AUTOBYTEL INC

FORM 10-Q
(Quarterly Report)

Filed 10/23/09 for the Period Ending 09/30/09

Address	18872 MACARTHUR BLVD SUITE 200 IRVINE, CA 92612-1400
Telephone	9492254500
CIK	0001023364
Symbol	ABTL
SIC Code	7370 - Computer Programming, Data Processing, And
Industry	Advertising
Sector	Services
Fiscal Year	12/31

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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, 2009

or

☐ **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 0-22239

Autobytel Inc.

(Exact name of registrant as specified in its charter)

Delaware **(State or other jurisdiction of incorporation or organization)**	**33-0711569** **(I.R.S. Employer identification number)**
18872 MacArthur Boulevard, Suite 200, Irvine, California **(Address of principal executive offices)**	**92612** **(Zip Code)**

(949) 225-4500
(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant: (1) filed all reports required to be filed by Section 13 or 15(d) of the Exchange Act of 1934 during the past 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 and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (section 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☐ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer," and "smaller reporting company" in Rule12b-2 of the Exchange Act.

Large accelerated filer ☐ Accelerated filer ☒ Non-accelerated filer ☐ Smaller reporting company ☒
(Do not check if a smaller reporting company)

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 October 15, 2009, there were 45,184,679 shares of the Registrant's Common Stock outstanding.

INDEX

		Page
	PART I. FINANCIAL INFORMATION	
ITEM 1.	Unaudited Consolidated Condensed Financial Statements:	
	Unaudited Consolidated Condensed Balance Sheets as of September 30, 2009 and December 31, 2008	3
	Unaudited Consolidated Condensed Statements of Operations and Comprehensive Loss for the Three and Nine Months Ended September 30, 2009 and 2008	4
	Unaudited Consolidated Condensed Statements of Cash Flows for the Nine Months Ended September 30, 2009 and 2008	5
	Notes to Unaudited Consolidated Condensed Financial Statements	6
ITEM 2.	Management's Discussion and Analysis of Financial Condition and Results of Operations	15
ITEM 3.	Quantitative and Qualitative Disclosures About Market Risk	22
ITEM 4.	Controls and Procedures	22
	PART II. OTHER INFORMATION	
ITEM 1.	Legal Proceedings	23
ITEM 1A.	Risk Factors	23
ITEM 5.	Other Information	25
ITEM 6.	Exhibits	25
Signatures		26

PART I. FINANCIAL INFORMATION

Item 1. ***Unaudited Consolidated Condensed Financial Statements***

AUTOBYTEL INC.

UNAUDITED CONSOLIDATED CONDENSED BALANCE SHEETS

(Amounts in thousands, except share and per-share data)

	September 30, 2009	December 31, 2008
Assets		
Current assets:		
Cash and cash equivalents	$ 25,239	$ 27,393
Accounts receivable, net of allowances for bad debts and customer credits of $1,294 and $1,277 at September 30, 2009 and December 31, 2008, respectively	8,802	10,047
Prepaid expenses and other current assets	744	1,378
Total current assets	34,785	38,818
Property and equipment, net	1,348	2,421
Investment and other assets	130	763
Total assets	$ 36,263	$ 42,002
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	$ 2,917	$ 3,579
Accrued expenses and other current liabilities	3,652	6,432
Deferred revenues	794	1,835
Total current liabilities	7,363	11,846
Non-current liabilities	108	181
Total liabilities	7,471	12,027
Commitments and contingencies (Note 9)		
Stockholders' equity:		
Preferred stock, $0.001 par value; 11,445,187 shares authorized; none outstanding	—	—
Common stock, $0.001 par value; 200,000,000 shares authorized and 45,184,679 and 45,219,679 shares issued and outstanding as of September 30, 2009 and December 31, 2008, respectively	45	45
Additional paid-in capital	301,512	300,720
Unrealized gain from investment	—	568
Accumulated deficit	(272,765)	(271,358)
Total stockholders' equity	28,792	29,975
Total liabilities and stockholders' equity	$ 36,263	$ 42,002

See accompanying notes.

AUTOBYTEL INC.

UNAUDITED CONSOLIDATED CONDENSED STATEMENTS OF OPERATIONS

AND COMPREHENSIVE LOSS

(Amounts in thousands, except per-share data)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
Net revenues:				
Lead fees	$ 11,695	$ 15,571	$ 35,431	$ 50,910
Advertising	1,627	1,640	5,100	5,906
Other revenues	32	59	138	137
Total net revenues	13,354	17,270	40,669	56,953
Cost of revenues (excludes depreciation of $225 and $318 for the three months ended September 30, 2009 and 2008, respectively and $859 and $1,102 for the nine months ended September 30 2009 and 2008, respectively)	8,614	11,107	26,523	37,146
Gross profit	4,740	6,163	14,146	19,807
Operating expenses:				
Sales and marketing	2,387	4,001	7,568	13,516
Technology support	1,357	3,651	4,044	11,924
General and administrative	2,409	4,593	9,495	15,328
Patent litigation settlement	(2)	—	(2,848)	(2,667)
Goodwill impairment	—	—	—	52,074
Total operating expenses	6,151	12,245	18,259	90,175
Operating loss	(1,411)	(6,082)	(4,113)	(70,368)
Interest and other income	94	271	915	1,116
Provision for income taxes	124	—	124	—
Loss from continuing operations	(1,441)	(5,811)	(3,322)	(69,252)
Discontinued operations, net	642	184	1,915	4,390
Net loss	$ (799)	$ (5,627)	$ (1,407)	$ (64,862)
Basic and diluted loss per common share:				
Loss from continuing operations	$ (0.03)	$ (0.13)	$ (0.07)	$ (1.57)
Discontinued operations, net	0.01	—	0.04	0.10
Basic and diluted loss per common share	$ (0.02)	$ (0.13)	$ (0.03)	$ (1.47)
Comprehensive loss:				
Net loss	$ (799)	$ (5,627)	$ (1,407)	$ (64,862)
Unrealized gain/(loss) from investment	—	33	—	(6)
Comprehensive loss	$ (799)	$ (5,594)	$ (1,407)	$ (64,868)

See accompanying notes.

AUTOBYTEL INC.

UNAUDITED CONSOLIDATED CONDENSED STATEMENTS OF CASH FLOWS

(Amounts in thousands)

	Nine Months Ended September 30,	
	2009	**2008**
Cash flows from operating activities:		
Net loss	$ (1,407)	$ (64,862)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	1,258	3,551
Provision for bad debts	864	673
Provision for customer credits	729	792
Gain on sale of AVV business	(1,772)	(4,204)
Share-based compensation	792	2,129
Loss on goodwill impairment	—	52,074
Changes in assets and liabilities:		
Accounts receivable	(348)	(2,364)
Prepaid expenses and other current assets	634	(44)
Investment and other non-current assets	(569)	84
Accounts payable	(662)	(1,826)
Accrued expenses and other liabilities	(2,780)	(1,456)
Deferred revenues	(1,041)	338
Non-current liabilities	(73)	(107)
Net cash used in operating activities	(4,375)	(15,222)
Cash flows from investing activities:		
Maturities of short-term investments	—	14,050
Purchases of short-term investments	—	(14,050)
Purchases of property and equipment	(131)	(2,254)
Proceeds from sale of AVV business	1,772	21,396
Proceeds from sale of available-for-sale investment	580	—
Net cash provided by investing activities	2,221	19,142
Cash flows from financing activities:		
Proceeds from exercise of stock options and awards issued under the employee stock purchase plan	—	649
Net cash provided by financing activities	—	649
Net (decrease)/increase in cash and cash equivalents	(2,154)	4,569
Cash and cash equivalents, beginning of period	27,393	27,601
Cash and cash equivalents, end of period	$ 25,239	$ 32,170

See accompanying notes.

AUTOBYTEL INC.
NOTES TO UNAUDITED CONSOLIDATED CONDENSED FINANCIAL STATEMENTS

1. Organization and Operations of Autobytel

Autobytel Inc. ("Autobytel" or the "Company") is an automotive marketing services company that assists automotive dealers and manufacturers sell cars and light trucks. By connecting consumers to automotive dealers and manufacturers through internet lead referral programs and online advertising, the Company provides automotive dealers and manufacturers with opportunities to efficiently market their vehicles to potential customers. The Company purchases from third parties and generates from its own websites consumer internet requests for pricing and availability on new and used cars as well as for vehicle financing ("Leads"). The Company sells the Leads primarily to its automotive dealer and manufacturer customers. Leads are purchased from a network of supplier websites ("Network Websites"). These Network Websites provide substantially all of the Company's Leads. Additionally, the Company owns and operates consumer-facing automotive websites, including Autobytel.com ®, Autoweb.com ®, AutoSite.com ®, Car.com sm, CarSmart.com ®, CarTV.com ®, and MyRide.com ® that provide consumers with information and tools to aid them with their automotive purchase decisions. The Company's owned websites provide a small percentage of its Leads and a significant portion of its page views for the advertising component of its advertising business. In addition to its websites, the Company provides advertising opportunities for automotive manufacturers and other automotive advertisers through its marketing network, which includes its AutoReach advertising network ("Ad Network") and co-branded websites.

The Company was incorporated in Delaware on May 17, 1996. Its principal corporate offices are located in Irvine, California. The Company's common stock is listed on The NASDAQ Global Market under the symbol ABTL.

The Company experienced negative cash flow in the nine months ended September 30, 2009 and throughout 2008, and at September 30, 2009, had an accumulated deficit of $273 million. The Company continues to face many risks and uncertainties related to the general economic conditions and the automotive industry in particular, however, the Company believes current cash and cash equivalents are sufficient to meet anticipated cash needs for working capital and capital expenditures for at least the next 12 months.

2. Basis of Presentation, Unaudited Interim Financial Statements

The unaudited consolidated condensed financial statements of Autobytel presented herein are presented on the same basis as the Company's 2008 Annual Report on Form 10-K. Autobytel has made its disclosures in accordance with accounting principles generally accepted in the United States of America as they apply to interim reporting, but condensed or omitted certain information and disclosures normally included in notes to consolidated financial statements in accordance with the Securities and Exchange Commission's rules and regulations. The unaudited consolidated condensed financial statements should be read in conjunction with the consolidated financial statements and the notes thereto in Autobytel's Annual Report on Form 10-K filed with the SEC for the year ended December 31, 2008.

In the opinion of Autobytel's management, the accompanying unaudited interim consolidated condensed financial statements contain all adjustments (consisting of normal recurring adjustments) to fairly present Autobytel's consolidated condensed financial position as of September 30, 2009 and the consolidated condensed statements of operations and cash flows for the nine months ended September 30, 2009 and 2008, as applicable. The statements of operations and cash flows for the periods ended September 30, 2009 and 2008 are not necessarily indicative of the results of operations or cash flows expected for the year or any other period. Autobytel's management has evaluated subsequent events through October 23, 2009, the date the financial statements are issued.

The Company sold certain assets and liabilities of its AVV Inc. ("AVV") business on January 23, 2008 (See Note 7). Accordingly, AVV is presented in the unaudited consolidated condensed financial statements as discontinued operations. As discontinued operations, revenues and expenses are presented on a net basis and stated separately from the respective captions in continuing operations in the Consolidated Condensed Statements of Operations and Comprehensive Loss. Expenses included in discontinued operations are direct costs that will be eliminated from future operations.

Certain reclassifications have been made to prior period information to conform to the current period presentations.

3. Recent Accounting Pronouncements

In June 2009, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards ("SFAS") 168 – "The FASB Accounting Standards Codification ™ and the Hierarchy of Generally Accepted Accounting Principles," a replacement of SFAS 162. SFAS 168 provides that the FASB Accounting Standards Codification (the "Codification") is the single source of U.S. GAAP in the preparation of financial statements, except for rules and interpretive releases of the SEC under authority of federal securities laws, which are sources of authoritative guidance for SEC registrants. The Codification was not meant to create new accounting and reporting guidance, but rather to simplify user access to all authoritative accounting guidance by reorganizing U.S. GAAP pronouncements into accounting topics within a consistent organizational structure. The Codification supersedes all existing non-SEC accounting and reporting standards and is effective for financial statements issued for interim and annual periods ending after September 15, 2009.

Following SFAS 168, the FASB will no longer issue new standards in the form of Statements, FASB Staff Positions, or Emerging Issues Task Force Abstracts; instead, it will issue Accounting Standards Updates (ASU's). The FASB will not consider ASU's as authoritative in their own right; rather these updates will serve only to update the Codification, provide background information about the guidance, and provide the bases for conclusions on the change(s) in the Codification. In the description that follows, the Company will provide reference to both the Codification Topic reference and the previously authoritative references in "italics" related to Codification Topics and Subtopics, as appropriate.

Fair Value Measurements

(Included in Accounting Standards Codification (ASC) 820 "Fair Value Measurements and Disclosures," previously known as SFAS 157, "Fair Value Measurements"). In September 2006, the FASB issued SFAS 157, "Fair Value Measurements". SFAS 157 establishes a framework for measuring fair value and expands disclosures of fair value measurements. SFAS 157 is effective for financial statements issued for periods beginning after November 15, 2007. In February 2008, the FASB issued FASB Staff Position ("FSP") FAS 157-2 which defers the effective date of SFAS 157 for non-financial assets and liabilities that are not recorded at fair value on a recurring basis until periods beginning after November 15, 2008. The adoption of the non-deferred portion of SFAS 157 on January 1, 2008 and the adoption of the deferred portion of SFAS 157 on January 1, 2009 did not have an impact on the Company's consolidated financial position, results of operations or cash flows.

Derivative and Hedging Activities

(Included in ASC 815 "Derivatives and Hedging," previously known as SFAS 161, "Disclosures about Derivative Instruments and Hedging Activities – an Amendment of FASB Statement 133 "). In March 2008, the FASB issued SFAS 161, "Disclosures about Derivative Instruments and Hedging Activities – an Amendment of FASB Statement 133." SFAS 161 provides new disclosure requirements for derivative and hedging activities and is effective for periods beginning after November 15, 2008. Since the Company does not have any Derivatives or Hedging Activities, the adoption of SFAS 161 on January 1, 2009 did not have any effect on its consolidated financial statements.

Non-Controlling Interests

(Included in ASC 810 "Consolidations," previously known as SFAS 160, "Non-controlling Interests in Consolidated Financial Statements – an amendment of ARB 51"). In December 2007, the FASB issued SFAS 160, "Non-controlling Interests in Consolidated Financial Statements – an amendment of ARB 51." This standard provides new accounting guidance and disclosure requirements for non-controlling interests in a subsidiary. Since the Company does not have non-controlling interests in its subsidiaries, the adoption of SFAS 161 on January 1, 2009 did not have any effect on its consolidated financial statements.

Business Combinations

(Included in ASC 805 "Business Combinations," previously known as SFAS 160, "Non-controlling Interests in Consolidated Financial Statements – an amendment of ARB 51"). In December 2007, the FASB issued SFAS 141R, "Business Combinations." SFAS 141R establishes principles and requirements for how the acquirer of a business recognizes and measures in its financial statements the identifiable assets acquired, the liabilities assumed, and any non controlling interest in the acquiree. The statement also provides guidance for recognizing and measuring the goodwill acquired in the business combination and determines what information to disclose to enable users of financial statements to evaluate the nature and financial effects of the business combination. SFAS 141R is effective for business combinations occurring after December 31, 2008. The nature and magnitude of the specific effect the adoption of SFAS 141R will have on the Company's consolidated financial statements will depend on the nature, terms, size of acquisitions, if any, it may consummate subsequent to the effective date of January 1, 2009.

4. Computation of Basic and Diluted Net Loss Per Share

Basic net loss per share is computed using the weighted average number of common shares outstanding during the period, excluding any unvested restricted stock. Diluted net loss per share is computed using the weighted average number of common shares, and if dilutive, potential common shares outstanding, as determined under the treasury stock method, during the period. Potential common shares consist of unvested restricted stock and the common shares issuable upon the exercise of stock options.

The following are the share amounts utilized to compute the basic and diluted net loss per share for the three and nine months ended September 30, 2009 and 2008:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
Basic and diluted shares:				
Weighted average common shares outstanding	44,958,840	44,194,668	44,957,194	44,031,077
Weighted average unvested restricted stock outstanding	(456,679)	(11,087)	(456,679)	(3,723)
Basic and dilutive shares	44,502,161	44,183,581	44,500,515	44,027,354

For the three months ended September 30, 2009 and 2008, 8.1 million and 6.9 million outstanding stock options and restricted stock, respectively, which could dilute basic EPS in the future were not included in the computation of diluted EPS because to do so would have been anti-dilutive. For the nine months ended September 30, 2009 and 2008; 8.2 million and 7.7 million, respectively, anti-dilutive stock options and restricted stock were excluded from the calculation of diluted earnings per share.

5. Share-Based Compensation

Share-based compensation expense is included in costs and expenses in the accompanying Consolidated Condensed Statements of Operations and Comprehensive Loss as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
	(in thousands)			
Cost of revenues	$ 7	$ 21	$ 20	$ 77
Sales and marketing	85	165	257	554
Technology support	25	45	68	295
General and administrative *(a)*	150	330	447	1,203
Total share-based compensation costs	$ 267	$ 561	$ 792	$ 2,129

(a) Approximately $46,000 of accelerated stock compensation expense is included in the nine months ended September 30, 2009 amount. This award accelerated vesting in accordance with the original award agreement.

Stock Options

During the three and nine months ended September 30, 2009, the Company granted 691,777 and 1,891,777 service-based stock options, with weighted average grant date fair values of $0.37 and $0.24, respectively. During the three and nine months ended September 30, 2008, the Company granted 1,487,000 and 1,852,500 service-based stock options, with weighted average grant date fair values of $0.53 and $2.20, respectively. The Company's President and Chief Executive Officer was granted 1,000,000 of the total 1,891,777 awards granted during the nine months ended September 30, 2009 ("CEO Awards"). The CEO Awards vest on the first anniversary of the grant date and have an exercise price of $0.35, which was higher than the closing price of the Company's common stock on the grant date. The shares that are issuable upon exercise of the CEO Award options are subject to restrictions on resale that lapse over time (as to one-third on the first anniversary of the grant date and thereafter will lapse as to the remaining two-thirds of the shares in equal one-twelfth (1/12) installments of the original number of shares subject to the options each quarter until all resale restrictions have lapsed). The vesting of these options and lapse of the resale restrictions will accelerate upon involuntary termination of employment by the Company without cause or for voluntary termination by the CEO for good reason.

During the nine months ended September 30, 2008, the Company granted 216,667 performance based stock options, with a weighted average fair value of $0.80. These awards did not vest as the employees who were granted these awards terminated employment with the Company prior to the performance measurement date.

During the nine months ended September 30, 2009 the Company granted 1,068,250 stock options to substantially all employees at exercise prices equal to the price of the stock on the grant date of $0.35, with a fair market value per option granted of $0.19. One-third of these options cliff vest on the first anniversary following the grant date and the remaining two-thirds vest ratably over twenty-four months thereafter. In addition, the remaining two-thirds of the awards must meet additional conditions in order to be exercisable. One-third of the remaining options must also satisfy the condition that the closing price of Autobytel's common stock over any 30 consecutive trading days is at least two times the option exercise price to be exercisable. The final one-third of the remaining options must also satisfy the condition that the closing price of Autobytel's common stock over any 30 consecutive trading days is at least three times the option exercise price to be exercisable. Certain of these options will accelerate upon a change in control.

There were no stock options exercised during the three and nine months ended September 30, 2009. The Company issued 320,000 shares of common stock upon the exercise of stock options for the nine months ended September 30, 2008.

The weighted average grant date fair value of all options granted in the three and nine months ended September 30, 2009 were $0.37 and $0.22, respectively. The weighted average grant date fair value of all options granted in the three and nine months ended September 30, 2008 were $0.53 and $2.28, respectively. The grant date fair value of all stock options granted during these periods was estimated using the Black-Scholes option-pricing model using the following weighted average assumptions:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
Dividend yield	—	—	—	—
Volatility	80%	62%	75%	62%
Risk-free interest rate	2.2%	3.0%	1.7%	2.9%
Expected life (years)	4.1	4.1	4.1	4.1

Restricted Stock

During the three months ended September 30, 2008, the Company granted an aggregate of 1,020,000 restricted stock awards that are subject to forfeiture. The forfeiture restrictions lapse as to one-third of the restricted stock awards on the first anniversary of the award date and ratably over twenty-four months thereafter. The lapsing of the forfeiture restrictions is accelerated under certain conditions, including upon a change of control of the Company. Compensation expense for restricted stock awards is measured on the grant date using the quoted market price of the Company's common stock on the grant date. The grant date fair value of the restricted stock granted was $1.06.

Employee Stock Purchase Plan

The Company's Employee Stock Purchase Plan ("ESPP") was suspended by the Company's Board of Directors during the third quarter of 2008. The Company provided 62,043 ESPP awards during the three and nine months ended September 30, 2008 under the ESPP, with a weighted-average grant date fair value per award of $0.64.

6. Selected Balance Sheet Accounts

Investment

Autobytel had an investment in one publicly traded company's equity securities, acquired as part of an acquisition in 2001, that it categorized as available-for-sale. Investments categorized as available-for-sale are measured at fair value with unrealized gains and losses included in accumulated comprehensive income as a separate component of stockholders' equity. The Company recorded its investments based on "Level 1" inputs, which were quoted market prices in an active market for identical assets or liabilities. During the nine months ended September 30, 2009 Autobytel sold its investment and realized a gain of $0.6 million, which is included in other income on the Consolidated Condensed Statement of Operations and Comprehensive Loss. As of December 31, 2008, the investment was valued at $0.6 million, with $0.6 million recorded in accumulated other comprehensive income.

Property and Equipment

Property and equipment consisted of the following:

	September 30, 2009	December 31, 2008
	(in thousands)	
Computer software and hardware	$ 9,181	$ 9,138
Furniture and equipment	1,439	1,715
Leasehold improvements	949	1,249
Capitalized internal use software	912	912
	12,481	13,014
Less – Accumulated depreciation and amortization	(11,133)	(10,593)
Property and Equipment, net	$ 1,348	$ 2,421

At September 30, 2009 and December 31, 2008, capitalized internal use software, net of amortization, and development in process were $0.2 million and $0.4 million, respectively.

The Company periodically reviews long-lived assets to determine if there is any impairment of these assets. The Company assesses the impairment of these assets, or the need to accelerate amortization, whenever events or changes in circumstances indicate that the carrying value may not be recoverable. The Company's judgments regarding the existence of impairment indicators are based on legal factors, market conditions and operational performance of our long-lived assets. If such indicators exist, the Company evaluates the assets for impairment based on the estimated future undiscounted cash flows expected to result from the use of the assets and their eventual disposition. Should the carrying amount of an asset exceed its estimated future undiscounted cash flows, an impairment loss is recorded for the excess of the asset's carrying amount over its fair value. Fair value is generally determined based on a valuation process that provides an estimate of a fair value of these assets using a discounted cash flow model, which includes assumptions and estimates.

Concentration of Credit Risk and Risks Due to Significant Customers

Financial instruments that potentially subject the Company to concentrations of credit risk consist primarily of cash and cash equivalents, investments and accounts receivable. Cash and cash equivalents are primarily maintained with three financial institutions in the United States. Deposits held by banks may exceed the amount of insurance provided for such deposits. Generally these deposits may be redeemed upon demand. Accounts receivable are primarily derived from fees billed to automotive dealers and automotive manufacturers. The Company generally requires no collateral to support its accounts receivables and maintains an allowance for bad debts for potential credit losses.

The Company has a concentration of credit risk with its automotive industry related accounts receivable balances, and in particular with the three largest U.S. automobile manufacturers (General Motors, Chrysler LLC, and Ford) ("Detroit Three"). During the first nine months of 2009 approximately 12% of the Company's total revenues were derived from the Detroit Three, and approximately 24% or $2 million of gross accounts receivable relate to the Detroit Three at September 30, 2009. The Company has not established a specific allowance for doubtful accounts related to the Detroit Three accounts receivable at September 30, 2009.

Accrued Expenses and Other Current Liabilities

Accrued expenses and other current liabilities consisted of the following:

	September 30, 2009	December 31, 2008
	(in thousands)	
Compensation and related costs	$ 2,395	$ 2,288
Accrued severance	62	2,614
Professional fees	14	340
Other accrued expenses	454	261
Amounts due to customers	535	583
Outstanding checks	155	143
Employee benefits	33	36
Other current liabilities	4	167
Total accrued expenses and other current liabilities	$ 3,652	$ 6,432

Goodwill

During second quarter 2008, the Company performed its annual impairment test by first comparing the carrying value of the Company to its fair value based on its market capitalization at that date. As the carrying value exceeded the fair value, the second step impairment measurement was performed based on a discounted projection of future cash flows and market methods of determining fair value. As a result of this testing, the entire goodwill balance of $52.1 million was impaired and written-off as an expense in second quarter 2008.

7. Discontinued Operations

On January 23, 2008, the Company completed the sale of certain assets and liabilities of its AVV, Inc. data extraction and customer relationship management software business to Dominion Enterprises (“Dominion”) for approximately $22.75 million in cash, plus a working capital payment of approximately $1.0 million. The Company recorded a gain on sale of approximately $4.2 million in connection with the transaction in the three months ended March 31, 2008. The Company and Dominion also agreed to a $1.9 million escrow in connection with the transaction. During the three months ended September 30, 2009, the Company received approximately $0.5 million of the escrow proceeds, bringing the total proceeds received from the escrow account for the nine months ended September 30, 2009 to $1.8 million. These amounts are classified as a gain on sale, discontinued operations. The remaining $0.1 million of escrow proceeds were distributed to Dominion; therefore, no significant escrow amounts are outstanding as of September 30, 2009.

For the three and nine months ended September 30, 2009 and 2008, the results of operations of AVV are reported as discontinued operations, net of taxes, as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
	(in thousands)			
Total net revenues:	$ —	$ —	$ —	$ 568
Cost of revenues	—	—	—	—
Gross profit	—	—	—	568
Operating expenses:				
Sales and marketing	—	—	—	150
Technology support	—	—	—	114
General and administrative	—	—	—	53
Total operating costs	—	—	—	317
Gain on sale	499	—	1,772	4,204
(Benefit)/provision for income taxes	(143)	(184)	(143)	65
Discontinued operations, net	$ 642	$ 184	$ 1,915	$ 4,390

8. Patent Litigation Settlements

Dealix Patent Litigation Settlement In 2004, the Company brought a lawsuit for patent infringement against Dealix Corporation ("Dealix"). In December 2006, the Company entered into a settlement agreement with Dealix (the "Settlement Agreement"). The Settlement Agreement provides that Dealix will pay the Company a total of $20.0 million in settlement payments for a mutual release of claims and a license from the Company to Dealix and its parent company, the Cobalt Group, of certain of the Company's patent and patent applications. On March 13, 2007, the Company received the initial $12.0 million settlement payment with the remainder to be paid out in installments of $2.7 million on the next three anniversary dates of the initial payment. The Company received the first of three installments of $2.7 million in March 2008, and in March 2009, the Company received the second installment of $2.7 million pursuant to the Settlement Agreement. The Company records the payments as patent litigation settlement in the period payment is received, as a reduction to operating expenses. The remaining payment is guaranteed by WP Equity Partners, Inc., a Warburg Pincus affiliate. The Company has been unable to assess with reasonable assurance the collectability of the remaining payment under the Settlement Agreement as the Company does not have financial information to support the credit worthiness of the debtor or guarantor. The Company does not have reasonable assurance that it will receive the remaining payment on its due date or at all and therefore has not recorded any amounts receivable related to the Settlement Agreement as of September 30, 2009 or December 31, 2008.

Texas and California Patent Litigation Settlements . As previously reported in our Quarterly Report on Form 10-Q for the quarter ended March 31, 2009, on April 23, 2009 the Company announced that it entered into a settlement agreement with Insweb Corporation ("Insweb"), Leadpoint, Inc. ("Leadpoint"), and Internet Brands, Inc. ("Internet Brands") settling and dismissing with prejudice various patent-related and other claims by and against the Company. Under the settlement terms, Autobytel granted to Insweb, Leadpoint and Internet Brands, and Insweb, Leadpoint and Internet Brands each granted to Autobytel, a non-exclusive perpetual license to their respective patents as well as long-term covenants not to sue any of the parties for infringement of current or future patents; and mutual releases of claims. In connection with the settlement, (i) Autobytel and Autodata Solutions, Inc. ("Autodata"), a wholly owned subsidiary of Internet Brands, entered into a Master License and Services Agreement pursuant to which the Company will have the right to publish certain editorial content, images, shopping tools and vehicle data provided by Autodata for a term of five years; and (ii) shares of Internet Brands' common stock previously issued to one of the Company's subsidiaries but held by Internet Brands was released to the Company. In addition, InsWeb and Autobytel entered into a Content License Agreement pursuant to which Autobytel will receive specific auto insurance editorial content, data and interactive tools from InsWeb. The content and tools will contain links to one of InsWeb's insurance websites, and Autobytel and InsWeb will share the revenue associated with consumer activity generated by the links. LeadPoint agreed to pay Autobytel $200,000, $100,000 of which was paid in connection with the signing of the settlement, to be followed by $50,000 installments payable on or before March 31, 2010 and September 30, 2010, respectively. In connection with the settlement, all claims brought by Insweb, Internet Brands and Leadpoint against Dominion Enterprises ("Dominion"), the purchaser of the Company's AVV business, and Retention Performance Marketing, Inc. ("RPM"), and OneCommand, Inc. ("OneCommand"), the purchaser of the Company's RPM business, were also dismissed with prejudice, with Internet Brands, Leadpoint, and Insweb each providing Dominion, OneCommand, and RPM covenants not to sue for infringement of the Insweb patent at issue in the litigation, and Dominion, OneCommand, and RPM each granting to Insweb, Internet Brands, and Leadpoint, and Insweb, Internet Brands and Leadpoint each granting to Dominion, OneCommand, and RPM, long-term mutual releases of claims.

Edmunds Declaratory Relief Action Settlement . On March 13, 2008, Edmunds Holding Company and Edmunds.com (collectively "Edmunds") filed a lawsuit against the Company in the United States District Court for the District of Delaware relating to the Company's U.S. Patent Number 6,282,517 for lead technology ("'517 Patent"). In the lawsuit, Edmunds sought a declaration that its business activities, some of which include generating automotive leads, did not infringe the '517 Patent and that such patent was invalid. On February 20, 2009, this declaratory relief action was dismissed by the court. In March 2009, the Company entered into a settlement resolving the issues presented in Edmunds' declaratory judgment action. Under this settlement, Autobytel granted to Edmunds a limited license to the '517 Patent and other existing Autobytel leads-related patents in exchange for the right to publish on Autobytel's family of websites a select assortment of Edmunds.com's industry-leading multi-media automotive content, including photos, editorial reviews, and articles. The settlement agreement also provided for mutual releases of claims. This settlement did not have a material impact on the Company's financial statements.

9. Commitments and Contingencies

Employment Agreements

The Company has employment agreements and retention agreements with certain key employees. A number of these agreements require severance payments, continuation of certain insurance benefits and acceleration of vesting of stock options and restricted stock units in the event of a termination of employment without cause or for good reason. In addition, these employees were also granted stock options and awarded restricted stock, the agreements for which provide for acceleration of vesting upon a change of control of Autobytel.

Effective April 3, 2009, the Company and Mr. Jeffrey H. Coats, the Company's President and Chief Executive Officer, agreed to amend and restate Mr. Coats' employment agreement to provide Mr. Coats with relocation benefits and severance payments, continuation of certain insurance benefits, and acceleration of vesting and lapsing of resale restrictions in the event of Mr. Coats termination of employment by the Company without cause or by Mr. Coats for good reason.

Litigation

In August 2001, a purported class action lawsuit was filed in the United States District Court for the Southern District of New York against Autobytel and certain of the Company's current and former directors and officers (the "Autobytel Individual Defendants") and underwriters involved in the Company's initial public offering. A Consolidated Amended Complaint, which is now the operative complaint, was filed on April 19, 2002. This action purports to allege violations of the Securities Act of 1933 ("Securities Act") and the Securities Exchange Act of 1934 ("Exchange Act"). Plaintiffs allege that the underwriter defendants agreed to allocate stock in the Company's initial public offering to certain investors in exchange for excessive and undisclosed commissions and agreements by those investors to make additional purchases of stock in the aftermarket at predetermined prices. Plaintiffs allege that the prospectus for the Company's initial public offering was false and misleading in violation of the securities laws because it did not disclose these arrangements. The action seeks damages in an unspecified amount. The action is being coordinated with approximately 300 other nearly identical actions filed against other companies. The parties in the approximately 300 coordinated cases, including Autobytel, the underwriter defendants in the Autobytel class action lawsuit, and the plaintiff class in the Autobytel class action lawsuit, reached a settlement. The insurers for the issuer defendants in the coordinated cases will make the settlement payment on behalf of the issuers, including Autobytel. On October 6, 2009, the Court granted final approval of the settlement. The time to appeal the final approval decision will expire on November 5, 2009. Due to the inherent uncertainties of litigation, the Company cannot accurately predict the ultimate outcome of this matter. If the settlement is appealed, the settlement does not survive that appeal, and Autobytel is found liable, it is possible that damages could be greater than Autobytel's insurance coverage and the impact on Autobytel's financial statements could be material.

Between April and September 2001, eight separate purported class actions virtually identical to the one filed against Autobytel were filed against Autoweb.com, Inc. ("Autoweb"), certain of Autoweb's former directors and officers (the "Autoweb Individual Defendants"), and underwriters involved in Autoweb's initial public offering. A Consolidated Amended Complaint, which is now the operative complaint, was filed on April 19, 2002. It purports to allege violations of the Securities Act and the Exchange Act. Plaintiffs allege that the underwriter defendants agreed to allocate stock in Autoweb's initial public offering to certain investors in exchange for excessive and undisclosed commissions and agreements by those investors to make additional purchases of stock in the aftermarket at predetermined prices. Plaintiffs also allege that the prospectus for Autoweb's initial public offering was false and misleading in violation of the securities laws because it did not disclose these arrangements. The action seeks damages in an unspecified amount. The action is being coordinated with approximately 300 other nearly identical actions filed against other companies. The parties in the approximately 300 coordinated cases, including Autoweb, the underwriter defendants in the Autoweb class action lawsuit, and the plaintiff class in the Autoweb class action lawsuit, reached a settlement. The insurers for the issuer defendants in the coordinated cases will make the settlement payment on behalf of the issuers, including Autoweb. On October 6, 2009, the Court granted final approval of the settlement. The time to appeal the final approval decision will expire on November 5, 2009. Due to the inherent uncertainties of litigation, the Company cannot accurately predict the ultimate outcome of this matter. If the settlement is appealed, the settlement does not survive that appeal, and Autoweb is found liable, it is possible that damages could be greater than Autoweb's insurance coverage and the impact on Autobytel's financial statements could be material.

From time to time, the Company is involved in other litigation matters arising from the normal course of its business activities. The actions filed against the Company and other litigation, even if not meritorious, could result in substantial costs and diversion of resources and management attention, and an adverse outcome in litigation could materially adversely affect its business, results of operations, financial condition, and cash flows.

10. Related Party Transaction

On April 3, 2009, the Compensation Committee approved the payment of $70,000 to Maverick Associates LLC, a Delaware limited liability company, for consulting services rendered to the Company by Jeffrey H. Coats during 2008 in connection with the Company's evaluation of strategic alternatives and development and implementation of cost reduction initiatives by the Company. Mr. Coats is the sole member of Maverick Associates.

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

The Securities and Exchange Commission ("SEC") encourages companies to disclose forward-looking information so that investors can better understand a company's future prospects and make informed investment decisions. This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Words such as "anticipates," "estimates," "expects," "projects," "intends," "plans," "believes" and words of similar substance used in connection with any discussion of future operations or financial performance identify forward-looking statements. In particular, statements regarding expectations and opportunities, new product expectations and capabilities, and our outlook regarding our performance and growth are forward-looking statements. This Quarterly Report on Form 10-Q also contains statements regarding plans, goals and objectives. There is no assurance that we will be able to carry out our plans or achieve our goals and objectives or that we will be able to do so successfully on a profitable basis. These forward-looking statements are just predictions and involve risks and uncertainties, many of which are beyond our control, and actual results may differ materially from these statements. Factors that could cause actual results to differ materially from those reflected in forward-looking statements include, but are not limited to, those discussed in this Item 2 and under the heading "Risk Factors" in this Quarterly Report on Form 10-Q and in our Annual Report on Form 10-K for the year ended December 31, 2008 and Quarterly Reports on Form 10-Q for the quarters ended March 31, 2009 and June 30, 2009. Investors are urged not to place undue reliance on forward-looking statements. Forward-looking statements speak only as of the date on which they were made. Except as may be required by law, we do not undertake any obligation, and expressly disclaim any obligation, to update or alter any forward-looking statements, whether as a result of new information, future events or otherwise. All forward-looking statements contained herein are qualified in their entirety by the foregoing cautionary statements.

You should read the following discussion of our results of operations and financial condition in conjunction with our condensed consolidated financial statements and related notes included elsewhere in this Quarterly Report on Form 10-Q and our consolidated financial statements and the notes thereto in Autobytel's Annual Report on Form 10-K for the year ended December 31, 2008.

Our corporate website is located at *www.autobytel.com* . Information on our website is not incorporated by reference in this Quarterly Report. At or through the Investor Relations section of our website we make available free of charge our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and all amendments to these reports as soon as practicable after such material is electronically filed with or furnished to the SEC. Our Code of Conduct and Ethics for Employees, Officers and Directors is available at the Corporate Governance link of the Investor Relations section of our website.

Basis of Presentation

We sold certain assets and liabilities of our AVV Inc. ("AVV") business on January 23, 2008. Accordingly, AVV is presented in the unaudited consolidated condensed financial statements as discontinued operations. As discontinued operations, revenues and expenses are presented on a net basis and stated separately from the respective captions in continuing operations in the Consolidated Condensed Statements of Operations and Comprehensive Loss. Expenses included in discontinued operations are direct costs that will be eliminated from future operations.

Overview

We are an automotive marketing services company that assists automotive dealers and manufacturers sell cars and light trucks. By connecting consumers to automotive dealers and manufacturers through internet lead referral programs and online advertising, we provide automotive dealers and manufacturers with opportunities to efficiently market their vehicles to potential customers. We purchase from third parties and generate from our own websites consumer internet requests for pricing and availability on new and used cars as well as for vehicle financing (these consumer internet requests are referred to in this Quarterly Report on Form 10-Q as "Leads"). We sell the Leads primarily to our automotive dealer and manufacturer customers. Leads are purchased from a network of supplier websites ("Network Websites"). These Network Websites provide substantially all of our Leads. Additionally, we own and operate consumer-facing automotive websites, including Autobytel.com ®, Autoweb.com ®, AutoSite.com ®, Car.com ℠, CarSmart.com ®, CarTV.com ®, and MyRide.com ® that provide consumers with information and tools to aid them with their automotive purchase decisions. Our owned websites provide a small percentage of our Leads but provide a significant portion of our page views for the advertising component of our business. In addition to advertising on our websites, we provide advertising opportunities for automotive manufacturers and other automotive advertisers through our marketing network, which includes our AutoReach advertising network ("Ad Network") and co-branded websites.

For the three and nine months ended September 30, 2009 our results of operations were affected and may continue to be affected in the future, by various factors, including, but not limited to, the following:

- General economic conditions, specifically including the adverse effect of high unemployment on the number of vehicle purchasers and the lack of available consumer credit to finance vehicle purchases. These economic conditions have affected the automotive industry, which is currently experiencing what is considered to be the most challenging environment of the past several decades:
    - North American vehicle sales have decreased significantly,
    - Dealer consolidations, closings, and bankruptcies have increased significantly,
    - General Motors and Chrysler filed for and emerged from bankruptcy in 2009, and
    - Auto sales in the United States are expected to continue to remain at low levels throughout 2009 and into 2010.
- The market for Leads, including:
    - The effects of competition and Lead sourcing (i.e., Leads from our owned web sites versus Leads acquired from third parties) on our supply and acquisition costs of quality Leads and the resulting effects on sales, pricing and margins for our services and products, and
    - A declining Dealer base and a corresponding decline in the number of Leads delivered to our Dealers in the aggregate.
- The market for advertising services, including:
    - Variations in spending by manufacturers and others for our advertising services,
    - The amount of visits (traffic) to our websites,
    - The cost of acquiring traffic to our websites, and
    - The rates attainable from our advertisers.
- The effects of the U.S. Government sponsored “cash-for-clunkers” incentive program in the third quarter 2009, including the impact on Lead sales and advertising services in the third quarter, as well as the potential near-term impact on future vehicle purchases and advertising. These government incentives may have accelerated future vehicle sales into the third quarter of 2009, which reduced dealer inventories and potential vehicle purchasers in the near-term, which may negatively impact future supply of Leads, at least in the fourth quarter of 2009. Although the cash-for-clunkers program resulted in higher traffic to our Web sites during the third quarter of 2009, advertisers’ budgets with Autobytel did not increase much from prior periods and their spend in other areas may adversely impact their future advertising spend with Autobytel, at least in the fourth quarter of 2009.

Results of Operations

Three Months Ended September 30, 2009 Compared to the Three Months Ended September 30, 2008

	2009	% of Total net revenues	2008	% of Total net revenues	Change $	Change %
	($ amounts in thousands)					
Net revenues:						
Lead Fees	$ 11,695	88%	$ 15,571	90%	$ (3,876)	(25)%
Advertising	1,627	12	1,640	10	(13)	(1)
Other	32	—	59	—	(27)	(46)
Total net revenues	13,354	100	17,270	100	(3,916)	(23)
Cost of revenues (excludes depreciation of $225 and $318 for the three months ended September 30, 2009 and 2008, respectively)	8,614	65	11,107	64	(2,493)	(22)
Gross profit	4,740	35	6,163	36	(1,423)	(23)
Operating expenses:						
Sales and marketing	2,387	18	4,001	23	(1,614)	(40)
Technology support	1,357	10	3,651	21	(2,294)	(63)
General and administrative	2,409	18	4,593	27	(2,184)	(48)
Patent litigation settlement	(2)	—	—	—	(2)	—
Total operating expenses	6,151	46	12,245	71	(6,094)	(50)
Operating loss	$ (1,411)	(11)%	$ (6,082)	(35)%	$ 4,671	(77)%

Lead Fees. Lead fees decreased $3.9 million or 25% in third quarter 2009, compared to third quarter 2008, and was primarily a result of the following:

- a 12% decline in the total volume of new and used car sales Leads delivered, which was due to a 35% net reduction in the number of auto-dealer customers, partially offset by an increase in the number of Leads delivered per customer,
- a 9% decline in our average sales price per Lead (6%, excluding OEM customers), was due primarily to continued pressures on pricing from our retail, and particularly our OEM customers,
- The U.S. Government sponsored “cash-for-clunkers” incentive program generated relatively significant sales for automotive-dealers during the third quarter of 2009, but it had a mixed impact on Autobytel. Although we experienced increased Leads delivered per dealer as a result of the program during the quarter, overall dealer demand for our Lead programs decreased, reflected by fewer new dealers, as certain dealers felt that they had a sufficient volume of customers through increased on-line and showroom traffic.

Advertising. Advertising revenues for third quarter 2009 were relatively consistent with third quarter 2008. The cash-for-clunkers program increased the traffic to our websites during the third quarter 2009 compared to 2008, as more consumers visited our sites to perform on-line cash-for-clunkers-related research, however, this increase was offset by lower advertising rates.

Cost of Revenues. Cost of revenues consists of Lead and traffic acquisition costs, and other cost of revenues. Lead and traffic acquisition costs consist of payments made to our Lead providers, including internet portals and online automotive information providers. Other cost of revenues consists of search engine marketing and fees paid to third parties for data and content included on our properties, connectivity costs, technology license fees, development and maintenance costs related to our websites, server equipment depreciation and technology amortization and compensation related expense. Search engine marketing (“SEM”), sometimes referred to as paid search marketing, is the practice of bidding on keywords on search engines to drive traffic to a website.

The $2.5 million or 22% decrease in the cost of revenues in third quarter 2009 compared to third quarter 2008 was primarily due to a decrease of $1.2 million in Lead acquisition costs directly related to the decline in volume of Leads delivered, a decrease in depreciation of $0.6 million, a $0.6 million decrease in other traffic acquisition costs, a decrease in hosting and data content of $0.2 million, and a net $0.1 million increase in other net expense amounts. Other traffic acquisition costs have decreased due to cost containment initiatives and efforts to more efficiently deploy marketing dollars. Depreciation and other website related costs have decreased due to the decision to discontinue the use of the MyRide related

software platform in the fourth quarter of 2008. The average cost per purchased Lead increased by approximately 3% in third quarter 2009, compared to the same period in 2008. This increase is due to the increased cost of retail Leads combined with an increase in the relative percentage of Leads delivered to retail automotive dealers. The increased cost of our retail Leads is primarily the result of an increase in the overall quality of the Leads purchased.

Sales and Marketing. Sales and marketing expense includes costs for developing our brand equity, internal personnel costs, and other costs associated with dealer sales, website advertising, and dealer support. Sales and marketing expense in third quarter 2009 decreased by $1.6 million or 40% compared to third quarter 2008, due principally to internal cost containment initiatives, which are related to the reductions in force which were initiated in the second half of 2008.

Technology Support. Technology support expense includes personnel costs related to enhancing the features, content and functionality of our websites and our Internet-based communications platform, costs associated with our telecommunications and computer infrastructure, and costs related to data and technology development. Technology support expenses in third quarter 2009 decreased by $2.3 million or 63% compared to third quarter 2008, due to compensation expense savings resulting from internal cost reduction initiatives, which are related to the reductions in force which were initiated in the second half of 2008.

General and Administrative. General and administrative expense consists of executive, financial and legal personnel expenses and costs related to being a public company. General and administrative expense in third quarter 2009 decreased $2.2 million or 48% compared to third quarter 2008 due to a decrease in net personnel and temporary labor expense of $0.9 million (including a $0.2 million decrease of stock compensation), a decrease of approximately $0.8 million of insurance and other expenses, and a decrease of $0.5 million of professional fees.

Nine Months Ended September 30, 2009 Compared to the Nine Months Ended September 30, 2008

	2009	% of Total net revenues	2008	% of Total net revenues	Change $	Change %
	($ amounts in thousands)					
Net revenues:						
Lead Fees	$ 35,431	87%	$ 50,910	89%	$ (15,479)	(30)%
Advertising	5,100	13	5,906	11	(806)	(14)
Other	138	—	137	—	1	1
Total net revenues	40,669	100	56,953	100	(16,284)	(29)
Cost of revenues (excludes depreciation of $859 and $1,102 for the nine months ended September 30 2009 and 2008, respectively)	26,523	65	37,146	65	(10,623)	(29)
Gross profit	14,146	35	19,807	35	(5,661)	(29)
Operating expenses:						
Sales and marketing	7,568	19	13,516	24	(5,948)	(44)
Technology support	4,044	10	11,924	21	(7,880)	(66)
General and administrative	9,495	23	15,328	27	(5,833)	(38)
Patent litigation settlement	(2,848)	(7)	(2,667)	(5)	(181)	7
Goodwill impairment	—	—	52,074	91	(52,074)	(100)
Total operating expenses	18,259	45	90,175	158	(71,916)	(80)
Operating loss	$ (4,113)	(10)%	$ (70,368)	(124)%	$ 66,255	(94)%

Lead Fees. Lead fees decreased $15.5 million or 30% in the nine months ended September 30, 2009, compared to the same period in 2008 and was primarily a result of the following:

- a 16% decline in the total volume of new and used car sales Leads delivered, which was due to a 35% net reduction in the number of automotive customers, including one of our large OEM customers, partially offset by a increase in the number of Leads delivered per customer.
- a 12% decline in our average sales price per Lead (11%, excluding OEM customers), which was due primarily to sales incentives provided to new and existing auto-dealer customers.

Advertising. The $0.8 million or 14% decrease in advertising revenues for the nine months ended September 30, 2009, compared to the same period in 2008 was due primarily due to a decrease in page views as a result of the reduction in SEM of approximately 71%, partially offset by the recognition of $0.4 million of deferred advertising revenue in the nine month period ended September 30, 2009 related to advertising campaigns that were closed out with certain advertisers.

Cost of Revenues. The $10.6 million or 29% decrease in the cost of revenues in the nine month period ended September 30, 2009 compared to the same period in 2008 was primarily due to a decrease of $4.0 million in Lead acquisition costs directly related to the decline in volume of Leads delivered, a $2.5 million decrease in SEM, a decrease in depreciation of $1.9 million, a decrease in hosting and data content of $0.9 million, a decrease in other traffic acquisition costs of $0.7 million, and a $0.6 million decrease in other net expense amounts. SEM and other traffic acquisition costs have decreased due to cost containment initiatives and efforts to more efficiently deploy marketing dollars. Depreciation and other website related costs have decreased due to the decision to discontinue the use of the MyRide related software platform in the fourth quarter of 2008. The average cost per purchased Lead increased by approximately 9% in the nine months ended September 30, 2009, compared to the same period in 2008. This increase is due to the increased cost of retail Leads combined with an increase in the relative percentage of Leads delivered to retail automotive dealers. The increased cost of retail Leads is primarily the result of an increase in overall quality of the Leads purchased.

Sales and Marketing. Sales and marketing expense in the nine months ended September 30, 2009 decreased by $5.9 million or 44% compared to the same period in 2008, due principally to internal cost containment initiatives, which are related to the reductions in force which were initiated in the second half of 2008.

Technology Support. Technology support expense in the nine months ended September 30, 2009 decreased by $7.9 million or 66% compared to the same period in 2008, due to compensation expense savings resulting from internal cost reduction initiatives, which are related to the reductions in force which were initiated in the second half of 2008.

General and Administrative. General and administrative expense in the nine months ended September 30, 2009 decreased $5.8 million or 38% compared to the same period in 2008 due to a decrease in net personnel and temporary labor expense of $3.2 million (including a $0.8 million decrease of stock compensation), a decrease in professional fees of $1.4 million, primarily as a result of cost containment initiatives, and a decrease in insurance and other expenses of approximately $1.2 million.

Patent Litigation Settlement . In 2004, we brought a lawsuit for patent infringement against Dealix Corporation ("Dealix"). In December 2006, we entered into a settlement agreement with Dealix (the "Settlement Agreement"). The Settlement Agreement provides that Dealix will pay us a total of $20.0 million in settlement payments for a mutual release of claims and a license from us to Dealix and its parent company, the Cobalt Group, of certain of our patent and patent applications. On March 13, 2007, we received the initial $12.0 million settlement payment with the remainder to be paid out in installments of $2.7 million on the next three anniversary dates of the initial payment. In March 2009, we received the second of three $2.7 million settlement payments pursuant to the Settlement Agreement. We recorded the payment as patent litigation settlement in the period payment was received, as a reduction to costs and operating expenses. The remaining payment is guaranteed by WP Equity Partners, Inc., a Warburg Pincus affiliate, and is expected to be received in March 2010. We have been unable to assess with reasonable assurance the collectability of the remaining payments under the Settlement Agreement as we do not have financial information to support the credit worthiness of the debtor or guarantor. We do not have reasonable assurance that we will receive the remaining payment on its respective due date or at all, and therefore have not recorded any amounts receivable related to the Settlement Agreement as of September 30, 2009.

Goodwill Impairment. During the nine months ended September 30, 2008 we performed our annual impairment test by first comparing the carrying value of Autobytel to its fair value based on market capitalization at that date. As the carrying value exceeded the fair value, the second step impairment measurement was performed based on a discounted projection of future cash flows and market methods of determining fair value. As a result of this testing, a non-cash impairment charge of $52.1 million was recorded during the nine months ended September 30, 2008.

Employees

As of October 15, 2009, we had 114 employees. We also use independent contractors as required. None of our employees are represented by labor unions. We have not experienced any work stoppages and consider our employee relations to be generally good.

Liquidity and Capital Resources

The table below sets forth a summary of our cash flows for the nine months ended September 30, 2009 and 2008:

	Nine Months Ended September 30,	
	2009	2008
	(in thousands)	
Net cash used in operating activities	$ (4,375)	$ (15,222)
Net cash provided by investing activities	2,221	19,142
Net cash provided by financing activities	—	649

Our principal sources of liquidity are our cash and cash equivalents balances and proceeds from dispositions of non-core businesses and the Dealix patent litigation settlement payments. We continue to have no debt. Our cash and cash equivalents totaled $25.2 million as of September 30, 2009 compared to cash and cash equivalents of $27.4 million as of December 31, 2008.

We entered into a Settlement Agreement with Dealix, which among other things, provides for settlement payments. We received settlement payments in 2007, 2008, and 2009. We have been unable to assess with reasonable assurance the collectability of the remaining payment due in March 2010 under the Settlement Agreement, as we do not have financial information to support the credit worthiness of the debtor or guarantor. We do not have reasonable assurance that we will receive the remaining payment on its due date or at all, and therefore, we have not recorded any amounts receivable related to the Settlement Agreement and cannot rely on these payments as a source of future liquidity.

During the first nine months of 2009 both General Motors (“GM”) and Chrysler LLC (“Chrysler”) filed for reorganization bankruptcy. Chrysler emerged from bankruptcy in June 2009, and GM emerged from bankruptcy in July 2009. For the nine months ended September 30, 2009, approximately 8% of our total revenues were derived from GM and Chrysler, and approximately 16% or $1.4 million of the gross accounts receivable related to GM and Chrysler at September 30, 2009. GM and Chrysler’s bankruptcies did not significantly impact our liquidity during the nine months ended September 30, 2009.

Net Cash Used in Operating Activities

Net cash used in operating activities in the nine months ended September 30, 2009 of $4.4 million resulted primarily from a net loss of $1.4 million and an increase in cash used to reduce accrued expenses and other liabilities of $2.8 million primarily related to severance costs that were accrued as of December 31, 2008 and paid in first half 2009. Net cash used in operating activities in the nine months ended 2008 was $15 million. The reduction in cash used in operating activities from 2008 to 2009 was primarily due to the reduction in losses combined with changes in working capital requirements.

Net Cash Provided by Investing Activities

Net cash provided by investing activities was $2.2 million in the nine months ended September 30, 2009. The Company received approximately $1.8 million of the $1.9 million AVV asset sale proceeds that were held in escrow. In addition, we sold all of our available-for-sale investment for cash proceeds of $0.6 million. Net cash provided by investing activities in the nine months ended 2008 of $19 million was due to an increase in cash proceeds from divestures of $21.4 million, partially offset by increases in capital expenditures of $2.3 million.

Net Cash Provided by Financing Activities

Our primary source of cash from financing activities is from the exercise of stock options and the issuance of common stock pursuant to the employee stock purchase plan. There were no financing activities in the nine months ended September 30, 2009 and $0.6 million of proceeds from option activity in the nine months ended September 30, 2008.

Off-Balance Sheet Arrangements

At September 30, 2009 we had no off-balance sheet arrangements as defined in Item 303(a)(4)(ii) of Regulation S-K.

Recent Accounting Pronouncements

In June 2009, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards ("SFAS") 168 – "The FASB Accounting Standards Codification ™ and the Hierarchy of Generally Accepted Accounting Principles," a replacement of SFAS 162. SFAS 168 provides that the FASB Accounting Standards Codification (the "Codification") is the single source of U.S. GAAP in the preparation of financial statements, except for rules and interpretive releases of the SEC under authority of federal securities laws, which are sources of authoritative guidance for SEC registrants. The Codification was not meant to create new accounting and reporting guidance, but rather to simplify user access to all authoritative accounting guidance by reorganizing U.S. GAAP pronouncements into accounting topics within a consistent organizational structure. The Codification supersedes all existing non-SEC accounting and reporting standards and is effective for financial statements issued for interim and annual periods ending after September 15, 2009.

Following SFAS 168, the FASB will no longer issue new standards in the form of Statements, FASB Staff Positions, or Emerging Issues Task Force Abstracts; instead, it will issue Accounting Standards Updates (ASU's). The FASB will not consider ASU's as authoritative in their own right; rather these updates will serve only to update the Codification, provide background information about the guidance, and provide the bases for conclusions on the change(s) in the Codification. In the description that follows, the Company will provide reference to both the Codification Topic reference and the previously authoritative references in "italics" related to Codification Topics and Subtopics, as appropriate.

Fair Value Measurements

(Included in Accounting Standards Codification (ASC) 820 "Fair Value Measurements and Disclosures," previously known as SFAS 157, "Fair Value Measurements"). In September 2006, the FASB issued SFAS 157, "Fair Value Measurements". SFAS 157 establishes a framework for measuring fair value and expands disclosures of fair value measurements. SFAS 157 is effective for financial statements issued for periods beginning after November 15, 2007. In February 2008, the FASB issued FASB Staff Position ("FSP") FAS 157-2 which defers the effective date of SFAS 157 for non-financial assets and liabilities that are not recorded at fair value on a recurring basis until periods beginning after November 15, 2008. The adoption of the non-deferred portion of SFAS 157 on January 1, 2008 and the adoption of the deferred portion of SFAS 157 on January 1, 2009 did not have an impact on the Company's consolidated financial position, results of operations or cash flows.

Derivative and Hedging Activities

(Included in ASC 815 "Derivatives and Hedging," previously known as SFAS 161, "Disclosures about Derivative Instruments and Hedging Activities – an Amendment of FASB Statement 133 "). In March 2008, the FASB issued SFAS 161, "Disclosures about Derivative Instruments and Hedging Activities – an Amendment of FASB Statement 133." SFAS 161 provides new disclosure requirements for derivative and hedging activities and is effective for periods beginning after November 15, 2008. Since the Company does not have any Derivatives or Hedging Activities, the adoption of SFAS 161 on January 1, 2009 did not have any effect on its consolidated financial statements.

Non-Controlling Interests

(Included in ASC 810 "Consolidations," previously known as SFAS 160, "Non-controlling Interests in Consolidated Financial Statements – an amendment of ARB 51"). In December 2007, the FASB issued SFAS 160, "Non-controlling Interests in Consolidated Financial Statements – an amendment of ARB 51." This standard provides new accounting guidance and disclosure requirements for non-controlling interests in a subsidiary. Since the Company does not have non-controlling interests in its subsidiaries, the adoption of SFAS 161 on January 1, 2009 did not have any effect on its consolidated financial statements.

Business Combinations

(Included in ASC 805 "Business Combinations," previously known as SFAS 160, "Non-controlling Interests in Consolidated Financial Statements – an amendment of ARB 51"). In December 2007, the FASB issued SFAS 141R, "Business Combinations." SFAS 141R establishes principles and requirements for how the acquirer of a business recognizes and measures in its financial statements the identifiable assets acquired, the liabilities assumed, and any non-controlling interest in the acquiree. The statement also provides guidance for recognizing and measuring the goodwill acquired in the business combination and determines what information to disclose to enable users of financial statements to evaluate the nature and financial effects of the business combination. SFAS 141R is effective for business combinations occurring after December 31, 2008. The nature and magnitude of the specific effect the adoption of SFAS 141R will have on the Company's consolidated financial statements will depend on the nature, terms, size of acquisitions, if any, it may consummate subsequent to the effective date of January 1, 2009.

Item 3. ***Quantitative and Qualitative Disclosures about Market Risk***

For the three and nine months ended September 30, 2009 there were no material changes in the information required to be provided under Item 305 of Regulation S-K from the information disclosed in Item 7A of the Company's Annual Report on Form 10-K for the year ended December 31, 2008.

Item 4. ***Controls and Procedures***

As of the end of the period covered by this Quarterly Report on Form 10-Q, we carried out an evaluation under the supervision and with the participation of our management, including our Chief Executive Officer and our Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures pursuant to Rule 13a-15 under the Securities Exchange Act of 1934, as amended ("Exchange Act"). Based on the evaluation, our Chief Executive Officer and our Chief Financial Officer believe that, as of the end of the period covered by this Quarterly Report on Form 10-Q, our disclosure controls and procedures were effective at ensuring that the information required to be disclosed by us in the reports that we file or submit under the Exchange Act is (i) recorded, processed, summarized, and reported within the time periods specified in the SEC's rules and forms and (ii) accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required financial disclosure.

As of the end of the period covered by this Quarterly Report on Form 10-Q, there were no changes in our internal control over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act) that have materially affected or were reasonably likely to materially affect, our internal control over financial reporting.

Our management, including our Chief Executive Officer and our Chief Financial Officer, does not expect that our disclosure controls and internal control over financial reporting will prevent all error and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within the Company have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of simple error or mistake. Additionally, controls may be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the control.

The design of any system of controls also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions; over time, a control may become inadequate because of changes in conditions, or the degree of compliance with the policies or procedures may deteriorate. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

See discussion at Part I, Item 1, Note 9, "Commitments and Contingencies – *Litigation* ," to the unaudited consolidated condensed financial statements, which is incorporated by reference herein.

Item 1A. Risk Factors

We are particularly affected by general economic conditions and in particular the automotive industry.

General economic conditions, specifically including the adverse effect of high unemployment on the number of vehicle purchasers and the lack of available consumer credit to finance vehicle purchases. These economic conditions have affected the automotive industry, which is currently experiencing what is considered to be the most challenging environment of the past several decades:

- North American vehicle sales have decreased significantly,
- Dealer consolidations, closings, and bankruptcies have increased significantly,
- General Motors and Chrysler filed for and emerged from bankruptcy in 2009, and
- Auto sales in the United States are expected to continue to remain at low levels throughout 2009 and into 2010.

Our common stock could be delisted from the NASDAQ Global Market if we are not able to satisfy continued listing requirements, and if this were to occur, the price of our common stock and our ability to raise additional capital may be adversely affected and the ability to buy and sell our stock may be less orderly and efficient.

Our common stock is currently listed on the NASDAQ Global Market. Continued listing of a security on the NASDAQ Global Market is conditioned upon compliance with various continued listing standards. There can be no assurance that we will continue to satisfy the requirements for maintaining a NASDAQ Global Market listing. The standards for continued listing require, among other things, that the closing minimum bid price for the listed securities be at least $1.00 per share for 30 consecutive trading days. Our common stock has traded below $1.00 per share since October 1, 2008, and there can be no assurances made that we will satisfy the $1.00 minimum bid price required for continued listing of our common stock on the NASDAQ Global Market. The NASDAQ Stock Market LLC implemented a temporary suspension of its minimum $1.00 closing bid price and minimum market value for publicly held shares continued listing rules. This temporary suspension expired on July 31, 2009, with enforcement of these rules reinstated on August 3, 2009.

We received a letter dated September 15, 2009, from The NASDAQ Stock Market LLC, notifying Autobytel that during the preceding 30 consecutive business days, the closing bid price of Autobytel's common stock was below the $1.00 minimum bid price per share required for continued listing on the NASDAQ Global Market. This notification does not result in the immediate delisting of Autobytel's common stock from the NASDAQ Global Market.

In accordance with NASDAQ rules, Autobytel has 180 calendar days, or until March 15, 2010, to regain compliance with the minimum bid price requirement by maintaining a closing bid price of $1.00 per share or higher for a minimum of 10 consecutive business days. Under the Listing Rules, the NASDAQ staff may exercise its discretion to extend this 10 day period. If Autobytel does not regain compliance with the minimum bid requirement during this initial 180-day period, NASDAQ will provide notice to Autobytel that Autobytel's common stock is subject to delisting from the NASDAQ Global Market. If Autobytel receives such a notice, it may appeal the delisting determination to the NASDAQ Hearing Panel or may apply to transfer the listing of its common stock to the NASDAQ Capital Market if Autobytel satisfies all criteria for initial listing on the NASDAQ Capital Market, other than compliance with the minimum bid price requirement. If such application to the NASDAQ Capital Market is approved, then Autobytel may be eligible for an additional grace period.

Our strategy is dependent on increasing Lead referral revenue; Lead referral revenue is directly impacted by automotive dealer ("Dealer") attrition in our dealer network and the number of Leads delivered to our Dealers; if Dealer attrition continues to increase and the total number of Leads delivered to our Dealers continues to decrease, our revenues will continue to decrease.

Our strategy and achievement of profitability are dependent on our ability to increase Lead referral revenue. If we are not successful in increasing Lead referral revenue, then we may not be able to achieve profitability in the future. Increasing Lead referral revenue is dependent upon our ability to attract and retain qualified automotive dealers and manufacturers.

We derive a majority of our revenue from Lead referral fees paid by Dealers participating in our Dealer network. In 2008 and continuing through the third quarter of 2009 and into the fourth quarter of 2009, we experienced attrition in the number of our Dealers and a decrease in the total number of Leads delivered. Our revenues have decreased as a result of this Dealer attrition and reduction in the total number of delivered Leads, and if Dealer attrition increases or continues at the current rate and we are unable to add new Dealers to mitigate the attrition, or if the total number of Leads continues to decrease, our revenues will continue to decrease. In order for us to grow or maintain our Dealer network, we must reduce our Dealer attrition. We cannot assure that we will be able to reduce the level of Dealer attrition, and our failure to reduce Dealer attrition could materially and adversely affect our business, results of operations and financial condition. In addition to Dealer attrition and reduction in Leads delivered, if automotive manufacturers ("Manufacturers") or Dealers require us to decrease the fees we charge for our services, our revenues will decline, which could have a material adverse effect on our business, results of operations and financial condition.

From time to time, a Dealer group or Manufacturer may significantly decrease the number of Dealers participating in our Dealer network or the number of Leads accepted from us. A material factor affecting Dealer attrition is our ability to provide Dealers and Manufacturers with high quality Leads at acceptable prices. High quality Leads are those that result in high closing ratios. Closing ratio is the number of vehicles purchased at a Dealer generated from Leads divided by to the total number of Leads sent to that Dealer. Generally, our Dealer agreements are cancelable by either party upon 30 days notice. Participating Dealers may terminate their relationship with us for any reason, including an unwillingness to accept our subscription terms, as a result of joining alternative marketing programs, or due to the quality of our Leads. We cannot assure that Dealers will not terminate their agreements with us.

While we have a large customer population making up our revenue base, we have one Manufacturer customer that accounts for more than 5% of our revenue. The loss of that customer could have a material adverse effect on our business, results of operations and financial condition.

Our Advertising Revenues could be impacted by advertising budget and website traffic reductions.

Manufacturers continue to evaluate their ongoing advertising expenditures, the efficiencies of their advertising programs, and the websites that are included in their online advertising campaigns. As a result, advertising rates have experienced downward pressure and cutbacks in advertising budgets have occurred. The industry allocates advertising budgets on an annual basis and is currently in the "upfront" planning process for 2010. To the extent that the volume and quality of our website traffic does not allow us to achieve a favorable ranking as compared to other websites in the industry, Manufacturers and/or their advertising agencies may reduce the current committed expenditures for 2009 and/or not include our websites in the "upfront" advertising expenditure allocations for 2010.

Potential Adverse Effects Resulting From the "Cash-for-Clunkers" Program.

The U.S. Government sponsored "cash-for-clunkers" incentive program in the third quarter 2009 may adversely affect near-term future vehicle purchases and advertising. The incentives may have accelerated future vehicle sales into the third quarter of 2009, thereby reducing dealer inventories and potential vehicle purchasers in the near-term, which may negatively impact future supply of Leads, at least in the fourth quarter of 2009. Although the cash-for-clunkers program resulted in higher traffic to our websites during the third quarter of 2009, advertisers' budgets with Autobytel did not increase much from prior periods and their spend in other areas may adversely impact their future advertising spend with Autobytel, at least in the fourth quarter of 2009.

Item 5. Other Information

Not Applicable.

Item 6. Exhibits

2.1	Asset Purchase Agreement dated as of January 23, 2008, between the Company, AVV, Inc. and Dominion Enterprises is incorporated herein by reference to Exhibit 2.1 to the Current Report on Form 8-K filed with the SEC on January 29, 2008.
3.1	Fifth Amended and Restated Certificate of Incorporation of Autobytel Inc. ((formerly autobytel.com inc. (“Autobytel” or the “Company”)) certified by the Secretary of State of Delaware (filed December 14, 1998), as amended by Certificate of Amendment dated March 1, 1999, Second Certificate of Amendment of the Fifth Amended and Restated Certificate of Incorporation of Autobytel dated July 22, 1999, Third Certificate of Amendment of the Fifth Amended and Restated Certificate of Incorporation of Autobytel dated August 14, 2001, and Amended Certificate of Designation of Series A Junior Participating Preferred Stock dated April 24, 2009 is incorporated herein by reference to Exhibit 3.1 to the Quarterly Report on Form 10-Q for the period ended March 31, 2009 filed with the SEC on April 24, 2009.
3.2*	Second Amended and Restated Bylaws dated August 1, 2009.
4.1	Form of Common Stock Certificate of Autobytel is incorporated herein by reference to Exhibit 4.1 to the Quarterly Report on Form 10-Q for the period ended September 30, 2001 filed with the SEC on November 14, 2001.
4.2	Amended and Restated Rights Agreement, dated as of April 24, 2009, between Autobytel and Computershare Trust Company, N.A., successor-in-interest to U.S. Stock Transfer Corporation (which includes the form of Amended Certificate of Designation of the Series A Junior Participating Preferred Stock of Autobytel as Exhibit A, the form of Right Certificate as Exhibit B and the Summary of Rights to Purchase Preferred Shares as Exhibit C) is incorporated herein by reference to Exhibit 4.2 to the Quarterly Report on Form 10-Q for the period ended March 31, 2009 filed with the SEC on April 24, 2009.
31.1*	Chief Executive Officer Section 302 Certification of Periodic Report, dated October 23, 2009.
31.2*	Chief Financial Officer Section 302 Certification of Periodic Report, dated October 23, 2009.
32.1*	Chief Executive Officer and Chief Financial Officer Section 906 Certification of Periodic Report, dated October 23, 2009.

* Filed herewith

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.

A UTOBYTEL I NC .

By: /s/ Curtis E. DeWalt

Curtis E. DeWalt
Senior Vice President and Chief Financial Officer
(Duly Authorized Officer and Principal Financial Officer)

Date: October 23, 2009

By: /s/ Wesley Ozima

Wesley Ozima
Vice President and Controller
(Principal Accounting Officer)

EXHIBIT INDEX

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* Filed herewith

EXHIBIT 3.2

SECOND AMENDED AND RESTATED BYLAWS

of

Autobytel Inc.

(a Delaware corporation)

TABLE OF CONTENTS

	Page
ARTICLE I OFFICES	1
Section 1.01. REGISTERED OFFICE	1
Section 1.02. PRINCIPAL OFFICE	1
Section 1.03. OTHER OFFICES	1
ARTICLE II MEETINGS OF STOCKHOLDERS	1
Section 2.01. ANNUAL MEETINGS	1
Section 2.02. SPECIAL MEETINGS	1
Section 2.03. PLACE OF MEETINGS	2
Section 2.04. NOTICE OF MEETINGS	2
Section 2.05. QUORUM	2
Section 2.06. VOTING	3
Section 2.07. LIST OF STOCKHOLDERS	4
Section 2.08. INSPECTOR OF ELECTION	4
Section 2.09. STOCKHOLDER ACTION WITHOUT MEETINGS	4
Section 2.10. ADVANCE NOTICE PROVISION FOR NOMINATION OF DIRECTORS	5
Section 2.11. ADVANCE NOTICE PROVISION FOR PROPOSING BUSINESS AT A STOCKHOLDERS' MEETING	8
Section 2.12. ORGANIZATION	10
ARTICLE III BOARD OF DIRECTORS	10
Section 3.01. GENERAL POWERS	10
Section 3.02. NUMBER	10
Section 3.03. ELECTION OF DIRECTORS	10
Section 3.04. RESIGNATIONS	11
Section 3.05. VACANCIES	11
Section 3.06. PLACE OF MEETING; TELEPHONE CONFERENCE MEETING	11
Section 3.07. FIRST MEETING	11
Section 3.08. REGULAR MEETINGS	11
Section 3.09. SPECIAL MEETINGS	12
Section 3.10. QUORUM AND ACTION	12
Section 3.11. ACTION BY CONSENT	13
Section 3.12. COMPENSATION	13
Section 3.13. COMMITTEES	13
Section 3.14. MEETINGS AND ACTIONS OF COMMITTEES	14
Section 3.15. CHAIRMAN OF THE BOARD	14
ARTICLE IV OFFICERS	14
Section 4.01. OFFICERS	14
Section 4.02. ELECTION	14
Section 4.03. SUBORDINATE OFFICERS	14
Section 4.04. REMOVAL AND RESIGNATION	14
Section 4.05. VACANCIES	15
Section 4.06. CHIEF EXECUTIVE OFFICER	15
Section 4.07. PRESIDENT	15
Section 4.08. CHIEF OPERATING OFFICER	15
Section 4.09. CHIEF FINANCIAL	15

OFFICER .....
Section 16
4.10. VICEPRESIDENT .....
Section 16
4.11. SECRETARY .....
Section 4.12. ASSISTANT 17
SECRETARY .....
ARTICLE V CONTRACTS, CHECKS, DRAFTS, BANK ACCOUNTS, 17
ETC.....
Section 5.01. EXECUTION OF 17
CONTRACTS .....
Section 5.02. CHECKS, DRAFTS, 17
ETC .....
Section 17
5.03. DEPOSIT .....
Section 5.04. GENERAL AND SPECIAL BANK 17
ACCOUNTS .....
ARTICLE VI SHARES AND THEIR 18
TRANSFER .....
Section 6.01. CERTIFICATES FOR 18
STOCK .....
Section 6.02. TRANSFER OF 18
STOCK .....
Section 18
6.03. REGULATIONS .....
Section 6.04. LOST, STOLEN, DESTROYED AND MUTILATED 19
CERTIFICATES .....
Section 6.05. RECORD 19
DATE .....
Section 6.06. REPRESENTATION OF SHARES OF OTHER 19
CORPORATIONS .....
Section 6.07. SPECIAL DESIGNATION ON 20
CERTIFICATES .....
ARTICLE 21
VII INDEMNIFICATION .....
Section 7.01. ACTIONS OTHER THAN BY OR IN THE RIGHT OF THE 21
CORPORATION .....
Section 7.02. ACTIONS BY OR IN THE RIGHT OF THE 21
CORPORATION .....
Section 7.03. DETERMINATION OF RIGHT OF 22
INDEMNIFICATION .....
Section 7.04. INDEMNIFICATION AGAINST EXPENSES OF SUCCESSFUL 22
PARTY .....
Section 7.05. ADVANCE OF 22
EXPENSES .....
Section 7.06. OTHER RIGHTS AND 22
REMEDIES .....
Section 22
7.07. INSURANCE .....
Section 7.08. CONSTITUENT 23
CORPORATIONS .....
Section 7.09. EMPLOYEE BENEFIT 23
PLANS .....
Section 23
7.10. TERM .....
Section 23
7.11. SEVERABILITY .....
Section 23
7.12. AMENDMENTS .....
ARTICLE VIII RECORDS AND 24
REPORTS .....
Section 8.01. MAINTENANCE OF 24
RECORDS .....
Section 8.02. INSPECTION BY 24
DIRECTORS .....
ARTICLE 24
IX MISCELLANEOUS .....
Section 24
9.01. SEAL .....
Section 9.02. WAIVER OF 24
NOTICES .....
Section 9.03. LOANS AND 23
GUARANTIES .....
Section 25
9.04. GENDER .....
Section 25
9.05. AMENDMENTS .....
CERTIFICATE OF 26
SECRETARY .....

SECOND AMENDED AND RESTATED BYLAWS

of

Autobytel Inc.

(a Delaware corporation)

ARTICLE I

OFFICES

Section 1.01 REGISTERED OFFICE. The registered office of Autobytel Inc. (hereinafter called the " **Corporation** ") shall be at such place in the State of Delaware as shall be designated by the Board of Directors (hereinafter called the " **Board** ").

Section 1.02 PRINCIPAL OFFICE. The principal office for the transaction of the business of the Corporation shall be at such location, within or without the State of Delaware, as shall be designated by the Board.

Section 1.03 OTHER OFFICES. The Corporation may also have an office or offices at such other place or places, either within or without the State of Delaware, as the Board may from time to time determine or as the business of the Corporation may require.

ARTICLE II

MEETINGS OF STOCKHOLDERS

Section 2.01 ANNUAL MEETINGS. Annual meetings of the stockholders of the Corporation for the purpose of electing directors and for the transaction of such other proper business as may come before such meetings shall be held each year at such time, date and place, if any, as the Board shall determine by resolution. In the absence of such designation, the annual meeting of stockholders shall be held at 3:00 p.m., on the third Thursday in June at the principal office of the Corporation. However, if such day falls on a legal holiday, then the meeting shall be held at the same time and place on the next succeeding full business day.

Section 2.02 SPECIAL MEETINGS. Special meetings of the stockholders of the Corporation for any purpose or purposes may be called at any time by the Board, or by a committee of the Board which has been duly designated by the Board and whose powers and authority, as provided in a resolution of the Board or in these Bylaws, include the power to call such meetings, or by the Chairman of the Board, or by the President, but such special meetings may not be called by any other person or persons; provided, however, that if and to the extent that any special meeting of stockholders may be called by any other person or persons specified in any provision of the Corporation's certificate of incorporation (" **Certificate of Incorporation** ") or any amendment thereto or any certificate filed under Section 151(g) of the General Corporation Law of the State of Delaware (or its successor statute as in effect from time to time hereafter) (" **General Corporation Law of Delaware** "), then such special meeting may also be called by, or at the direction of, the person or persons, in the manner, at the time and for the purposes so specified.

Section 2.03 PLACE OF MEETINGS. All meetings of the stockholders shall be held at such places, if any, within or without the State of Delaware, as designated by the Board and specified in the respective notices or waivers of notice thereof. In the absence of any such designation, stockholders' meetings shall be held at the principal executive office of the Corporation.

Section 2.04 NOTICE OF MEETINGS. Except as otherwise required by law, notice of each meeting of the stockholders, whether annual or special, shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting. Notice may be given (i) by delivering a typewritten or printed notice thereof to such stockholder personally, (ii) by depositing such notice in the United States mail or nationally recognized overnight courier, in a postage prepaid envelope, directed to such stockholder at such stockholder's address furnished by such stockholder to the Secretary of the Corporation for such purpose or, if such stockholder shall not have furnished to the Secretary such stockholder's address for such purpose, then at such stockholder's address as it appears on the records of the Corporation, or (iii) subject to the prior consent of the stockholder to whom the notice is to be given, by email or other form of electronic transmission as permitted by Section 232 of the General Corporation Law of Delaware. Except as otherwise expressly required by law, no publication of any notice of a meeting of the stockholders shall be required. Every notice of a meeting of the stockholders shall state the place, if any, date and hour of the meeting, the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for stockholders entitled to notice of the meeting), the means of remote communication, if any, by which stockholders may be deemed present and, in the case of a special meeting, the purpose or purposes for which the meeting is called (no business other than that specified in the notice of special meeting may be transacted). The notice of any meeting at which directors are to be elected shall include the name of any nominee or nominees who, at the time of the notice, the Board intends to present for election.

An affidavit of the mailing or other means of giving any notice of any stockholders' meeting, executed by the Secretary, Assistant Secretary or any transfer agent of the Corporation giving the notice, shall, in the absence of fraud, be prima facie evidence of the giving of such notice.

Section 2.05 QUORUM. Except as otherwise provided by statute or by the certificate of incorporation, the holders of record of a majority in voting power of the shares of stock of the Corporation issued and outstanding and entitled to be voted, present in person or by proxy, shall constitute a quorum for the transaction of business at any meeting of the stockholders of the Corporation or any adjournment thereof. The stockholders present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. In the absence of a quorum at any meeting or any adjournment thereof, a majority in voting power of the shares of stock present in person or by proxy and entitled to vote thereat, or any officer entitled to preside at or to act as secretary of such meeting, may adjourn such meeting from time to time. Notice need not be given of any such adjourned meeting if the time and place, if any, thereof and the means of remote communications, if any, by which stockholders and proxy

holders may be deemed present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At any such adjourned meeting at which a quorum is present any business may be transacted which might have been transacted at the meeting as originally called. If the adjournment is for more than thirty (30) days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the Board shall fix a new record date for notice of such adjourned meeting, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date for notice of such adjourned meeting.

Section 2.06 VOTING.

At each meeting of the stockholders, each stockholder shall be entitled to vote in person or by proxy each share or fractional share of the stock of the Corporation which has voting rights on the matter in question and which shall have been held by such stockholder and registered in such stockholder's name on the books of the Corporation on the record date for the determination of stockholders entitled to vote at such meeting.

Shares of its own stock belonging to the Corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors in such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes. Notwithstanding the foregoing, persons holding stock of the Corporation in a fiduciary capacity shall be entitled to vote such stock. Persons whose stock is pledged shall be entitled to vote, unless in the transfer by the pledgor on the books of the Corporation the pledgor shall have expressly empowered the pledgee to vote thereon, in which case only the pledgee, or the pledgee's proxy, may represent such stock and vote thereon. Stock having voting power standing of record in the names of two or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety or otherwise, or with respect to which two or more persons have the same fiduciary relationship respecting the same shares, shall be voted in accordance with the provisions of the General Corporation Law of Delaware.

Any such voting rights may be exercised by the stockholder entitled thereto in person or by such stockholder's proxy appointed in accordance with the General Corporation Law of Delaware; provided, however, that no proxy shall be voted or acted upon after three (3) years from its date unless said proxy shall provide for a longer period. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by delivering to the Secretary of the Corporation a revocation of the proxy or a new proxy bearing a later date. At any meeting of the stockholders all matters, except as otherwise provided in the Certificate of Incorporation, in these Bylaws, the rules or regulations of any stock exchange applicable to the Corporation, applicable law or pursuant to any regulation applicable to the Corporation or its securities, shall be decided by the vote of a majority in voting power of the shares present in person or by proxy and entitled to vote thereat and thereon. The vote at any meeting of the stockholders on any question need not be by ballot, unless so directed by the chairman of the meeting. On a vote by ballot, each ballot shall be signed by the stockholder voting, or by such stockholder's proxy if there be such proxy, and it shall state the number of shares voted. The

revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212(e) of the General Corporation Law of Delaware.

Section 2.07 LIST OF STOCKHOLDERS. The officer who has charge of the stock ledger of the Corporation shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting (provided, however, if the record date for determining the stockholders entitled to vote is less than ten (10) days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date), arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of meeting or (ii) during ordinary business hours at the principal place of business of the Corporation. The list of stockholders must also be open to examination at the meeting as required by applicable law. If the meeting is to be held at a place, then a list of stockholders entitled to vote at the meeting shall be produced and kept at the time and place of the meeting during the whole time thereof and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Except as otherwise provided by law, the stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list of stockholders required by this Section 2.07 or to vote in person or by proxy at any meeting of stockholders.

Section 2.08 INSPECTOR OF ELECTION. The Corporation may, and shall if required by law, in advance of any meeting of stockholders, appoint one or more inspectors of election, who may be employees of the Corporation, to act at the meeting or any adjournment thereof and to make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. In the event that no inspector so appointed or designated is able to act at a meeting of stockholders, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of such inspector's duties, shall take and sign an oath to execute faithfully the duties of inspector with strict impartiality and according to the best of the inspector's ability. The inspector or inspectors so appointed or designated shall (i) ascertain the number of shares of capital stock of the Corporation outstanding and the voting power of each such share, (ii) determine the shares of capital stock of the Corporation represented at the meeting and the validity of proxies and ballots, (iii) count all votes and ballots, (iv) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, and (v) certify their determination of the number of shares of capital stock of the Corporation represented at the meeting and such inspectors' count of all votes and ballots. Such certification and report shall specify such other information as may be required by law. In determining the validity and counting of proxies and ballots cast at any meeting of stockholders of the Corporation, the inspectors may consider such information as is permitted by applicable law. No person who is a candidate for an office at an election may serve as an inspector at such election.

Section 2.09 STOCKHOLDER ACTION WITHOUT MEETINGS. Unless otherwise provided by the Certificate of Incorporation, any action required by the General Corporation Law of Delaware to be taken at any annual or special meeting of the stockholders, or any action which may be taken at any annual or special meeting of the stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent in writing setting forth the action so taken shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the books in which minutes of proceedings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for notice of such meeting had been the date that written consents signed by a sufficient number of holders to take the action were delivered to the Corporation.

Section 2.10 ADVANCE NOTICE PROVISION FOR NOMINATION OF DIRECTORS. Only persons who are nominated in accordance with the following procedures shall be eligible for election as directors of the Corporation, except as may be otherwise provided in the Certificate of Incorporation with respect to the right of holders of preferred stock of the Corporation to nominate and elect a specified number of directors in certain circumstances. Nominations of persons for election to the Board may be made at any annual meeting of stockholders or at any special meeting of stockholders called for the purpose of electing directors, (a) specified in the notice of meeting (or any supplement thereto) given by or at the discretion of the Board (or a duly authorized committee thereof), (b) by or at the direction of the Board (or any duly authorized committee thereof) or (c) by any stockholder of the Corporation (i) who is a stockholder of record on the date of the giving of the notice provided for in this Section 2.10 and on the record date for the determination of stockholders entitled to vote at such meeting and (ii) who complies with the notice procedures set forth in this Section 2.10.

In addition to any other applicable requirements, for a nomination to be made by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation.

To be timely, a stockholder’s notice to the Secretary must be delivered to or mailed and received at the principal executive offices of the Corporation (a) in the case of an annual meeting, not less than ninety (90) days (provided that in the case of the Corporation’s annual meeting to be held in 2010, the number of days shall be sixty (60) days) nor more than one hundred and twenty (120) days (provided that in the case of the Corporation’s annual meeting to be held in 2010, the number of days shall be ninety (90) days) prior to the anniversary date of the immediately preceding annual meeting of stockholders; provided , however , that in the event that the date of the annual meeting is more than thirty (30) days before or more than seventy (70) days after such anniversary date, notice by the stockholder must be so delivered not earlier than the close of business on the one hundred twentieth (120th) day prior to such annual meeting and

not later than the close of business on the later of the ninetieth (90 th) day prior to such annual meeting or the tenth (10 th) day following the day on which public announcement of the date of such meeting is first made by the Corporation; and (b) in the case of a special meeting of stockholders called for the purpose of electing directors, not earlier than the close of business on the one hundred twentieth (120th) day prior to such special meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such special meeting or the tenth (10th) day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board to be elected at such meeting.

To be in proper written form, a stockholder's notice to the Secretary must set forth (a) as to each person whom the stockholder proposes to nominate for election as a director (i) the name, age, business address and residence address of the person, (ii) the principal occupation or employment of the person; (iii) (A) the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by the person, and (B) the name of each nominee holder of shares of capital stock of the Corporation owned beneficially but not of record by such person or affiliates or associates of such person and the number of shares held by each such nominee; (iv) a description of any agreement, arrangement or understanding (including any derivative or short positions, profit interests, options, warrants, stock appreciation or similar rights, hedging transactions and borrowed or loaned shares) that has been entered into as of or prior to, and is in effect as of, the date of the stockholder's notice by, or on behalf of, such person or any affiliates or associates of such person, the effect or intent of which is to mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of, such person or any affiliate or associate of such person, with respect to shares of stock of the Corporation; and (v) any other information relating to the person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Securities Exchange Act of 1934, as amended (the " **Exchange Act** "), and the rules and regulations promulgated thereunder; and (b) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination is made (i) the name and record address of such stockholder as they appear on the Corporation's books, and of such beneficial owner, (ii) (A) the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by such stockholder and such beneficial owner, and (B) the name of each nominee holder of shares of capital stock of the Corporation owned beneficially but not of record by such stockholder or beneficial owner and the number of shares held by each such nominee (iii) a description of all arrangements or understandings between such stockholder and/or such beneficial owner and each proposed nominee and any other person or persons (including their names) pursuant to which the nomination(s) are to be made by such stockholder, (iv) a description of any agreement, arrangement or understanding (including any derivative or short positions, profit interests, options, warrants, stock appreciation or similar rights, hedging transactions and borrowed or loaned shares) that has been entered into as of the date of the stockholder's notice by, or on behalf of, such stockholder and such beneficial owners, the effect or intent of which is to mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of, such stockholder or such beneficial owner, with respect to shares of stock of the Corporation, (v) a representation that such stockholder is a holder of record of the stock of the Corporation as of the date of the stockholder's notice required by this Section 2.10 and that such stockholder intends to be a holder of record of stock of the Corporation on the record date for the determination of stockholders entitled to vote at such

meeting; (vii) that such stockholder intends to appear in person or by proxy at the meeting to nominate the persons named in its notice, (viii) a representation whether the stockholder or the beneficial owner, if any, intends or is part of a group which intends (1) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to elect the nominee and/or (2) otherwise to solicit proxies or votes from stockholders in support of such nomination and (ix) any other information relating to such stockholder that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to and in accordance with Section 14 of the Exchange Act and the rules and regulations promulgated thereunder. Such notice must be accompanied by a written consent of each proposed nominee to being named as a nominee and to serve as a director if elected. The Corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as a director of the Corporation.

Notwithstanding foregoing, in the event that the number of directors to be elected to the Board is increased effective at the annual meeting and there is no public announcement by the Corporation naming the nominees for the additional directorships at least one hundred (100) days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section shall also be considered timely, but only with respect to nominees for the additional directorships, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the tenth (10th) day following the day on which such public announcement is first made by the Corporation.

No person shall be eligible for election as a director of the Corporation unless nominated in accordance with the procedures set forth in this Section 2.10. If the Chairman of the meeting determines that a nomination was not made in accordance with the foregoing procedures, the Chairman shall declare to the meeting that the nomination was defective and such defective nomination shall be disregarded.

Notwithstanding the foregoing provisions of this Section 2.10, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination, such nomination shall be disregarded, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 2.10, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders, and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

For purposes of this Section 2.10, "public announcement" shall include disclosure in a press release reported by the Dow Jones News Service, Associated Press or other national news service or in a document publicly filed or furnished by the Corporation with or to the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

Compliance with this Section 2.10 shall be the exclusive means for a stockholder to make nominations.

Section 2.11 ADVANCE NOTICE PROVISION FOR PROPOSING BUSINESS AT A STOCKHOLDERS' MEETING. No business may be transacted at an annual meeting of stockholders, other than business that is either (a) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board (or any duly authorized committee thereof), (b) otherwise properly brought before the annual meeting by or at the direction of the Board (or any duly authorized committee thereof) or (c) otherwise properly brought before the annual meeting by any stockholder of the Corporation (i) who is a stockholder of record on the date of the giving of the notice provided for in this Section 2.11 and on the record date for the determination of stockholders entitled to vote at such annual meeting and (ii) who complies with the notice procedures set forth in this Section 2.11.

In addition to any other applicable requirements, for business to be properly brought before an annual meeting by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation and any proposed business must constitute a proper matter for stockholder action.

To be timely, a stockholder's notice to the Secretary must be delivered to or mailed and received at the principal executive offices of the Corporation not less than ninety (90) days (provided that in the case of the Corporation's annual meeting to be held in 2010, the number of days shall be sixty (60) days) nor more than one hundred and twenty (120) days (provided that in the case of the Corporation's annual meeting to be held in 2010, the number of days shall be ninety (90) days) prior to the anniversary date of the immediately preceding annual meeting of stockholders; provided , however , that in the event that the date of the annual meeting is more than thirty (30) days before or more than seventy (70) days after such anniversary date, notice by the stockholder must be so delivered not earlier than the close of business on the one hundred twentieth (120th) day prior to such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such annual meeting or the tenth (10th) day following the day on which public announcement of the date of such meeting is first made by the Corporation.

To be in proper written form, a stockholder's notice to the Secretary must set forth (a) as to each matter such stockholder proposes to bring before the annual meeting a brief description of the business desired to be brought before the annual meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the Bylaws of the Corporation, the language of the proposed amendment), the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made, and (b) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the proposal is made (i) the name and record address of such stockholder as they appear on the Corporation's books, and of the beneficial owner, (ii) (A) the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by such stockholder and such beneficial owner, and (B) the name of each nominee holder of shares of capital stock of the Corporation owned beneficially but not of record by such stockholder or beneficial owner and the number of shares held by each such nominee; (iii) a description of all arrangements or understandings between such stockholder and/or beneficial

owner and any other person or persons (including their names) in connection with the proposal of such business by such stockholder and such beneficial owner and any material interest of such stockholder and/or beneficial owner in such business, (iv) a description of any agreement, arrangement or understanding (including any derivative or short positions, profit interests, options, warrants, stock appreciation or similar rights, hedging transactions and borrowed or loaned shares) that has been entered into as of or prior to, and is in effect as of, the date of the stockholder's notice by, or on behalf of, such stockholder and such beneficial owners, the effect or intent of which is to mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of, such stockholder or such beneficial owner, with respect to shares of stock of the Corporation, (v) a representation that such stockholder is a holder of record of stock of the Corporation as of the date of the giving of the stockholder's notice required by this Section 2.11 and intends to be a holder of record of stock of the Corporation on the record date for the determination of stockholders entitled to vote at such annual meeting date; (vi) a representation that such stockholder intends to appear in person or by proxy at the annual meeting to bring such business before the meeting; and (vii) a representation whether the stockholder or the beneficial owner, if any, intends or is part of a group which intends (1) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the proposal and/or (2) otherwise to solicit proxies or votes from stockholders in support of such proposal.

The foregoing notice requirements of this Section 2.11 shall be deemed satisfied by a stockholder with respect to business other than a nomination if the stockholder has notified the Corporation of such stockholder's intention to present a proposal at an annual meeting in compliance with applicable rules and regulations promulgated under the Exchange Act and such stockholder's proposal has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such annual meeting.

No business shall be conducted at the annual meeting of stockholders except business brought before the annual meeting in accordance with the procedures set forth in this Section 2.11. If the Chairman of an annual meeting determines that business was not properly brought before the annual meeting in accordance with the foregoing procedures, the Chairman shall declare to the meeting that the business was not properly brought before the meeting and such business shall not be transacted.

Notwithstanding the foregoing provisions of this Section 2.11, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual meeting of stockholders of the Corporation to present proposed business, such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 2.11, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders, and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

For purposes of this Section 2.11, “public announcement” shall include disclosure in a press release reported by the Dow Jones News Service, Associated Press or other national news service or in a document publicly with or furnished by the Corporation with or to the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

Notwithstanding the foregoing provisions of this Section 2.11, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 2.11; provided however, that any references in these Bylaws to the Exchange Act or the rules promulgated thereunder are not intended to and shall not limit any requirements applicable to proposals as to any other business to be considered pursuant to this Section 2.11, and compliance with this Section 2.11 shall be the exclusive means for a stockholder to submit other business (other than, as provided in the fifth paragraph of this Section 2.11, matters brought properly under and in compliance with Rule 14a-8 of the Exchange Act, as may be amended from time to time). Nothing in this Section 2.11 shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation’s proxy statement pursuant to applicable rules and regulations promulgated under the Exchange Act.

Section 2.12 ORGANIZATION. The Chief Executive Officer, or in the absence of the Chief Executive Officer, the Chairman of the Board, shall call the meeting of the stockholders to order, and shall act as chairman of the meeting. In the absence of the Chief Executive Officer, the Chairman of the Board, and all of the Vice Presidents, the stockholders shall appoint a chairman for such meeting. The chairman of any meeting of stockholders shall determine the order of business and the procedures at the meeting, including such matters as the regulation of the manner of voting and the conduct of business. The Secretary of the Corporation shall act as secretary of all meetings of the stockholders, but in the absence of the Secretary at any meeting of the stockholders, the chairman of the meeting may appoint any person to act as secretary of the meeting.

ARTICLE III

BOARD OF DIRECTORS

Section 3.01 GENERAL POWERS. The property, business and affairs of the Corporation shall be managed by or under the direction of the Board, which may exercise all of the powers of the Corporation, except such as may be otherwise provided in the Certificate of Incorporation or required by applicable law.

Section 3.02 NUMBER. The authorized number of directors of the Corporation shall be six (6) members until changed by an amendment of this Section 3.02. Directors need not be stockholders in the Corporation.

Section 3.03 ELECTION OF DIRECTORS. The directors shall be elected by the stockholders of the Corporation, and at each election the persons receiving the greatest number of votes, up to the number of directors then to be elected, shall be the persons then elected. The election of directors is subject to any provisions contained in the Certificate of Incorporation relating thereto, including any provisions for a classified board.

Except as provided in Sections 3.04 and 3.05 of these Bylaws, at each annual meeting of stockholders, directors will be elected to serve from the time of election and qualification until the third annual meeting following election.

Section 3.04 RESIGNATIONS. Any director of the Corporation may resign at any time by giving notice in writing or by electronic transmission to the Board or to the Secretary of the Corporation. Any such resignation shall take effect at the time specified therein, or, if the time is not specified, it shall take effect immediately upon its delivery; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 3.05 VACANCIES. Except as otherwise provided in the Certificate of Incorporation or these Bylaws, any vacancy on the Board, whether because of death, resignation, disqualification, an increase in the number of directors or any other cause, may be filled by vote of the majority of the remaining directors, although less than a quorum, or by a sole remaining director. Each director so chosen to fill a vacancy shall hold office until such director's successor shall have been elected and shall qualify or until such director shall resign or shall have been removed. No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of the director's term of office.

Upon the resignation of one or more directors from the Board, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have the power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided hereinabove in the filling of other vacancies.

Unless otherwise provided in the Certificate of Incorporation or the Bylaws:

(i) Vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all of the stockholders having the right to vote as a single class may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director.

(ii) Whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the provisions of the Certificate of Incorporation, vacancies and newly created directorships of such class or classes or series may be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected.

Section 3.06 PLACE OF MEETING; TELEPHONE CONFERENCE MEETING. The Board may hold any of its meetings at such place or places within or without the State of Delaware as the Board may from time to time by resolution designate or as shall be designated by the person or persons calling the meeting or in the notice or waiver of notice of any such meeting. Directors may participate in any regular or special meeting of the Board by means of telephone conference or other communications equipment pursuant to which all persons participating in the meeting of the Board can hear each other, and such participation shall constitute presence in person at such meeting.

Section 3.07 FIRST MEETING. The Board shall meet as soon as practicable after each annual election of directors and notice of such first meeting shall not be required.

Section 3.08 REGULAR MEETINGS. Regular meetings of the Board may be held at such times as the Board shall from time to time by resolution determine. If any day fixed for a meeting shall be a legal holiday at the place where the meeting is to be held, then the meeting shall be held at the same hour and place on the next succeeding business day which is not a legal holiday. Except as provided by law, notice of regular meetings need not be given.

Section 3.09 SPECIAL MEETINGS. Special meetings of the Board may be called at any time by the Chairman of the Board or the President or by any three (3) directors, to be held at the principal office of the Corporation, or at such other place or places, within or without the State of Delaware, as the person or persons calling the meeting may designate.

Notice of the time and place of special meetings shall be given to each director either (i) by mailing or otherwise sending to the director a written notice of such meeting, charges prepaid, addressed to the director at the director's respective address as it is shown upon the records of the Corporation, or if it is not so shown on such records or is not readily ascertainable, at the place in which the meetings of the directors are regularly held, at least seventy-two (72) hours prior to the time of the holding of such meeting; (ii) by orally communicating the time and place of the special meeting to him or her at least forty-eight (48) hours prior to the time of the holding of such meeting or (iii) via facsimile, email or other electronic transmission, transmitted to the director at the director's facsimile number, email address or other electronic address as it is shown upon the records of the Corporation, at least forty-eight (48) hours prior to the time of the holding of such meeting. Either of the notices as above provided shall be due legal and personal notice to such director. Any oral notice given personally or by telephone may be communicated either to the director or to a person at the office of the director who the person giving the notice has reason to believe will promptly communicate it to the director.

Whenever notice is required to be given, either to a stockholder or a director, under any provision of the General Corporation Law of Delaware, the Certificate of Incorporation or these Bylaws, a waiver thereof, either in writing or by electronic transmission, given by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting, whether in person or by proxy, shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of any regular or special meeting of directors or committee of directors need be specified in any written waiver of notice.

All such waivers shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 3.10 QUORUM AND ACTION. Except as otherwise provided in these Bylaws or by law, the presence of a majority of the authorized number of directors shall be required to constitute a quorum for the transaction of business at any meeting of the Board, and

all matters shall be decided at any such meeting, a quorum being present, by the affirmative vote of a majority of the directors present. In the absence of a quorum, a majority of directors present at any meeting may adjourn the same from time to time until a quorum shall be present. Notice of the time and place of holding an adjourned meeting of the Board need not be given unless the meeting is adjourned for more than twenty-four (24) hours. If the meeting is adjourned for more than twenty-four (24) hours, then notice of the time and place of the adjourned meeting shall be given before the adjourned meeting takes place, in the manner specified in Section 3.09 of these Bylaws, to the directors who were not present at the time of adjournment. The directors shall act only as a Board, and the individual directors shall have no power as such. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the quorum for that meeting.

Section 3.11 ACTION BY CONSENT. Any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if all members of the Board or of such committee, as the case may be, consent thereto in writing or by electronic transmission and such writing or writings or electronic transmissions are filed with the minutes of proceedings of the Board or such committee. Such action by written consent shall have the same force and effect as the unanimous vote of such directors.

Section 3.12 COMPENSATION. No stated salary need be paid to directors, as such, for their services but, as fixed from time to time by resolution of the Board, the directors may receive directors' fees, compensation (including without limitation cash compensation and/or the grant of stock options or stock) and reimbursement for expenses for attendance at directors' meetings, for serving on committees and for discharging their duties; provided that nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

Section 3.13 COMMITTEES. Pursuant to Section 141(c)(2) of the General Corporation Law of Delaware, the Board may, by resolution, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board will establish and maintain an Audit Committee and a Compensation Committee. Any committee of the Board, to the extent permitted by law and to the extent provided in the resolution of the Board, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it, but no committee of the Board shall have the power or authority in reference to the following matter: (i) approving or adopting, or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the General Corporation Law of Delaware to be submitted to stockholders for approval or (ii) adopting, amending or repealing any bylaw of the Corporation.

The Board may designate one or more directors as alternative members of any committee who may replace any absent or disqualified member at any committee meeting. In the absence or disqualification of any member of any such committee, the members thereof present at any meeting and not disqualified from voting, whether or not they constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of such absent or disqualified member.

A majority of the members, or replacements thereof, of any such committee shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the members, or replacements thereof, shall constitute the act or decision of such committee.

Section 3.14 MEETINGS AND ACTIONS OF COMMITTEES. Meetings and actions of committees shall be governed by, and held and taken in accordance with, the following provisions of Article III of these Bylaws: Section 3.06 (place of meetings; meetings by telephone), Section 3.08 (regular meetings), Section 3.09 (special meetings; notice), Section 3.10 (quorum and action), and Section 3.11 (action by consent), with such changes in the context of those Bylaws as are necessary to substitute the committee and its members for the Board and its members; provided, however, that the time of regular meetings of committees may be determined either by resolution of the Board or by resolution of the committee and that special meetings of committees may also be called by resolution of the Board. The Board may adopt rules for the government of any committee not inconsistent with the provisions of these Bylaws.

Section 3.15 CHAIRMAN OF THE BOARD. The Board may elect a Chairman of the Board and may have one or more Vice Chairmen. The Chairman of the Board and the Vice Chairmen shall be appointed from time to time by the Board and shall have such powers and duties as shall be designated by the Board.

ARTICLE IV

OFFICERS

Section 4.01 OFFICERS. The officers of the Corporation shall be a Chief Executive Officer, a President, a Chief Financial Officer and a Secretary. The Corporation may also have, at the discretion of the Board, one or more Vice Presidents (who may include a Chief Operating Officer and a Chief Accounting Officer), one or more Assistant Vice Presidents, one or more Assistant Secretaries, and such other officers as may be appointed in accordance with the provisions of Section 4.03 of these Bylaws. One person may hold two or more offices, except that the Secretary may not also hold the office of President. The salaries of all officers of the Corporation above the rank of Vice President shall be fixed by the Board, unless at the discretion of the Board, the Board elects to fix the salaries of officers at or below the rank of Vice President.

Section 4.02 ELECTION. The officers of the Corporation, except such officers as may be appointed in accordance with the provisions of Section 4.03 or Section 4.05 of these Bylaws, shall be chosen annually by the Board, and each shall hold such officer's office until such officer shall resign or shall be removed or otherwise disqualified to serve, or until such officer's successor shall be elected and qualified.

Section 4.03 SUBORDINATE OFFICERS. The Board may appoint, or may authorize the Chief Executive Officer to appoint, such other officers below the rank of President as the business of the Corporation may require, including without limitation Vice Presidents and Assistant Secretaries, each of whom shall have such authority and perform such duties as are provided in these Bylaws or as the Board or the Chief Executive Officer from time to time may

specify, and shall hold office until such officer shall resign or shall be removed or otherwise disqualified to serve.

Section 4.04 REMOVAL AND RESIGNATION. Any officer may be removed, with or without cause (subject to any right such officer may have under an employment contract with the Corporation), by the Board, at any regular or special meeting of the Board, or, except in case of an officer chosen by the Board, by the Chief Executive Officer upon whom such power of removal may be conferred by the Board.

Any officer may resign at any time by giving a notice, in writing or by electronic transmission, to the Board, the Chairman of the Board, the President or the Secretary of the Corporation. Any such resignation shall take effect at the date of the delivery of such notice or at any later time specified therein; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective; provided that this provision shall not supersede any powers of the Board or the Chief Executive Officer pursuant to this Section 4.04.

Section 4.05 VACANCIES. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in these Bylaws for the regular appointments to such office.

Section 4.06 CHIEF EXECUTIVE OFFICER. The Chief Executive Officer of the Corporation shall, subject to the control of the Board, have general supervision, direction and control of the business and affairs of the Corporation. Such officer shall preside at all meetings of stockholders and the Board. Such officer shall have the general powers and duties of management usually vested in the chief executive officer of a corporation and shall have such other powers and duties with respect to the administration of the business and affairs of the Corporation as may from time to time be assigned to such officer by the Board or as prescribed by these Bylaws. In the absence or disability of the President, the Chief Executive Officer, in addition to said officer's assigned duties and powers, shall perform all the duties of the President and when so acting shall have all the powers and be subject to all restrictions upon the President.

Section 4.07 PRESIDENT. The President shall exercise and perform such powers and duties with respect to the administration of the business and affairs of the Corporation as may from time to time be assigned to such officer by the Chief Executive Officer (unless the President is also the Chief Executive Officer) or by the Board or as is prescribed by these Bylaws. In the absence or disability of the Chief Executive Officer, the President shall perform all of the duties of the Chief Executive Officer and when so acting shall have all the powers and be subject to all the restrictions upon the Chief Executive Officer.

Section 4.08 CHIEF OPERATING OFFICER. If a Chief Operating Officer is appointed in accordance with these Bylaws, the Chief Operating Officer shall exercise and perform such powers and duties with respect to the administration of the business and affairs of the Corporation as may from time to time be assigned to the Chief Operating Officer by the Chief Executive Officer or by the Board. In the absence or disability of both the Chief Executive Officer and the President, the Chief Operating Officer shall perform all of the duties of the Chief Executive Officer and when so acting shall have all the powers and be subject to all the restrictions upon the Chief Executive Officer.

Section 4.09 CHIEF FINANCIAL OFFICER. The Chief Financial Officer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings and shares. The books of account shall at all reasonable times be open to inspection by any director for a purpose reasonably related to such individual's position as director. Unless a Treasurer for the Corporation has been appointed in accordance with these Bylaws, the Chief Financial Officer shall also be the Treasurer.

The Chief Financial Officer shall deposit all money and other valuables in the name and to the credit of the Corporation with such depositaries as may be designated by the Board. The Chief Financial Officer shall disburse the funds of the Corporation as may be ordered by the Board, shall render to the President and directors, whenever they request it, an account of all of such officer's transactions as Chief Financial Officer and of the financial condition of the Corporation, and shall have such other powers and perform such other duties as may be prescribed by the Board or these Bylaws.

Section 4.10 VICE PRESIDENT. The Vice President(s), if any, shall exercise and perform such powers and duties with respect to the administration of the business and affairs of the Corporation as from time to time may be assigned to each of them by the President, by the Chief Executive Officer, by the Board or as is prescribed by these Bylaws. A Vice President may also be designated as a "Senior Vice President" or "Executive Vice President." In the absence or disability of the President, the Vice Presidents, in order of their rank as fixed by the Board, or if not ranked, the Vice President designated by the Board, shall perform all of the duties of the President and when so acting shall have all of the powers of and be subject to all the restrictions upon the President. A Vice President may be designated the Chief Accounting Officer who may be the Chief Financial Officer, and any person so designated shall have such powers as is customary for a Chief Accounting Officer.

Section 4.11 SECRETARY. The Secretary shall keep, or cause to be kept, a book of minutes at the principal office for the transaction of the business of the Corporation, or such other place as the Board may order, of all meetings of directors and stockholders, with the time and place of holding, whether regular or special, and if special, how authorized and the notice thereof given, the names of those present at directors' meetings, the number of shares present or represented at stockholders' meetings and the proceedings thereof.

The Secretary shall keep, or cause to be kept, at the principal office for the transaction of the business of the Corporation or at the office of the Corporation's transfer agent, a share register, or a duplicate share register, showing the names of the stockholders and their addresses, the number and classes of shares held by each, the number and date of certificates issued for the same, and the number and date of cancellation of every certificate surrendered for cancellation.

The Secretary shall give, or cause to be given, notice of all the meetings of the stockholders and of the Board required by these Bylaws or by law to be given and shall keep the seal of the Corporation in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the Board or these Bylaws. If for any reason the Secretary shall

fail to give notice of any special meeting of the Board called by one or more of the persons identified in Section 3.09 of these Bylaws, or if the Secretary shall fail to give notice of any special meeting of the stockholders called by one or more of the persons identified in Section 2.02 of these Bylaws, then any such person or persons may give notice of any such special meeting.

Section 4.12 ASSISTANT SECRETARY. The Assistant Secretary, if any, or, if there is more than one, the Assistant Secretaries in the order determined by the Board (or if there be no such determination, then in the order of their election) shall, in the absence of the Secretary or in the event of the Secretary's inability or refusal to act, perform the duties and exercise the powers of the Secretary and shall perform such other duties and have such other powers as the Board may from time to time prescribe.

ARTICLE V

CONTRACTS, CHECKS, DRAFTS, BANK ACCOUNTS, ETC.

Section 5.01 EXECUTION OF CONTRACTS. The Board, except as otherwise provided in these Bylaws, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name and on behalf of the Corporation, and such authority may be general or confined to specific instances; and unless so authorized by the Board or by these Bylaws or in the case of the Chief Executive Officer, Chief Operating Officer or Chief Financial Officer, within the agency power of such officer, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or in any amount. Unless so authorized or ratified by the Board or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

Section 5.02 CHECKS, DRAFTS, ETC. All checks, drafts or other orders for payment of money, notes or other evidence of indebtedness, issued in the name of or payable to the Corporation, shall be signed or endorsed by such person or persons and in such manner as, from time to time shall be determined by resolution of the Board. Each such person shall give such bond, if any, as the Board may require.

Section 5.03 DEPOSIT. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board may select, or as may be selected by any officer or officers, assistant or assistants, agent or agents, attorney or attorneys, of the Corporation to whom such power shall have been delegated by the Board. For the purpose of deposit and for the purpose of collection for the account of the Corporation, the President, the Chief Executive Officer, the Chief Financial Officer or any Vice President (or any other officer or officers, assistant or assistants, agent or agents, or attorney or attorneys of the Corporation who shall be determined by the Board from time to time) may endorse, assign and deliver checks, drafts and other orders for the payment of money which are payable to the order of the Corporation.

Section 5.04 GENERAL AND SPECIAL BANK ACCOUNTS. The Board from time to time may authorize the opening and keeping of general and special bank accounts with such

banks, trust companies or other depositories as the Board may select or as may be selected by an officer or officers, assistant or assistants, agent or agents, or attorney or attorneys of the Corporation to whom such power shall have been delegated by the Board. The Board may make such special rules and regulations with respect to such bank accounts, not inconsistent with the provisions of these Bylaws, as it may deem expedient.

ARTICLE VI

SHARES AND THEIR TRANSFER

Section 6.01 CERTIFICATES FOR STOCK. The shares of the Corporation shall be represented by certificates, provided that the Board may provide by resolution or resolutions that some or all of any or all classes or series of stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Every holder of stock represented by certificates shall be entitled to have a certificate signed by or in the name of the Corporation by the Chairman or Vice Chairman of the Board, if any, or the President or a Vice President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary, of the Corporation certifying the number of shares owned by such holder in the Corporation. Any of or all the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

Certificates for shares shall be of such form as the Board may designate and shall state the name of the record holder of the shares represented thereby; its number; date of issuance; the number of shares for which it is issued; a summary statement or reference to the powers, designations, preferences or other special rights of such stock and the qualifications, limitations or restrictions of such preferences and/or rights, if any; a statement or summary of liens, if any; a conspicuous notice of restrictions upon transfer or registration of transfer, if any; a statement as to any applicable voting trust agreement; if the shares be assessable, or, if assessments are collectible by personal action, a plain statement of such facts.

In the case of uncertificated shares, except as otherwise determined by the Board, the Corporation shall, within a reasonable time after the issuance or transfer of uncertificated stock, send to the registered owner thereof a written notice setting forth the above. Notices to registered owners shall be in such form as the Board may designate.

A record shall be kept of the respective names of the persons, firms or corporations owning the stock of the Corporation, either represented by certificates or uncertificated, the number and class of shares respectively owned, and the respective dates thereof, and in case of cancellation, the respective dates of cancellation. Every certificate surrendered to the Corporation for exchange or transfer shall be canceled, and no new certificate or certificates shall be issued in exchange for any existing certificate until such existing certificate shall have been so canceled, except in cases provided for in Section 6.04 of these Bylaws.

Section 6.02 TRANSFER OF STOCK. Transfer of shares of stock of the Corporation shall be made only on the books of the Corporation by the registered holder thereof, or by the registered holder's attorney thereunto authorized by power of attorney duly executed and filed with the Secretary, or with a transfer clerk or a transfer agent appointed as provided in Section 6.03 of these Bylaws, and (i) in the case of certificated shares, upon surrender of the certificate or certificates for such shares properly endorsed and the payment of all taxes thereon, and (ii) in the case of uncertificated shares, upon receipt of proper instructions from the registered owner of the uncertificated shares and the Corporation's satisfaction that the transfer complies with all applicable law including applicable tax laws. The person in whose name shares of stock stand on the books of the Corporation shall be deemed the owner thereof for all purposes as regards the Corporation. Whenever any transfer of shares shall be made for collateral security, and not absolutely, such fact shall be stated expressly in the entry of transfer if, when the certificate or certificates shall be presented to the Corporation for transfer or when the proper instruction from the registered owner of the uncertificated shares for transfer shall be received by the Corporation, as the case may be, both the transferor and the transferee request the Corporation to do so.

Section 6.03 REGULATIONS. The Board may make such rules and regulations as it may deem expedient, not inconsistent with these Bylaws, concerning the issue, transfer and registration of certificated and uncertificated shares of the Corporation and the issue of any notices or statements in connection with uncertificated shares. The Board may appoint, or authorize any officer or officers to appoint, one or more transfer clerks or one or more transfer agents and one or more registrars, and may require all certificates for stock and all notices or statements in connection with uncertificated shares to bear the signature or signatures of any of them.

Section 6.04 LOST, STOLEN, DESTROYED AND MUTILATED CERTIFICATES. In any case of loss, theft, destruction or mutilation of any certificate of stock, another may be issued, or book-entry for an uncertificated share may be entered, at the Corporation's option, in its place upon proof of such loss, theft, destruction or mutilation and upon the giving of a bond of indemnity to the Corporation in such form and in such sums as the Board may direct and in the case of mutilation, upon surrender of the mutilated certificate; provided, however, that a new certificate may be issued, or book-entry for an uncertificated share may be entered, without requiring any bond when, in the judgment of the Board, it is proper to do so.

Section 6.05 RECORD DATE.

(a) In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall, unless otherwise required by law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If the Board so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next

preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board may fix a record date, which shall not be more than sixty (60) days prior to such other action. If no such record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

(c) If stockholder action by written consent is not eliminated or restricted by the Corporation's Certificate of Incorporation, in order that the Corporation may determine the stockholders entitled to express consent to corporate action in writing without a meeting, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board. If no record date for determining stockholders entitled to express consent to corporate action in writing without a meeting is fixed by the Board, (i) when no prior action of the Board is required by law, the record date for such purpose shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation in accordance with applicable law, and (ii) if prior action by the Board is required by law, the record date for such purpose shall be at the close of business on the day on which the Board adopts the resolution taking such prior action.

Section 6.06 REPRESENTATION OF SHARES OF OTHER CORPORATIONS. The President or any Vice President and the Secretary or any Assistant Secretary of the Corporation are authorized to vote, represent and exercise on behalf of the Corporation all rights incident to all shares of, or interests in, any other entity or entities standing in the name of the Corporation. The authority herein granted to said officers to vote or represent on behalf of the Corporation any and all shares or interests held by the Corporation in any other entity or entities may be exercised either by such officers in person or by any person authorized so to do by proxy or power of attorney duly executed by said officers.

Section 6.07 SPECIAL DESIGNATION ON CERTIFICATES.

If the Corporation is authorized to issue more than one class of stock or more than one series of any class, then (i) in the case of certificated shares, the powers, the designations, the preferences, the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the Corporation

shall issue to represent such class or series of stock; provided, however, that, except as otherwise provided in Section 202 of the General Corporation Law of Delaware, in lieu of the foregoing requirements there may be set forth on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, the designations, the preferences and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights, or (ii) in the case of uncertificated shares, except as otherwise determined by the Board, the Corporation shall, within a reasonable time after the issuance or transfer of uncertificated stock, send to the registered owner thereof a written notice setting forth the powers, the designations, the preferences, the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights which would otherwise have been required to be set forth or stated on the face or back of the share certificate, or a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, the designations, the preferences and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. The above can be set forth on the same notice as provided in Section 6.01 of these Bylaws.

ARTICLE VII

INDEMNIFICATION

Section 7.01 ACTIONS OTHER THAN BY OR IN THE RIGHT OF THE CORPORATION. The Corporation shall, to the maximum extent and in the manner permitted by the General Corporation Law of Delaware as the same now exists or may hereafter be amended, indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that the person is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise or as a member of any committee or similar body, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, that the person had reasonable cause to believe that the person's conduct was unlawful.

Section 7.02 ACTIONS BY OR IN THE RIGHT OF THE CORPORATION. The Corporation shall, to the maximum extent and in the manner permitted by the General Corporation Law of Delaware as the same now exists or may hereafter be amended, indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending

or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that the person is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, or as a member of any committee or similar body, against expenses (including attorneys' fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if the person acted in good faith and in a manner the person reasonably believed to be in, or not opposed to, the best interests of the Corporation, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Section 7.03 DETERMINATION OF RIGHT OF INDEMNIFICATION. Any indemnification under Section 7.01 or 7.02 of these Bylaws (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the present or former director, officer, employee or agent is proper in the circumstances because such person has met the applicable standard of conduct set forth in Sections 7.01 and 7.02 of these Bylaws. Such determination shall be made, with respect to a person who is a director or officer at the time of such determination, (i) by a majority vote of the directors who were not parties to such action, suit or proceeding, even though less than a quorum; (ii) by a committee of such directors designated by a majority vote of such directors, even though less than a quorum; (iii) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion; or (iv) by the stockholders.

Section 7.04 INDEMNIFICATION AGAINST EXPENSES OF SUCCESSFUL PARTY. Notwithstanding the other provisions of this Article VII, to the extent that a present or former director, officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 7.01 or 7.02 of these Bylaws, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by the person in connection therewith.

Section 7.05 ADVANCE OF EXPENSES. Expenses (including attorneys' fees) incurred by a present or former officer or director in defending a civil or criminal action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding as authorized by the Board upon receipt of an undertaking by or on behalf of the director or officer, to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation as authorized in this Article VII. Such expenses incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the Board deems appropriate.

Section 7.06 OTHER RIGHTS AND REMEDIES. The indemnification and advancement of expenses provided by, or granted pursuant to, the other Sections of this Article VII shall not be deemed exclusive and are declared expressly to be nonexclusive of any other

rights to which those seeking indemnification or advancements of expenses may be entitled under any bylaw , agreement, vote of stockholders or disinterested directors or otherwise, both as to action in said person's official capacity and as to action in another capacity while holding such office.

Section 7.07 INSURANCE. Upon resolution passed by the Board, the Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise or as a member of any committee or similar body against any liability asserted against any such person and incurred by said person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power to indemnify said person against such liability under the provisions of this Article VII.

Section 7.08 CONSTITUENT CORPORATIONS. For the purposes of this Article VII, references to "the Corporation" include in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers and employees or agents, so that any person who is or was a director, officer, employee or agent, of such constituent corporation or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise or as a member of any committee or similar body shall stand in the same position under the provisions of this Article VII with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued.

Section 7.09 EMPLOYEE BENEFIT PLANS. For the purposes of this Article VII, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to any employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in this Article VII.

Section 7.10 TERM. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VII shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 7.11 SEVERABILITY. If any part of this Article VII shall be found, in any action, suit or proceeding or appeal therefrom or in any other circumstances or as to any particular officer, director, employee or agent to be unenforceable, ineffective or invalid for any reason, the enforceability, effect and validity of the remaining parts or of such parts in other circumstances shall not be affected, except as otherwise required by applicable law.

Section 7.12 AMENDMENTS. The foregoing provisions of this Article VII shall be deemed to constitute a contract between the Corporation and each of the persons entitled to indemnification and/or advancement of expenses hereunder, for as long as such provisions remain in effect. Any amendment to the foregoing provisions of this Article VII which limits or otherwise adversely affects the scope of indemnification, advancement of expenses or other rights of any such persons hereunder shall, as to such persons, apply only to claims arising, or causes of action based on actions or events occurring, after such amendment and delivery of notice of such amendment is given to the person or persons so affected. Until notice of such amendment is given to the person or persons whose rights hereunder are adversely affected, such amendment shall have no effect on such rights of such persons hereunder. Any person entitled to indemnification and/or advancement of expenses under the foregoing provisions of this Article VII shall, as to any act or omission occurring prior to the date of receipt of such notice, be entitled to indemnification and/or advancement of expenses to the same extent as had such provisions continued as Bylaws of the Corporation without such amendment.

ARTICLE VIII

RECORDS AND REPORTS

Section 8.01 MAINTENANCE OF RECORDS. The Corporation shall, either, at its principal executive office or at such place or places as designated by the Board, keep a record of its stockholders listing their names and addresses and the number and class of shares held by each stockholder, a copy of these Bylaws as amended to date, accounting books and other records of its business and properties.

Section 8.02 INSPECTION BY DIRECTORS. Any director shall have the right to examine the Corporation's stock ledger, a list of its stockholders and its other books and records for a purpose reasonably related to such person's position as a director in accordance with applicable law.

ARTICLE IX

MISCELLANEOUS

Section 9.01 SEAL. The Board shall provide a corporate seal, which shall be in the form of a circle and shall bear the name of the Corporation and words and figures showing that the Corporation was incorporated in the State of Delaware and showing the year of incorporation.

Section 9.02 WAIVER OF NOTICES. Any waiver of notice, either in writing or by electronic transmission, given by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of any regular or special meeting of the stockholders, directors, or members of a committee of directors need be specified in a waiver of notice.

Section 9.03 LOANS AND GUARANTIES. To the extent not prohibited by law, the Corporation may lend money to, or guarantee any obligation of, and otherwise assist any officer or other employee of the corporation or of its subsidiaries, including any officer who is a director, whenever, in the judgment of the Board, such loan, guaranty or assistance may reasonably be expected to benefit the Corporation. The loan, guaranty or other assistance may be with or without interest, and may be unsecured or secured in such manner as the Board shall approve, including, without limitation, a pledge of shares of stock of the Corporation. Nothing contained in this Section 9.03 shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the Corporation at common law or under any statute.

Section 9.04 GENDER. All personal pronouns used in these Bylaws shall include the other genders, whether used in the masculine, feminine or neuter gender, and the singular shall include the plural, and vice versa, whenever and as often as may be appropriate.

Section 9.05 AMENDMENTS. These Bylaws, or any of them, may be rescinded, altered, amended or repealed, and new bylaws may be made (i) by resolution of the Board or (ii) by the stockholders, by the vote of a majority of the voting power of the outstanding shares of voting stock of the Corporation, at an annual meeting of stockholders, without previous notice, or at any special meeting of stockholders, provided that notice of such proposed amendment, modification, repeal or adoption is given in the notice of special meeting; provided, however, that Section 2.02 of these Bylaws can only be amended if that Section as amended would not conflict with the Corporation's Certificate of Incorporation. Any bylaw made or altered by the stockholders may be altered or repealed by the Board or may be altered or repealed by the stockholders.

CERTIFICATE OF SECRETARY

The undersigned certifies:

(1) That the undersigned is duly elected and acting Secretary of Autobytel Inc., a Delaware corporation (" **Corporation** "); and

(2) That the foregoing Second Amended and Restated Bylaws constitute the Bylaws of the Corporation as duly adopted by the Board of Directors at a meeting held on June 24, 2009, to be effective August 1, 2009.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Corporation as of August 5, 2009.

/s/ Glenn E. Fuller
Glenn E. Fuller, Secretary

[SEAL]

Exhibit 31.1

CERTIFICATION

I, Jeffrey H. Coats, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Autobytel 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)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and we 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 independent registered accountants 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: October 23, 2009

/s/ Jeffrey H. Coats
Jeffrey H. Coats
President and Chief Executive Officer

Exhibit 31.2

CERTIFICATION

I, Curtis E. DeWalt, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Autobytel 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)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and we 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 independent registered accountants 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: October 23, 2009

/s/ Curtis E. DeWalt
Curtis E. DeWalt,
Senior Vice President and
Chief Financial Officer

Exhibit 32.1

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Autobytel Inc. (the " *Company* ") on Form 10-Q for the period ended March 31, 2009 (the " *Report* "), we, Jeffrey H. Coats, President and Chief Executive Officer of the Company, and Curtis E. DeWalt, Senior Vice President and Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange

   Act of 1934; and

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

/s/ Jeffrey H. Coats
Jeffrey H. Coats
President and Chief Executive Officer
October 23, 2009

/s/ Curtis E. DeWalt
Curtis E. DeWalt
Senior Vice President and Chief Financial Officer
October 23, 2009

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signatures that appear in typed form within the electronic version of this written statement required by Section 906, has been provided to Autobytel Inc. and will be retained by Autobytel Inc. and furnished to the Securities and Exchange Commission or its staff upon request.