UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): April 21, 2023

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

Delaware	001-37945	20-5456087
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

901 Yamato Road, Suite 260 Boca Raton, Florida	33431
(Address of Principal Executive Offices)	(Zip Code)

Registrant's telephone number, including area code: (855) 353-9289

N/A
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered or to be 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	FPAY	The Nasdaq Stock Market LLC

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

Emerging growth company ☐

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

CURRENT REPORT ON FORM 8-K

FlexShopper, Inc. (the "Company")

April 21, 2023

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

On April 21, 2023, the Company entered into the Amendment No. 1 To Amended and Restated Employment Agreement with H. Russell Heiser. The employment agreement with Mr. Heiser extends for a term expiring on December 31, 2027, and is automatically renewable for three successive one-year terms unless written notice of non-renewal is timely provided by either party. Pursuant to this employment agreement, Mr. Heiser has agreed to devote his full time, attention and efforts to our business and his duties as our Chief Executive Officer. The employment agreement provides that, effective as of March 20, 2023, Mr. Heiser will receive a base salary at an annual rate of $460,000 for services rendered in such position. Pursuant to a short-term incentive plan approved by the Compensation Committee of our Board, Mr. Heiser may be entitled to receive cash bonuses based on the executive meeting and exceeding performance goals relating to the net revenue and EBITDA of our company. The target cash bonus under the short-term incentive plan is up to 50% of Mr. Heiser's annual base salary (with a maximum bonus payment of 100% of his base salary).

Pursuant to a long-term incentive plan approved by the Compensation Committee of our Board, Mr. Heiser will receive grants of stock options and performance share units ("PSUs") under our 2018 Omnibus Equity Compensation Plan. Mr. Heiser was granted stock options to purchase such number of shares of our common stock with a fair market value of $345,000, determined using the Black-Scholes formula for fair value as of the April 21, 2023 grant date and a ten-year life, with annual vesting at the rate of 25% over four years, commencing on December 31, 2023. Mr. Heiser was also granted PSUs for shares of our common stock with a fair market value of $690,000, based on the common stock price as of the April 21, 2023 grant date. The PSUs are subject to both performance and time-based vesting. The performance metrics are based on specified EBITDA goals for our company. If we achieve 100% of the performance metrics, 50% of the PSUs will vest (and 50% will be forfeited), with a maximum vesting of 100% of the PSUs if 200% of the target performance is achieved. For the time-based component, the PSUs will vest annually at the rate of 25% over four years, commencing on December 31, 2023.

The employment agreement also provides for termination by us upon death or disability of Mr. Heiser (defined as three aggregate months of incapacity during any 365-consecutive day period) or upon cause, which includes willful misconduct, gross negligence, willful failure to perform duties, fraud/embezzlement, willful policy violation or a breach of the employment agreement. In the event the employment agreement is terminated by us without cause or by the executive for good reason, defined as a material breach of the agreement by us, Mr. Heiser will be entitled to one year's salary and COBRA reimbursement and immediate vesting of any equity which would have otherwise vested in the one year following the termination.

In the event of a termination without cause or resignation for good reason in either case within three months preceding or 12 months following a change of control of our company, Mr. Heiser will receive one year's salary, his target bonus, 18 months of COBRA reimbursement and immediate vesting of all outstanding unvested (but nonforfeited) equity awards.

The employment agreement also contains covenants (a) restricting Mr. Heiser from engaging in any activities competitive with our business or soliciting employees or clients during the term of such employment agreement and two years thereafter, (b) prohibiting the executive from disclosure of confidential information regarding us at any time and (c) confirming that all intellectual property developed by the executive and relating to our business constitutes our sole and exclusive property.

The foregoing summary is qualified by reference to the full text of the employment agreement with Mr. Heiser attached as Exhibit 10.1, which is incorporated herein in its entirety.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits. The exhibits listed in the following Exhibit Index are filed as part of this current report.

Exhibit No.	Description
10.1	Amendment No. 1 to Amended and Restated Employment Agreement, dated April 21, 2023.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

SIGNATURES

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

FLEXSHOPPER, INC.

Dated: April 27, 2023

By: /s/ H. Russell Heiser, Jr.
Name: H. Russell Heiser, Jr.
Title: Chief Executive Officer

AMENDMENT NO. 1 TO
AMENDED AND RESTATED EMPLOYMENT AGREEMENT

THIS AMENDMENT, dated April 21, 2023 (this "**Amendment**"), is between **FLEXSHOPPER, INC.**, a Delaware corporation (the "**Company**"), and **H. RUSSELL HEISER, JR.** (the "**Executive**").

W I T N E S S E T H

WHEREAS, the Company and the Executive are parties to an Amended and Restated Employment Agreement, made and entered into effective as of January 1, 2022 (the "**Agreement**"), pursuant to which the Executive agreed to be employed and serve as the Chief Financial Officer of the Company during a term of employment expiring on December 31, 2025, subject to automatic renewal for three successive one-year terms (unless otherwise sooner terminated) in accordance with the terms of the Agreement;

WHEREAS, the Executive was appointed by the Board of Directors of the Company to become the Chief Executive Officer of the Company effective on March 20, 2023 and, in connection therewith, the Board agreed to amend the Agreement with the Executive to be substantially consistent with the terms provided in the employment agreement with the Company's former Chief Executive Officer; and

WHEREAS, in accordance with Section 13 of the Agreement, the Company and the Executive have agreed to amend the Agreement as provided herein to reflect the Executive's added duties and desire that such amendments be effective as of March 20, 2023, the date the Executive assumed the position of Chief Executive Officer of the Company; and

NOW, THEREFORE, the parties hereto hereby agree to amend the Agreement as follows:

1. Definitions; References; Continuation of the Agreement. Unless otherwise specified herein, each capitalized term used herein that is defined in the Agreement shall have the meaning assigned to such term in the Agreement. Each reference to "the Agreement" and each other similar reference contained in the Agreement from and after the effectiveness of this Amendment shall refer to the Agreement, as amended hereby. Except as amended hereby, all terms and provisions of the Agreement shall continue unmodified and remain in full force and effect.

2. Amendments to the Terms of Employment. The parties agree that the Agreement shall be amended as follows:

(a) Section 1 [Definitions] of the Agreement shall be amended to change the definition of "Severance Amount" to $460,000 from $360,000.

(b) Section 2 [Employment] of the Agreement shall be amended to add "Chief Executive Officer" to the Executive's title and associated duties. The Executive shall remain as the Chief Financial Officer of the company until the Board shall have appointed his successor to the position of Chief Financial Officer of the Company.

(c) Section 3 [Term] of the Agreement shall be amended to change the expiration date of the Initial Term to December 31, 2027 from December 31, 2025.

(d) Section 4(a) [Compensation – Base Salary] of the Agreement shall be amended to change the Executive's annual Base Salary to $460,000 from $360,000.

(e) Section 4(b) [Compensation – Annual Cash Bonus] of the Agreement shall be amended to state that the Executive’s target bonus under the STI Plan shall be 50% (rather than 40%) of the Base Salary, with a maximum bonus payment of 100% (rather than 80%) of the Base Salary.

(f) Section 5(a) [Expense Reimbursement and Other Benefits – Reimbursement of Expenses] of the Agreement shall be amended to indicate that the Chairman of the Board (rather than the Chief Executive Officer) shall review and approve all of the Executive’s reimbursement requests.

(g) Section 5(c) [Expense Reimbursement – Equity Awards] of the Agreement shall be amended to insert the paragraphs below immediately following subsection (ii) thereof to reflect 2023 equity awards:

(iii) As soon as practicable following the date hereof, the Company shall grant to Executive an option to acquire shares of the Company with a fair market value at grant of $345,000 (together with the option in subsection (i), the “**Initial Option**”). The option shares under the Initial Option shall vest at the rate of 25% each year, with the first vesting date being December 31, 2023 and 25% on the last day of each year thereafter during the Term of Employment; providing, however, if there is a (i) Change in Control during the Term of Employment or (ii) the Term of Employment ends for any reason other than (A) due to a termination by the Executive without Good Reason or (B) a termination by the Company with Cause, then all unvested Initial Options shall immediately vest. Once vested, the options can be exercised to acquire shares in whole or in part, from time to time, during the Term of Employment and for a period of 6 months after the earlier to occur of (i) the termination of Executive’s Term of Employment (for whatever reason other than Cause) or (ii) the closing of the Change in Control event. Options not exercised within such 6-month period shall immediately terminate. The purchase price for each share acquired upon exercise of the Initial Option as well as other terms of the Initial Option, which shall be consistent with the terms above, shall be set forth in an option grant agreement. The purchase price must be paid in full at the time of exercise.

(iv) As soon as practicable following the date hereof, the Company shall the Company shall grant to Executive performance share units with a fair market value of $690,000 (the “**PSUs**”). The PSUs shall be subject to both performance and time-based vesting. For the performance component, the performance measurement period shall be the calendar year 2023. The performance metrics shall be based on the Company’s adjusted EBITDA, as more fully set forth on Schedule 1 hereto. If the Company achieves 100% of the performance metrics (the “Target Performance”), 50% of the PSUs shall vest, with a maximum vesting of 100% of the granted PSUs if 200% of the Target Performance is achieved. The unvested PSUs shall be forfeited. For the time-based component, the PSUs shall vest at the rate of 25% each year, with the first vesting date being December 31, 2023 and 25% on the last day of each year thereafter during the Term of Employment. For example, if the Company achieves the Target Performance, Executive shall forfeit 50% of the PSUs and the remaining PSUs shall vest on the last day of 2023, 2024, 2025, and 2026, subject to Executive’s continued employment. If there is a Change in Control after the performance measurement period, all unvested (but non-forfeited) PSUs shall vest. PSUs not vested on the termination of Executive’s Term of Employment (for whatever reason) shall never vest and they shall terminate. The Company shall issue a PSU grant agreement, which shall be consistent with the terms above.

3. <u>Effectiveness</u>. This Amendment shall become effective as of March 20, 2023.

4. <u>Disclosure of Material Information</u>. The Company shall timely file a Current Report on Form 8-K describing the terms of this Amendment in the form required by the Securities Exchange Act of 1934 and attaching a copy of this Amendment.

5. <u>Fees</u>. Each party shall pay the fees and expenses of its advisers, counsel, accountants and other experts, if any, and all other expenses incurred by such party incident to the negotiation, preparation, review, execution, delivery and performance of this Amendment.

6. <u>Counterparts; Execution; Amendments</u>. This Amendment may be executed in counterparts and by fax or electronic signatures, all of which shall be one and the same agreement and shall have binding legal effect. No waiver or amendment under or in respect of this Amendment shall be valid unless in writing signed by the party to be charged therewith.

7. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of Florida.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed on the date first above written.

FLEXSHOPPER, INC.

By: ______________________________
Howard Dvorkin
Chairman of the Board

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H. Russell Heiser, Jr.