

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 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): **September 26, 2022**

PHUNWARE, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation)

001-37862

(Commission File Number)

30-1205798

(IRS Employer Identification No.)

1002 West Avenue, Austin, Texas

(Address of principal executive offices)

78701

(Zip Code)

Registrant's Telephone Number, Including Area Code: **(512) 693-4199**

(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:

- 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 Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.0001 per share	PHUN	The NASDAQ Capital Market
Warrants to purchase one share of Common Stock	PHUNW	The NASDAQ Capital Market

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.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

(b) Departure of Director.

On September 26, 2022, Randall Crowder notified Phunware, Inc. (the “Company”) of his resignation from the Company’s board of directors (the “Board”), effective as of September 27, 2022. Mr. Crowder’s resignation was not due to any disagreement with the Company on any matter relating to the Company’s operations, policies or practices. Mr. Crowder will continue to serve as the Chief Operating Officer of the Company.

(c) Compensatory Arrangements of Certain Officers.

As previously disclosed, effective as of December 26, 2018 (the “Effective Date”), the Company entered into employment agreements (each, an “Agreement,” and collectively, the “Agreements”) with certain of its executive officers, including Alan S. Knitowski, Chief Executive Officer, Matt Aune, Chief Financial Officer, Randall Crowder, Chief Operating Officer, and Luan Dang, Chief Technology Officer (each, an “Officer,” and collectively, the “Officers”). The Agreements with Messrs. Knitowski, Aune, Crowder and Dang were attached as Exhibits 10.2, 10.3, 10.4 and 10.6, respectively, to the Form 8-K filed by the Company on January 2, 2019.

As also previously disclosed, the Company is reviewing and evaluating the Agreements and related compensatory arrangements of all of the Officers. In connection therewith, on September 27, 2022, the Company (i) provided notice to Mr. Dang (the “Notice”) that the Company does not intend to renew his current Agreement and (ii) entered into amendments to the Agreements with Mr. Aune and Mr. Crowder, respectively (each, an “Amendment,” and collectively, the “Amendments”).

Pursuant to the provision of the Notice, Mr. Dang’s Agreement will expire on December 26, 2022, which is the fourth anniversary of the Effective Date. The Company may seek to enter into a separation agreement with Mr. Dang on or prior to the expiration of his Agreement.

Pursuant to the Amendments, each of Mr. Aune’s Agreement and Mr. Crowder’s Agreement will have a term running from the Effective Date through September 27, 2023. Also pursuant to the Amendments, the term of each of Mr. Aune’s Agreement and Mr. Crowder’s Agreement will not renew automatically for additional one (1) year terms. Accordingly, each of Mr. Aune’s Agreement and Mr. Crowder’s Agreement will expire on September 27, 2023.

The Amendments also amended Mr. Aune’s Agreement and Mr. Crowder’s Agreement to provide that if the Company terminates either Officer’s employment with the Company for reasons other than Cause (as defined therein), the Officer’s death, or the Officer’s Disability (as defined in therein), and such termination occurs outside the Change in Control Period (as defined therein), then subject to the terms of the applicable Agreement, the Officer will receive, in addition to his salary payable through the date of termination of employment and any other employee benefits earned and owed through the date of termination, among other things, continuing payments of severance pay at a rate equal to the Officer’s Base Salary (as defined therein) rate, as then in effect, for the greater of (i) six (6) months from the date of such termination or (ii) the remainder of the term of the applicable Agreement, in accordance with the Company’s normal payroll policies.

The foregoing description of the Amendments does not purport to be complete and is qualified in its entirety by reference to the full text of the Amendments, which are attached as Exhibit 10.1 and Exhibit 10.2 to this Current Report on Form 8-K and incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

<i>Exhibit No.</i>	<i>Exhibit Title</i>
10.1	Amendment No. 1 to Employment Agreement by and between Phunware, Inc. and Matt Aune.
10.2	Amendment No. 1 to Employment Agreement by and between Phunware, Inc. and Randall Crowder.
104	Cover Page Interactive Data File (embedded within the inline XBRL document)

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.

Dated: September 30, 2022

Phunware, Inc.

By: /s/ Matt Aune
Matt Aune
Chief Financial Officer

AMENDMENT NO. 1 TO EMPLOYMENT AGREEMENT

This Amendment No. 1 to Employment Agreement (this “**Amendment**”), dated as of September 27, 2022, is entered into by and between Phunware, Inc. (the “**Company**”) and Matt Aune (“**Executive**”).

WHEREAS, the Company and Executive entered into that certain Employment Agreement, effective as of the Closing Date for the Stellar Acquisition III, Inc. Merger Agreement (as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with its provisions, the “**Agreement**”); and

WHEREAS, the Parties hereto desire to amend the Agreement on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions. Capitalized terms used and not defined in this Amendment have the respective meanings assigned to them in the Agreement.

2. Amendment to the Agreement. As of the date first written above:

(a) Section 3 of the Agreement is hereby amended and restated to provide as follows:

“3. Term of Agreement. This Agreement will have an initial term running from the Effective Date through September 27, 2023 (the “**Term**”). Notwithstanding the foregoing provision of this paragraph, (a) if a Change in Control occurs when there are fewer than twelve (12) months remaining during the Term, the term of this Agreement will extend automatically through the date that is twelve (12) months following the effective date of the Change in Control, or (b) if an initial occurrence of an act or omission by the Company constituting the grounds for “Good Reason” in accordance with Section 10(g) hereof has occurred (the “**Initial Grounds**”), and the expiration date of the Company cure period (as such term is used in Section 10(g)) with respect to such Initial Grounds could occur following the expiration of the Term, the term of this Agreement will extend automatically through the date that is thirty (30) days following the expiration of such cure period, but such extension of the term will only apply with respect to the Initial Grounds. If Executive becomes entitled to benefits under Section 8 during the term of this Agreement, the Agreement will not terminate until all of the obligations of the parties hereto with respect to this Agreement have been satisfied.”

(b) Section 8(a)(i) of the Agreement is hereby amended and restated to provide as follows:

“(i) continuing payments of severance pay at a rate equal to Executive’s Base Salary rate, as then in effect, for the greater of: (A) six (6) months from the date of such termination, or (B) the remainder of the Term, in each case in accordance with the Company’s normal payroll policies; and”

3. Date of Effectiveness; Limited Effect. This Amendment will become effective as of the date first written above. Except as expressly provided in this Amendment, all of the terms and provisions of the Agreement are and will remain in full force and effect and are hereby ratified and confirmed by the Company and Executive. Without limiting the generality of the foregoing, the amendment contained herein will not be construed as an amendment to or waiver of any other provision of the Agreement or as a waiver of or consent to any further or future action on the part of either the Company or Executive that would require the waiver or consent of the other party. On and after the date first written above, each reference in the Agreement to “this Agreement,” “the Agreement,” “hereunder,” “hereof,” “herein,” or words of like import will mean and be a reference to the Agreement as amended by this Amendment.

4. Miscellaneous.

(c) This Amendment will be governed by the laws of the State of Texas (with the exception of its conflict of laws provisions).

(d) This Amendment will be binding upon and inure to the benefit of (a) the heirs, executors and legal representatives of Executive upon Executive’s death and (b) any successor of the Company. Any such successor of the Company will be deemed substituted for the Company under the terms of this Amendment for all purposes. For this purpose, “**successor**” means any person, firm, corporation or other business entity which at any time, whether by purchase, merger or otherwise, directly or indirectly acquires all or substantially all of the assets or business of the Company.

(e) The headings in this Amendment are for reference only and do not affect the interpretation of this Amendment.

(f) This Amendment may be executed in counterparts, each of which is deemed an original, but all of which constitute one and the same agreement. Delivery of an executed counterpart of this Amendment electronically shall be effective as delivery of an original executed counterpart of this Amendment.

(g) This Amendment constitutes the sole and entire agreement between the Company and Executive with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Company and Executive have executed this Amendment as of the date first written above.

COMPANY:

Phunware, Inc.

By: /s/ Alan S. Knitowski
Name: Alan S. Knitowski
Title: Chief Executive Officer

EXECUTIVE:

/s/ Matt Aune
Matt Aune

[Signature Page to Amendment No. 1 to Employment Agreement]

AMENDMENT NO. 1 TO EMPLOYMENT AGREEMENT

This Amendment No. 1 to Employment Agreement (this “**Amendment**”), dated as of September 27, 2022, is entered into by and between Phunware, Inc. (the “**Company**”) and Randall Crowder (“**Executive**”).

WHEREAS, the Company and Executive entered into that certain Employment Agreement, effective as of the Closing Date for the Stellar Acquisition III, Inc. Merger Agreement (as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with its provisions, the “**Agreement**”); and

WHEREAS, the Parties hereto desire to amend the Agreement on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions. Capitalized terms used and not defined in this Amendment have the respective meanings assigned to them in the Agreement.
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and provisions of the Agreement are and will remain in full force and effect and are hereby ratified and confirmed by the Company and Executive. Without limiting the generality of the foregoing, the amendment contained herein will not be construed as an amendment to or waiver of any other provision of the Agreement or as a waiver of or consent to any further or future action on the part of either the Company or Executive that would require the waiver or consent of the other party. On and after the date first written above, each reference in the Agreement to “this Agreement,” “the Agreement,” “hereunder,” “hereof,” “herein,” or words of like import will mean and be a reference to the Agreement as amended by this Amendment.

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(f) This Amendment may be executed in counterparts, each of which is deemed an original, but all of which constitute one and the same agreement. Delivery of an executed counterpart of this Amendment electronically shall be effective as delivery of an original executed counterpart of this Amendment.

(g) This Amendment constitutes the sole and entire agreement between the Company and Executive with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Company and Executive have executed this Amendment as of the date first written above.

COMPANY:

Phunware, Inc.

/s/ Ryan Costello

Ryan Costello on behalf of the Compensation Committee of the Board of Directors

EXECUTIVE:

/s/ Randall Crowder

Randall Crowder

[Signature Page to Amendment No. 1 to Employment Agreement]