

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

**FORM 8-K/A  
Amendment No. 1**

**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 14, 2023**

**FLUENT, INC.**  
(Exact name of Registrant as Specified in Its Charter)

**Delaware  
(State or Other Jurisdiction  
of Incorporation)**

**000-37893  
(Commission  
File Number)**

**77-0688094  
(IRS Employer  
Identification No.)**

**300 Vesey Street, 9th Floor  
New York, New York  
(Address of Principal Executive Offices)**

**10282  
(Zip Code)**

**Registrant's Telephone Number, Including Area Code: (646) 669-7272**

**Not Applicable  
(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 Instructions 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))

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

| Title of each class              | Trading<br>Symbol | Name of exchange<br>on which registered |
|----------------------------------|-------------------|---|
| Common Stock, Par Value \$0.0005 | FLNT              | The NASDAQ Stock Market LLC             |

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§ 230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§ 240.12b-2 of this chapter).

Emerging growth company

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.

## EXPLANATORY NOTE

This Current Report on Form 8-K/A amends and supplements the Current Report on Form 8-K of Fluent, Inc. (the “Company”), originally furnished by the Company to the Securities and Exchange Commission on August 14, 2023 (the “Initial Form 8-K”). The sole purpose for filing this Form 8-K/A is to correct certain information contained in the Company’s press release furnished with the Initial Form 8-K as Exhibit 99.1, which announced the financial results of the Company for the fiscal quarter and six months ended June 30, 2023 (the “Earnings Release”).

The information contained herein is being furnished pursuant to Item 2.02 of Form 8-K, “Results of Operations and Financial Condition.” This information shall not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or incorporated by reference in any filing under the Securities Act of 1933, as amended, (the “Securities Act”) or the Exchange Act, except as shall be expressly set forth by specific reference in such a filing.

### **Item 2.02 Results of Operations and Financial Condition.**

Subsequent to the Company’s second fiscal quarter earnings call on August 14, 2023 and during the preparation of the Company’s unaudited consolidated financial statements to be included in the Company’s Form 10-Q for the second fiscal quarter ended June 30, 2023 (the “Form 10-Q”), the Company determined that (a) an agreed prepayment on August 21, 2023 of \$5.0 million of outstanding indebtedness under the Company’s term loan with Citizens Bank, N.A. as administrative agent, lead arranger and bookrunner, should be classified as a current liability on the Company’s condensed consolidated balance sheet at June 30, 2023; and (b) \$4.0 million of insurance proceeds that the Company was informed it would receive on July 31, 2023, to reimburse the Company for certain legal defense costs incurred in connection with the Federal Trade Commission investigation and the Pennsylvania Office of the Attorney General matter should have been classified as a current asset with an offsetting contra-expense to general and administrative expenses, with an associated additional income tax expense of \$0.9 million for the three and six months ended June 30, 2023 and an increase of \$0.9 million of current liabilities at June 30, 2023. The contra-expense and associated income tax expense are each excluded from the Company’s calculations of Adjusted EBITDA and adjusted net income (loss). Adjusted EBITDA and adjusted net income (loss) are non-GAAP financial measures defined in the Earnings Release.

Therefore, the consolidated balance sheet, consolidated income statements and consolidated statements of cash flows, and the reconciliations of Adjusted EBITDA and adjusted net income (loss) and to net income (loss) included in the Earnings Release do not reflect the final versions of these statements included in the Form 10-Q, and the statements in the Earnings Release stating net income (loss) for the three and six months ended June 30, 2023 do not reflect the reported information contained in the Form 10-Q.

Corrected versions of the affected financial statements and reconciliations appearing in the Earnings Release are attached hereto as Exhibit 99.1 and are also available in the Form 10-Q filed with the Securities and Exchange Commission on August 21, 2023.

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**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits.

| <b>Exhibit Number</b> | <b>Description</b>  |
|-----------------------|---|
| 99.1                  | <a href="#">Corrected financial statements and reconciliations</a>  |
| 104                   | Cover Page Interactive Data File - the cover page iXBRL tags are embedded within the Inline XBRL document |

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**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 hereunto duly authorized.

Date: August 21, 2023

**Fluent, Inc.**

By: /s/ Don Patrick

Don Patrick

Chief Executive Officer

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

|  | June 30, 2023     | December 31,<br>2022 |
|--|-------------------|----------------------|
| <b>ASSETS:</b>   |                   |                      |
| Cash and cash equivalents  | \$ 20,983         | \$ 25,547            |
| Accounts receivable, net of allowance for doubtful accounts of \$209 and \$544, respectively   | 58,120            | 63,164               |
| Prepaid expenses and other current assets  | 9,941             | 3,506                |
| Total current assets   | 89,044            | 92,217               |
| Property and equipment, net  | 783               | 964                  |
| Operating lease right-of-use assets  | 4,278             | 5,202                |
| Intangible assets, net   | 28,525            | 28,745               |
| Goodwill   | 30,966            | 55,111               |
| Other non-current assets   | 1,486             | 1,730                |
| <b>Total assets</b>  | <b>\$ 155,082</b> | <b>\$ 183,969</b>    |
| <b>LIABILITIES AND SHAREHOLDERS' EQUITY:</b>   |                   |                      |
| Accounts payable   | \$ 13,303         | \$ 6,190             |
| Accrued expenses and other current liabilities   | 27,469            | 35,626               |
| Deferred revenue   | 895               | 1,014                |
| Current portion of long-term debt  | 10,000            | 5,000                |
| Current portion of operating lease liability   | 2,309             | 2,389                |
| Total current liabilities  | 53,976            | 50,219               |
| Long-term debt, net  | 27,989            | 35,594               |
| Operating lease liability  | 2,734             | 3,743                |
| Other non-current liabilities  | 2,248             | 458                  |
| <b>Total liabilities</b>   | <b>86,947</b>     | <b>90,014</b>        |
| Contingencies (Note 10)  |                   |                      |
| <b>Shareholders' equity:</b>   |                   |                      |
| 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 — 85,751,226 and 84,385,458, respectively; and Shares outstanding — 81,139,657 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   | 425,491           | 423,384              |
| Accumulated deficit  | (345,992)         | (318,300)            |
| <b>Total shareholders' equity</b>  | <b>68,135</b>     | <b>93,955</b>        |
| <b>Total liabilities and shareholders' equity</b>  | <b>\$ 155,082</b> | <b>\$ 183,969</b>    |

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

|  | <u>Three Months Ended June 30,</u> |                 | <u>Six Months Ended June 30,</u> |                 |
|--|------------------------------------|-----------------|----------------------------------|-----------------|
|  | <u>2023</u>                        | <u>2022</u>     | <u>2023</u>                      | <u>2022</u>     |
| <b>Revenue</b>   | \$ 82,145                          | \$ 98,361       | \$ 159,399                       | \$ 187,424      |
| <b>Costs and expenses:</b>                                   |                                    |                 |                                  |                 |
| Cost of revenue (exclusive of depreciation and amortization) | 59,540                             | 70,026          | 117,812                          | 137,589         |
| Sales and marketing  | 4,215                              | 4,484           | 9,028                            | 8,336           |
| Product development  | 4,615                              | 4,802           | 9,553                            | 9,357           |
| General and administrative                                   | 3,941                              | 11,688          | 16,266                           | 22,975          |
| Depreciation and amortization                                | 3,095                              | 3,332           | 5,454                            | 6,639           |
| Goodwill impairment and write-off of intangible assets       | —                                  | 55,400          | 25,700                           | 55,528          |
| Loss on disposal of property and equipment                   | —                                  | 21              | —                                | 21              |
| <b>Total costs and expenses</b>                              | <u>75,406</u>                      | <u>149,753</u>  | <u>183,813</u>                   | <u>240,445</u>  |
| <b>Income (loss) from operations</b>                         | 6,739                              | (51,392)        | (24,414)                         | (53,021)        |
| Interest expense, net  | (795)                              | (430)           | (1,484)                          | (814)           |
| <b>Income (loss) before income taxes</b>                     | 5,944                              | (51,822)        | (25,898)                         | (53,835)        |
| Income tax expense   | (1,693)                            | (5,122)         | (1,794)                          | (5,122)         |
| <b>Net income (loss)</b>                                     | <u>4,251</u>                       | <u>(56,944)</u> | <u>(27,692)</u>                  | <u>(58,957)</u> |
| <b>Basic and diluted income (loss) per share:</b>            |                                    |                 |                                  |                 |
| Basic  | \$ 0.05                            | \$ (0.70)       | \$ (0.34)                        | \$ (0.73)       |
| Diluted  | \$ 0.05                            | \$ (0.70)       | \$ (0.34)                        | \$ (0.73)       |
| <b>Weighted average number of shares outstanding:</b>        |                                    |                 |                                  |                 |
| Basic  | 82,727,971                         | 81,493,821      | 82,323,854                       | 81,193,107      |
| Diluted  | 82,752,646                         | 81,493,821      | 82,323,854                       | 81,193,107      |

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

|  | <b>Six Months Ended June 30,</b> |                  |
|--|----------------------------------|------------------|
|  | <b>2023</b>                      | <b>2022</b>      |
| <b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>   |                                  |                  |
| <b>Net loss</b>  | \$ (27,692)                      | \$ (58,957)      |
| <b>Adjustments to reconcile net loss to net cash provided by (used in) operating activities:</b> |                                  |                  |
| Depreciation and amortization  | 5,454                            | 6,639            |
| Non-cash loan amortization expense   | 133                              | 135              |
| Share-based compensation expense   | 1,997                            | 1,851            |
| Goodwill impairment  | 25,700                           | 55,400           |
| Write-off of intangible assets   | —                                | 128              |
| Loss on disposal of property and equipment   | —                                | 21               |
| Provision for bad debt   | (92)                             | 158              |
| Deferred income taxes  | —                                | —                |
| <b>Changes in assets and liabilities, net of business acquisitions:</b>                          |                                  |                  |
| Accounts receivable  | 5,136                            | (7,913)          |
| Prepaid expenses and other current assets  | (6,435)                          | 488              |
| Other non-current assets   | 244                              | (25)             |
| Operating lease assets and liabilities, net  | (165)                            | (85)             |
| Accounts payable   | 7,113                            | 913              |
| Accrued expenses and other current liabilities   | (9,147)                          | (451)            |
| Deferred revenue   | (119)                            | (177)            |
| Other  | (76)                             | (72)             |
| <b>Net cash provided by (used in) operating activities</b>                                       | <b>2,051</b>                     | <b>(1,947)</b>   |
| <b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>   |                                  |                  |
| Capitalized costs included in intangible assets  | (2,370)                          | (2,199)          |
| Business acquisitions, net of cash acquired  | (1,250)                          | (971)            |
| Acquisition of property and equipment  | (22)                             | (6)              |
| <b>Net cash used in investing activities</b>   | <b>(3,642)</b>                   | <b>(3,176)</b>   |
| <b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>   |                                  |                  |
| Repayments of long-term debt   | (2,500)                          | (2,500)          |
| Debt financing costs   | (237)                            | —                |
| Taxes paid related to net share settlement of vesting of restricted stock units                  | (236)                            | (448)            |
| <b>Net cash used in financing activities</b>   | <b>(2,973)</b>                   | <b>(2,948)</b>   |
| <b>Net decrease in cash and cash equivalents</b>   | <b>(4,564)</b>                   | <b>(8,071)</b>   |
| Cash and cash equivalents at beginning of period   | 25,547                           | 34,467           |
| Cash and cash equivalents at end of period   | <b>\$ 20,983</b>                 | <b>\$ 26,396</b> |

## Definitions, Reconciliations and Uses of Non-GAAP Financial Measures

The following non-GAAP measures are used in this release:

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) acquisition-related costs, (8) restructuring and other severance costs, and (9) 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) acquisition-related costs, (5) restructuring and other severance costs, and (6) 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 adjusted EBITDA from net loss for the three and six months ended June 30, 2023 and 2022, respectively, which we believe is the most directly comparable GAAP measure.

|  | Three Months Ended June 30, |                 | Six Months Ended June 30, |                  |
|--|-----------------------------|-----------------|---------------------------|------------------|
|  | 2023                        | 2022            | 2023                      | 2022             |
| <b>Net income (loss)</b>                   | \$ 4,251                    | \$ (56,944)     | \$ (27,692)               | \$ (58,957)      |
| Income tax expense                         | 1,693                       | 5,122           | 1,794                     | 5,122            |
| Interest expense, net                      | 795                         | 430             | 1,484                     | 814              |
| Depreciation and amortization              | 3,095                       | 3,332           | 5,454                     | 6,639            |
| Share-based compensation expense           | 936                         | 863             | 1,997                     | 1,851            |
| Goodwill impairment                        | —                           | 55,400          | 25,700                    | 55,400           |
| Write-off of intangible assets             | —                           | —               | —                         | 128              |
| Loss on disposal of property and equipment | —                           | 21              | —                         | 21               |
| Acquisition-related costs(1)(2)            | 562                         | 579             | 1,185                     | 1,137            |
| Restructuring and other severance costs    | —                           | 38              | 480                       | 38               |
| Certain litigation and other related costs | (5,736)                     | 596             | (4,358)                   | 1,998            |
| <b>Adjusted EBITDA</b>                     | <u>\$ 5,596</u>             | <u>\$ 9,437</u> | <u>\$ 6,044</u>           | <u>\$ 14,191</u> |

(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 \$24 and \$110 for the three and six months ended June 30, 2023, respectively, as a result of certain acquisitions.

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

| (In thousands, except share and per share data)       | Three Months Ended June 30, |               | Six Months Ended June 30, |                 |
|---|-----------------------------|---------------|---------------------------|-----------------|
|   | 2023                        | 2022          | 2023                      | 2022            |
| <b>Net income (loss)</b>                              | \$ 4,251                    | \$ (56,944)   | \$ (27,692)               | \$ (58,957)     |
| Share-based compensation expense                      | 936                         | 863           | 1,997                     | 1,851           |
| Goodwill impairment                                   | —                           | 55,400        | 25,700                    | 55,400          |
| Write-off of intangible assets                        | —                           | —             | —                         | 128             |
| Loss on disposal of property and equipment            | —                           | 21            | —                         | 21              |
| Acquisition-related costs(1)(2)                       | 562                         | 579           | 1,185                     | 1,137           |
| Restructuring and other severance costs               | —                           | 38            | 480                       | 38              |
| Certain litigation and other related costs            | (5,736)                     | 596           | (4,358)                   | 1,998           |
| <b>Adjusted net income (loss)</b>                     | <u>\$ 13</u>                | <u>\$ 553</u> | <u>\$ (2,688)</u>         | <u>\$ 1,616</u> |
| <b>Adjusted net income (loss) per share:</b>          |                             |               |                           |                 |
| Basic   | \$ 0.00                     | \$ 0.01       | \$ (0.03)                 | \$ 0.02         |
| Diluted   | \$ 0.00                     | \$ 0.01       | \$ (0.03)                 | \$ 0.02         |
| <b>Weighted average number of shares outstanding:</b> |                             |               |                           |                 |
| Basic   | 82,727,971                  | 81,493,821    | 82,323,854                | 81,193,107      |
| Diluted   | 82,752,646                  | 81,575,329    | 82,323,854                | 81,233,586      |

(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 \$24 and \$110 for the three and six months ended June 30, 2023, respectively, as a result of certain acquisitions.

We present 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:

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. 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 in 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 our overall financial performance as compared to adjusted EBITDA and the GAAP measure of net income (loss).

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 condensed 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 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.