

# POSITIVEID CORP

## **FORM 8-K** (Current report filing)

Filed 02/10/17 for the Period Ending 02/06/17

Address	1690 SOUTH CONGRESS AVENUE SUITE 200 DELRAY BEACH, FL 33445
Telephone	561-805-8008
CIK	0001347022
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SIC Code	3826 - Laboratory Analytical Instruments
Industry	Communications & Networking
Sector	Technology
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**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): February 6, 2017

**POSITIVEID CORPORATION**

(Exact name of registrant as specified in its charter)

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**Delaware**

(State or Other Jurisdiction  
of Incorporation)

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**001-33297**

(Commission  
File Number)

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**06-1637809**

(IRS Employer  
Identification Number)

**1690 South Congress Avenue, Suite 201**

**Delray Beach, Florida 33445**

(Address of principal executive offices) (zip code)

**(561) 805-8000**

(Registrant's telephone number, including area code)

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(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))
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## Cautionary Note on Forward-Looking Statements

This Current Report on Form 8-K (this “Report”) and any related statements of representatives and partners of the Company contain, or may contain, among other things, certain “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended (the “Securities Act”), and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). Such forward-looking statements involve significant risks and uncertainties. Such statements may include, without limitation, statements with respect to the Company’s plans, objectives, projections, expectations and intentions and other statements identified by words such as “projects,” “may,” “will,” “could,” “would,” “should,” “believes,” “expects,” “anticipates,” “estimates,” “intends,” “plans,” or similar expressions. These statements are based upon the current beliefs and expectations of the Company’s management and are subject to significant risks and uncertainties, including those detailed in the Company’s filings with the Securities and Exchange Commission (the “SEC”). Actual results may differ significantly from those set forth in the forward-looking statements. These forward-looking statements involve certain risks and uncertainties that are subject to change based on various factors (many of which are beyond the Company’s control). The Company undertakes no obligation to publicly update any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by applicable law.

### Item 1.01 Entry into a Material Definitive Agreement.

On February 6, 2017, PositiveID Corporation (the “Company”) entered into a waiver of cross-default (the “Agreement”) with lenders who hold 96% of the Company’s outstanding convertible debt (the “Lenders”). Under the terms of the Agreement, the Lenders have agreed to waive their rights or remedies to demand repayment of their loans or any other remedy from the Company, related to notice(s) of default received by the Company. Except as expressly provided in the Agreement, the loans will continue unchanged and in full force and effect, and all rights, powers, and remedies of the Lenders thereunder and under applicable law are reserved.

The foregoing description of the terms of the Agreement does not purport to be complete and is qualified in its entirety by the complete text of the document attached as Exhibit 10.1 to this Current Report on Form 8-K.

### Item 2.04 Triggering Events that Accelerate or Increase a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Transaction

On or about February 6, 2017, the Company received notice from a holder and was told verbally that a second holder intended to send a notice (the “Notifying Holders”) of convertible redeemable promissory notes with an aggregate face value of approximately \$120,000 (the “Notes”), that certain events of default had occurred. This debt comprises approximately 2% of the Company’s outstanding convertible debt. The notice received to date asserts, and the Company expects that the notice that will shortly be sent will assert, that the Company is in default under the terms of the Notes because the Company failed to tender conversion shares to the Notifying Holders within three business days of notices of conversion, and failed to reserve the amount of shares required if the Notes would be fully converted (the “Events of Default”). As a result of the potential Events of Default, interest on the Notes increases and additional penalties may accrue. The Company is in ongoing discussions with the Notifying Holders regarding a resolution of the matter.

### Item 9.01 Financial Statements and Exhibits

<b>Exhibit Number</b>	<b>Description</b>
10.1	Form of Waiver of Cross Default, dated February 6, 2017

**SIGNATURES**

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

**POSITIVEID CORPORATION**

Date: February 10, 2017

By: /s/ William J. Caragol

Name: William J. Caragol

Title: Chief Executive Officer

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**FORM OF WAIVER OF CROSS-DEFAULT**

This Waiver of Cross Default (this “Agreement”) is dated as of February 6, 2017, and is entered into by and among PositiveID Corporation, a Delaware corporation (the “Company”) and [ ] (the “Lenders”).

**RECITALS**

**WHEREAS**, the Company is indebted to the Lenders an aggregate principal and interest amount of \$5.7 million (“Loans”) partially due and payable as of February 6, 2017. This comprises 96% of the Company’s outstanding convertible debt.

**WHEREAS**, the Company has received a notice of default from [Holder 1] and has been informed by [Holder 2] (collectively, the “Notifying Holders”) that they will also be delivering a notice of default, related to their outstanding convertible loans. The Notifying Holders’ loans have an aggregate principal and interest balance of \$126 thousand, which comprises 2% of the Company’s outstanding convertible debt.

**WHEREAS**, the Lenders are willing to:

1. forbear from enforcing any of their rights related to a cross default in any agreement between the Lenders and the Company related to the Holder 1 notice already delivered and the Holder 2 notice expected to be delivered.

**NOW, THEREFORE** , for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Waiver of Cross Default. Lenders hereby waive their rights or remedies to demand repayment of the Loans (“Forbearance Payment”), or any other remedy from the Company, related to a cross default created by the Holder 1 notice already delivered and the Holder 2 notice expected to be delivered.

2. Continuing Effect. Except as expressly provided herein, the Company hereby agrees that the Loans shall continue unchanged and in full force and effect, and all rights, powers and remedies of the Lenders thereunder and under applicable law are hereby expressly reserved.

3. Miscellaneous.

- (a) Section headings used in this Agreement are for convenience of reference only and shall not affect the construction of this Agreement.
  - (b) This Agreement may be executed in any number of counterparts and by the different parties on separate counterparts and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute but one and the same agreement.
  - (c) This Agreement shall be governed and construed in accordance with the laws of the State of Delaware, without regard to any principals of conflicts of law. Each of the parties hereby irrevocably consents and agrees that any legal or equitable actions or proceeding arising under or in connection with this Agreement shall be brought in the appropriate courts located in State of Delaware, and by execution and delivery of this Agreement, irrevocably submits to and accepts the jurisdiction of said courts and waives any defense that such court is not a convenient forum.
  - (d) This Agreement shall be binding upon the Company, the Lenders and their respective successor and assigns, and shall inure to the benefit of the Company, the Lenders and their respective successors and assigns.
  - (e) All amendments or modifications of this Agreement and all consents, waivers and notices delivered hereunder or in connection herewith shall be in writing.
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**4 . WAIVER OF JURY TRIAL . EACH OF THE COMPANY AND EACH OF THE LENDERS HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

**IN WITNESS WHEREOF** , the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

**POSITIVEID CORPORATION**

By: \_\_\_\_\_  
Name: William J. Caragol  
Title: Chief Executive Officer

**LENDER**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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