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, 2020

☐ **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: 001-37862

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

Delaware	**26-4413774**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification Number)

7800 Shoal Creek Blvd	**Suite 230-S**	**Austin**	**TX**	**78757**
(Address of principal executive offices)				**(Zip Code)**

Registrant’s telephone number, including area code: **512-693-4199**

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 (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 every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of “large accelerated filer,” “accelerated filer,” “smaller reporting company,” and “emerging growth company” in Rule 12b-2 of the Exchange Act.

Large accelerated filer	☐	Accelerated filer	☐
Non-accelerated filer	☒	Smaller reporting company	☒
		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. ☐

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 9, 2020, 49,140,540 shares of common stock, par value $0.0001 per share, were issued and outstanding.

TABLE OF CONTENTS

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Report includes forward-looking statements. All statements other than statements of historical facts contained in this Report, including statements regarding our future results of operations and financial position, business strategy and plans, and our objectives for future operations, are forward-looking statements. The words “anticipate,” “believe,” “continue,” “could,” “estimate,” “expect,” “intend,” “may,” “might,” “plan,” “possible,” “potential,” “predict,” “project,” “should,” “will,” “would” and similar expressions that convey uncertainty of future events or outcomes are intended to identify forward-looking statements, but the absence of these words does not mean that a statement is not forward-looking.

The forward-looking statements contained in this Report are based on our current expectations and beliefs concerning future developments and their potential effects on us. Future developments affecting us may not be those that we have anticipated. These forward-looking statements involve a number of risks, uncertainties (some of which are beyond our control) and other assumptions that may cause actual results or performance to be materially different from those expressed or implied by these forward-looking statements. These risks and uncertainties include, but are not limited to, those factors described under the heading “Risk Factors.” Should one or more of these risks or uncertainties materialize, or should any of our assumptions prove incorrect, actual results may vary in material respects from those projected in these forward-looking statements. We undertake no obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, except as may be required under applicable securities laws. These risks and others described under “Risk Factors” may not be exhaustive.

By their nature, forward-looking statements involve risks and uncertainties because they relate to events and depend on circumstances that may or may not occur in the future. We caution you that forward-looking statements are not guarantees of future performance and that our actual results of operations, financial condition and liquidity, and developments in the industry in which we operate may differ materially from those made in or suggested by the forward-looking statements contained in this Report. In addition, even if our results of operations, financial condition and liquidity, and developments in the industry in which we operate are consistent with the forward-looking statements contained in this Report, those results or developments may not be indicative of results or developments in subsequent periods.

PART I—FINANCIAL INFORMATION

Item 1. Financial Statements

Phunware, Inc.
Condensed Consolidated Balance Sheet
(In thousands, except per share information)

	September 30, 2020	December 31, 2019
	(Unaudited)	
Assets		
Current assets:		
Cash	$ 1,143	$ 276
Accounts receivable, net of allowance for doubtful accounts of $123 and $3,179 at September 30, 2020 and December 31, 2019, respectively	1,153	1,671
Prepaid expenses and other current assets	462	368
Total current assets	2,758	2,315
Property and equipment, net	14	24
Goodwill	25,828	25,857
Intangible assets, net	143	253
Deferred tax asset	241	241
Restricted cash	91	86
Other assets	276	276
Total assets	$ 29,351	$ 29,052
Liabilities and stockholders' equity (deficit)		
Current liabilities:		
Accounts payable	$ 9,067	$ 10,159
Accrued expenses	5,555	4,035
Accrued legal settlement	4,500	—
Deferred revenue	3,215	3,360
PhunCoin deposits	1,202	1,202
Factored receivables payable	439	1,077
Current maturities of long-term debt, net	1,693	—
Warrant liability	1,242	—
Total current liabilities	26,913	19,833
Long-term debt	4,272	910
Long-term debt - related party	555	195
Deferred tax liability	241	241
Deferred revenue	2,003	3,764
Deferred rent	178	83
Total liabilities	34,162	25,026
Commitments and contingencies		
Stockholders' equity (deficit)		
Common stock, $0.0001 par value	5	4
Additional paid-in capital	135,239	128,008
Accumulated other comprehensive loss	(410)	(382)
Accumulated deficit	(139,645)	(123,604)
Total stockholders' equity (deficit)	(4,811)	4,026
Total liabilities and stockholders' equity (deficit)	$ 29,351	$ 29,052

The accompanying notes are an integral part of these condensed consolidated financial statements.

Phunware, Inc.
Condensed Consolidated Statements of Operations and Comprehensive Loss
(In thousands, except per share information)
(Unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Net revenues	$ 3,130	$ 5,637	$ 7,983	$ 16,462
Cost of revenues	898	2,418	2,757	7,757
Gross profit	2,232	3,219	5,226	8,705
Operating expenses:				
Sales and marketing	383	705	1,265	2,094
General and administrative	4,276	3,754	11,981	11,699
Research and development	572	1,052	1,811	3,438
Legal settlement	4,500	—	4,500	—
Total operating expenses	9,731	5,511	19,557	17,231
Operating loss	(7,499)	(2,292)	(14,331)	(8,526)
Other expense:				
Interest expense	(1,362)	(145)	(1,923)	(484)
Loss on extinguishment of debt	(950)	—	(1,031)	—
Gain on change in fair value of warrants	1,244	—	1,244	—
Other (expense) income	—	11	—	28
Total other expense	(1,068)	(134)	(1,710)	(456)
Loss before taxes	(8,567)	(2,426)	(16,041)	(8,982)
Income tax expense	—	—	—	(5)
Net loss	(8,567)	(2,426)	(16,041)	(8,987)
Other comprehensive loss:				
Cumulative translation adjustment	47	(33)	(28)	(36)
Comprehensive loss	$ (8,520)	$ (2,459)	$ (16,069)	$ (9,023)
Net loss per common share, basic and diluted	$ (0.19)	$ (0.06)	$ (0.38)	$ (0.25)
Weighted-average common shares used to compute net loss per share, basic and diluted	44,304	39,027	42,089	36,034

The accompanying notes are an integral part of these condensed consolidated financial statements.

Phunware, Inc.
Condensed Consolidated Statements of Changes in Redeemable Convertible Preferred Stock and Stockholders' Equity (Deficit)
(In thousands)
(Unaudited)

	Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated Deficit	Other Comprehensive Loss	Total Stockholders' Equity
	Shares	Amount	Shares	Amount				
Balance - June 30, 2020	—	—	43,555	$ 4	$ 132,045	$ (131,078)	$ (457)	$ 514
Exercise of stock options, net of vesting of restricted shares	—	—	33	—	9	—	—	9
Vesting of restricted stock units	—	—	388	—	—	—	—	—
Issuance of common stock for payment of legal, earned bonus, and board of director fees	—	—	164	—	225	—	—	225
Sale of common stock	—	—	1,302	1	1,341	—	—	1,342
Stock-based compensation expense	—	—	—	—	1,708	—	—	1,708
Reacquisition of equity component of Senior Convertible Note	—	—	—	—	(89)	—	—	(89)
Cumulative translation adjustment	—	—	—	—	—	—	47	47
Net loss	—	—	—	—	—	(8,567)	—	(8,567)
Balance - September 30, 2020	—	—	45,442	$ 5	$ 135,239	$ (139,645)	$ (410)	$ (4,811)

	Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated Deficit	Other Comprehensive Loss	Total Stockholders' Equity (Deficit)
	Shares	Amount	Shares	Amount				
Balance - December 31, 2019	—	—	39,811	$ 4	$ 128,008	$ (123,604)	$ (382)	$ 4,026
Exercise of stock options, net of vesting of restricted shares	—	—	186	—	96	—	—	96
Vesting of restricted stock units	—	—	1,082	—	—	—	—	—
Issuance of common stock for payment of legal, earned bonus, and board of director fees	—	—	1,297	—	1,239	—		1,239
Sale of common stock	—	—	1,302	1	1,341	—	—	1,342
Stock-based compensation expense			—	—	3,458	—	—	3,458
Issuance of common stock upon partial conversions of Senior Convertible Note	—	—	1,764	—	2,266	—	—	2,266
Reacquisition of equity component of Senior Convertible Notes	—	—	—	—	(1,388)	—	—	(1,388)
Equity classified cash conversion feature of Senior Convertible Notes	—	—	—	—	219	—	—	219
Cumulative translation adjustment	—	—	—	—		—	(28)	(28)
Net loss	—	—	—	—	—	(16,041)		(16,041)
Balance - September 30, 2020	—	—	45,442	$ 5	$ 135,239	$ (139,645)	$ (410)	$ (4,811)

	Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated Deficit	Other Comprehensive Loss	Total Stockholders' Equity
	Shares	Amount	Shares	Amount				
Balance - June 30, 2019	—	—	38,902	$ 4	$ 125,854	$ (117,294)	$ (421)	$ 8,143
Exercise of stock options, net of vesting of restricted shares	—	—	179	—	113	—	—	113
Vesting of restricted stock units	—	—	23	—	—	—	—	—
Stock-based compensation expense	—	—	—	—	684	—	—	684
Cumulative translation adjustment	—	—	—	—	—	—	(33)	(33)
Net loss	—	—	—	—	—	(2,426)	—	(2,426)
Balance - September 30, 2019	—	—	39,104	$ 4	$ 126,651	$ (119,720)	$ (454)	$ 6,481

	Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated Deficit	Other Comprehensive Loss	Total Stockholders' Equity
	Shares	Amount	Shares	Amount				
Balance - December 31, 2018	6	5,377	27,253	$ 3	$ 118,062	$ (111,820)	$ (418)	$ 5,827
Exercise of stock options, net of vesting of restricted shares	—	—	298		165	—	—	165
Vesting of restricted stock units	—	—	23	—	—	—	—	—
Exercise of common stock warrants for cash	—	—	617		6,184	—	—	6,184
Exercise of common stock warrants pursuant to cashless provisions	—	—	10,913	1	(1)	—	—	—
Series A convertible preferred stock redeemed for cash	(6)	(5,377)	—	—	(863)	—	—	(863)
Waiver of sponsor promissory note originally issued in conjunction with Reverse Merger and Recapitalization	—	—	—	—	1,993	—	—	1,993
Stock-based compensation expense	—	—	—	—	1,111	—	—	1,111
Cumulative-effect adjustment resulting from the adoption of ASU 2014-09	—	—	—	—	—	1,087	—	1,087
Cumulative translation adjustment	—	—	—	—	—	—	(36)	(36)
Net loss	—	—	—	—	—	(8,987)	—	(8,987)
Balance - September 30, 2019	—	—	39,104	$ 4	$ 126,651	$ (119,720)	$ (454)	$ 6,481

The accompanying notes are an integral part of these condensed consolidated financial statements.

Phunware, Inc.
Condensed Consolidated Statements of Cash Flows
(In thousands)
(Unaudited)

	Nine Months Ended September 30,	
	2020	**2019**
Operating activities		
Net loss	$ (16,041)	$ (8,987)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation	10	46
Amortization of acquired intangibles	110	205
Amortization of debt discount and deferred financing costs	1,217	—
Gain on change in fair value of warrants	(1,244)	—
Loss on sale of digital currencies	—	4
Loss on extinguishment of debt	1,031	—
Non-cash interest expense	55	—
Bad debt (recovery) expense	(30)	79
Stock-based compensation	3,458	1,111
Changes in operating assets and liabilities:		
Accounts receivable	551	291
Prepaid expenses and other assets	(94)	(86)
Accounts payable	536	(327)
Accrued expenses	1,332	973
Accrued legal settlement	4,500	—
Deferred revenue	(1,906)	792
Net cash used in operating activities	(6,515)	(5,899)
Investing activities		
Proceeds received from sale of digital currencies	—	88
Capital expenditures	—	(18)
Net cash provided by investing activities	—	70
Financing activities		
Proceeds from borrowings, net of issuance costs	10,207	250
Proceeds from related party bridge loans	560	—
Payments on senior convertible notes	(3,948)	—
Payments on related party notes	(200)	—
Net repayments on factoring agreement	(638)	(888)
Proceeds from PhunCoin deposits	—	212
Proceeds from warrant exercises	—	6,092
Proceeds from exercise of options to purchase common stock	95	165
Proceeds from sales of common stock, net of issuance costs	1,341	—
Series A convertible preferred stock redemptions and dividend payments	—	(6,240)
Net cash provided by (used in) financing activities	7,417	(409)
Effect of exchange rate on cash and restricted cash	(30)	(38)
Net increase (decrease) in cash and restricted cash	872	(6,276)
Cash and restricted cash at the beginning of the period	362	6,344
Cash and restricted cash at the end of the period	$ 1,234	$ 68

Supplemental disclosure of cash flow information:				
Interest paid	$	681	$	510
Income taxes paid	$	—	$	—
Supplemental disclosures of non-cash financing activities:				
Issuance of common stock for payment of legal, earned bonus and board of director fees	$	1,239	$	—
Issuance of common stock upon partial conversions of Senior Convertible Note	$	2,266	$	—
Reacquisition of equity component of Senior Convertible Note	$	(1,388)	$	—
Equity classified cash conversion feature of Senior Convertible Note	$	219	$	—
Waiver of sponsor promissory note	$	—	$	1,993

The accompanying notes are an integral part of these condensed consolidated financial statements.

Phunware, Inc
Notes to Unaudited Condensed Consolidated Financial Statements
(In thousands, except share and per share information)
(Unaudited)

1. The Company and Basis of Presentation

The Company

Phunware, Inc. (the "Company") offers a fully integrated software platform that equips companies with the products, solutions and services necessary to engage, manage and monetize their mobile application portfolios globally at scale. Phunware's Multiscreen-as-a-Service ("MaaS") platform provides the entire mobile lifecycle of applications, media and data in one login through one procurement relationship. The Company's MaaS technology is available in software development kit form for organizations developing their own application, via customized development services and prepackaged solutions. Through its integrated mobile advertising platform of publishers and advertisers, the Company provides in-app application transactions for mobile audience building, user acquisition, application discovery, audience engagement and audience monetization. Founded in 2009, the Company is a Delaware corporation headquartered in Austin, Texas.

Basis of Presentation

The condensed consolidated financial statements have been prepared in conformity with generally accepted accounting principles in the United States ("U.S. GAAP") and include the Company's accounts and those of its wholly owned subsidiaries. All intercompany transactions and balances have been eliminated in consolidation.

The balance sheet at December 31, 2019 was derived from the Company's audited consolidated financial statements, but these interim condensed consolidated financial statements do not include all the annual disclosures required by U.S. GAAP. These interim condensed consolidated financial statements should be read in conjunction with the Company's audited consolidated financial statements and the notes thereto for the year ended December 31, 2019, which are referenced herein. The accompanying interim condensed consolidated financial statements as of September 30, 2020 and for the three and nine months ended September 30, 2020 and 2019, are unaudited. The unaudited interim condensed consolidated financial statements have been prepared on a basis consistent with the audited financial statements, pursuant to the rules and regulations of the Securities and Exchange Commission ("SEC") for interim financial statements. Certain information and footnote disclosures normally included in financial statements prepared in accordance with U.S. GAAP have been condensed or omitted pursuant to such rules and regulations. In the opinion of management, the financial statements reflect all adjustments (consisting of normal recurring adjustments) considered necessary to fairly state the Company's financial position as of September 30, 2020 and the results of operations for the three and nine months ended September 30, 2020 and 2019, and cash flows for the nine months ended September 30, 2020 and 2019. The results for the three and nine months ended September 30, 2020 are not necessarily indicative of the results to be expected for the year ending December 31, 2020 or for any future interim period.

Reclassifications of Prior Year Presentation

Certain amounts in the financial statements of prior periods have been reclassified to conform to the current period financial statement presentation. This reclassification had no effect on the Company's reported results of operations. A reclassification was made to the condensed consolidated balance sheet as of December 31, 2019 to identify related parties for debt issuances.

Concentrations of Credit Risk

The Company's financial instruments that are exposed to concentrations of credit risk consist primarily of cash and trade accounts receivable. Although the Company limits its exposure to credit loss by depositing its cash with established financial institutions that management believes have good credit ratings and represent minimal risk of loss of principal, its deposits, at times, may exceed federally insured limits. Collateral is not required for accounts receivable, and the Company believes the carrying value approximates fair value.

The following table sets forth the Company's concentration of revenue sources as a percentage of total net revenues.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Customer A	26 %	8 %	30 %	3 %
Customer B	9 %	1 %	11 %	7 %
Customer C	21 %	— %	8 %	— %

In addition to the above, revenue from Fox Networks Group was55% and 58% for the three and nine months ended September 30, 2019, respectively.

The following table sets forth the Company's concentration of accounts receivable, net of specific allowances for doubtful accounts.

	September 30, 2020	December 31, 2019
Customer A	21 %	15 %
Customer C	— %	10 %
Customer D	20 %	— %
Customer E	6 %	11 %
Customer F	— %	23 %

Going Concern

Accounting Standards Codification ("ASC") Topic 205-40,*Presentation of Financial Statements - Going Concern*("ASC 205-40") requires management to assess the Company's ability to continue as a going concern for one year after the date the financial statements are issued. Under ASC 205-40, management has the responsibility to evaluate whether conditions and/or events raise substantial doubt about the Company's ability to meet future financial obligations as they become due within one year after the date that the financial statements are issued. As required by this standard, management's evaluation shall initially not take into consideration the potential mitigating effects of management's plans that have not been fully implemented as of the date the financial statements are issued.

The Company's assessment included the preparation of a detailed cash forecast that included all projected cash inflows and outflows. The Company continues to focus on growing its revenues. Accordingly, operating expenditures may exceed the revenue it expects to receive for the foreseeable future. Additionally, the Company has a history of operating losses and negative operating cash flows and expects these trends to continue into the foreseeable future.

During the quarter ended September 30, 2020, the Company obtained financings through the issuance of new convertible notes and the sale of its common stock through an at-the-market offering (both more fully described below). Future plans may include obtaining new debt financings and credit lines, utilizing existing or expanding existing credit lines, issuing equity securities, including the exercise of warrants, and reducing overhead expenses. Despite a history of successfully implementing similar plans to alleviate the adverse financial conditions, these sources of working capital are not currently sufficient and assured, and consequently do not mitigate the risks and uncertainties disclosed above.

There can be no assurance that the Company will be able to obtain additional funding on satisfactory terms or at all. In addition, no assurance can be given that any such financing, if obtained, will be adequate to meet the Company's capital needs and support its growth. If additional funding cannot be obtained on a timely basis and on satisfactory terms, its operations would be materially negatively impacted. The Company has therefore concluded there is substantial doubt about its ability to continue as a going concern through one year from the issuance of these condensed consolidated financial statements.

The accompanying condensed consolidated financial statements have been prepared on a going-concern basis, which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business. The accompanying condensed consolidated financial statements do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classification of liabilities that may result from uncertainty related to the Company's ability to continue as a going concern.

2. Summary of Significant Accounting Policies

There have been no changes in significant accounting policies as described in our Annual Report on Form 10-K filed with the SEC on March 30, 2020 for the year ended December 31, 2019, except as set forth below.

Use of Estimates

The preparation of financial statements in conformity with U.S. GAAP requires management to make certain estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. Items subject to the use of estimates include, but are not limited to, the standalone selling price for our products and services, stock-based compensation, useful lives of long-lived assets including intangibles, fair value of intangible assets and the recoverability or impairment of tangible and intangible assets, including goodwill, reserves and certain accrued liabilities, the benefit period of deferred commissions, fair value of debt component of the convertible note at issuance, the fair value of the convertible note outstanding upon derecognition, assumptions used in Black-Scholes valuation method, such as expected volatility, risk-free interest rate and expected dividend rate and provision for (benefit from) income taxes. Actual results could differ from those estimates and such differences could be material to the consolidated financial statements.

Convertible Debt with a Cash Conversion Feature

In March 2020, the Company issued a 7% Senior Convertible Note (defined below) with a principal amount of $3,000 for gross proceeds at closing of $2,371. In accounting for the issuance, the Company separated the note into liability and equity components. The carrying amount of the liability component was calculated by measuring the fair value of similar liabilities that do not have an associated convertible feature. The carrying amount of the equity component representing the conversion option was determined by deducting the carrying amount of the liability component from the par value of the notes. The difference represents the debt discount, recorded as a reduction of the senior convertible note on our condensed consolidated balance sheet, and is amortized to interest expense over the term of the notes using the effective interest rate method. The equity component is not remeasured as long as it continues to meet the conditions for equity classification. In accounting for the issuance costs related to the notes, we allocated the total amount of issuance costs incurred to liability and equity components based on their relative values. Issuance costs attributable to the liability component are being amortized using the effective interest rate method, to interest expense over the term of the notes. The issuance costs attributable to the equity component are recorded as a reduction of the equity component within additional paid-in capital.

Convertible Debt and Related Derivative Financial Instruments

In July 2020, the Company issued a Series A Senior Convertible Note (defined below) with an initial principal amount of $4,320. After the payoff of the Senior Convertible Note and deducting transaction costs, aggregate net cash proceeds to the Company was $1,751. In accordance with ASC Topic 815-40, Derivatives and Hedging - Contracts in an Entity's Own Stock, the Company evaluates all of its financial instruments, including warrants to purchase common stock issued in conjunction with convertible debt, to determine if such instruments are derivatives or contain features that qualify as embedded derivatives. For derivative financial instruments that are accounted for as liabilities, the derivative instrument is initially recorded at its fair value and is then re-valued at each reporting date, with changes in the fair value reported in the condensed consolidated statement of operations. The Company uses a Black-Scholes option-pricing model to value the warrants at inception and subsequent valuation dates.

Debt Issuance Costs

Direct costs incurred to issue non-revolving debt instruments are recognized as a reduction to the related debt balance in the accompanying condensed consolidated balance sheets and amortized to interest expense over the contractual term of the related debt using the effective interest method.

Fair Value of Financial Instruments

The Company follows the guidance in ASC 820, Fair Value Measurement, to account for financial assets and liabilities measured on a recurring basis. Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. As such, fair value is a market-based measurement that should be determined based on assumptions that market participants would use in pricing an asset or liability. The Company uses a fair value hierarchy, which distinguishes between assumptions based on market data (observable inputs) and an entity's own assumptions (unobservable inputs). The guidance requires fair value measurements be classified and disclosed in one of the following three categories:

- Level 1: Unadjusted quoted prices in active markets for identical assets or liabilities.
- Level 2: Quoted prices in markets that are not active or inputs which are observable, either directly or indirectly, for substantially the full term of the asset or liability.
- Level 3: Prices or valuation techniques that require inputs that are both significant to the fair value measurement and unobservable (i.e., supported by little or no market activity).

Determining which category an asset or liability falls within the hierarchy requires significant judgment. The fair value of the Company’s warrant issued with the 2020 Convertible Notes at September 30, 2020 was $1,242 and is recorded as Warrant Liability on the accompanying condensed consolidated balance sheets is considered a Level 3 fair value measurement as there are significant unobservable inputs used in the underlying valuations. The fair value measurements of the warrant are sensitive to changes in the unobservable inputs. Changes in those inputs might result in a higher or lower fair value measurement.

Loss per Common Share

Basic loss per common share is computed by dividing net loss applicable to common stockholders by the weighted average number of shares of common stock outstanding during the period. Restricted shares subject to repurchase provisions relating to early exercises under the Company's 2009 Equity Incentive Plan were excluded from basic shares outstanding. Diluted loss per common share is computed by giving effect to all potential shares of common stock, including those related to the Company's outstanding warrants and stock equity plans, to the extent dilutive. For all periods presented, these shares were excluded from the calculation of diluted loss per share of common stock because their inclusion would have been anti-dilutive. As a result, diluted loss per common share is the same as basic loss per common share for all periods presented.

The following table sets forth common stock equivalents that have been excluded from the computation of dilutive weighted average shares outstanding as their inclusion would have been anti-dilutive:

	September 30,	
	2020	2019
Convertible notes	7,221,740	21,740
Warrants	5,996,112	3,836,112
Options	1,211,828	1,720,339
Restricted stock units	2,223,773	2,103,363
Restricted shares	1,198	13,091
Total	16,654,651	7,694,645

Recently Adopted Accounting Pronouncements

In January 2017, the Financial Accounting Standards Board (the "FASB") issued Accounting Standards Update ("ASU") 2017-04, *Intangibles—Goodwill and Other (Topic 350): Simplifying the Test for Goodwill Impairment* ("ASU 2017-04"). ASU 2017-04 simplifies how all entities assess goodwill for impairment by eliminating Step 2 from the goodwill impairment test. As amended, the goodwill impairment test will consist of one step; comparing the fair value of a reporting unit with its carrying amount. An entity should recognize a goodwill impairment charge for the amount by which the carrying amount exceeds the reporting unit’s fair value. The Company adopted this standard on January 1, 2020. The adoption of this standard did not have a material impact on our consolidated financial statements or disclosures.

Recent Accounting Pronouncements Not Yet Adopted

In February 2016, the FASB issued ASU No. 2016-02, *Leases (Topic 842)* ("ASU 2016-02"). The core principle of ASU 2016-02 is that a lessee should recognize the assets and liabilities that arise from leases. For operating leases, a lessee is required to recognize a right-of-use asset and a lease liability, initially measured at the present value of the lease payments, in the statement of financial position. For leases with a term of 12 months or less, a lessee is permitted to make an accounting policy election by class of underlying asset not to recognize lease assets and lease liabilities. Under current U.S. GAAP, the Company recognizes rent expense on a straight-line basis for all operating leases, taking into account fixed accelerations, as well as reasonably assured renewal periods. In November 2019, the FASB issued ASU No. 2019-10 ("ASU 2019-10"). ASU 2019-10 delayed the effective date of ASU 2016-02 for certain types of businesses, including private companies. Under the Jumpstart Our Business Startups ("JOBS") Act, the Company has previously elected not to opt out of such extended transition period which means that when a standard is issued or revised and it has different application dates for public or private companies, the Company, as an Emerging Growth Company ("EGC"), can adopt the new or revised standard at the time private companies adopt the new or revised standard. The issuance of ASU 2020-05 further delayed the implementation of this guidance of the Company for one year. Although ASU 2020-05 would defer implementation for the Company by an additional year, the Company believes this guidance would still be effective for the Company for fiscal years beginning after December 15, 2020, as it would lose its status as an EGC at the latest on December 31, 2021. Although earlier application is permitted, the Company plans to implement this guidance beginning the first quarter of its fiscal year 2021. The Company currently does not expect the ASU 2016-02 to materially impact our results of operations; although, based upon our current operating leases outstanding, we believe this guidance may have a material impact on our consolidated balance sheet. We do not plan on recasting prior periods.

In June 2016, the FASB issued ASU No. 2016-13, *Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments* ("ASU 2016-13"). ASU 2016-13 introduces a model based on expected losses to estimate credit losses for most financial assets and certain other instruments. In addition, for available-for-sale debt securities with unrealized losses, the losses will be recognized as allowances rather than reductions in the amortized cost of the securities. As a Smaller Reporting Company ("SRC") as defined by the SEC, the standard is currently effective for the Company annual reporting periods beginning after December 15, 2022, with early adoption permitted for annual reporting periods beginning after December 15, 2019. We currently intend to adopt ASU No. 2016-13 effective January 1, 2023. Entities will apply the standard's provisions by recording a cumulative-effect adjustment to retained earnings. The Company currently does not expect the adoption of ASU 2016-13 to have a material impact on our consolidated financial statements and disclosures.

In December 2019, the FASB issued ASU No. 2019-12, *Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes* ("ASU 2019-12"), which simplifies the accounting for income taxes. Should the Company retain its EGC status through the fifth anniversary of the date of its initial public offering, this guidance will be effective for us in our financial statements and consolidated notes thereto for the fiscal year ending December 31, 2021 on a prospective basis. Early adoption is permitted. The Company is currently evaluating the impact of the new guidance on its condensed consolidated financial statements.

In August 2020, the FASB issued ASU 2020-06, *Debt – Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging – Contracts in Entity's Own Equity (Subtopic 815 – 40)*, ("ASU 2020-06"). ASU 2020-06 simplifies the accounting for certain financial instruments with characteristics of liabilities and equity, including convertible instruments and contracts on an entity's own equity. ASU 2020-06 is effective for SRCs for fiscal years beginning after December 15, 2023, and interim periods within those fiscal years. Early adoption is permitted, but no earlier than fiscal years beginning after December 15, 2020, including interim periods within those fiscal years. The Company is currently evaluating the impact of this guidance on its condensed consolidated financial statements.

3. Revenue

Disaggregation of Revenue

The Company derived 99% and 96% of its net revenues from within the United States for the three and nine months ended September 30, 2020, respectively. The Company derived over 98% of its net revenues from within the United States for each of the three and nine months ended September 30, 2019. During the three and nine months ended September 30, 2020, the Company derived 1% and 4%, respectively, of its net revenues from outside the United States. During the three and nine months ended September 30, 2019, the Company derived less than 2% of its net revenues from outside the United States.

The following table sets forth the Company's net revenues:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Net Revenues				
Platform subscriptions and services	$ 2,860	$ 5,152	$ 7,274	$ 15,065
Application transaction	270	485	709	1,397
Net revenues	$ 3,130	$ 5,637	$ 7,983	$ 16,462

Deferred Revenue

The Company's deferred revenue balance consisted of the following:

	September 30, 2020	December 31, 2019
Current deferred revenue		
Platform subscriptions and services revenue	$ 3,135	$ 3,278
Application transaction revenue	80	82
Total current deferred revenue	$ 3,215	$ 3,360
Non-current deferred revenue		
Platform subscriptions and services revenue	$ 2,003	$ 3,764
Total non-current deferred revenue	$ 2,003	$ 3,764
Total deferred revenue	$ 5,218	$ 7,124

Deferred revenue consists of customer billings or payments received in advance of the recognition of revenue under the arrangements with customers. The Company recognizes deferred revenue as revenue only when revenue recognition criteria are met. During the nine months ended September 30, 2020, the Company recognized revenue of $3,971 that was included in its deferred revenue balance as of December 31, 2019.

Remaining Performance Obligations

Remaining performance obligations were $8,797 as of September 30, 2020, of which the Company expects to recognize 55% as revenue over the next 12 months and the remainder thereafter.

4. Cash, Cash Equivalents, and Restricted Cash

The Company considers all investments with a maturity of three months or less from the date of acquisition to be cash equivalents. The Company had no cash equivalents as of September 30, 2020 and December 31, 2019.

As a result of the issuance of the Notes (defined and discussed further below), the Company had $91 and $86 in restricted cash as of September 30, 2020 and December 31, 2019, respectively.

The following table sets forth the Company's cash and restricted cash as of September 30, 2020 and December 31, 2019:

Cash and restricted cash	September 30, 2020	December 31, 2019
Cash	$ 1,143	$ 276
Restricted cash	91	86
Total cash and restricted cash	$ 1,234	$ 362

5. Factoring Agreement

On June 15, 2016, the Company entered into a factoring agreement with CSNK Working Capital Finance Corp. (d/b/a Bay View Funding) ("Bay View") whereby it sells select accounts receivable with recourse.

Under the terms of the agreement, Bay View may make advances to the Company of amounts representing up to 80% of the net amount of eligible accounts receivable. The factor facility is collateralized by a general security agreement over all the Company's personal property and interests. Fees paid to Bay View for factored receivables are 1.80% for the first 30 days and 0.65% for every ten days thereafter, to a maximum of 90 days total outstanding. The Company bears the risk of credit loss on the receivables. These receivables are accounted for as a secured borrowing arrangement and not as a sale of financial assets.

The amount of factored receivables outstanding was $439 and $1,077 as of September 30, 2020 and December 31, 2019, respectively. There was $2,561 and $1,923 available for future advances as of September 30, 2020 and December 31, 2019, respectively.

6. Debt

A summary of the Company's various debt obligations is set forth below:

	September 30, 2020	December 31, 2019
Series A Note (principal amount)	$ 3,201	$ —
Series B Note (principal amount)	1,013	—
Paycheck Protection Program Loan	2,850	—
Convertible notes	250	250
Promissory notes	905	855
Related-party bridge loans	360	—
Note payable	67	—
Total debt	$ 8,646	$ 1,105
Debt discount - warrants (2020 Convertible Notes)	(1,681)	—
Debt discount - issuance costs (2020 Convertible Notes)	(445)	—
Less: current maturities of long-term debt	(1,693)	—
Less: related-party debt	(555)	(195)
Long-term debt	$ 4,272	$ 910

2020 Convertible Notes

On July 15, 2020, the Company issued a Series A Senior Convertible Note (a "Series A Note") to an institutional investor with an initial principal amount of $4,320 (reflecting an original issue discount of $320) in a private placement. As noted above, the Company repaid in full the outstanding principal balance, accrued and unpaid interest and make-whole amount on the Senior Convertible Note issued on March 20, 2020 to the same investor. After the payoff of the Senior Convertible Note and deducting transaction costs, aggregate net cash proceeds to the Company was $1,751.

On the same date, the Company issued a Series B Senior Secured Convertible Note (a "Series B Note," and together with the Series A Note, the "2020 Convertible Notes") to the same investor with an initial principal amount of $17,280 (reflecting an original issue discount of $1,280). The investor paid for the Series B Note by delivering a secured promissory note (the "Investor Note") with an initial principal amount of $16,000.

The Company will receive cash under the Series B Note only upon cash repayment of the corresponding Investor Note. The investor may, at its option and at any time, voluntarily prepay an Investor Note, in whole or in part. In addition, the Investor Note is subject to mandatory prepayment, in whole or in part, upon the occurrence of certain events. The equity and other conditions include minimum price and volume thresholds, a minimum market capitalization at least $40 million. Mandatory prepayments of principal outstanding under the Investor Note that, together with the unrestricted principal may not exceed the lesser of (i) $5,000 and (ii) 10% of the 30 trading day market capitalization of the Company.

On September 15, 2020, the Company exercised its right under the Investor Note to require a mandatory prepayment of the Investor Note of $1,000, of which the Company received in cash. As a result, $1,000 in principal and $80 of original issue discount became unrestricted and owed under the Series B Note, after giving effect to netting of the remainder of the balance of the Investor Note and Series B Note.

Under certain circumstances, the Investor Note is automatically satisfied through netting against the Series B Note rather than through the payment of cash, which if triggered would reduce the amounts outstanding under the Series B Note and Investor Note.

The Series A Note and outstanding unrestricted principal balance on the Series B Note each bear interest at a rate of 7% per annum and includes a make-whole of interest from the date of issuance through the maturity date of December 31, 2021. The restricted principal of the Series B Note bears interest at a rate of 3% per annum. The 2020 Convertible Notes mature on December 31, 2021.

Monthly Payments

Starting on July 31, 2020 and on the last trading day of each month thereafter, and on the maturity date, the Company is required to make monthly amortization payments equal to 1/18th of the Series A Note, interest on the 2020 Convertible Notes and make-whole (the "Installment Amount"), which must be satisfied in cash at a redemption price equal to 107% of the Installment Amount. For the three and nine months ended September 30, 2020, the Company recorded $216 in a loss on extinguishment of debt in the condensed consolidated statements of operations and comprehensive loss related to monthly payments for the 2020 Convertible Notes.

Redemption

The Company may redeem the 2020 Convertible Notes at a price equal to 107% of the outstanding principal of the 2020 Convertible Notes (or, if greater, the market value of the shares underlying the 2020 Convertible Notes) and accrued and unpaid interest.

Subject to certain limited exceptions, the noteholder will have the right to have us redeem a portion of each 2020 Convertible Note not in excess of 40% of the net proceeds from a qualified capital fund raise at a redemption price of 107% of the portion of the 2020 Convertible Note subject to redemption or, if greater, the market value of the shares underlying the 2020 Convertible Note.

In connection with an Event of Default, the noteholder may require us to redeem in cash any or all of the 2020 Convertible Notes. The redemption price will equal 115% of the outstanding principal of the 2020 Convertible Notes to be redeemed, and accrued and unpaid interest.

In connection with a Change of Control (as defined in the 2020 Convertible Notes), a noteholder may require us to redeem all or any portion of the 2020 Convertible Notes. The redemption price per share will equal the greatest of (i) 115% of the outstanding principal to be redeemed, and accrued and unpaid interest, (ii) 115% of the market value of the shares of our common stock, and (iii) 115% of the aggregate cash consideration that would have been payable in respect of the shares of our common stock underlying the 2020 Convertible Notes.

Under certain circumstances, the unrestricted principal of the Series B Note is automatically netted against the principal amount of the corresponding Investor Note. Under certain circumstances, upon such netting, the original issue discount under the Series B Note associated with the principal amount thereof being redeemed will be deemed satisfied.

Conversion

The 2020 Convertible Notes are convertible, at the option of the noteholder, into shares of our common stock at a conversion price of $3.00 per share. The conversion price is subject to full ratchet anti-dilution protection and standard adjustments in the event of any stock split, stock dividend, stock combination, recapitalization or other similar transaction.

If an Event of Default has occurred under the 2020 Convertible Notes, the noteholder may elect to alternatively convert the 2020 Convertible Notes at a redemption premium of 115% at an alternate conversion price equal to the lower of (x) the conversion price then in effect and (y) the greater of the Floor Price (as defined in the 2020 Convertible Notes) and 85% of the lowest volume weighted average price in the 10 days prior to the applicable conversion date.

Covenants

The Company will be subject to certain customary affirmative and negative covenants regarding the incurrence of certain indebtedness, the existence of liens, the repayment of indebtedness, the payment of cash in respect of dividends, distributions or redemptions, and the transfer of assets, among other matters. We are also subject to a financial covenant that requires us to maintain available cash in the amount of $500 at the end of each fiscal quarter, subject to a right to cure.

Warrant

In addition to the 2020 Convertible Notes, we issued a warrant exercisable for3 years for the purchase of an aggregate of up to2,160,000 shares of the Company's common stock, at an exercise price of $4.00 per share to the same investor. The number of shares and exercise price are each subject to adjustment provided under the warrant. If, at the time of exercise of the warrant, there is no effective registration statement registering, or no current prospectus available for, the issuance of the shares, then the warrant may also be exercised, in whole or in part, by means of a “cashless exercise.” The warrant may not be exercised if, after giving effect to the exercise, the investor would beneficially own amounts in excess of those permissible under the terms of the warrant.

The following table sets forth the assumptions used and calculated aggregated fair values of the liability classified warrants:

	September 30, 2020	July 15, 2020
Strike price per share	$ 4.00	$ 4.00
Closing price per share	$ 0.92	$ 1.44
Term (years)	2.78	3
Volatility	155 %	177 %
Risk-free rate	0.16 %	0.18 %
Dividend Yield	—	—

Upon issuance of the warrant, the Company recorded a warrant liability as a discount to the 2020 Convertible Notes of $2,486. The Company revalued the warrant as of September 30, 2020, and accordingly recorded a gain of $1,244 as a result of the change in the fair value of its liability classified warrants for the three and nine months ended September 30, 2020.

Registration Rights Agreement

The Company was required to file a registration statement covering the resale of the shares underlying the 2020 Convertible Notes and to have the registration statement declared effective within 90 days of after the closing of the Purchase Agreement. The Company filed a registration statement, which was declared effective by the SEC on October 27, 2020. The Company obtained a waiver of the Registration Delay Payments (as defined in the Registration Rights Agreement) from the noteholder.

Participation Rights

In addition, the Company granted the noteholder participation rights in future equity and equity-linked offerings of securities, subject to certain limited exceptions, during the two years after the later of (a) the closing or (b) the date the Investor Note no longer remains outstanding, in an amount of up to30% of the securities being sold in such offerings.

Paycheck Protection Program ("PPP") Loan

On April 10, 2020, the Company received loan proceeds in the amount of $2,850 from JPMorgan Chase, N.A. pursuant to the PPP under the Coronavirus Aid, Relief and Economic Security Act (the "CARES Act"), which was enacted on March 27, 2020. The loan, which was in the form of a note dated April 9, 2020, matures on April 9, 2022, bears interest at a rate of 0.98% per annum. The Paycheck Protection Flexibility Act of 2020, extended the deferral period for loan payments to either (i) the date that SBA remits the borrower’s loan forgiveness amount to the lender or (ii) if the borrower does not apply for loan forgiveness, ten months after the end of the borrower’s loan forgiveness covered period. The note may be prepaid by the Company at any time prior to the maturity with no prepayment penalties.

The principal amount of the PPP loan is subject to forgiveness under the PPP upon Phunware's request to the extent that PPP loan proceeds are used to pay expenses permitted by the PPP. Although the Company currently anticipates a portion of the loan to be forgiven, there can be no assurance that any part of the PPP loan will be forgiven.

Senior Convertible Note

In March 2020, the Company issued a Senior Convertible Note to an institutional investor with an initial principal amount of $3,000 (the "Senior Convertible Note") for cash proceeds of $2,760 (reflecting an original issue discount of $240) in a private placement. After deducting the placement agent fee and other estimated expenses, net cash proceeds at the closing were approximately $2,371. The Senior Convertible Note bears interest at a rate of 7% per annum and includes a make-whole of interest from the date of issuance through the maturity date of December 31, 2021.

Monthly Payments and Conversion

Starting on April 30, 2020 and on the last trading day of the month and on the maturity date, the Company was required to make monthly payments. On each payment date, the Company was required to settle a principal repayment of approximately $143 plus interest thereon (the "Installment Amount") which was to be satisfied in shares of common stock of the Company at 100% of the Installment Amount, or at the election of the Company, in whole or in part, in cash, at 105% of the Installment Amount. Installment payments made in common stock were subject to customary equity conditions (including minimum floor price and volume thresholds), and were calculated on a conversion price equal to the lower of (x) the conversion price then in effect and (y) the greater of the Floor Price (as defined in the Senior Convertible Note) and 85% of the lowest volume weighted average price in the 10 days prior to the payment date.

In addition to the monthly payments described above, during the second quarter of 2020, the noteholder elected an acceleration of payments of monthly principal, interest and make-whole payments pursuant to certain provisions of the Senior Convertible Note. These accelerated payments were made in the form of shares of common stock of the Company at the rate then in effect per the Senior Convertible Note. As a result, the Company issued an aggregate of 1,763,675 shares for principal, interest and make-whole payments to the noteholder. In accounting for the accelerated conversions, the Company followed the guidance as prescribed in ASC 470 in accounting for derecognition (or conversion) of convertible debt with a cash conversion feature. The Company determined the fair value of the debt immediately prior to its derecognition, with the difference between the consideration transferred to the noteholder and the fair value of the debt representing the reacquisition of the embedded conversion option. A loss on extinguishment of $81 was recorded based on the difference between the calculated fair value of the debt immediately prior to its derecognition and the carrying amount of the debt component, including any unamortized debt discount or issuance costs.

Redemption

In conjunction with the issuance of the 2020 Convertible Notes, the Company redeemed the Senior Convertible Note in July 2020 at a price equal to 110% of the outstanding principal accrued and unpaid interest and make-whole interest. The cash payment to the noteholder to satisfy the Senior Convertible Note was in the amount $2,084. The redemption of the Senior Convertible Note resulted in a loss on extinguishment of $734.

Related-Party Bridge Loans

During the first quarter of 2020, various related parties loaned the Company $560. The Related-Party Bridge Loans ("RPBLs") bear an interest of 10% per annum and will mature on November 14, 2024. Payments on or payoff of the RPBLs may be made early with no penalty. The RPBLs and amounts thereof were made by the following related parties: (i) $204 by Cane Capital, LLC, an entity owned in part by our Chief Executive Officer; (ii) $151 by Curo Capital Appreciation Fund, LLC, an entity in which the Company's Chief Executive Officer and Chief Technology Officer serve as co-presidents, (iii) $155 by various individuals associated by familiar relationship with our Chief Executive Officer; and (iv) $50 by Luan Dang, the Company's Chief Technology Officer. Transaction costs related to the RPBLs were not significant.

Convertible Notes

In April 2019, the Company's board of directors authorized the issuance of $20,000 of convertible promissory notes (the "Convertible Notes"), which may be paid by investors in the form of cash or, in the Company's sole discretion, cryptocurrency, such as Bitcoin or Ethereum. The Convertible Notes will be sold in reliance on an exemption from registration. The Company may not issue Convertible Notes under the Purchase Agreement in excess of $20,000, in the aggregate, unless otherwise agreed by the holders of a majority in interest of the principal outstanding under the Convertible Notes. Transaction costs related to the issuance of the Convertible Note were immaterial.

The Convertible Notes bear ordinary interest at a rate of7% per annum. Interest under the Convertible Notes is payable quarterly beginning on September 30, 2019, and interest and principal under the Convertible Notes is payable monthly beginning on June 30, 2021. However, at the holder's election, interest payments may be deferred until the earlier of (i) repayment in full of all remaining unpaid principal and (ii) conversion. The Convertible Notes mature on June 3, 2024.

The Convertible Notes are convertible into shares of the Company's common stock at a price of $11.50 per share. Each Note will convert voluntarily upon a holder's election, or automatically upon the closing sale price of the Company's common stock equals or exceeds $17.25 per share for 20 out of 30 consecutive trading days, if a registration statement is then in effect covering the disposition of the converted shares. Assuming the Convertible Notes in an aggregate principal amount of $20,000 are sold under the Purchase Agreement, and assuming that all interest payments are deferred until maturity, the Convertible Notes would be convertible to a maximum total of approximately 2,347,826 shares of the Company's common stock.

Promissory Notes

In October 2019, the Company's board of directors authorized the issuance of $20,000 of promissory notes (the "Notes"), which may be paid by investors in the form of cash or, in the Company's sole discretion, cryptocurrency, such as Bitcoin or Ethereum. The Notes will be sold in reliance on an exemption from registration. The Company may prepay the Notes at any time without penalty. The Company may not issue Notes under the Purchase Agreement in excess of $20,000, in the aggregate, unless otherwise agreed by the holders of a majority in interest of the principal outstanding under the Notes. Transaction costs related to the issuance of the Notes were immaterial.

The Notes bear ordinary interest at a rate of10% per annum. Interest under the Notes is payable monthly beginning on November 30, 2019. During the term of the Notes, the Company will maintain a restricted bank account with a minimum balance of one year of interest payments on the aggregate principal balance of all Notes, which will be available for use exclusively to satisfy any payments owed by the Company under the Notes. The principal and unpaid accrued interest on the Notes will be due and payable on demand by the majority Note holders on or after the date that is 60 months following November 15, 2019. If an event of default occurs under the Notes, the majority Note holders may cause all principal and unpaid interest under the Notes to become immediately due and payable. In such event, the Notes will thereafter accrue interest at a rate of 12% per annum. Upon agreement between the Company and any senior creditor, the Notes will be subject to subordination in the right of payment to all current and future indebtedness or obligations of the Company for borrowed money to banks, commercial finance lenders, and other institutions regularly engaged in the business of lending money, or for factoring arrangements to parties providing such factoring.

During 2019, the Company issued a Note in the principal amount of $195, in exchange for cash consideration, to Cane Capital, LLC, an entity owned in part by Alan S. Knitowski, the Company's Chief Executive Officer and a member of its board of directors.

Interest Expense

The following table sets forth interest expense for the Company's various debt obligations included on the condensed consolidated statements of operations:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
2020 Convertible Notes	$ 279	$ —	$ 279	$ —
Accretion of debt discount - issuance costs	185	—	370	—
Accretion of debt discount - warrants	805	—	805	—
Senior Convertible Note	3	—	197	—
Factoring financing agreement	44	140	141	472
All other debt and financing obligations	46	5	131	12
Total	$ 1,362	$ 145	$ 1,923	$ 484

7. Commitments and Contingencies

Leases

The Company has operating office space leases in Austin, Texas; Irvine, California; San Diego, California; and Miami, Florida. Rent expense under operating leases totaled $207 and $631 for the three and nine months ended September 30, 2020, respectively. Rent expense under operating leases totaled $188 and $519 for the three and nine months ended September 30, 2019, respectively.

Future minimum annual lease payments as of September 30, 2020 under the Company’s operating leases are set forth as follows:

Future minimum lease obligations years ending December 31,	Lease Obligations
2020 (Remainder)	$ 203
2021	836
2022	725
2023	622
2024	609
Thereafter	208
Total	$ 3,203

Litigation

In 2017, the Company filed a breach of contract complaint against Uber Technologies, Inc. ("Uber") seeking approximately $3,000 (plus interest) for unpaid invoices for advertising campaign services provided for Uber in the first quarter of 2017. The case, captioned Phunware, Inc. v. Uber Technologies, Inc., Case No. CGC-17-561546 was filed in the Superior Court of the State of California County of San Francisco. Uber generally denied the allegations in the Company's complaint and also filed a cross-complaint against Phunware and Fetch Media, Ltd., the advertising agency Uber retained to run its mobile advertising campaign for the period 2014 through the first quarter of 2017, asserting numerous fraud and contract-based claims. In 2019, Uber filed its First Amended Cross-Complaint, naming new individual cross-defendants, Alan S. Knitowski, who serves as a director and the Company's President and Chief Executive Officer and former Phunware employees D. Stasiuk, M. Borotsik, and A. Cook, (collectively, the "Individual Defendants") alleging civil RICO violations and civil conspiracy to violate RICO, in addition to fraud, negligence, and unfair competition-based claims, and adding a fraud-based claim against Phunware. Uber’s First Amended Cross-Complaint alleges that cross-defendants fraudulently obtained approximately $17,000 from Uber, and claimed treble damages, general and punitive damages, and attorneys’ fees and costs. On October 9, 2020, the Company entered into a Settlement Agreement and Mutual General Release (the "Settlement Agreement") with Uber and certain other parties related to the Company's complaint against Uber, Uber's cross-complaint against the Company and Uber's amended cross-complaint against the Company and Individual Defendants. As provided in the Settlement Agreement, both parties have agreed to fully and finally settle, compromise, and resolve all disputes, differences and disagreements that have existed, now exist, or may exist between them that fall within the subject matter lawsuit. Furthermore, each party denies engaging in any wrongdoing whatsoever and specifically denies each and every allegation of wrongdoing alleged in the lawsuit. The Settlement Agreement provides that Phunware and its insurance carriers will pay a total sum of $6,000 to Uber, of which the Company's insurance carrier will pay $1,500 to settle Uber's claims against the Individual Defendants while the Company will pay a total of $4,500 to Uber in a series of installments beginning no later than December 31, 2020, and ending no later than September 30, 2021. The Settlement Agreement further provides that the Company and the Individual Defendants fully release claims against Uber relating to the lawsuit and upon receipt of the payments, Uber will fully release claims against the Company and the Individual Defendants relating to the lawsuit. The court will retain jurisdiction over the case until the terms of the Settlement Agreement have been fully satisfied. The court has set a dismissal review hearing for November 16, 2021. If the terms of the Settlement Agreement are fulfilled before that date, the parties will file requests to dismiss the action and the hearing will be taken off calendar. On November 5, 2020, Uber filed a request for dismissal with prejudice of claims against the Individual Defendants; Uber’s claims against Phunware remain until the terms of the Settlement Agreement have been fully satisfied. The Company recorded a loss of $4,500 for its portion of the settlement in Legal Settlement in its condensed consolidated statements of operations for the three and nine months ending September 30, 2020.

On December 17, 2019, certain stockholders (the "Plaintiffs") filed a lawsuit against the Company. The case, captioned Wild Basin Investments, LLC, et al. v. Phunware, Inc., et al.; Cause No. D-1-GN-19-008846 was filed in the 126th Judicial District Court of Travis County, Texas. The Plaintiffs invested in various early rounds of financing while the Company was private and claim the Company should not have subjected their shares to a 180-day "lock up" period. According to the Plaintiffs, the price of Phunware stock dropped significantly during the lock up period. The Plaintiffs seek unspecified damages in excess of $1,000. The Company maintains the Plaintiffs' claims are without merit and intends to contest vigorously the claims asserted in the lawsuit, but there can be no guarantees that a favorable resolution will be successful. All defendants have answered. The Court has not yet set a trial date or pretrial deadlines. The case is in early stage of discovery.

On March 9, 2020, Ellenoff Grossman & Schole LLP (“EGS”) filed a lawsuit against the Company. The complaint, captioned Ellenoff Grossman & Schole LLP versus Stellar Acquisition III, Corp a/k/a Stellar Acquisition III, Inc. n/k/a Phunware, Inc., was filed in the Supreme Court of the State of New York, New York County (Case No. 152585/2020). Pursuant to the complaint, EGS sought monetary damages in the amount of $690 for alleged unpaid invoices related to legal services rendered for Stellar in conjunction with the reverse merger with the Company, plus legal and court costs. On September 29, 2020, the Company consummated a Settlement Agreement and General Release (the "Settlement Agreement") with EGS. The Settlement Agreement provides that Phunware pay a total sum of $600 to EGS in a series of installments beginning no later than October 15, 2020, and ending no later than October 15, 2023. There is no penalty for prepayments. Pursuant to the Settlement Agreement, on September 30, 2020, EGS filed a Stipulation of Voluntary Discontinuance with Prejudice with the court. In conjunction with the execution of the Settlement Agreement, the Company also signed an Affidavit of Confession of Judgment ("Confession of Judgment"), which provides that should the Company default in any payment obligations under the Settlement Agreement, EGS shall be entitled to enter the Confession of Judgment with the Court against the Company for $690 less any payments made under the Settlement Agreement. The Company reclassified $690 from accounts payable to accrued expenses in the condensed consolidated balance sheet as of September 30, 2020 related to the settlement. In accordance with authoritative guidance, the Company will defer any settlement gain, if any, until it has fulfilled its payment obligations under the settlement.

On April 24, 2020, Sha-Poppin Gourmet Popcorn, LLC, individually and on behalf of a class of similarly situated parties (the “Popcorn Company”), filed a lawsuit against certain defendants, including the Company. The case captioned, Sha-Poppin Gourmet Popcorn, LLC v. JPMorgan Chase Bank, N.A., RCSH Operations, LLC, RCSH Operations, Inc (together d/b/a Ruth’s Chris Steakhouse), and Phunware, Inc., was filed in the Northern District of Illinois, Eastern Division. The Popcorn Company alleges that the Company was unjustly enriched by JPMorgan Chase for the Company's loan made pursuant to the PPP under the CARES Act. (See Note 6 for discussion related to the Company's CARES Act loan.) The Company filed a motion to dismiss the single claim against it and disputes the court's jurisdiction and the basis of the claim. The Company intends to defend the matter vigorously, but there can be no guarantees that a favorable resolution will be successful. Given the preliminary stage of the case, the Company is unable to predict the outcome of this dispute, or estimate the loss or range of loss, if any, associated with this matter.

From time to time, the Company is and may become involved in various legal proceedings in the ordinary course of business. The outcomes of our legal proceedings are inherently unpredictable, subject to significant uncertainties, and could be material to our operating results and cash flows for a particular reporting period. In addition, for the matters disclosed above that do not include an estimate of the amount of loss or range of losses, such an estimate is not possible, and we may be unable to estimate the possible loss or range of losses that could potentially result from the application of non-monetary remedies.

8. PhunCoin & PhunToken

PhunCoin

In 2018, PhunCoin, Inc., the Company’s wholly-owned subsidiary, launched an offering pursuant to Rule 506(c) of Regulation D (the "Reg D Offering") as promulgated under the Securities Act of rights to acquire a token denominated as "PhunCoin" (the "Rights"). In addition, in 2019, we commenced an offering of Rights pursuant to Regulation CF (the "Reg CF Offering"). PhunCoin, Inc. accepts payment in the form of cash and digital currencies for purchases of the Rights. The amount of PhunCoin to be issued to the purchaser is equal to the dollar amount paid by the purchaser divided by the price of PhunCoin at the time of issuance of PhunCoin during the launch of the Token Ecosystem (as defined below) before taking into consideration an applicable discount rate, which is based on the time of the purchase (early purchasers will receive a larger discount rate).

PhunCoin is expected to be issued to Rights holders the earlier of (i) the launch of the Company’s blockchain technology enabled rewards marketplace and data exchange ("Token Ecosystem"), (ii) one (1) year after the issuance of the Rights to the purchaser, or (iii) the date the Company determines that it has the ability to enforce resale restrictions with respect to PhunCoin pursuant to applicable federal securities laws. Proceeds from the Rights offering are generally not refundable; however, the Company believes it has a contractual obligation to use good faith efforts to issue a token to Rights holders under the token rights agreement. Holders of the Rights may be issued PhunCoin even if the Token Ecosystem is not yet operational. PhunCoin will have no usefulness until the Token Ecosystem is operational because PhunCoin is expected to only be useable on the Token Ecosystem. The ongoing coronavirus of 2019 pandemic has resulted in Phunware reducing human capital resources from the development of the Token Ecosystem to other initiatives of the organization. There can be no assurance as to when, or if, the Company will allocate resources to the development of the Token Ecosystem in the future or if the Company will be able to successfully launch the Token Ecosystem.

As of September 30, 2020, the Company has received aggregate cash proceeds from the Reg D Offering and Reg CF Offering of $1,207, pursuant to which the holders of the Rights will receive an aggregate of approximately 577.9 million PhunCoin if the launch of the Token Ecosystem occurs. The Reg CF Offering closed May 1, 2019. While the Reg D Offering is ongoing, the Company does not anticipate any additional proceeds to be raised.

PhunToken ("Phun")

During the second quarter of 2019, Phunware announced the launch of a separate token, Phun, which is meant to act as a medium of exchange within the Token Ecosystem. Phun will be issued through a separate, wholly-owned subsidiary, Phun Token International, available initially only to persons outside of the United States and Canada. Consumers may receive Phun for actively engaging in marketing campaigns; developers and publishers may receive Phun for utilizing Phunware’s loyalty software development kit in order to better engage, manage and monetize their consumers; and brands will gain access to more relevant, verifiable data by accessing Phunware’s data exchange and using Phun for their own loyalty programs. As of September 30, 2020, the Company has not sold any Phun.

9. Stockholders’ Equity

Common Stock

Total common stock authorized to be issued as of September 30, 2020 was 1,000,000,000 shares, with a par value of $0.0001 per share. At September 30, 2020 and December 31, 2019, there were 45,452,422 and 39,817,917 shares outstanding, inclusive of 1,198 and 6,219 restricted shares subject to repurchase for unvested shares related to early option exercises under the Company’s stock equity plans, respectively.

On August 14, 2020, the Company entered into an At-The-Market Issuance Sales Agreement (the “Sales Agreement”) with Ascendiant Capital Markets, LLC (“Ascendiant”), as sales agent, pursuant to which the Company may offer and sell, from time to time, through Ascendiant shares of common stock for an aggregate offering price of up to $15,000. Subject to the terms and conditions of the Sales Agreement, Ascendiant will use commercially reasonable efforts consistent with its normal trading and sales practices to sell shares from time to time based upon the Company’s instructions, including any price, time or size limits specified by the Company. Under the Sales Agreement, Ascendiant may sell shares by any method deemed to be an “at the market” offering as defined in Rule 415 under the U.S. Securities Act of 1933, as amended, or any other method permitted by law, including in privately negotiated transactions. During the three and nine months ended September 30, 2020, 1,301,665 shares of common stock were sold for gross proceeds of $1,493. Offering costs totaled $152.

During 2019, the Company issued an aggregate of 11,530,442 shares of common stock related to various cash and cashless (net) exercises of warrants for common stock. Cash exercises for warrants for 617,296 shares of common stock resulted in aggregate gross proceeds of approximately $6,184, of which $6,092 was received in cash, $92 was received in digital currencies. Furthermore, there were 13,975,359 warrants exercised under cashless (net) provisions resulting in the issuance of 10,913,146 shares of common stock.

Warrants

The Company has various warrants outstanding. A summary of the Company’s outstanding warrants is set forth below:

Warrant Type		Cash Exercise Price per share	Warrants Outstanding September 30, 2020	Warrants Outstanding December 31, 2019
2020 Convertible Note warrants	$	4.00	2,160,000	—
Common stock warrant (Series D-1)	$	5.54	14,866	14,866
Common stock warrants (Series F)	$	9.22	377,402	377,402
Public Warrants (PHUNW)	$	11.50	1,761,291	1,761,291
Private Placement Warrants	$	11.50	1,658,381	1,658,381
Unit Purchase Option Warrants	$	11.50	24,172	24,172
Total			5,996,112	3,836,112

10. Stock-Based Compensation

2018 Equity Incentive Plan

In 2018, our board of directors adopted, and our stockholders approved, the 2018 Equity Incentive Plan (the "2018 Plan"). The purposes of the 2018 Plan are to attract and retain the best available personnel for positions of substantial responsibility, to provide additional incentives to employees, directors and consultants who perform services to the Company, and to promote the success of our business. These incentives are provided through the grant of stock options, stock appreciation rights, restricted stock, restricted stock units, performance units and performance shares.

The number of shares of common stock available for issuance under the 2018 Plan will also include an annual increase on the first day of each fiscal year, equal to the lesser of: (i) 10% of the post-closing outstanding shares of common stock; (ii) 5% of the outstanding shares of common stock on the last day of the immediately preceding fiscal year; or (iii) such other amount as our board of directors may determine.

In addition, the shares of common stock reserved for issuance under the 2018 Plan also will include any shares of common stock subject to stock options, restricted stock units or similar awards granted under the 2009 Equity Incentive Plan (the "2009 Plan"), that, on or after the adoption of the 2018 Plan, expire or otherwise terminate without having been exercised in full and shares of common stock issued pursuant to awards granted under the 2009 Plan that are forfeited to or repurchased by us. As of September 30, 2020, the maximum number of shares of common stock that may be added to the 2018 Plan pursuant to the foregoing equals 1,213,026.

During the nine months ended September 30, 2020, restricted stock units were the only stock-based incentives granted under the 2018 PlanA summary of the Company's restricted stock unit activity under the 2018 Plan is set forth below:

	Shares		Weighted Average Grant Date Fair Value
Outstanding as of December 31, 2019	2,436,968	$	3.15
Granted	2,542,029		1.02
Released	(2,380,270)		2.08
Forfeited	(374,954)		2.96
Outstanding as of September 30, 2020	2,223,773	$	1.89

Not including the maximum number of shares from the 2009 Plan that may be added to the 2018 Plan noted above, the 2018 Plan had01,873 and 205,206 shares of common stock reserved for future issuances as of September 30, 2020 and December 31, 2019, respectively.

During the first quarter of 2020, we granted 123,084 restricted stock units to non-employee directors, each with a grant date fair value of $1.25 per share in lieu of cash compensation board fees for services provided. The awards vested immediately. We also granted 125,523 restricted stock units to non-employee directors, with a grant date fair value of $1.25 per share. The awards vest over ten months in four equal installments on March 26, 2020, June 26, 2020, September 18, 2020, and December 25, 2020, respectively, and are subject to service conditions. We also granted 756,000 restricted stock unit awards to team members with an average grant date fair value of $1.25 per share. The awards granted to team members vest over an average of

42 months with various installment and vesting dates, and are subject to service conditions. We also granted 610,000 restricted stock units to a non-employee service provider that were for the satisfaction of legal fees owed. The awards granted to the legal service provider vested immediately and had an average grant date fair value $0.89.

During the second quarter of 2020, we granted 85,996 restricted stock units to non-employee directors, each with a grant date fair value of $0.71 per share in lieu of cash compensation board fees for services provided. The awards vested immediately. We also granted 375,000 restricted stock unit awards to team members with an average grant date fair value of $0.67 per share. The awards granted to team members vest over 4 years with 25% vesting May 18, 2021, then equal quarterly installments thereafter until the final vesting period of May 18, 2024 and are subject to service conditions. We also granted 250,000 restricted stock units to a non-employee service provider that were for the satisfaction of legal fees owed. The awards granted to the legal service provider vested immediately and had an average grant date fair value $0.67.

During the third quarter of 2020, we granted 39,426 restricted stock units to non-employee directors, each with a grant date fair value of $1.28 per share in lieu of cash compensation board fees for services provided. The awards vested immediately. We also granted 12,000 restricted stock unit awards to team members with an average grant date fair value of $1.68 per share. The awards granted to team members vest over 4 years with 25% vesting May 18, 2021, then equal quarterly installments thereafter until the final vesting period of May 18, 2024 and are subject to service conditions. We also granted 155,000 restricted stock units to non-employee service providers that were for the satisfaction of legal and professional fees. The awards granted to the service providers have various vesting dates and had an average grant date fair value $1.52.

The restricted stock unit grants were valued based on the fair value of the Company's common stock on the date of grant.

2018 Employee Stock Purchase Plan

Also, in 2018, our board of directors adopted, and our stockholders approved, the 2018 Employee Stock Purchase Plan (the “2018 ESPP”). The 2018 ESPP will be administered by our board of directors or a committee appointed by the board (the “administrator”). The purpose of the 2018 ESPP is to provide eligible employees with an opportunity to purchase shares of our common stock through accumulated contributions. The 2018 ESPP permits participants to purchase shares of common stock through contributions (generally in the form of payroll deductions) of up to an amount of their eligible compensation determined by the administrator. Subject to certain other limitations or unless otherwise determined by the administrator, a participant may purchase a maximum of 2,000 shares of common stock during a purchase period. The offering periods under the 2018 ESPP will begin on such date as determined by the administrator and expire on the earliest to occur of (a) the completion of the purchase of shares on the last exercise date occurring within 27 months of the applicable enrollment date of the offering period on which the purchase right was granted, or (b) a shorter period established by the administrator prior to an enrollment date for all options to be granted on such enrollment date. Amounts deducted and accumulated by the participant are used to purchase shares of common stock on each exercise date. The purchase price of the shares will be determined by the administrator but in no event will be less than 85% of the lower of the fair market value of common stock on the enrollment date or on the exercise date. Participants may end their participation at any time during an offering period and will be paid their accrued contributions that have not yet been used to purchase shares of common stock. Participation ends automatically upon termination of employment with the Company.

The number of shares of common stock that may be made available for sale under the 2018 ESPP also includes an annual increase on the first day of each fiscal year beginning for the fiscal year following the fiscal year in which the first enrollment date (if any) occurs equal to the lesser of (i) 3% of the expected post-closing outstanding shares of common stock; (ii) 1.5% of the outstanding shares of common stock on the last day of the immediately preceding fiscal year; or such other amount as the administrator may determine.

As of September 30, 2020, the Company has not consummated an enrollment or offering period related to the 2018 ESPP. The 2018 ESPP had 272,942 shares of common stock available for sale and reserved for issuance as of September 30, 2020 and December 31, 2019.

2009 Equity Incentive Plan

In 2009, the Company adopted its 2009 Equity Incentive Plan (the “2009 Plan”), which allowed for the granting of incentive and non-statutory stock options, as defined by the Internal Revenue Code, to employees, directors, and consultants. The exercise price of the options granted was generally equal to the value of the Company’s common stock on the date of grant, as determined by the Company’s board of directors. The awards are exercisable and vest, generally over four years, in accordance with each option agreement. The term of each option is no more than ten years from the date of the grant. The 2009 Plan allows for options to be immediately exercisable, subject to the Company’s right of repurchase for unvested shares at the original exercise price. The total amount received in exchange for these shares has been included in accrued expenses on the accompanying condensed consolidated balance sheets and is reclassified to equity as the shares vest. As of September 30, 2020 and December 31, 2019, 1,198 and 6,219 shares were unvested amounting to $1 and $3 in accrued expenses, respectively. Effective with the adoption of the 2018 Plan, no additional grants will be made under the 2009 Plan.

A summary of the Company's stock option activity under the 2009 Plan and related information is as follows:

	Number of Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (years)	Aggregate Intrinsic Value
Outstanding as of December 31, 2019	1,465,450	$ 0.80	6.86	$ 771
Granted	—			
Exercised	(183,753)	0.52		
Forfeited	(69,869)	1.40		
Outstanding as of September 30, 2020	1,211,828	$ 0.80	6.46	$ 340
Exercisable as of September 30, 2020	1,008,747	$ 0.75	6.28	$ 295

For the nine months ended September 30, 2020, the aggregate intrinsic value of options exercised was $87 and the total fair value of options vested was $98.

Stock-Based Compensation

Compensation costs that have been included on the Company's condensed consolidated statements of operations and comprehensive loss for all stock-based compensation arrangements are detailed as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
Stock-based compensation	**2020**	**2019**	**2020**	**2019**
Cost of revenues	$ 104	$ 68	$ 217	$ 106
Sales and marketing	15	30	44	14
General and administrative	1,530	492	3,168	864
Research and development	59	94	29	127
Total stock-based compensation	$ 1,708	$ 684	$ 3,458	$ 1,111

The Company recognizes forfeitures as they occur. As of September 30, 2020, the unamortized fair value of the restricted stock units under the 2018 Plan was approximately $3,234. The weighted-average remaining recognition period over which these costs will be amortized was approximately 2.6 years. Unrecognized stock compensation expense for options granted under the 2009 Plan was $111 as of September 30, 2020.

11. Domestic and Foreign Operations

Identifiable long-lived assets attributed to the United States and international geographies are based upon the country in which the asset is located or owned. As of September 30, 2020 and December 31, 2019, all of the Company's identifiable long-lived assets were in the United States.

12. Related-Party Transactions

Accounts Payable

At September 30, 2020 and December 31, 2019, there is $255 recorded in accounts payable due to Nautilus Energy Management Corporation, an affiliate of a current member and former member of the Company's board of directors.

Debt

As more fully discussed in Note 6, *Debt*, the Company entered into a Note and RPBLs (both defined above) with certain related parties.

13. Subsequent Events

The Company has evaluated subsequent events through November 12, 2020.

Through the date noted above, the Company sold 3,868,027 shares of common stock pursuant to its at-the-market offering for gross proceeds of $3,259. Offering costs totaled $98.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

References in this section to "we," "us," "our," or "the Company" refer to Phunware. References to "management" or "management team" refer to Phunware's officers and directors.

The following discussion and analysis of Phunware's financial condition and results of operations should be read in conjunction with Phunware's condensed consolidated financial statements and the related notes to those statements presented in "*Part I – Item 1. Financial Statements.*" In addition to historical financial information, the following discussion and analysis contains forward-looking statements that involve risks, uncertainties and assumptions. Phunware's actual results and timing of selected events may differ materially from those anticipated in these forward-looking statements as a result of many factors, including those discussed in the section titled "*Risk Factors*" and elsewhere in this Report.

Certain figures, such as interest rates and other percentages, included in this section have been rounded for ease of presentation. Percentage figures included in this section have not in all cases been calculated on the basis of such rounded figures but on the basis of such amounts prior to rounding. For this reason, percentage amounts in this section may vary slightly from those obtained by performing the same calculations using the figures in our condensed consolidated financial statements or in the associated text. Certain other amounts that appear in this section may similarly not sum due to rounding.

Key Events and Recent Developments

On March 11, 2020, the World Health Organization declared the outbreak of the novel coronavirus ("COVID-19") as a pandemic. The outbreak is having an impact on the global economy, resulting in rapidly changing market and economic conditions. The COVID-19 outbreak in the United States has caused business disruption through mandated and voluntary closing of businesses and cancellation of events for which the Company's application transition business serves. Furthermore, the Company's platform software and services business serves healthcare and hospitals throughout the United States. While the disruption is currently expected to be temporary, there is considerable uncertainty around the duration of the closings and cancellations.

The related financial impact and duration cannot be reasonably estimated at this time. We implemented a work-from-home policy for our employees effective March 16, 2020 and we are taking steps to implement measures to reduce operating expenses. To that end, on March 27, 2020, the Company committed to cost reduction by furloughing 37 persons, or approximately 42% of its workforce. From March 27, 2020 to September 30, 2020, the Company had recalled five employees from furlough and eight voluntary terminated.

On April 10, 2020, the Company received loan proceeds in the amount of 2,850,336 from JPMorgan Chase, N.A. pursuant to the Paycheck Protection Program ("PPP") under the Coronavirus Aid, Relief and Economic Security Act ("CARES Act"), which was enacted on March 27, 2020. The principal amount of the PPP loan is subject to forgiveness under the PPP upon Phunware's request to the extent that PPP loan proceeds are used to pay qualifying expenses permitted by the PPP. Although the Company currently anticipates a portion of the loan to be forgiven, there can be no assurance that any part of the PPP loan will be forgiven. See Item 1A. Risk Factors, in Part II of this Quarterly Report on Form 10-Q and Part I of in our Annual Report on Form 10-K filed with the SEC on March 30, 2020, for additional information.

On October 9, 2020, the Company entered into a Settlement Agreement and Mutual General Release with Uber Technologies, Inc. ("Uber") and certain other parties related to the Company's complaint against Uber, Uber's cross-complaint against the Company and Uber's amended cross-complaint against the Company and Individual Defendants. The Company will pay to Uber a total sum of $4.5 million in a series of installments beginning no later than December 31, 2020, and ending no later than September 30, 2021. Refer to Note 7 "*Commitments and Contingencies"* in the notes to the condensed consolidated financial statements included in Part 1, Item 1 of this Quarterly Report on Form 10-Q.

Overview

Phunware, Inc. offers a fully integrated software platform that equips companies with the products, solutions and services necessary to engage, manage and monetize their mobile application portfolios globally at scale. Phunware's Multiscreen-as-a-Service ("MaaS") platform provides the entire mobile lifecycle of applications, media and data in one login through one procurement relationship. Its offerings include:

- Enterprise mobile software including content management, location-based services, marketing automation, business intelligence and analytics, alerts, notifications and messaging, audience engagement, audience monetization, vertical solutions and cryptonetworking, MaaS software application framework that pre-integrates all of our MaaS software ingredients for use within mobile application portfolios, solutions and services;

- Application transactions for mobile audience building, user acquisition, application discovery, audience engagement and audience monetization; and
- Data for data enrichment expanding connections and attributes of a Phunware ID and building custom audience for use in mobile media.

We intend to continue investing for long-term growth. We have invested and expect to continue investing in expanding our ability to market, sell and provide our current and future products and services to customers globally. We also expect to continue investing in the development and improvement of new and existing products and services to address customers' needs. We currently do not expect to be profitable in the near future.

Key Business Metrics

Our management regularly monitors certain financial measures to track the progress of its business against internal goals and targets. We believe that the most important of these measures include backlog and deferred revenue.

Backlog and Deferred Revenue. Backlog represents future amounts to be invoiced under our current agreements. At any point in the contract term, there can be amounts that we have not yet been contractually able to invoice. Until such time as these amounts are invoiced, they are not recorded in revenues, deferred revenue, accounts receivable or elsewhere in our condensed consolidated financial statements, and are considered by us to be backlog. We expect backlog to fluctuate up or down from period to period for several reasons, including the timing and duration of customer contracts, varying billing cycles and the timing and duration of customer renewals.

In addition, our deferred revenue consists of amounts that have been invoiced but that have not yet been recognized as revenues as of the end of a reporting period. Together, the sum of deferred revenue and backlog represents the total billed and unbilled contract value yet to be recognized in revenues, and provides visibility into future revenue streams.

The following table sets forth the backlog and deferred revenue:

	September 30, 2020	December 31, 2019
	(in thousands)	
Backlog	$ 3,391	$ 5,496
Deferred revenue	5,218	7,124
Total backlog and deferred revenue	$ 8,609	$ 12,620

Non-GAAP Financial Measures

Adjusted Gross Profit, Adjusted Gross Margin and Adjusted EBITDA

We report our financial results in accordance with accounting principles generally accepted in the United States of America ("GAAP"). We also use certain non-GAAP financial measures that fall within the meaning of Securities and Exchange Commission Regulation G and Regulation S-K Item 10(e), which may provide users of the financial information with additional meaningful comparison to prior period results. Our non-GAAP financial measures include adjusted gross profit, adjusted gross margin and adjusted earnings before interest, taxes, depreciation and amortization ("EBITDA") (our "non-GAAP financial measures"). Management uses these measures (i) to compare operating performance on a consistent basis, (ii) to calculate incentive compensation for its employees, (iii) for planning purposes including the preparation of its internal annual operating budget, and (iv) to evaluate the performance and effectiveness of operational strategies.

Our non-GAAP financial measures should be considered in addition to, not as a substitute for, or superior to, financial measures calculated in accordance with GAAP. They are not measurements of our financial performance under GAAP and should not be considered as alternatives to revenue or net loss, as applicable, or any other performance measures derived in accordance with GAAP and may not be comparable to other similarly titled measures of other businesses. Our non-GAAP financial measures have limitations as analytical tools and should not be considered in isolation or as a substitute for analysis of our operating results as reported under GAAP. Some of these limitations include:

- Non-cash compensation is and will remain a key element of our overall long-term incentive compensation package, although we exclude it as an expense when evaluating its ongoing operating performance for a particular period;
- Our non-GAAP financial measures do not reflect the impact of certain cash charges resulting from matters we consider not to be indicative of ongoing operations, and;
- other companies in our industry may calculate our non-GAAP financial measures differently than we do, limiting their usefulness as comparative measures.

We compensate for these limitations to our non-GAAP financial measures by relying primarily on its GAAP results and using our non-GAAP financial measures only for supplemental purposes. Our non-GAAP financial measures include adjustments for items that may not occur in future periods. However, we believe these adjustments are appropriate because the amounts recognized can vary significantly from period to period, do not directly relate to the ongoing operations of our business and complicate comparisons of our internal operating results and operating results of other peer companies over time. For example, it is useful to exclude non-cash, stock-based compensation expenses because the amount of such expenses in any specific period may not directly correlate to the underlying performance of our business operations and these expenses can vary significantly across periods due to timing of new stock-based awards. We may also exclude certain discrete, unusual, one-time, or non-cash costs, including transaction costs and the income tax impact of adjustments in order to facilitate a more useful period-over-period comparison of its financial performance. Each of the normal recurring adjustments and other adjustments described in this paragraph help management with a measure of our operating performance over time by removing items that are not related to day-to-day operations or are non-cash expenses.

The following table sets forth the non-GAAP financial measures we monitor.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
	(in thousands)		(in thousands)	
Adjusted gross profit (1)	$ 2,340	$ 3,294	5,460	8,839
Adjusted gross margin (1)	74.8 %	58.4 %	68.4 %	53.7 %
Adjusted EBITDA (2)	$ (1,258)	$ (1,521)	$ (6,253)	$ (7,136)

(1) Adjusted gross profit and adjusted gross margin are non-GAAP financial measures. We believe that adjusted gross profit and adjusted gross margin provide supplemental information with respect to gross profit and gross margin regarding ongoing performance. We define adjusted gross profit as net revenues less cost of revenue, adjusted to exclude one-time revenue adjustments, stock-based compensation and amortization of intangible assets. We define adjusted gross margin as adjusted gross profit as a percentage of net revenues.

(2) Adjusted EBITDA is a non-GAAP financial measure. We believe Adjusted EBITDA provides helpful information with respect to operating performance as viewed by management, including a view of our business that is not dependent on (i) the impact of our capitalization structure and (ii) items that are not part of day-to-day operations. We define adjusted EBITDA as net loss plus (i) interest expense, (ii) income tax expense, (iii) depreciation, (iv) amortization, and further adjusted for (v) one-time adjustments, and (vi) stock-based compensation expense.

Reconciliation of Non-GAAP Financial Measures

The following tables set forth a reconciliation of the most directly comparable GAAP financial measure to each of the non-GAAP financial measures discussed above.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	**2019**	**2020**	**2019**
	(in thousands)		(in thousands)	
Gross profit	$ 2,232	$ 3,219	$ 5,226	$ 8,705
Add back: Amortization of intangibles	4	7	17	28
Add back: Stock-based compensation	104	68	217	106
Adjusted gross profit	$ 2,340	$ 3,294	$ 5,460	$ 8,839
Adjusted gross margin	74.8 %	58.4 %	68.4 %	53.7 %

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	**2019**	**2020**	**2019**
	(in thousands)		(in thousands)	
Net loss	$ (8,567)	$ (2,426)	$ (16,041)	$ (8,987)
Add back: Depreciation and amortization	33	76	120	251
Add back: Interest expense	1,362	145	1,923	484
Add back: Income tax expense	—	—	—	5
EBITDA	(7,172)	(2,205)	(13,998)	(8,247)
Add Back: Stock-based compensation	1,708	684	3,458	1,111
Add Back: Legal settlement	4,500	—	4,500	—
Add Back: Loss on extinguishment of debt	950	—	1,031	—
Less: Fair value adjustment for warrant liabilities	(1,244)	—	(1,244)	—
Adjusted EBITDA	$ (1,258)	$ (1,521)	$ (6,253)	$ (7,136)

The above non-GAAP financial measures are inclusive of an acceleration of revenue related to a contract termination by a customer during the current quarter. Refer to *Results of Operations - Net Revenues* below for further discussion.

Components of Results of Operations

Revenue and Gross Profit

There are a number of factors that impact the revenue and margin profile of the services and technology offerings we provide, including, but not limited to, solution and technology complexity, technical expertise requiring the combination of products and types of services provided, as well as other elements that may be specific to a particular client solution.

Platform Subscriptions and Services Revenue. Subscription revenue is derived from software license fees, which comprise subscription fees from customers licensing the Company's Software Development Kits (SDKs), which includes accessing the MaaS platform and/or MaaS platform data; application development service revenue from the development of customer applications, or apps, which are built and delivered to customers; and support fees.

Subscription revenue from SDK licenses gives the customer the right to access the Company's MaaS platform. Application development revenue is derived from development services around designing and building new applications or enhancing existing applications. Support revenue is comprised of support and maintenance fees of customer applications, software updates, and technical support for application development services for a support term.

From time to time, the Company also provides professional services by outsourcing employees' time and materials to customers.

Platform subscriptions and services gross profit is equal to subscriptions and services revenue less the cost of personnel and related costs for our support and professional services employees, external consultants, stock-based compensation and allocated overhead. Costs associated with our development and project management teams are generally recognized as incurred. Costs directly attributable to the development or support of applications relating to platform subscription customers are included in cost of sales, whereas costs related to the ongoing development and maintenance of Phunware's MaaS platform are expensed in research and development. As a result, platform subscriptions and services gross profit may fluctuate from period to period.

Application Transaction Revenue. We also generate revenue by charging advertisers to deliver advertisements (ads) to users of mobile connected devices. Depending on the specific terms of each advertising contract, we generally recognize revenue based on the activity of mobile users viewing these ads. Fees from advertisers are commonly based on the number of ads delivered or views, clicks, or actions by users on mobile advertisements delivered, and we recognize revenue at the time the user views, clicks, or otherwise acts on the ad. We sell ads through several offerings: cost per thousand impressions, cost per click and cost per action. In addition, we generate application transaction revenue thru in-app purchases from application on our platform.

Application transaction gross profit is equal to application transaction revenue less cost of revenue associated with application transactions. Application transaction gross profit is impacted by the cost of direct premium, performance and network cost as well as based on the activity of mobile users viewing ads and marketing engagements through mobile applications. As a result, our application transaction gross profit may fluctuate from period to period due to variable activity of mobile users.

Gross Margin

Gross margin measures gross profit as a percentage of revenue. Gross margin is generally impacted by the same factors that affect changes in the mix of subscriptions and services and application transactions.

Operating Expenses

Our operating expenses include sales and marketing expenses, general and administrative expenses, research and development expenses, depreciation and amortization of acquired intangible assets. Personnel costs are the most significant component of operating expenses and consist of salaries, benefits, bonuses, stock-based compensation and, in sales and marketing expense, commissions. Legal settlements pertaining to litigation brought as a result of the Company's operations is also included in the Company's operating expenses.

Sales and Marketing Expense. Sales and marketing expense is comprised of compensation, commission expense, variable incentive pay and benefits related to sales personnel, along with travel expenses, other employee related costs, including stock-based compensation and expenses related to marketing programs and promotional activities. We expect our sales and marketing expense to increase in absolute dollars as we increase our sales and marketing organizations as we plan to increase revenue but may fluctuate as a percentage of our total revenue from period to period.

General and Administrative Expense. General and administrative expense is comprised of compensation and benefits of administrative personnel, including variable incentive pay and stock-based compensation, bad debt expenses and other administrative costs such as facilities expenses, professional fees and travel expenses. We expect to incur additional general and administrative expenses as a result of operating as a public company, including expenses related to compliance with the rules and regulations of the SEC and listing standards of Nasdaq, additional insurance expenses, investor relations activities and other administrative and professional services. We also expect to increase the size of our general and administrative function to support the growth of our business. As a result, we expect that our general and administrative expenses will increase in absolute dollars but may fluctuate as a percentage of our total revenue from period to period.

Research and Development Expense. Research and development expenses consist primarily of employee compensation costs and overhead allocation. We believe that continued investment in our platform is important for our growth. As a result, we expect our research and development expenses will increase in absolute dollars as our business grows but may fluctuate as a percentage of revenue from period to period.

Interest Expense

Interest expense includes interest related to our outstanding debt, including amortization of discounts and deferred issuance costs, as well as, factoring fees related to our factoring financing arrangement.

Our board of directors has authorized two different debt offerings allowing the Company to seek up to $20 million in each debt offering. We further have entered into certain related party bridge loans and multiple convertible note arrangements.

Refer to Note 5 "*Factoring Agreement*" and Note 6 "*Debt*" in the notes to the condensed consolidated financial statements included Part I, Item 1 of this Quarterly Report on Form 10-Q for more information on our factoring arrangement and debt offerings, respectively.

We also may seek additional debt financings to fund the expansion of our business or to finance strategic acquisitions in the future, which may have an impact on its interest expense.

Results of Operations

Net Revenues

	Three Months Ended September 30,		Change	
	2020	2019	Amount	%
	(in thousands)			
Net Revenues				
Platform subscriptions and services	$ 2,860	$ 5,152	$ (2,292)	(44.5)%
Application transaction	270	485	(215)	(44.3)%
Net revenues	$ 3,130	$ 5,637	$ (2,507)	(44.5)%
Platform subscriptions and services as a percentage of net revenues	91.4 %	91.4 %		
Application transactions as a percentage of net revenues	8.6 %	8.6 %		

	Nine Months Ended September 30, 2020		Change	
	2020	2019	Amount	%
	(in thousands)			
Net Revenues				
Platform subscriptions and services	$ 7,274	$ 15,065	$ (7,791)	(51.7)%
Application transaction	709	1,397	(688)	(49.2)%
Net revenues	$ 7,983	$ 16,462	$ (8,479)	(51.5)%
Platform subscriptions and services as a percentage of net revenues	91.1 %	91.5 %		
Application transactions as a percentage of net revenues	8.9 %	8.5 %		

Net revenues decreased $2.5 million, or (44.5)%, for the three months ended September 30, 2020 compared to the corresponding period in 2019. Platform subscriptions and services revenue decreased $2.3 million, or (44.5)%, driven by the completion of our statement of work with Fox Networks Group ("Fox") on September 30, 2019. Revenue from Fox was approximately $3.1 million three months ended September 30, 2019. This decrease was partially offset by an acceleration of revenue related to the termination of a customer contract which represented 21% of the Company's revenue during the period, as well as fulfillment of other customer contracts. See the subheading titled, "*Concentrations of Credit Risk,*" in Note 1, "*The Company and Basis of Presentation*" in the notes to the condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q.

Application transaction revenue decreased $0.2 million, or (44.3)%, for the three months ended September 30, 2020, compared to the corresponding period in 2019, primarily because of decrease in app store revenue and the various decreased or ceased advertising campaigns.

Net revenues decreased $8.5 million, or (51.5)%, for the nine months ended September 30, 2020 compared to the corresponding period in 2019. Platform subscriptions and services revenue decreased $7.8 million, or (51.7)%, driven by the completion of our statement of work with Fox, as noted above. Revenue from Fox was approximately $9.5 million nine months ended September 30, 2019. This decrease was partially offset by acceleration of revenue as a result of the contract termination noted above, as well as, the fulfillment of other customer contracts.

Application transaction revenue decreased $0.7 million, or (49.2)%, for the nine months ended September 30, 2020, compared to the corresponding period in 2019, primarily because of the various decreased or ceased advertising campaigns.

Cost of Revenues, Gross Profit and Gross Margin

	Three Months Ended September 30,		Change	
	2020	2019	Amount	%
	(in thousands)			
Cost of Revenues				
Platform subscriptions and services	$ 845	$ 2,299	$ (1,454)	(63.2)%
Application transaction	53	119	(66)	(55.5)%
Total cost of revenues	$ 898	$ 2,418	$ (1,520)	(62.9)%
Gross Profit				
Platform subscriptions and services	2,015	$ 2,853	$ (838)	(29.4)%
Application transaction	217	366	(149)	(40.7)%
Total gross profit	$ 2,232	$ 3,219	$ (987)	(30.7)%
Gross Margin				
Platform subscriptions and services	70.5 %	55.4 %		
Application transaction	80.4 %	75.5 %		
Total gross margin	71.3 %	57.1 %		

	Nine Months Ended September 30, 2020		Change	
	2020	2019	Amount	%
	(in thousands)			
Cost of Revenues				
Platform subscriptions and services	$ 2,640	$ 7,407	$ (4,767)	(64.4)%
Application transaction	117	350	(233)	(66.6)%
Total cost of revenues	$ 2,757	$ 7,757	$ (5,000)	(64.5)%
Gross Profit				
Platform subscriptions and services	4,634	$ 7,658	$ (3,024)	(39.5)%
Application transaction	592	1,047	(455)	(43.5)%
Total gross profit	$ 5,226	$ 8,705	$ (3,479)	(40.0)%
Gross Margin				
Platform subscriptions and services	63.7 %	50.8 %		
Application transaction	83.5 %	74.9 %		
Total gross margin	65.5 %	52.9 %		

Total gross profit decreased $1.0 million, or (30.7)% and $3.5 million, or (40.0)% for the three and nine months ended September 30, 2020, respectively, when compared to the corresponding period of 2019, due to the revenue items described above, as well as lower application transaction costs due to decreased or ceased advertising campaigns.

Operating Expenses

	Three Months Ended September 30,		Change	
	2020	2019	Amount	%
	(in thousands)			
Operating expenses				
Sales and marketing	$ 383	$ 705	$ (322)	(45.7)%
General and administrative	4,276	3,754	522	13.9 %
Research and development	572	1,052	(480)	(45.6)%
Legal Settlement	4,500	—	4,500	100.0 %
Total operating expenses	$ 9,731	$ 5,511	$ 4,220	76.6 %

	Nine Months Ended September 30, 2020		Change	
	2020	2019	Amount	%
	(in thousands)			
Operating expenses				
Sales and marketing	$ 1,265	$ 2,094	$ (829)	(39.6)%
General and administrative	11,981	11,699	282	2.4 %
Research and development	1,811	3,438	(1,627)	(47.3)%
Legal Settlement	4,500	—	4,500	100.0 %
Total operating expenses	$ 19,557	$ 17,231	$ 2,326	13.5 %

Sales and Marketing

Sales and marketing expense decreased $0.3 million, or (45.7)% for the three months ended September 30, 2020 compared to the corresponding period of 2019, primarily due to reduced employee compensation costs as a result of lower headcount of $0.1 million and $0.2 million related to marketing events and travel.

Sales and marketing expense decreased $0.8 million, or (39.6)% for the nine months ended September 30, 2020 compared to the corresponding period of 2019, primarily due to reduced employee compensation costs as a result of lower headcount of $0.4 million. Other decreases of $0.2 million due to reduction of marketing related events and expenditures and $0.2 million due to reduction in travel and consulting expense.

General and Administrative

General and administrative expense increased $0.5 million, or 13.9% for the three months ended September 30, 2020 compared to the corresponding period of 2019, due to increase of $1 million in stock-based compensation and $0.4 million in legal fees mainly related to our litigation with Uber, as described in detail in the section titled “Legal Proceedings,” in Part II, Item 1 of this Quarterly Report on Form 10-Q . These decreases were primarily offset by $0.4 million reduction in IT related expenses such as software and other miscellaneous office expenses, $0.3 million in professional and contract labor expenses and $0.2 million in settlements of accounts payable balances.

General and administrative expense increased $0.3 million, or 2.4% for the nine months ended September 30, 2020 compared to the corresponding period of 2019, due to increase of $2.3 million in stock-based compensation and $0.3 million in legal fees mainly related to our litigation with Uber. These decreases were primarily offset by $0.8 million in software and hosting expenses, $0.7 million in professional and contract labor expenses, $0.3 million for payroll and related costs due to a decrease in headcount, $0.2 million in travel expense, $0.2 million in settlements of accounts payable balances previously expensed and $0.1 million in bad debt expense.

Research and Development

Research and development expense decreased $0.5 million, or (45.6)% and $1.6 million, or (47.3)% for the three and nine months ended September 30, 2020, respectively, compared to the corresponding period of 2019, primarily due to reduced employee compensation costs as a result of lower headcount, travel expense and stock-based compensation.

Legal Settlement

Legal settlement of $4.5 million relates to the settlement of the Company's litigation with Uber as described in detail in Note 7 "*Commitments and Contingencies"* in the notes to the condensed consolidated financial statements included in Part 1, Item 1 of this Quarterly Report on Form 10-Q.

Other expense

	Three Months Ended September 30,		Change	
	2020	2019	Amount	%
	(in thousands)			
Other expense				
Interest expense	$ (1,362)	$ (145)	$ (1,217)	839.3 %
Loss on extinguishment of debt	(950)	—	(950)	100.0 %
Fair value adjustment for warrant liabilities	1,244	—	1,244	100.0 %
Other income (expense)	—	11	(11)	(100.0)%
Total other expense	$ (1,068)	$ (134)	$ (934)	697.0 %

	Nine Months Ended September 30, 2020		Change	
	2020	2019	Amount	%
	(in thousands)			
Other expense				
Interest expense	$ (1,923)	$ (484)	$ (1,439)	297.3 %
Loss on extinguishment of debt	(1,031)	—	(1,031)	100.0 %
Fair value adjustment for warrant liabilities	1,244	—	1,244	100.0 %
Other income (expense)	—	28	(28)	(100.0)%
Total other expense	$ (1,710)	$ (456)	$ (1,254)	275.0 %

Other expense increased $0.9 million and $1.3 million for the three and nine months ended September 30, 2020, respectively, when compared to the corresponding period of 2019, primarily due to losses on extinguishment of debt and interest related to our debt borrowings as further described in Note 6 "*Debt"* in the notes to the condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q. This is partially offset by gain in fair value adjustment for warrant liabilities and by a lower amount of financing used, and corresponding interest under our factoring financing arrangement.

Liquidity and Capital Resources

As of September 30, 2020, we held total cash (including restricted cash) of $1.2 million, of which over 99% of our cash was held in the United States.

In April 2019, the Company's board of directors authorized the issuance of $20 million of convertible promissory notes (the "Convertible Notes"). The Convertible Notes bear ordinary interest at a rate of 7% per annum and mature on June 3, 2024. The Convertible Notes are convertible into shares of the Company's common stock at a price of $11.50 per share. Each Convertible Note will convert voluntarily upon a holder's election, or automatically upon the closing sale price of the Company's common stock equals or exceeds $17.25 per share for 20 out of 30 consecutive trading days, if a registration statement is then in effect covering the disposition of the converted shares. The Company has one Convertible Note with a balance outstanding of $250 thousand as of September 30, 2020. Refer to Note 6 "*Debt*" in the notes to the condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q for information on the Convertible Notes.

In October 2019, the Company's board of directors authorized the issuance of $20 million of promissory notes (the "Notes"). The Notes bear ordinary interest at a rate of 10% per annum. During the term of the Notes, the Company will maintain a restricted bank account with a minimum balance of one year of interest payments on the aggregate principal balance of all Notes, which will be available for use exclusively to satisfy any payments owed by the Company under the Notes. The principal and unpaid accrued interest on the Notes will be due and payable on demand by the majority Note holders on or after the date that is 60 months following November 15, 2019. The Notes have a balance outstanding of $905 thousand as of September 30, 2020. Refer to Note 6 "*Debt*" in the notes to the condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q for information on the Notes.

During the first quarter of 2020, various related parties loaned the Company $560 thousand. The Related-Party Bridge Loans ("RPBLs") have an interest of 10% per annum and will mature on November 14, 2024. Payments on or payoff of the RPBLs may be made early with no penalty. Refer to Note 6 "*Debt*" in the notes to the condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q for information on the RPBLs.

On March 19, 2020, the Company entered into a Securities Purchase Agreement for the sale of a Senior Convertible Note with an institutional investor with a principal amount of $3.0 million (the "Senior Convertible Note") for a cash purchase price of approximately $2.8 million (reflecting an original issue discount of $0.2 million) in a private placement that closed on March 20, 2020. After deducting the placement agent fee and other estimated expenses, net cash proceeds at the closing were approximately $2.4 million. In addition, we granted the noteholder participation rights in future equity and equity-linked offerings of securities during the two years after the closing in an amount of up to 30% of the securities being sold in such offerings. The Senior Convertible Note was redeemed for cash and paid in full with the issuance of the 2020 Convertible Notes on July 15, 2020. Refer to Note 6 "*Debt*" in the notes to the condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q for information on the Senior Convertible Notes.

On April 10, 2020, the Company received loan proceeds in the amount of $2.85 million from JPMorgan Chase, N.A. pursuant to the PPP ("PPP Loan") under the CARES Act. The loan, which was in the form of a note dated April 9, 2020, matures on April 9, 2022, bears interest at a rate of 0.98% per annum. The Paycheck Protection Flexibility Act of 2020, extended the deferral period for loan payments to either (i) the date that SBA remits the borrower's loan forgiveness amount to the lender or (ii) if the borrower does not apply for loan forgiveness, ten months after the end of the borrower's loan forgiveness covered period. The note may be prepaid by the Company at any time prior to the maturity with no prepayment penalties. Refer to Note 6 "*Debt*" in the notes to the condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q for information on the PPP Loan.

On July 15, 2020, the Company issued a Series A Senior Convertible Note (a "Series A Note") to an institutional investor with an initial principal amount of $4,320 (reflecting an original issue discount of $320) in a private placement. As noted above, the Company repaid in full the outstanding principal balance, accrued and unpaid interest and make-whole amount on the Senior Convertible Note issued on March 20, 2020 to the same investor. After the payoff of the Senior Convertible Note and deducting transaction costs, aggregate net cash proceeds to the Company was $1,751. On the same date, the Company issued a Series B Senior Secured Convertible Note (a "Series B Note," and together with the Series A Note, the "2020 Convertible Notes") to the same investor which the noteholder paid for by delivering an offsetting secured promissory note (the "Investor Note"). On September 15, 2020, the Company exercised its right under the Investor Note to require a mandatory prepayment of the Investor Note of $1,000, which the Company received in cash. The Series A Note and outstanding balance on the Series B Note each bear interest at a rate of 7% per annum and includes a make-whole of interest from the date of issuance through the maturity date of December 31, 2021. Refer to Note 6 "*Debt*" in the notes to the condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q for information on the 2020 Convertible Notes.

Going Concern

The Company has a history of operating losses and negative operating cash flows. Although the Company continues to focus on growing its revenues, it expects these trends to continue into the foreseeable future. We will be required to raise additional capital through debt or equity financings and/or reduce operating expenses. Despite a history of successfully implementing similar plans to alleviate adverse financial conditions, these sources of working capital are not currently assured. There can be no assurance that we will be able to consummate such financings on favorable terms or at all. These conditions raise substantial doubt about our ability to continue as a "going concern".

The following table summarizes our cash flows for the periods presented:

	Nine Months Ended September 30,		Change	
(in thousands, except percentages)	**2020**	**2019**	**Amount**	**%**
Consolidated statement of cash flows				
Net cash used in operating activities	$ (6,515)	$ (5,899)	$ (616)	10.4 %
Net cash provided by investing activities	—	70	(70)	(100.0)%
Net cash provided by (used in) financing activities	7,417	(409)	7,826	(1,913.4)%

Operating Activities

The primary source of cash from operating activities is receipts from the sale of platform subscriptions and services and application transactions to customers. The primary uses of cash from operating activities are payments to employees for compensation and related expenses, publishers and other vendors for the purchase of digital media inventory and related costs, sales and marketing expenses and general operating expenses.

We utilized $6.5 million of cash from operating activities during the nine months ended September 30, 2020, primarily resulting from a net loss of $16.0 million, as adjusted $3.5 million for stock-based compensation, $1.2 million for amortization of debt discount and deferred financing costs, $1.2 million for gain on the change in fair value of warrants and $1.0 million for loss on extinguishment of debt. In addition, certain changes in our operating assets and liabilities resulted in significant cash increases (decreases) as follows: $0.5 million from an increase in accounts payable, $1.3 million from an increase in accrued expenses, $4.5 million from an increase in legal settlement accrual, $0.6 million from an increase in account receivable, $(1.9) million from an decrease in deferred revenue and $(0.1) million from an decrease in prepaid and other assets.

The Company utilized $5.9 million of cash from operating activities during the nine months ended September 30, 2019, primarily resulting from a net loss of $9.0 million, as adjusted $0.2 million for depreciation and amortization, $0.1 million for allowance for doubtful receivables and $1.1 million for stock-based compensation. In addition, certain changes in our operating assets and liabilities resulted in significant cash increases (decreases) as follows: $(0.3) million from a decrease in accounts payable, $1.0 million from an increase in accrued expenses, $0.3 million from an increase in account receivable, and $0.8 million from an increase in deferred revenue.

Investing Activities

Investing activities for the nine months ended September 30, 2019 consisted of the sale of digital currencies received for warrant exercises.

Financing Activities

Our financing activities during the nine months ended September 30, 2020 consisted of proceeds from various debt borrowings offset by net repayments on our financing factoring agreement. We acquired $7.4 million of cash from financing activities, as a result of $10.8 million from new issuances of debt (inclusive of $0.6 million from related parties) and $1.3 million from our at-the-market offering of common stock. These sources of financing were partially offset of $4.1 million of payments on debt (inclusive of $0.2 million to related parties), $0.6 million in net repayments on our factoring financing agreement. Refer to the notes to the condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q for information on the Company's financing activities.

Financing activities during the nine months ended September 30, 2019 consisted of redemptions and dividends of the Series A convertible preferred stock, as well as net repayments on the Company's financing factoring agreement. These payments were mostly offset by proceeds from warrant exercises, convertible note, PhunCoin deposits and exercises of options to purchase common stock. The Company utilized $0.4 million of cash from financing activities, primarily as follows: $(6.2) million from redemptions and dividend payments of Series A convertible preferred stock, $(0.9) million of repayments from the Company’s factoring financing agreement; mostly offset by $6.1 million provided by warrant exercise, $0.3 million provided from convertible notes borrowings, $0.2 million from PhunCoin deposits, and $0.2 million from exercises of options to purchase common stock.

Off-Balance Sheet Arrangements

During the periods ended September 30, 2020 and December 31, 2019, the Company did not have any off-balance sheet arrangements, as defined in Item 303(a)(4)(ii) of SEC Regulation S-K, such as the use of unconsolidated subsidiaries, structured finance, special purpose entities or variable interest entities.

Indemnification Agreements

In the ordinary course of business, the Company provides indemnifications of varying scope and terms to customers, vendors, lessors, business partners and other parties with respect to certain matters, including, but not limited to, losses arising out of breach of such agreements, solutions to be provided by the Company or from intellectual property infringement claims made by third parties. In addition, the Company has entered into indemnification agreements with directors and certain current and former officers and employees that will require the Company, among other things, to indemnify them against certain liabilities that may arise by reason of, or are related to, their status or service as directors, officers or employees.

Recent Accounting Pronouncements

Refer to Note 2, "*Significant Accounting Policies*", in the notes to our condensed consolidated financial statements for analysis of recent accounting pronouncements that are applicable to our business.

Summary of Significant Accounting Policies

Management's discussion and analysis of our financial condition and results of operations is based on our financial statements, which have been prepared in accordance with GAAP. The preparation of these financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements, as well as the reported revenues generated and expenses incurred during the reporting periods. Our estimates are based on our historical experience and on various other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

Except for the changes described in Note 2, "*Significant Accounting Policies*," in the notes to our condensed consolidated financial statements related to the issuance of the Senior Convertible Note and 2020 Convertible Notes and the adoption of ASU 2017-04, there have been no material changes to our critical accounting policies and estimates as compared to the critical accounting policies and estimates disclosed in our Annual Report on Form 10-K filed with the SEC on March 30, 2020 for the year ended December 31, 2019.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

Not applicable.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer (together, the "Certifying Officers"), we carried out an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act. Based on the foregoing, our Certifying Officers concluded that our disclosure controls and procedures were effective as of the end of the period covered by this Report.

Disclosure controls and procedures are controls and other procedures designed to ensure that information required to be disclosed in our reports filed or submitted under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed in our reports filed or submitted under the Exchange Act is accumulated and communicated to management, including our Certifying Officers, or persons performing similar functions, as appropriate, to allow timely decisions regarding required disclosure.

Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting identified in connection with the evaluation required by Rule 13a-15(d) and 15d-15(d) of the Exchange Act that occurred during the three months ended September 30, 2020 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Limitations on Effectiveness of Controls

In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. In addition, the design of disclosure controls and procedures must reflect the fact that there are resource constraints and that management is required to apply its judgment in evaluating the benefits of possible controls and procedures relative to their costs.

PART II - OTHER INFORMATION

Item 1. Legal Proceedings

The information set forth under the "*Litigation*" subheading in Note 7, "*Commitments and Contingencies*" in the notes to the condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q is incorporated herein by reference.

Item 1A. Risk Factors

Important risk factors that could affect our operations and financial performance, or that could cause results or events to differ from current expectations, are described in "Part I, Item 1A — Risk Factors" of our Annual Report on Form 10-K filed with the SEC on March 30, 2020 for the year ended December 31, 2019, as supplemented by the "Risk Factors" section in our prospectus filed with the SEC on January 10, 2020 (as amended and/or supplemented to date) and September 4, 2020 (as amended an/or supplemented to date) and the information set forth below. An investment in our securities involves a high degree of risk. The risks and uncertainties described below and within our Form 10-K for the year ended December 31, 2019 and the prospectuses are not the only ones we face. Additional risks and uncertainties that we are unaware of, or that we currently believe are not material, may also become important factors that adversely affect our business or results of operations.

The COVID-19 pandemic could adversely affect our business, operating results, cash flow and financial condition.

We are closely monitoring the impact of the 2019 novel coronavirus, or COVID-19, on all aspects of our business. In March 2020, the World Health Organization characterized COVID-19 as a pandemic and the President of the United States declared the COVID-19 outbreak a national emergency. Since then, the COVID-19 pandemic has rapidly spread across the globe and has already resulted in significant volatility, uncertainty and economic disruption. The future impacts of the pandemic and any resulting economic impact are largely unknown. It is possible that the COVID-19 pandemic, the measures taken by local, state and national governments and the resulting economic impact may materially and adversely affect our business, results of operations, cash flow and financial condition.

The COVID-19 pandemic may prevent us from conducting business activities at full capacity for an extended period of time, including due to spread of the disease or due to shutdowns that are requested or mandated by governmental authorities. For example, we have taken precautionary measures intended to help minimize the risk of the virus to our employees which may disrupt our operations, including implementing a work-from-home policy for our employees until we determine to reopen our offices, canceling marketing events and suspending travel. An extended period of remote work arrangements could strain our business continuity plans, introduce operational risk, including, but not limited to, cybersecurity risks, prevent us from expanding or upselling our customer base, prevent the timely delivery of contracts in progress and impair our ability to effectively manage our business.

In addition, any economic downturn or recession resulting from the COVID-19 pandemic will likely impact demand for our products and services and adversely affect our operations. We expect there to be volatility in customer demand and buying habits as the pandemic continues and the resulting economic impacts are felt, including the possibilities that our end customers delay, decrease or cancel their planned purchases, or are unable to pay amounts owed to us.

The extent to which COVID-19 ultimately impacts our business, results of operations, cash flow and financial condition will depend on future developments, which are uncertain and cannot be predicted, including, but not limited to, the duration and spread of the outbreak, its severity, the actions taken by governments and authorities to contain the virus or treat its impact, and when and to what extent normal economic and operating conditions can resume. These uncertainties have resulted in volatility in securities and financial markets, which may prevent us from accessing the equity or debt capital markets on attractive terms or at all for a period of time, which could have an adverse effect on our liquidity position. Even after the COVID-19 pandemic has subsided, we may continue to experience materially adverse impacts to our business as a result of its global economic impact, including as a result of any recession that may occur. The impact of the COVID-19 pandemic may also exacerbate other risks discussed in this "Risk Factors" section and elsewhere in this Quarterly Report on Form 10-Q and those described in our Annual Report on Form 10-K filed with the SEC on March 30, 2020. For these reasons, the current level of uncertainty over the economic and operational impacts of COVID-19 means the impact on our business, results of operations, cash flows and financial position cannot be reasonably estimated at this time.

Our loans under the Paycheck Protection Program ("PPP") may not be forgiven or may subject us to challenges and investigations regarding qualification for the loan.

On April 10, 2020, we received a loan under the PPP, which was established under the CARES Act, in the aggregate principal amount of approximately $2.85 million. Pursuant to the CARES Act, we may apply for and be granted forgiveness for all or a portion of the PPP Loans. Such forgiveness will be determined, subject to limitations, based on the use of the loan proceeds for qualifying expenses, which include payroll costs, rent, and utility costs over the allowable measurement period following receipt of the loan proceeds.

In addition to changes enacted by the Congress, the Small Business Administration (“SBA”) continues to develop and issue new and updated guidance regarding the PPP Loans application process, including guidance regarding required borrower certifications and requirements for forgiveness of loans made under the program. We continue to track the guidance as it is released and assess and re-assess various aspects of its application as necessary based on the guidance. However, given the evolving nature of the guidance and based on our projected ability to use the loan proceeds for qualifying expenses, we cannot give any assurance that the anticipated PPP Loans will be forgiven in whole or in part.

Additionally, the PPP Loans applications required us to certify that the current economic uncertainty made the PPP Loans request necessary to support our ongoing operations. While we made this certification in good faith after analyzing, among other things, our financial situation and access to alternative forms of capital, and believe that we satisfied all eligibility criteria for the PPP Loans and that our receipt of the PPP Loans is consistent with the broad objectives of the PPP of the CARES Act, the certification described above does not contain any objective criteria and is subject to interpretation. In addition, the SBA has stated that it is unlikely that a public company with substantial market value and access to capital markets will be able to make the required certification in good faith. The lack of clarity regarding loan eligibility under the program has resulted in significant media coverage and controversy with respect to public companies applying for and receiving loans. If, despite our good faith belief that we satisfied all eligibility requirements for the PPP Loans, we are found to have been ineligible to receive the PPP Loans or in violation of any of the laws or regulations that apply to us in connection with the PPP Loans, including the False Claims Act, we may be subject to penalties, including significant civil, criminal and administrative penalties and could be required to repay the PPP Loans. In the event that we seek forgiveness of all or a portion of the PPP Loans, we will also be required to make certain certifications which will be subject to audit and review by governmental entities and could subject us to significant penalties and liabilities if found to be inaccurate. In addition, our receipt of the PPP Loans may result in adverse publicity and damage to our reputation, and a review or audit by the SBA or other government entity or claims under the False Claims Act could consume significant financial and management resources. Any of these events could harm our business, results of operations and financial condition.

A substantial number of shares of our common stock may be issued pursuant to the conversion terms of the 2020 Convertible Notes and exercise of the warrant, which could cause the price of our common stock to decline.

The 2020 Convertible Notes are immediately convertible into shares of our common stock at an initial conversion price of $3.00 per share. The noteholder may also exercise the warrant in connection therewith in full for 2,160,000 shares (without taking into account the limitations on the conversion of the 2020 Convertible Notes and exercise of the warrant). The issuance of these shares would dilute our other equity holders, which could cause the price of our common stock to decline.

Sales of substantial amounts of our common stock by selling stockholders, or the perception that such sales could occur, could adversely affect the price of our common stock.

The sale by selling stockholders of a significant number of shares of common stock could have a material adverse effect on the market price of our common stock. In addition, the perception in the public markets that selling stockholders may sell all or a portion of their shares as a result of the registration of such shares for resale could also in and of itself have a material adverse effect on the market price of our common stock. We cannot predict the effect, if any, that market sales of those shares of common stock or the availability of those shares of common stock for sale will have on the market price of our common stock.

The requirement that we repay the 2020 Convertible Notes and interest thereon in cash could adversely affect our business plan, liquidity, financial condition, and results of operations.

We are required to make monthly installment payments to the noteholder to repay principal amounts outstanding under the 2020 Convertible Notes and interest thereon in cash. These obligations could have important consequences on our business. In particular, they could:

- limit our flexibility in planning for, or reacting to, changes in our businesses and the industries in which we operate;
- increase our vulnerability to general adverse economic and industry conditions; and

- place us at a competitive disadvantage compared to our competitors.

No assurances can be given that we will be successful in making the required payments under the 2020 Convertible Notes. If we are unable to make the required cash payments, there could be a default under the 2020 Convertible Notes. In such event, or if a default otherwise occurs under the 2020 Convertible Notes, including as a result of our failure to comply with the financial or other covenants contained therein, the holders of the 2020 Convertible Notes could require us to immediately repay 115% of the outstanding principal and interest on the 2020 Convertible Notes or an amount equal to the market value of the shares of our common stock underlying the 2020 Convertible Notes, as determined in accordance with the 2020 Convertible Notes, in cash, if greater.

Restrictive covenants under the 2020 Convertible Notes could limit our growth and our ability to finance our operations, fund our capital needs, respond to changing conditions and engage in other business activities that may be in our best interests.

The 2020 Convertible Notes contain a number of affirmative and negative covenants regarding the incurrence of certain indebtedness, the existence of liens, the repayment of indebtedness, the payment of cash in respect to dividends, distributions or redemptions, and the transfer of assets among other matters. We are also subject to a financial covenant that requires us to maintain available cash in the amount of $500,000 at the end of each figure quarter, subject to a right of cure.

Our ability to comply with these covenants may be adversely affected by events beyond our control, and we cannot assure you that we can maintain compliance with these covenants. The financial covenants could limit our ability to make needed expenditures or otherwise conduct necessary or desirable business activities.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.

None.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information

The information set forth under the "*Key Events and Recent Developments"* subheading in Management's Discussion and Analysis included in Part I, Item 2 of this Quarterly Report on Form 10-Q is incorporated herein by reference.

Item 6. Exhibits

Unless otherwise noted, the exhibits listed on the accompanying Exhibit Index are filed or incorporated by reference (as stated therein) as part of this Quarterly Report on Form 10-Q.

EXHIBIT INDEX

Exhibit No.	Description
3.1	Amended and Restated Certificate of Incorporation of the Registrant (Incorporated by reference to Exhibit 3.1 of the Registrant's Form 8-K (File No. 001-37862), filed with the SEC on January 2, 2019).
3.2	Amended and Restated Bylaws of the Registrant (Incorporated by reference to Exhibit 3.2 of the Registrant's Form 8-K (File No. 001-37862), filed with the SEC on January 2, 2019).
3.3	Certificate of Designation (Incorporated by reference to Exhibit 3.3 of the Registrant's Form 8-K (File No. 001-37862) filed with the SEC on January 2, 2019).
4.1	Form of Note, dated April 9, 2020, between the Company and JPMorgan Chase (Incorporated by reference to Exhibit 4.1 of the Registrants Form 8-K filed with the SEC on April 16, 2020.
4.2	Form of Senior Convertible Note, dated March 20, 2020, between the Company and Alto Opportunity Master Fund, SPC – Segregated Master Portfolio B (Incorporated by reference to Exhibit 4.1 of the Registrants Form 8-K filed with the SEC on March 23, 2020).
10.1	Form of Securities Purchase Agreement, dated March 19, 2020 (Incorporated by reference to Exhibit 10.1 of the Registrants Form 8-K filed with the SEC on March 23, 2020).
10.2	Form of Registration Rights Agreement, dated March 20, 2020 (Incorporated by reference to Exhibit 10.1 of the Registrants Form 8-K filed with the SEC on March 23, 2020).
10.3	Form of Security Purchase Agreement, dated July 14, 2020, between the Company and Alto Opportunity Master Fund, SPC – Segregated Master Portfolio B (Incorporated by reference to Exhibit 10.1 of the Registrant's Form 8-K filed with the SEC on July 16, 2020).
10.4	Form of Series A Senior Convertible Note , dated July 15, 2020, between the Company and Alto Opportunity Master Fund, SPC – Segregated Master Portfolio B (Incorporated by reference to Exhibit 10.2 of the Registrant's Form 8-K filed with the SEC on July 16, 2020).
10.5	Form of Series B Senior Convertible Note, dated July 15, 2020, between the Company and Alto Opportunity Master Fund, SPC – Segregated Master Portfolio B (Incorporated by reference to Exhibit 10.3 of the Registrant's Form 8-K filed with the SEC on July 16, 2020).
10.6	Form of Note Purchase Agreement , dated July 14, 2020, between the Company and Alto Opportunity Master Fund, SPC – Segregated Master Portfolio B (Incorporated by reference to Exhibit 10.4 of the Registrant's Form 8-K filed with the SEC on July 16, 2020).
10.7	Form of Secured Promissory Note, dated July 14, 2020, between the Company and Alto Opportunity Master Fund, SPC – Segregated Master Portfolio B (Incorporated by reference to Exhibit 10.5 of the Registrant's Form 8-K filed with the SEC on July 16, 2020).
10.8	Form of Master Netting Agreement, dated July 15, 2020, between the Company and Alto Opportunity Master Fund, SPC – Segregated Master Portfolio B (Incorporated by reference to Exhibit 10.6 of the Registrant's Form 8-K filed with the SEC on July 16, 2020).
10.9	Form of Warrant to Purchase Common Stock, dated July 15, 2020, between the Company and Alto Opportunity Master Fund, SPC – Segregated Master Portfolio B (Incorporated by reference to Exhibit 10.7 of the Registrant's Form 8-K filed with the SEC on July 16, 2020).
10.10	Form of Registration Rights Agreement, dated July 15, 2020, between the Company and Alto Opportunity Master Fund, SPC – Segregated Master Portfolio B (Incorporated by reference to Exhibit 10.8 of the Registrant's Form 8-K filed with the SEC on July 16, 2020).
10.11	At-The-Market Issuance Sales Agreement, by and between Phunware, Inc. and H.C. Ascendiant Capital Markets, LLC, dated August 14, 2020 (Incorporated by reference to Exhibit 10.1 of the Registrant's Form 8-K filed with the SEC on August 14, 2020).
10.12*	Settlement Agreement and Mutual General Release, dated October 9, 2020, between the Company, Uber Technologies, Inc., and certain Individual Defendants.
31.1*	Certification of the Principal Executive Officer required by Rule 13a-14(a) or Rule 15d-14(a)*
31.2*	Certification of the Principal Financial Officer required by Rule 13a-14(a) or Rule 15d-14(a)*
32.1(1)	Certification of the Principal Executive Officer required by Rule 13a-14(b) or Rule 15d-14(b) and 18 U.S.C. 1350*

101.INS	XBRL Instance Document*
101.SCH	XBRL Taxonomy Extension Schema*
101.CAL	XBRL Taxonomy Calculation Linkbase*
101.LAB	XBRL Taxonomy Label Linkbase*
101.PRE	XBRL Definition Linkbase Document*
101.DEF	XBRL Definition Linkbase Document*

* Filed herewith

(1) The certifications attached as Exhibit 32.1 accompany this Quarterly Report on Form 10-Q pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, and shall not be deemed “filed” by the Registrant for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.

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, thereunto duly authorized.

November 12, 2020

Phunware, Inc.

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

By: /s/ Matt Aune
Name: Matt Aune
Title: Chief Financial Officer
(Principal Accounting and Financial Officer)

SETTLEMENT AGREEMENT AND MUTUAL GENERAL RELEASE

This Settlement Agreement and Release (the "Agreement") is made effective the 9th day of October, 2020, by and between Uber Technologies, Inc., ("Uber")[1], on the one hand, and Phunware Inc. ("Phunware") and individuals Alan Knitowski, Marty Borotsik, Andrew Cook, and David Stasiuk (collectively, "Defendants") on the other hand (individually, a "Party" and collectively, the "Parties").

WHEREAS, Phunware filed a civil action in the San Francisco Superior Court, *Phunware, Inc. v. Uber Technologies, Inc.*, Case No. CGC-17-561546 (hereinafter, the "Action") on September 26, 2017, asserting a cause of action against Uber Technologies, Inc. for breach of contract;

WHEREAS, Uber Technologies, Inc. filed a cross-complaint in the Action on November 13, 2017, asserting causes of action against Phunware and Fetch Media, Ltd. for fraud, conspiracy, intentional interference with contract, negligence, breach of contract, breach of the implied covenant of good faith and fair dealing, intentional breach of fiduciary duty, constructive fraud, negligent misrepresentation, professional negligence, unfair competition under Cal. Bus. & Prof. Code § 17200 *et seq.*, and unjust enrichment;

WHEREAS, Uber Technologies, Inc. filed an amended cross-complaint in the Action on July 12, 2019, asserting causes of action against Phunware for fraud, fraudulent concealment, negligence, and unfair competition under Cal. Bus. & Prof. Code § 17200 *et seq*., and asserting causes of action against Alan Knitowski, Marty Borotsik, Andrew Cook, and David Stasiuk (collectively, the "Individual Defendants") for violation of 18 USC § 1962(c), violation of 18

[1] For the avoidance of doubt, the term "Uber" shall also include Uber BV and any other Uber entity for purposes of the releases set forth in Paragraphs 11 through 13 below.

USC § 1962(d), fraud, fraudulent concealment, conspiracy to commit fraud, negligence, and unfair competition under Cal. Bus. & Prof. Code § 17200 *et seq*.;

WHEREAS, on August 12, 2020, the Court in the Action granted Uber's motion for sanctions against Phunware, and ordered Phunware's complaint against Uber as well as its answer to Uber's cross-complaint stricken;

WHEREAS, the Parties, and each of them, deny engaging in any wrongdoing whatsoever and specifically deny each and every allegation of wrongdoing alleged in the Action, and the Parties further deny any and all claims of damage or for other relief by any other Party in any amount whatsoever;

WHEREAS, based on the information presently known to the Parties, the settlement terms set forth herein represent a reasonable resolution of the Parties' claims;

WHEREAS, it is now the desire and intention of the Parties fully and finally to settle, compromise, and resolve all disputes, differences and disagreements that have existed, now exist, or may exist between them, including those described herein and those that fall within the subject matter of the Action;

WHEREAS, as described more fully below, Uber will receive total payments in the amount of SIX MILLION DOLLARS ($6,000,000); and,

WHEREAS, Phunware and the Individual Defendants have advised that Certain Underwriters at Lloyds and Companies subscribing to Directors and Officers Liability Policy number [redacted] (collectively, "Underwriters") have entered into a CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE, with the Individual Defendants and Phunware, dated ________________________ (the "Underwriters Agreement"), in which Underwriters have agreed to pay on behalf of the Individual Defendants the sum of

ONE MILLION FIVE HUNDRED THOUSAND DOLLARS ($1,500,000) (the "Underwriters' Payment") to Uber within 15 business days of Underwriters' receipt of all of the following: (i) this fully executed Agreement; (ii) the fully executed Underwriters Agreement; and (iii) appropriate wiring instructions, including bank name, ABA and SWIFT routing numbers, account name, and account number.

NOW, THEREFORE, in consideration of the mutual promises and undertakings set forth herein, the Parties agree as follows:

1. Phunware and the Individual Defendants shall provide the above listed items (i) (ii) and (iii) to Underwriters immediately upon execution of this Agreement.

2. Phunware shall pay FOUR MILLION FIVE HUNDRED THOUSAND DOLLARS ($4,500,000) to Uber, wired to Uber in accordance with Uber's instructions per the following schedule:

i. ONE MILLION FIVE HUNDRED THOUSAND DOLLARS ($1,500,000) by December 31, 2020, with <u>no</u> cure period under Section 5 herein.

ii. ONE MILLION FIVE HUNDRED THOUSAND DOLLARS ($1,500,000) by May 31, 2021.

iii. ONE MILLION FIVE HUNDRED THOUSAND DOLLARS ($1,500,000) by September 30, 2021.

3. Phunware and the Individual Defendants shall cause the Underwriters' Payment to be paid to Uber within 15 business days of Underwriters' receipt of the information identified in the above-listed items (i), (ii) and (iii). Phunware represents that all parties to the Underwriters Agreement have agreed to execute that agreement within two (2) days after this Agreement is executed.

4. Phunware may partially or fully prepay the settlement amount at any time with no prepayment penalty or fee.

5. Except for the initial settlement payment under Section 2(a) above, for which there is no cure period, Phunware shall have ten (10) days to satisfy a missed payment (the "Cure Period").

6. The amount of the payments herein and the deadlines in this section are material to Uber and under no circumstances will Uber grant any extensions or agree to any modifications of these terms. Notwithstanding Paragraph 5, if Phunware fails to make any payment by the dates set forth in Paragraph 2(b)-(c), it shall have ten (10) days to satisfy a missed payment (the "Cure Period"). If Phunware fails to make the initial payment in Paragraph 2(a) by December 31, 2020 or the payments in Paragraph 2(b) and (c) by the end of the Cure Period, Uber may, in its sole discretion, and as its sole recourse in the event of a default by Phunware, immediately file and move for enforcement of a Stipulated Consent Judgment against Phunware, substantially in the form of Exhibit A, for the difference between any prior total payments made by Phunware to Uber and $4,500,000, plus liquidated damages in the amount of $900,000 ("Liquidated Damages"). Phunware agrees that the Liquidated Damages are not unreasonable under the circumstances existing at the time of this Agreement, and are therefore proper under C.C.P. Section 1671. Phunware and the Individual Defendants waive any and all rights to oppose or contest the Stipulated Consent Judgment, or appeal entry of the Stipulated Consent Judgment. If Uber is required to pursue an action to enforce the Stipulated Consent Judgment and it prevails, it shall be awarded attorneys' fees in connection with such action. The Parties agree that the San Francisco Superior Court, including Judge Angela Bradstreet, has continuing jurisdiction to preside over Uber's filing and enforcement of the Stipulated Consent Judgment under C.C.P.

Section 664.6. This provision is a material term of the Agreement to Uber and Phunware expressly acknowledges such materiality and consents to this provision.

7. Uber considers the Underwriters' Payment to be a binding commitment on behalf of Phunware. If Underwriters do not timely make this payment, Phunware shall file suit against Underwriters within five (5) days after the full amount is due from Underwriters. In its suit, Phunware will seek recovery of the full amount of ONE MILLION FIVE HUNDRED THOUSAND DOLLARS ($1,500,000) plus interest and attorneys' fees. Phunware shall prosecute the suit diligently at its own expense and shall not settle the matter without first receiving written approval from Uber. All proceeds Phunware recovers from the suit up to and including ONE MILLION FIVE HUNDRED THOUSAND DOLLARS ($1,500,000) will be immediately paid to Uber. Any failure by Phunware to satisfy these obligations will be considered a material breach of this Agreement subject to full enforcement by Uber.

8. Within five (5) business days of Uber's confirmation that the payment from Underwriters has cleared and been received, Uber shall dismiss, with prejudice, its claims against Defendants Knitowski, Borotsik, Cook and Stasiuk.

9. Within ten (10) business days of Uber's confirmation that all amounts due from Phunware, including any liquidated damages and attorneys' fees have cleared and been received, Uber shall dismiss, with prejudice, its claims against Phunware.

10. Immediately upon, but no later than one (1) business day after, execution of this Agreement by all Parties, Phunware will dismiss with prejudice its arbitration claim against Ian Karnell and agrees to release Ian Karnell from any and all claims relating to his work while at Phunware.

11. Upon Uber's receipt of Underwriters' Payment, and only upon such receipt, Uber hereby absolutely, forever and fully, generally and specifically, release and discharge all past, present and former directors, officers and employees of Phunware, including but not limited to Knitowski, Borotsik, Cook and Stasiuk, and their respective past, present and future heirs, executors, estates, agents, representatives, insurers and reinsurers, from any and all claims, expenses, debts, demands, costs, contracts, liabilities, obligations, actions and causes of action of every nature, whether known or unknown, suspected or unsuspected, liquidated or unliquidated, fixed or contingent, matured or unmatured, whether in law or in equity, which it has or had or may claim to have or to have had from the beginning of time through the present, including all matters arising out of or relating to events described in Phunware's complaint, Uber's cross-complaint and Uber's amended cross-complaint, including any work that Knitowski, Borotsik, Cook and Stasiuk did for Uber from 2014 to 2017 (the "Uber Campaign"), and including any claims based on any events or circumstances that were alleged, or that could have been alleged or referred to, in relation to the Uber Campaign in the Action (the "Individual Defendants Uber Released Claims"). In no event shall this release be effective if the Underwriters' payment does not clear. For the avoidance of doubt, the Individual Defendants Uber Released Claims include claims for and rights to contribution or indemnification, contractual or otherwise, and include any claims arising out of or relating to the filing or defense of the Action.

12. Upon Uber's confirmation that the full amount of all payments due under this Agreement, including any liquidated damages and attorneys' fees, have cleared and been received, and only upon such receipt, Uber hereby absolutely, forever and fully, generally and specifically, releases and discharges Defendant Phunware, its agents, lawyers, representatives, insurers, reinsurers, from any and all claims, expenses, debts, demands, costs, contracts,

liabilities, obligations, actions and causes of action of every nature, whether known or unknown, suspected or unsuspected, liquidated or unliquidated, fixed or contingent, matured or unmatured, whether in law or in equity, which it has or had or may claim to have or to have had from the beginning of time through the present arising out of or relating to the Uber Campaign, and including any claims based on any events or circumstances that were alleged, or that could have been alleged or referred to, in relation to the Uber Campaign in the Action (the "Phunware Uber Released Claims"). For the avoidance of doubt, the Phunware Uber Released Claims include claims for and rights to contribution or indemnification, contractual or otherwise, and include any claims arising out of or relating to the filing or defense of the Action.

13. Defendants hereby absolutely, forever and fully, generally and specifically, release and discharge Uber and all of its current or former employees, subsidiaries, and affiliates, from any and all claims, expenses, debts, demands, costs, contracts, liabilities, obligations, actions and causes of action of every nature, whether known or unknown, suspected or unsuspected, liquidated or unliquidated, fixed or contingent, matured or unmatured, whether in law or in equity, which it has or had or may claim to have or to have had from the beginning of time through the present arising out of or relating to the Uber Campaign, including any claims based on any events or circumstances that were alleged, or that could have been alleged or referred to, in relation to the Uber Campaign in the Action (the "Defendants Released Claims"). For the avoidance of doubt, the Defendants Released Claims include claims for and rights to contribution or indemnification, contractual or otherwise, and include any claims arising out of or relating to the filing or defense of the Action.

14. So that the releases in Paragraphs 11 through 13 of this Agreement have their full and intended effect, the Parties hereby waive any and all rights or benefits which any of them

may have under Section 1542 of the Civil Code of the State of California, and any provisions of any other jurisdiction that have similar effect, providing that:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

The Parties hereby represent and warrant that they have had an opportunity to consult with counsel and that they understand the effect of this waiver of the above-quoted Civil Code section and any similar provisions. Thus, notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge, Uber and Defendants expressly acknowledge that this Agreement is intended to include in its effect, without limitation, claims and causes of action which they do not know or suspect to exist in their favor at the time of execution hereof, and that this Agreement contemplates extinguishment of all such claims and causes of action referenced herein. Accordingly, this Agreement shall remain in full force as a complete release of such claims notwithstanding the discovery or existence of any such additional or different claims and/or facts before or after the date of this Agreement.

15. The Parties each understand that this Agreement is deemed to have been drafted jointly by the Parties and agree that the canon of construing ambiguities against the drafter has no application here. The Agreement should be construed fairly and not in favor of or against one party as the drafter.

16. The Parties have each had a full and complete opportunity to review this Agreement, and to make suggestions or changes. The Parties acknowledge that they have been

represented by independent legal counsel of their own choice throughout the negotiations which preceded the execution of this Agreement; that they have had a full and complete opportunity to discuss with their attorneys the contents hereof; that they are fully aware of the contents of this Agreement and of its legal effect and fully understand and agree to each and every provision hereof without reservations; and that they have executed this Agreement voluntarily, in reliance on their own judgment, have not relied on any representations or promises made by any other Party not set forth in this Agreement, have the legal capacity to enter into this Agreement, and are free from coercion, duress and undue influence.

17. Each Party hereto warrants and represents to the other Parties that it is the lawful owner of all rights, title and interest in and to every claim being released herein, and that it has not heretofore assigned or transferred or purported to assign or transfer, to any person or entity, any such released matter or any part or portion thereof. Each Party hereto shall indemnify and hold harmless the others from and against any and all claims, demands, liabilities, debts, obligations, accounts, actions and causes of action (including the payment of attorneys' fees and costs actually incurred, whether or not litigation be commenced) based upon, in connection with, or arising out of any such prior assignment, transfer, lien and/or right or purported claimed assignment, transfer, lien and/or right.

18. This Agreement affects the settlement of disputes that are denied and contested and nothing contained herein should be construed as an admission by any Party of any liability of any kind with respect thereto. All such liability is expressly denied. The Parties and their counsel agree not to assert that this Agreement is an admission of guilt, wrongdoing, or liability on the part of any other Party.

19. Each of the Parties shall bear its own attorneys' fees and costs incurred in connection with the Action. In the event that any of the Parties files a legal action to interpret or enforce the Agreement, the prevailing party shall be entitled to reasonable legal fees, expert fees and costs.

20. This Agreement sets forth the entire agreement between the Parties and supersedes any and all prior oral and written agreements or understandings between the Parties concerning this subject matter. This Agreement may not be altered, amended or modified except by a further writing signed by all Parties.

21. This Agreement shall be construed in accordance with, and governed by, the laws of the State of California without regard to conflicts of laws rules. Any disputes between the Parties arising out of finalization of this Agreement, or its performance shall be resolved on an expedited and binding basis by a single arbitrator through JAMS - San Francisco, agreed upon by the Parties, and pursuant to the JAMS Streamlined Arbitration Rules and Procedures.

22. Each Party to this Agreement represents and warrants that it has full power and authority to enter into this Agreement. By the signature of each of the representatives of the Parties hereto placed on this Agreement, each such signatory represents and warrants that she or he is authorized to sign this Agreement on behalf of the Party for whom she or he is signing.

23. This Agreement may be executed and delivered in two or more counterparts, each of which when so executed and delivered shall be the original, but such counterparts together shall constitute but one and the same instrument. The facsimile or .pdf or digital signature of the Parties herein may be used instead of the original.

24. Each Party agrees to make, execute, and deliver such other instruments or documents, and to do or cause to be done such further or additional acts, as reasonably may be necessary in order to effectuate the purposes or to implement the terms of this Agreement.

25. Except as may be necessary to enforce the obligations in this Agreement or make disclosures to shareholders, lenders, auditors, accountants and lawyers, the Parties, including their officers, representatives and attorneys, agree to keep the terms of this Agreement strictly confidential. The Parties intend for this Agreement to be protected by the mediation privilege as well as the rules governing inadmissibility of settlement communications. Nothing in this provision shall prohibit either party, including their officers, representatives and attorneys, from disclosing the terms of this Agreement (i) pursuant to a court order or validly issued subpoena, and/or (ii) as required by securities law and other applicable law. Nothing in this Agreement shall prohibit either party, including their officers, representatives and attorneys, from disclosing publicly-available information.

[signatures on following page]

Phunware, Inc.

Dated: October___, 2020

By: ____________________________________

Authorized Business Representative

Dated: October___, 2020

By: ____________________________________

Craig Hansen
Hansen Law Firm, P.C.
Counsel to Phunware, Inc.

Uber Technologies, Inc.

Dated: October___, 2020

By: ____________________________________

Authorized Business Representative

Dated: October___, 2020

By: ____________________________________

John Bovich
Reed Smith LLP
Counsel to Uber Technologies, Inc.

Alan Knitowski

Dated: October___, 2020

By: ____________________________________

Dated: October___, 2020

By: ____________________________________

Craig Hansen
Hansen Law Firm, P.C.
Counsel to Alan Knitowski

Marty Borotsik

Dated: October___, 2020

By: ____________________________________

Dated: October___, 2020

By: ____________________________________

Ryan Saba
Rosen Saba, LLP
Counsel to Marty Borotsik

Andrew Cook

Dated: October___, 2020

By: ____________________________________

Dated: October___, 2020

By: ____________________________________

Ryan Saba
Rosen Saba, LLP
Counsel to Andrew Cook

David Stasiuk

Dated: October___, 2020

By: ____________________________________

Dated: October___, 2020

By: ____________________________________

Ryan Saba
Rosen Saba, LLP
Counsel to David Stasiuk

EXHIBIT A

John Bovich (SBN 150688)
Email: jbovich@reedsmith.com
Seth B. Herring (SBN 253907)
Email: sherring@reedsmith.com
Reed Smith LLP
101 Second Street, Suite 1800
San Francisco, CA 94105-3659
Telephone: +1 415 543 8700
Facsimile: +1 415 391 8269

Randall D. Haimovici (SBN 213635)
Email: rhaimovici@uber.com
Angela B. Johnson (SBN 287421)
Email: angelaj@uber.com
Ariel F. Ruiz (SBN 305488)
Email: ariel.ruiz@uber.com
Uber Technologies, Inc.
1455 Market Street, Floor 4
San Francisco, CA 94103-1355
Telephone: +1 415 533-7652

Attorneys for Defendant
Uber Technologies, Inc.

Craig A. Hansen (SBN 209622)
Email: craig@hansenlawfirm.net
Stephen Holmes (SBN 200727)
Email: steve@hansenlawfirm.net
Philip E. Yeager (SBN 265939)
Email: phil@hansenlawfirm.net
HANSEN LAW FIRM, P.C.
75 E. Santa Clara Street, Suite 1250
San Jose, CA 95113
Telephone: (408) 715-7980
Facsimile: (408) 715-7001

Attorneys for Phunware, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

<table>
<tr>
<td>Phunware, Inc.,

Plaintiff,

vs.

Uber Technologies, Inc.,

Defendant.</td>
<td rowspan="2">Case No.: CGC-17-561546

STIPULATED CONSENT JUDGMENT</td>
</tr>
<tr>
<td>Uber Technologies, Inc.

Cross-Complainant,

vs.

Phunware, Inc., Alan Knitowski, Dave Stasiuk, Marty Borotsik, Andrew Cook, and Does 1-100

Cross-Defendants.</td>
</tr>
</table>

THIS MATTER having been brought before the Court and the Parties having agreed to entry of this Consent Judgment, IT IS HEREBY ORDERED as follows:

1. This Stipulated Consent Judgment represents a material aspect of Uber and Phunware's settlement of the above-captioned lawsuit, and shall not be considered an admission of fault or liability by either Party.

2. As partial consideration for the parties' settlement of the above-captioned lawsuit, Phunware agreed to pay Uber the sum of $4,500,000.00 by September 30, 2021 ("Settlement Payment") pursuant to the following schedule:

a. A payment of $1,500,000.00 to be paid by December 31, 2020, with no cure period;

b. A payment of $1,500,000.00 to be paid by May 31, 2021; and

c. A payment of $1,500,000.00 to be paid by September 30, 2021.

3. Except for the initial payment due on December 31, 2020, the parties agreed that Phunware shall have ten (10) days to satisfy a missed payment (the "Cure Period").

4. The Parties agree that if Phunware fails to make the initial payment by December 31, 2020 or any other individual payment when due and not cured within the Cure Period, Phunware will be in default. In the event of such default, Phunware will immediately owe Uber the unpaid portion of the Settlement Payment, plus liquidated damages of $900,000.00.

5. The Parties hereby waive findings of fact, conclusions of law, a statement of decision, and appeal of this Stipulated Judgment. For the sake of clarity, Phunware waives any right to an appeal upon entry of this Stipulated Consent Judgment.

6. Pursuant to CCP § 664.6, the Superior Court of California, County of San Francisco, including Judge Angela Bradstreet, shall retain jurisdiction to enforce the Parties' settlement agreement and this Stipulated Consent Judgment following execution of the settlement agreement. If Uber is forced to enforce this Stipulated Consent Judgment and prevails, Uber shall be awarded its attorneys' fees and costs.

7. Phunware failed to make the payment scheduled on _____________and did not satisfy that payment within the 10 day cure period. As a result, Judgment is entered in Uber's favor for _______________.

Dated: _____________, 2020 By: ____________________________________ Judge of the Superior Court

Exhibit 31.1

CERTIFICATION

I, Alan S. Knitowski, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Phunware Inc.;

1. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

2. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

3. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared

   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

1. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 12, 2020

/s/ Alan S. Knitowski

Alan S. Knitowski
Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

CERTIFICATION

I, Matt Aune, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Phunware Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 12, 2020

/s/ Matt Aune

Matt Aune
Chief Financial Officer
(Principal Financial and Accounting Officer)

Exhibit 32.1

CERTIFICATION

Pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended, (the "Exchange Act") and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. §1350), Alan S. Knitowski, Chief Executive Officer (Principal Executive Officer) of Phunware, Inc. (the "Company"), and Matt Aune, Chief Financial Officer (Principal Financial and Accounting Officer) of the Company, each hereby certifies that, to the best of his or her knowledge:

1. The Company's Quarterly Report on Form 10-Q for the period ended September 30, 2020, to which this Certification is attached as Exhibit 32.1 (the "Periodic Report"), fully complies with the requirements of Section 13(a) or Section 15(d) of the Exchange Act, and

2. The information contained in the Periodic Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

November 12, 2020

Phunware, Inc.

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

By: /s/ Matt Aune
Name: Matt Aune
Title: Chief Financial Officer
(Principal Accounting and Financial Officer)

"This certification accompanies the Form 10-Q to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of Phunware, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Form 10-Q), irrespective of any general incorporation language contained in such filing."