

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): **June 17, 2024**

WAVEDANCER, INC

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-41092
(Commission
File Number)

54-1167364
(IRS Employer
Identification No.)

12015 Lee Jackson Memorial Highway
Suite 210
Fairfax, VA 22033
(Address of principal executive offices, including zip code)

703-383-3000
(Registrant's telephone number, including area code)

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

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

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.001 per share	WAVD	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.

Item 1.01. Entry into a Material Definitive Agreement.

As previously announced on November 15, 2023, WaveDancer, Inc. (“Parent”) and its wholly owned subsidiary, FFN, Inc (“FFN”), entered into an Agreement and Plan of Merger (“Merger Agreement”) with Firefly Neuroscience, Inc. (the “Company”). On January 12, 2024, Parent, FFN and the Company entered into the First Amendment to the Merger Agreement. Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Merger Agreement, as further amended, modified, supplemented and/or restated by the First Amendment and by the Second Amendment (as defined below).

On June 17, 2024, Parent, FFN and the Company made and entered into the Second Amendment (“Second Amendment”) to the Merger Agreement. The Second Amendment amends the terms and conditions of the Merger Agreement as follows:

1. The End Date (for purposes of establishing when the Merger Agreement is subject to termination) was extended to July 15, 2024 subject to a 31 calendar day extension to August 15, 2024.
2. The definition of Company Outstanding Shares was amended to include shares of common stock issuable upon conversion of shares of preferred stock and upon exercise of warrants which Parent will issue at the Closing. Parent anticipates issuing such shares and warrants in consideration of funds the Company intends to raise to consummate the Merger. Therefore, only Company equity holders will sustain the dilution for such shares for purposes of the equity split under the Merger Agreement between the equity holders of the Company and Parent.
3. The definition of Parent Outstanding Shares was amended to exclude shares of common stock issuable upon conversion of shares of preferred stock and upon exercise of warrants as described above.
4. The definition of Parent Net Cash was amended to exclude any cash proceeds resulting from the sale at the Closing of shares of preferred stock and warrants.
5. The definition of Parent Net Cash was amended from zero to (\$200,000) thereby allowing Parent to have unpaid liabilities up to \$200,000.
6. The definition of Parent Valuation was amended so that Parent having a negative Minimum Parent Net Cash Amount would not affect the Parent Valuation.

The foregoing descriptions of the Second Amendment and the Merger Agreement, as amended by the First Amendment, do not purport to be complete and are qualified in their entirety by reference to (i) the full text of the Second Amendment, which is filed as Exhibit 2.1 hereto and is incorporated herein by reference, (ii) the full text of the First Amendment, which was filed as Exhibit 2.1 to the Current Report on Form 8-K filed on January 18, 2024, and (iii) the full text of the Merger Agreement, which was filed as Exhibit 2.1 to the Current Report on Form 8-K filed on November 16, 2023.

Item 9.01 Financial Statements and Exhibits

<u>Exhibit No.</u>	<u>Description</u>
2.1	<u>Second Amendment to Agreement and Plan of Merger by and among WaveDancer, Inc., FFN Merger Sub, Inc., and Firefly Neuroscience, Inc. dated June 17, 2024.</u>
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.

Date: June 21, 2024

WAVEDANCER, INC.

By: /s/ G. James Benoit, Jr.
G. James Benoit, Jr.
Chief Executive Officer

SECOND AMENDMENT TO AGREEMENT AND PLAN OF MERGER

This Second Amendment (this "Second Amendment") to the Merger Agreement (as defined below) is made and entered into as of June 17, 2024, by and among WaveDancer, Inc. a Delaware corporation ("Parent"), FFN Merger Sub, Inc., a Delaware corporation ("Merger Sub"), and Firefly Neuroscience, Inc., a Delaware corporation (the "Company"). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Merger Agreement (as defined below).

WHEREAS, Parent, Merger Sub, and the Company have entered into that certain Agreement and Plan of Merger, dated as of November 15, 2023, as amended on January 12, 2024 (the "Merger Agreement").

WHEREAS, the Parties desire to amend the terms and conditions of the Merger Agreement to (i) extend the End Date to July 15, 2024, (ii) include in the definition of Company Outstanding Shares the convertible preferred shares and warrants being issued immediately following the consummation of the Merger, (iii) exclude from Parent Net Cash proceeds from the sale of securities at the Closing and (iv) reduce the Minimum Parent Net Cash Amount from \$0 to (\$200,000).

NOW, THEREFORE, for and in consideration of the mutual covenants contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each Party hereto, the Parties agree as follows:

1. **Amendments to Merger Agreement.** The Merger Agreement is hereby amended as follows:

a. Section 7.01(b) of the Merger Agreement is deleted in its entirety and replaced with the following:

By either Parent or Company if the Merger has not been consummated by the End Date (provided that the right to terminate this Agreement under this Section 7.01(b) will not be available to any party whose failure to fulfill any obligation under this Agreement has been a primary cause of the failure of the Merger to occur on or before such date); *provided, however*, that Parent or Company may, upon written notice delivered by one party to the other prior to the originally scheduled End Date, extend the originally scheduled End Date by up to thirty-one (31) calendar days (to August 15, 2024) (the "***Extended Date***") so long as such party requesting the extension is not in material breach of any provision of this Agreement;

b. The definition for "***End Date***" is hereby deleted in its entirety and replaced with the following:

End Date means July 15, 2024.

c. The definition of Company Outstanding Shares is hereby deleted and replaced with the following:

Company Outstanding Shares means the (a) the total number of shares of Company Common Stock outstanding immediately prior to the Effective Time, (b) the total number of shares of Company Common Stock that, immediately prior to the Effective Time, are issuable upon exercise of Company Options and Company Warrants (whether or not vested or currently exercisable), (c) shares of Parent Common Stock issued and/or issuable upon conversion of shares of Parent preferred stock being issued upon the Closing and (d) shares of Parent Common Stock issuable upon exercise of Parent Warrants issued upon the Closing (whether or not vested or currently exercisable).

d. The definition of Parent Outstanding Shares is hereby deleted and replaced with the following:

“Parent Outstanding Shares” means the sum of (a) the total number of shares of Parent Common Stock outstanding immediately prior to the Effective Time and (b) the total number of shares of Parent Common Stock that, immediately prior to the Effective Time, are issuable upon exercise of Parent Options and Parent Warrants (whether or not vested or currently exercisable); provided, however, for the avoidance of doubt Parent Outstanding Shares shall exclude any shares of Parent Common Stock issued and/or issuable upon conversion of shares of Parent preferred stock being issued upon the Closing and shares of Parent Common Stock issuable upon exercise of Parent Warrants issued upon the Closing (whether or not vested or currently exercisable).

e. The definition of Parent Net Cash is hereby deleted and replaced with the following:

“Parent Net Cash” means, without duplication (1) the sum of (A) the Parent’s unrestricted and unencumbered cash and cash equivalents, as of the Closing Date, including the Tellenger Amount but excluding any proceeds from the sale of any securities occurring upon the Closing including the sale of shares of convertible preferred stock and warrants, (B) the aggregate amount of Promissory Notes, if any, as of the Closing Date, minus (2) the sum of, without duplication, (V) any Transaction Costs of Parent and its Subsidiaries, except for Transaction Costs assumed by Tellenger, (W) any Indebtedness of Parent and its Subsidiaries not assumed in the Tellenger Sale, (X) any Taxes of Parent or its Subsidiaries related to or attributable to any Tax period or portion thereof that ends on or prior to the Closing Date and (Y) the current liabilities of Parent.

f. The definition of Minimum Parent Net Cash Amount is hereby deleted and replaced with the following:

“Minimum Parent Net Cash Amount” means an amount equal to (\$200,000).

g. The definition of Parent Valuation is hereby deleted and replaced with the following:

“Parent Valuation” means \$15,000,000 less, or plus if a negative number, the difference between \$5,000,000 and the Parent Net Cash including the Tellenger Amount (if applicable); provided, however, Parent Net Cash will be deemed equal to \$0 to the extent the Minimum Parent Net Cash Amount is negative.

2. **No Other Changes.** Except as expressly provided in this Amendment, the Agreement shall remain in full force and effect upon its original terms. This Amendment and the Agreement constitute an integrated agreement with respect to the subject matter hereof and thereof. This Amendment may be amended, modified, and supplemented only in accordance with the terms of the Agreement.
3. **Governing Law.** This Amendment shall be governed by and construed in accordance with the laws of the State of Delaware applicable to contracts made and performed in such State, without reference to such State's or any other state's or other jurisdiction's principles of conflict of laws.
4. **Counterparts.** This Amendment may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed as of the date first written above by their respective officers thereunto duly authorized.

COMPANY
FIREFLY NEUROSCIENCE, INC.

By: _____
Name: Jon Olsen
Title: CEO

MERGER SUB
FFN MERGER SUB, INC.

By: _____
Name: G. James Benoit, Jr.
Title: CEO

PARENT
WAVEDANCER, INC.

By: _____
Name: G. James Benoit, Jr.
Title: CEO