cash flows from investing for the nine months ended September 30, 2009 does not include the purchases of approximately \$147 of capitalized equipment related to the Company's colocation facility as the corresponding invoices are included in accounts payable at September 30, 2009, and therefore did not have an impact on cash flows for the period.

Cash flows from investing for the nine months ended September 30, 2008 does not include the purchases of approximately \$936 of capitalized equipment related to the Company's colocation facility as the corresponding invoices are included in accounts payable at September 30, 2008, and therefore did not have an impact on cash flows for the period.

SEE ACCOMPANYING NOTES TO UNAUDITED CONDENSED  
CONSOLIDATED FINANCIAL STATEMENTS.

LIVEPERSON, INC.

NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)

(1) SUMMARY OF OPERATIONS AND SIGNIFICANT ACCOUNTING POLICIES

(A) SUMMARY OF OPERATIONS

LivePerson, Inc. (the “Company” or “LivePerson”) was incorporated in the State of Delaware in 1995. The Company commenced operations in 1996. LivePerson provides online engagement solutions that facilitate real-time assistance and expert advice.

The Company’s primary revenue source is the sale of the LivePerson services to businesses of all sizes. The Company also facilitates online transactions between independent service providers (“Experts”) who provide expert online advice to individual consumers (“Users”). Headquartered in New York City, the Company’s product development staff, help desk and online sales support are located in Israel. The Company also maintains sales and professional services offices in Atlanta and the United Kingdom.

(B) UNAUDITED CONDENSED CONSOLIDATED FINANCIAL INFORMATION

The accompanying condensed consolidated financial statements as of September 30, 2009 and for the three and nine months ended September 30, 2009 and 2008 are unaudited. In the opinion of management, the unaudited condensed consolidated financial statements have been prepared on the same basis as the annual financial statements and reflect all adjustments, which include only normal recurring adjustments, necessary to present fairly the consolidated financial position of LivePerson as of September 30, 2009, and the consolidated results of operations and cash flows for the interim periods ended September 30, 2009 and 2008. The financial data and other information disclosed in these notes to the condensed consolidated financial statements related to these periods are unaudited. The results of operations for any interim period are not necessarily indicative of the results of operations for any other future interim period or for a full fiscal year. The condensed consolidated balance sheet at December 31, 2008 has been derived from audited consolidated financial statements at that date.

Certain information and note disclosures normally included in financial statements prepared in accordance with generally accepted accounting principles have been condensed or omitted pursuant to the rules and regulations of the Securities and Exchange Commission (the “SEC”). These unaudited interim condensed consolidated financial statements should be read in conjunction with the Company’s audited consolidated financial statements and notes thereto for the year ended December 31, 2008, included in the Company’s Annual Report on Form 10-K filed with the SEC on March 13, 2009.

The Company has evaluated subsequent events through November 5, 2009, which is the date the financial statements were available to be issued.

(C) RECLASSIFICATIONS