

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

FORM 8-K

**CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(D)
OF THE SECURITIES EXCHANGE ACT OF 1934**

Date of Report (date of earliest event reported): November 13, 2023

AWARE, INC.

(Exact name of registrant as specified in its charter)

Massachusetts
(State or other jurisdiction
of incorporation)

000-21129
(Commission
File Number)

04-2911026
(IRS Employer
Identification No.)

76 Blanchard Road, Burlington, MA, 01803
(Address of principal executive offices, including zip code)

Registrant's telephone number, including area code: (781) 687-0300

Not Applicable
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of Each Class	Trading Symbol	Name of Each Exchange on Which Registered
Common Stock, par value \$.01 per share	AWRE	The Nasdaq Global Market

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

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

ITEM 5.02. DEPARTURE OF DIRECTORS OR CERTAIN OFFICERS, ELECTION OF DIRECTOR; APPOINTMENT OF CERTAIN OFFICERS; COMPENSATORY ARRANGEMENTS OF CERTAIN OFFICERS.

As previously announced, David Barcelo, the former Chief Financial Officer and Treasurer of Aware, Inc. (the “Company”), has left the Company. In connection with Mr. Barcelo’s departure, the Company entered into a separation agreement with Mr. Barcelo on November 13, 2023 (the “Separation Agreement”). Pursuant to the terms of the Separation Agreement, Mr. Barcelo is entitled to receive the following severance from the Company once the Separation Agreement becomes effective: (i) \$265,224.98, which represents his annual base salary and is payable as salary continuation for twelve months; (ii) vesting of all time-based stock options and other time-based stock-based awards held by Mr. Barcelo that would have vested had he remained employed with Aware through October 31, 2024; and (iii) continuation of certain health benefit coverage through October 31, 2024. The Separation Agreement includes Mr. Barcelo’s agreement not to compete with the Company through October 31, 2024 and a general release by Mr. Barcelo of claims against the Company. The description of the Separation Agreement contained herein is qualified in its entirety by reference to the full text of the Separation Agreement, which is attached as Exhibit 10.1 hereto and incorporated herein by reference.

ITEM 9.01. FINANCIAL STATEMENTS AND EXHIBITS.

No financial statements are required to be filed as part of this Report. The following exhibits are filed as part of this report:

(d) EXHIBITS.

Number	Description
10.1	Letter Agreement dated as of November 13, 2023, by and between Aware, Inc. and David Barcelo
104	Cover Page Interactive Data File (embedded within XBRL document)

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

AWARE, INC.

Dated: November 15, 2023

By: /s/ David K. Traverse
David K. Traverse
Principal Financial Officer



October 24, 2023

Dear David:

The purpose of this letter agreement (the "Agreement") is to confirm the terms regarding your separation of employment with Aware, Inc. (together with its subsidiaries, the "Company").

- 1. Separation of Employment.** You acknowledge that your employment with the Company will terminate without cause effective October 31, 2023 (the "Separation Date"). Your salary and any accrued and unused vacation time, less all required local, state, federal and other employment-related taxes and deductions, will be paid through the Separation Date. You acknowledge that from and after the Separation Date, you shall have no authority and shall not represent yourself as an employee, officer or agent of the Company or any of its subsidiaries. You further acknowledge that except for the specific financial considerations set forth in this Agreement, you have been paid and provided all wages, vacation pay and holiday pay as of the Separation Date.
 - 2. Severance.** Subject to your execution and delivery to the Company of a Noncompete Agreement in the form attached hereto as Exhibit A (the "Noncompete Agreement") and a General Release and Waiver of All Claims in the form attached hereto as Exhibit B (the "Release"), with such release becoming irrevocable and fully effective, the Company agrees to provide you with the following (the "Severance"):

 - (a) You will be paid severance in the gross amount of \$265,224.98 less all required local, state, federal and other employment-related taxes and deductions. This sum represents twelve months' salary, and it will be paid as salary continuation in accordance with the regular payroll process of the Company, commencing on the Company's next regular payday following the eighth business day after the date of this Agreement.
 - (b) Notwithstanding anything to the contrary in any applicable option agreement or stock-based award agreement, all time-based stock options and other time-based stock-based awards held by you in which such stock option or other stock-based award would have vested if you had remained employed for an additional twelve (12) months following the Separation Date shall vest and become exercisable or nonforfeitable as of the Separation Date.
 - (c) The Company will pay the cost of COBRA continuation coverage, should you elect to receive it, for you and any dependent who received health insurance coverage through the Company prior to the Separation Date, for a period of twelve (12) months following the Separation Date ("Continuation Benefits"). Continuation Benefits otherwise receivable by you will be reduced to the extent benefits of the same type are received by or made available to you during the applicable twelve-month period (and any such benefits received by or made available to you shall be reported by you to the Company).
 - 3. Business Expenses.** Any approvable expenses you have incurred through the Separation Date will be reimbursed in a timely manner once you submit an expense report with corresponding receipts.
 - 4. Covenants by You.** You expressly acknowledge and agree to the following:
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- (a) With the exception of the laptop that was provided to you (which you may keep), you agree to return all Company documents (and any copies thereof whether in hard or electronic form), property (including, without limitation, keys, computers, iPads, computer disks and CD-ROMs, USB storage devices, pagers, phones and credit cards) and transfer any other Company information (including documents, files, etc.) within five (5) business days of the Separation Date. You may return Company documents, property and other Company information to the Company via FedEx using the Company account number. You agree to cooperate with Company representatives in the return of Company property.
- (b) You agree to keep confidential all confidential and proprietary information of the Company, and you agree to abide by any and all common law and/or statutory obligations relating to protection and non-disclosure of the Company's trade secrets and/or confidential and proprietary documents and information.
- (c) You agree that all information relating in any way to this Agreement, including the terms and amount of financial consideration provided for in this Agreement, shall be held confidential by you and shall not be publicized or disclosed by you to any person (other than an immediate family member, legal counsel or financial advisor, provided that any such individual to whom disclosure is made agrees to be bound by these confidentiality obligations), business entity or government agency (except as mandated by law).
- (d) You agree that you will not make any statements that are professionally or personally disparaging about, or adverse to, the interests of the Company (and/or its officers, directors and managers) including, but not limited to, any statements that disparage any such person, product, service, finances, financial condition, capability or any other aspect of the business of the Company, and that you will not engage in any conduct which is intended to harm professionally or personally the reputation of the Company (and/or its officers, directors and managers). The Company's executive officers and members of its Board of Directors will not make any public statements that are professionally or personally disparaging about you.
- (e) You agree that the breach of any of the foregoing covenants by you shall constitute a material breach of this Agreement and shall relieve the Company of any further obligations hereunder and, in addition to any other legal or equitable remedy available to the Company, shall entitle the Company to recover any compensation already paid to you pursuant to Section 2 of this letter.

5. Entire Agreement/Choice of Law/Enforceability. You acknowledge and agree that this Agreement, the Noncompete Agreement and the Release set forth the entire agreement between you and the Company. No variations or modifications hereof shall be deemed valid unless reduced to writing and signed by the parties hereto. This Agreement shall be construed, interpreted and enforced in accordance with the laws of The Commonwealth of Massachusetts, without regard to its choice of law principles. You hereby consent to (a) service of process, and to be sued, in The Commonwealth of Massachusetts and (b) to the jurisdiction of the courts of The Commonwealth of Massachusetts and the United States District Court for the District of Massachusetts, as well as to the jurisdiction of all courts to which an appeal may be taken from such courts, for the purpose of any suit, action or other proceeding arising out of any of your obligations hereunder, and you expressly waive any and all objections you may have as to venue in any such courts. The provisions of this Agreement are severable, and if for any

reason any part hereof shall be found to be unenforceable, the remaining provisions shall be enforced in full.

6. Understanding this Agreement. By executing this Agreement, you are acknowledging that you have been afforded sufficient time to understand the terms and effects of this letter, that your agreements and obligations hereunder are made voluntarily, knowingly, and without duress, and that neither the Company nor its agents or representatives have made any representations inconsistent with the provisions of this letter.

Your signature below reflects your understanding of, and agreement to, the terms and conditions set forth above.

Very truly yours,
AWARE, INC.

By: /s/ Robert Eckel
Name: Robert Eckel
Title: President and CEO

/s/ David Barcelo
David Barcelo

Dated: November 13, 2023

NONCOMPETE AGREEMENT

This NONCOMPETE AGREEMENT (the "AGREEMENT"), made as of the 24th day of October 2023, is entered into between Aware, Inc., a Massachusetts corporation with offices at 76 Blanchard Road, Burlington, Massachusetts 01803 (the "Company") and David Barcelo, an individual residing at 15 Dawn Circle, Andover MA 01810 (the "Employee").

RECITALS:

A. The Company is willing to grant certain severance and other benefits to the Employee, under the circumstances specified in that certain Employment Agreement dated May 4, 2020 between the Company and the Employee (the "Employment Agreement") and pursuant to a Separation Agreement dated as of the date hereof by and between the Company and the Employee (the "Separation Agreement"); and

B. As set forth in the Employment Agreement and the Separation Agreement, the Employee's execution of this Agreement is a condition to his receipt of such benefits;

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. NON-COMPETITION COVENANTS.

(a) NON-COMPETITION COVENANTS. The Employee agrees that he will not, during the Non-Competition Period (as hereinafter defined), directly or indirectly:

(i) as owner, employee, officer, director, partner, sales representative, agent, stockholder, capital investor, lessor, consultant or advisor, either alone or in association with others (other than as a holder of not more than one percent of the outstanding shares of any series or class of securities of a company, which securities of such class or series are publicly traded in the securities markets), develop, design, produce, market, sell or render (or assist any other person or entity in developing, designing, producing, marketing, selling or rendering), products or services which are competitive with the Business of the Company (as hereinafter defined) anywhere in the world;

(ii) solicit, divert or take away, or attempt to solicit, divert or take away, the business or patronage of any of the customers, prospective customers or referral sources of the Company with whom the Company has had a relationship during the period of the Employee's employment by the Company; or

(iii) recruit, solicit or hire any employee of the Company, or induce or attempt to induce any employee of the Company to terminate his or her employment with, or otherwise cease his or her relationship with, the Company.

(b) DEFINITIONS. For the purposes of this Section 1, the following terms shall have the respective meanings indicated below:

(i) "NON-COMPETITION PERIOD" shall mean the period during which the Employee is employed by the Company and the one-year period commencing on the last day of the Employee's employment by the Company, regardless of whether the Employee's termination was at the election of the Company, with or without cause, or at the election of the Employee, with or without good reason.

(ii) "BUSINESS OF THE COMPANY" shall mean the development, manufacture, marketing and/or distribution of (A) biometric technologies or wavelet compression technologies or (B) any other products or services which the Company sells, has under development or which are subject to active planning at any time during the term of the Employee's employment with the Company.

2. INJUNCTIVE AND OTHER EQUITABLE RELIEF.

(a) The Employee consents and agrees that if he violates any of the provisions of Section 1 hereof, the Company shall be entitled, in addition to any other remedies it may have at law, to the remedies of injunction, specific performance and other equitable relief for a breach by the Employee of Section 1 of this Agreement. This Section 2(a) shall not, however, be construed as a waiver of any of the rights which the Company may have for damages or otherwise.

(b) Any waiver by the Company of a breach of any provision of Section 1 hereof shall not operate or be construed as a waiver of any subsequent breach of such provision or any other provision hereof.

(c) The Employee agrees that each provision of Section 1 shall be treated as a separate and independent clause, and the unenforceability of any one clause shall in no way impair the enforceability of the other clauses herein. Moreover, if one or more of the provisions contained in Section 1 shall for any reason be held to be excessively broad as to scope, activity or subject so as to be unenforceable at law, such provision or provisions shall be construed by the appropriate judicial body by limiting and reducing it or them so as to be enforceable to the maximum extent compatible with the applicable law as it shall then appear.

(d) If the Company shall prevail in any action, suit or other proceeding (whether at law, in equity or otherwise) instituted concerning or arising out of this Agreement, it shall recover, in addition to any other remedy granted to it therein, all its costs and reasonable attorneys' fees incurred in connection with the prosecution or defense of such action, suit or other proceeding.

3. OTHER AGREEMENTS.

The Employee represents and warrants that his performance of all the terms of this Agreement does not and will not breach any other agreement by which he is bound.

4. NOT A CONTRACT OF EMPLOYMENT.

The Employee understands that this Agreement does not constitute a contract of employment or give the Employee rights to employment or continued employment by the Company.

5. ENTIRE AGREEMENT.

This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements and understandings, whether written or oral, relating to the subject matter of this Agreement.

6. AMENDMENT.

This Agreement may be amended or modified only by a written instrument executed by both the Company and the Employee.

7. GOVERNING LAW.

This Agreement shall be construed, interpreted and enforced in accordance with the laws of The Commonwealth of Massachusetts, without regard to its choice of law principles. The Employee hereby consents to (a) service of process, and to be sued, in The Commonwealth of Massachusetts and (b) to the jurisdiction of the courts of The Commonwealth of Massachusetts and the United States District Court for the District of Massachusetts, as well as to the jurisdiction of all courts to which an appeal may be taken from such courts, for the purpose of any suit, action or other proceeding arising out of any of Employee's obligations hereunder, and Employee expressly waives any and all objections he may have as to venue in any such courts.

8. SUCCESSORS AND ASSIGNS.

This Agreement shall be binding upon and inure to the benefit of both parties and their respective successors and assigns, including any corporation with which or into which the Company may be merged or which may succeed to its assets or business, provided, however, that the obligations of the Employee are personal and shall not be assigned by him.

9. MISCELLANEOUS.

(a) No delay or omission by the Company in exercising any right under this Agreement shall operate as a waiver of that or any other right. A waiver or consent given by the Company on any one occasion shall be effective only in that instance and shall not be construed as a bar or waiver of any right on any other occasion.

(b) The captions of the sections of this Agreement are for convenience of reference only and in no way define, limit or affect the scope or substance of any section of this Agreement.

(c) This Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision hereof shall be prohibited or invalid under any such law, such provision shall be ineffective to the extent of such prohibition or

invalidity, without invalidating or nullifying the remainder of such provision or any other provisions of this Agreement. If any one or more of the provisions contained in this Agreement shall for any reason be held to be excessively broad as to duration, geographical scope, activity or subject, such provisions shall be construed by limiting and reducing it so as to be enforceable to the maximum extent permitted by applicable law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year set forth above.

AWARE, INC.

By: /s/ Robert Eckel____
Name: Robert Eckel
Title: President and CEO

EMPLOYEE

/s/ David Barcelo
Name: David Barcelo

**GENERAL RELEASE AND WAIVER OF ALL CLAIMS
(INCLUDING OLDER WORKER BENEFITS PROTECTION ACT CLAIMS)**

For good and valuable consideration, including without limitation the compensation and benefits set forth in the Separation Agreement dated October 24, 2023 (the “Agreement”) between the undersigned and Aware, Inc. (the “Company”), to which this General Release and Waiver of All Claims is attached, the terms of which Agreement shall survive this General Release and Waiver of Claims, the undersigned, on behalf of and for himself and his heirs, administrators, executors, representatives, estates, attorneys, insurers, successors and assigns (hereafter referred to separately and collectively as the “Releasor”), hereby voluntarily releases and forever discharges the Company, and its subsidiaries (direct and indirect), affiliates, related companies, divisions, predecessor and successor companies, and each of its and their present, former, and future shareholders, officers, directors, employees, agents, representatives, attorneys, insurers and assigns (collectively as “Releasees”), jointly and individually, from any and all actions, causes of action, claims, suits, charges, complaints, contracts, covenants, agreements, promises, debts, accounts, damages, losses, sums of money, obligations, demands, and judgments all of any kind whatsoever, known or unknown, at law or in equity, in tort, contract, by statute, or on any other basis, for contractual, compensatory, punitive or other damages, expenses (including attorney’s fees and cost), reimbursements, or costs of any kind, which the undersigned employee ever had, now has, or may have, from the beginning of the world to the date of this Release, known or unknown, in law or equity, whether statutory or common law, whether federal, state, local or otherwise, including but not limited to any and all claims arising out of or in any way related to the undersigned’s engagement by the Company (including the hiring or termination of that engagement), or any related matters including, but not limited to claims, if any arising under the Age Discrimination in Employment Act of 1967, as amended by the Older Worker Benefits Protection Act; the Civil Rights Act of 1964, as amended; the Civil Rights Act of 1991, as amended; the Family and Medical Leave Act of 1993, as amended; the Immigration Reform and Control Act of 1986; the Americans with Disabilities Act of 1990, as amended; the Employee Retirement Income Security Act (ERISA), as amended; the Massachusetts laws against discrimination and harassment (including Mass. Gen. L. c. 151B), protecting equal rights or concerning the payment of wages (including Mass. Gen. L. c. 149, section 148 et seq. and Mass. Gen. L. c. 151, section 1A, et seq.), and federal, state or local common law, laws, statutes, ordinances or regulations. Notwithstanding the foregoing, nothing contained in this General Release and Waiver of Claims shall be construed to bar any claim by the undersigned to enforce the terms of the Agreement.

Releasor represents and acknowledges the following:

- (a) that Releasor understands the various claims Releasor could have asserted under federal or state law, including but not limited to the Age Discrimination in Employment Act, Mass. Gen. L. c. 151B, the Massachusetts Wage Act and Massachusetts overtime pay law and other similar laws;
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- (b) that Releasor has read this General Release carefully and understands all of its provisions;
- (c) that Releasor understands that Releasor has the right to and is advised to consult an attorney concerning this General Release and in particular the waiver of rights Releasor might have under the laws described herein and that to the extent, if any, that Releasor desired, Releasor availed himself or herself of this right;
- (d) that Releasor has been provided at least twenty-one (21) days to consider whether to sign this General Release and that to the extent Releasor has signed this General Release before the expiration of such twenty-one (21) day period Releasor has done so knowingly and willingly;
- (e) that Releasor enters into this General Release and waives any claims knowingly and willingly; and
- (f) that this General Release shall become effective seven (7) business days after it is signed. Releasor may revoke this General Release within seven (7) business days after it is signed by delivering a written notice of rescission to Senior Director, Human Resources, Aware, Inc., 76 Blanchard Road, Burlington, Massachusetts 01803. To be effective, the notice of rescission must be hand delivered, or postmarked within the seven (7) business day period and sent by certified mail, return receipt requested, to the referenced address.

Signed and sealed this 13 day of November, 2023.

Signed: /s/David Barcelo

Name (print): David Barcelo
