EDIETS COM INC
Form 10-Q
August 16, 2012
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UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

x **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended June 30, 2012.

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: 000-30559

eDiets.com, Inc.

(Exact name of registrant as specified in its charter)

Delaware	**56-0952883**
(State or other jurisdiction of	**(I.R.S. Employer**
incorporation or organization)	**Identification No.)**
1000 Corporate Drive, Suite 600	
Fort Lauderdale, Florida	**33334**
(Address of principal executive offices)	**(Zip Code)**

(954) 360-9022

(Registrant s telephone number, including area code)

Indicate by check mark whether the registrant (1) has 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 x 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 (§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 x 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 Rule 12b-2 of the Exchange Act.

Large accelerated filer ¨	Accelerated filer ¨
Non-accelerated filer ¨ (do not check if a smaller reporting company)	Smaller reporting company x

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ¨ No x

APPLICABLE ONLY TO CORPORATE ISSUERS

Indicate the number of shares outstanding of each of the registrant s classes of common stock, as of August 10, 2012:

Common Stock, $.001 par value per share	14,310,534 shares

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eDiets.com, Inc,

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PART I. FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

EDIETS.COM, INC.

CONDENSED CONSOLIDATED BALANCE SHEETS

(In thousands)

(unaudited)

	June 30, 2012	December 31, 2011
ASSETS		
CURRENT ASSETS:		
Cash and cash equivalents	$ 127	$ 603
Accounts receivable, net	4	26
Inventory	62	70
Prepaid expenses and other current assets	203	344
Current assets held for sale	100	120
Total current assets	496	1,163
Restricted cash	994	884
Property and office equipment, net	460	598
Intangible assets, net	3	4
Other assets	41	47
Total assets	$ 1,994	$ 2,696
LIABILITIES AND STOCKHOLDERS DEFICIT		
CURRENT LIABILITIES:		
Accounts payable	$ 2,198	$ 1,473
Accrued liabilities	691	924
Current portion of capital lease obligations	12	23
Deferred revenue	223	538
Related party debt - current	1,000	1,000
Current liabilities held for sale	139	84
Total current liabilities	4,263	4,042
Commitments and contingencies		
STOCKHOLDERS DEFICIT:		
Common stock	14	14
Additional paid-in capital	106,702	106,410
Accumulated deficit	(108,994)	(107,780)
Accumulated other comprehensive income (loss)	9	10
Total stockholders deficit	(2,269)	(1,346)
Total liabilities and stockholders deficit	$ 1,994	$ 2,696

The accompanying notes are an integral part of these condensed consolidated financial statements.

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EDIETS.COM, INC.

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS

(In thousands, except per share data)

(Unaudited)

	Three months ended June 30, 2012	Three months ended June 30, 2011	Six months ended June 30, 2012	Six months ended June 30, 2011
REVENUE				
Meal delivery	$ 5,081	4,755	11,424	10,301
Digital plans	413	669	858	1,439
Other	140	206	297	425
TOTAL REVENUE	5,634	5,630	12,579	12,165
COSTS AND EXPENSES:				
Cost of revenue				
Meal delivery	2,756	2,739	6,089	5,890
Digital plans	42	63	87	150
Other	27	25	61	75
Total cost of revenue	2,825	2,827	6,237	6,115
Technology and development	144	202	315	492
Sales, marketing and support	2,118	2,345	5,689	5,025
General and administrative	684	1,168	1,543	2,063
Amortization of intangible assets	3	3	6	6
Total costs and expenses	5,774	6,545	13,790	13,701
Loss from operations	(140)	(915)	(1,211)	(1,536)
Interest expense, net	(13)	(13)	(26)	(26)
Loss from continuing operations before income tax benefit (provision)	(153)	(928)	(1,237)	(1,562)
Income tax benefit (provision)		4		4
Loss from continuing operations	(153)	(924)	(1,237)	(1,558)
Income from discontinued operations, net of tax	9	73	23	324
Net loss	$ (144)	$ (851)	$ (1,214)	$ (1,234)
Basic and diluted loss per common share:				
Continuing operations	$ (0.01)	$ (0.07)	$ (0.09)	$ (0.13)
Discontinued operations				(0.03)
Net loss per common share	$ (0.01)	$ (0.07)	$ (0.09)	$ (0.10)
Weighted average common and common equivalent shares outstanding basic and diluted:	14,311	12,755	14,311	12,342

The accompanying notes are an integral part of these condensed consolidated financial statements.

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EDIETS.COM, INC.

CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS

(In thousands, except per share data)

(Unaudited)

	Three months ended June 30,		Six months ended June 30,	
	2012	**2011**	**2012**	**2011**
Net loss	$ (144)	$ (851)	$ (1,214)	$ (1,234)
Other comprehensive loss:				
Foreign currency translation adjustments	5	(17)	(1)	(67)
Comprehensive loss	$ (139)	(868)	(1,215)	(1,301)

The accompanying notes are an integral part of these condensed consolidated financial statements.

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EDIETS.COM, INC.

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

(In thousands)

(Unaudited)

	Six Months Ended June, 2012	Six Months Ended June, 2011
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net loss	$ (1,214)	$ (1,234)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation	140	416
Amortization of intangibles and other assets	6	7
Provision for (recovery of) bad debt	25	(7)
Stock-based compensation	292	876
Non-cash severance charges		67
Changes in operating assets and liabilities:		
Accounts receivable	16	223
Inventory, prepaid expenses and other assets	150	307
Restricted cash	(110)	(80)
Accounts payable and accrued liabilities	488	(687)
Deferred revenue	(265)	(484)
Net cash (used in) provided by operating activities	(472)	(596)
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchases of property and office equipment	(2)	(12)
Net cash used in investing activities	(2)	(12)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Proceeds from issuance of common stock under private placement		1,572
Proceeds from issuance of common stock private placement		1,962
Common stock issuance costs		(300)
Repayment of capital lease obligations	(2)	(10)
Net cash used in financing activities	(2)	3,224
NET (DECREASE) INCREASE IN CASH AND CASH EQUIVALENTS	(476)	2,616
Cash and cash equivalents, beginning of period	603	468
Cash and cash equivalents, end of period	$ 127	$ 3,084
SUPPLEMENTAL CASH FLOW INFORMATION		
Cash paid for interest	$	$ 2

The statement above combines the cash flows of discontinued operations with the cash flows from continuing operations. See Note 3 for further discussion of discontinued operations.

The accompanying notes are an integral part of these condensed consolidated financial statements.

EDIETS.COM, INC

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

June 30, 2012

(Unaudited)

1. ORGANIZATION

eDiets.com, Inc. (the Company) was incorporated in the State of Delaware on March 18, 1996 for the purpose of developing and marketing Internet-based diet and fitness programs. The Company markets its products both to consumers and to businesses primarily in North America.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation

The accompanying unaudited condensed consolidated financial statements included herein have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission. Certain information and note disclosures normally included in annual financial statements prepared in accordance with accounting principles generally accepted in the United States have been condensed or omitted pursuant to those rules and regulations. The Company believes that the disclosures made are adequate to make the information presented not misleading. All the adjustments which, in the opinion of management, are considered necessary for a fair presentation of the results of operations for the periods shown are of a normal recurring nature and have been reflected in the unaudited condensed consolidated financial statements. Results from continuing operations for the three and six months ended June 30, 2012 are not necessarily indicative of the results that may be expected for the year ending December 31, 2012. The Company s Nutrio.com, Inc. subsidiary, also known as eDiets Corporate Services, has been classified as a discontinued operation. See Note 3 for further information regarding discontinued operations. The information included in these unaudited condensed consolidated financial statements should be read in conjunction with Management s Discussion and Analysis of Financial Condition and Results of Operations contained in this report and the consolidated financial statements and accompanying notes included in the Company s Annual Report on Form 10-K for the fiscal year ended December 31, 2011.

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the amounts reported in the condensed consolidated financial statements and accompanying notes. While the Company believes that such estimates are fair when considered in conjunction with the condensed consolidated financial position and results of operations taken as a whole, the actual amount of such estimates, when known, may vary from these estimates.

Going Concern

The Company s condensed consolidated financial statements have been prepared assuming the Company will continue as a going concern. For the three and six months ended June 30, 2012, the Company had a net loss of approximately $0.1 million and $1.2 million, and for the six months ended June 30, 2012, the Company used approximately $0.5 million of cash in its operating activities. As of June 30, 2012, the Company has an accumulated deficit of approximately $109.0 million and total stockholders deficit of approximately $2.3 million. As of June 30, 2012, the Company s unrestricted cash balance was approximately $0.1 million.

Due to uncertainty about the Company s ability to meet its current operating expenses, debt obligations and capital expenditures, the Company s independent registered public accounting firm included an explanatory paragraph regarding the Company s ability to continue as a going concern in their report on our annual financial statements for the year ended December 31, 2011. The Company s debt consists of $1.0 million of principal of related party notes (the Director Notes) as of June 30, 2012. The entire outstanding principal balance of the Director Notes, together with all accrued and unpaid interest, is due and payable on December 31, 2012.

The continuation of the Company s business is dependent upon raising additional financial support. In light of the Company s results of continuing operations, management has and intends to continue to evaluate various possibilities. These possibilities include: raising additional capital through the issuance of common or preferred stock, securities convertible into common stock, or secured or unsecured debt, selling one or more lines of business, or all or a portion of the Company s assets, entering into a business combination, reducing or eliminating operations, liquidating assets, or seeking relief through a filing under the U.S. Bankruptcy Code. These possibilities, to the

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EDIETS.COM, INC

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)

extent available, may be on terms that result in significant dilution to the Company s existing stockholders or that result in the Company s existing stockholders losing all of their investment in the Company. There can be no assurances that the Company will be successful in raising adequate additional financial support. If not, the Company will be required to reduce operations and/or liquidate assets and/or seek relief through a filing under the U.S. Bankruptcy Code. The Company s condensed consolidated financial statements do not include any adjustments relating to the recoverability of assets and classification of assets and liabilities that might be necessary should the Company be unable to continue as a going concern.

Significant Accounting Policies

Meal delivery revenue is recognized when the earnings process is complete, which is upon transfer of title of the product. This transfer occurs upon shipment from the Company s fulfillment center to the end-customer. Meal delivery revenue includes amounts billed for shipping. In accordance with Accounting Standards Codification (ASC) 605-45 (formerly Emerging Issues Task Force (EITF) 99-19), *Revenue Recognition Principal Agent Considerations,* the Company recognizes gross meal delivery revenues based on the relevant fact that the Company is the primary obligor and has assumed asset risk when the customers place orders. Beginning in January 2008, the Company began offering two promotions: a) buy seven weeks of meal delivery and get the 8th week for free and b) buy a meal delivery program and get a free non-cash gift. For the first promotion and in accordance with ASC 605-50 (formerly EITF 01-09), *Revenue Recognition Customer Payments and Incentives*, the Company recognizes the cost of the free offer as cost of revenue proportionally over the term of the meal delivery subscription or until the customer cancels and no longer is entitled to the free offer. During 2011, the Company began offering various free offer promotions whereby the Company recognizes the cost of the free offer as cost of revenue proportionally over the term of the meal delivery subscription or until the customer cancels and is no longer entitled to the free offer. For the second promotion and in accordance with ASC 605-50, the Company recognizes meal delivery revenue when the meals are shipped and the cost of the free non-cash gift as cost of sales when the non-cash gift is shipped.

Digital plan revenue is generated by the Company offering membership subscriptions to the proprietary content contained in its websites. Subscriptions to the Company s digital plans are paid in advance, mainly via credit/debit cards and cash receipts are deferred and recognized as revenue on a straight-line basis over the period of the digital plan subscription. Beginning in January 2008, the Company began to offer a guarantee to all customers, under which if a customer did not meet their weight loss goal upon completion of six consecutive months of digital subscription and met the guarantee requirements they would receive the next six months of digital subscription for free. Consequently, the Company recognizes digital subscription revenue over the potential term of twelve months of digital subscription or until the subscriber no longer meets the guarantee requirements, whichever comes first.

In accordance with ASC605-45*,* the Company recognizes gross digital subscription revenues associated with licensed diet and fitness plans based on the relevant facts of the related license agreements, while the license fee incurred to the licensor is included in cost of revenues.

Other revenue relates primarily to royalty revenue and also includes advertising revenue and ecommerce revenue. Royalty revenue is derived from the exclusive technology licensing agreement related to the Company s operations in the United Kingdom and Ireland and is being recognized on a straight-line basis. On July 31, 2009 the Company terminated the 15-year exclusive licensing agreement with Tesco Ireland Limited (Tesco) which provided Tesco with exclusive rights to use the Company s personalized diet technology in the United Kingdom and Ireland, with an effective date of July 1, 2009. The termination agreement provides Tesco with certain continuing rights in the Company technology used by or incorporated into Tesco s diet website prior to termination, including a three-year non-exclusive right to use such technology and, thereafter, an assignment of certain intellectual property rights relating to such technology.

EDIETS.COM, INC

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)

ASC 820 (formerly SFAS 157), *Fair Value Measurements and Disclosures,* defines fair value as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. ASC 820 also establishes a fair value hierarchy which requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. The standard describes three levels of inputs that may be used to measure fair value:

Level 1 Quoted prices in active markets for identical assets or liabilities.

Level 2 Observable inputs other than Level 1 prices such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

Level 3 Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

The Company s debt consists of $1.0 million of principal of the Director Notes. During November 2010, the Company issued the Director Notes, consisting of (i) a promissory note to Kevin A. Richardson II, chairman of the Company s board of directors and controlling member of Prides Capital Fund, L.P. (Prides), the Company s largest stockholder, (ii) a promissory note to Lee S. Isgur, one of the Company s directors and (iii) a promissory note to Kevin N. McGrath, who at that time was one of the Company s directors and the Company s President and Chief Executive Officer. Interest accrues on the Director Notes at a rate of five percent (5%) per annum. These Director Notes are not traded in an active market. As a result of the volatility of substantially all domestic credit markets that currently exist and the difficulty of the Company obtaining similar financing from an unrelated party, the Company is unable, as of June 30, 2012, to determine the fair value of such debt.

The Company establishes a reserve for refunds for meal delivery and digital plan sales. Meal delivery refunds mainly result from late shipments or packaging issues. Based on historical experience, a range of between approximately 1%-3% of prior month s meal delivery sales will result in a refund, accordingly the Company estimates a reserve based on that assumption for future refunds. Since all digital plan subscriber payments are deferred upon receipt, at the end of each month a portion of the deferred revenue is reclassified as a reserve for refunds. Based on historical experience, a range of between approximately 1%-3% of digital plan subscriber sales will result in a refund issued in the subsequent month after sale. All other refunds issued relate to current month digital plan subscriber sales. Because the revenue has not been recognized, refunds do not result in a reversal of digital plan subscription revenue. Instead, refunds result in a decrease to the amounts maintained in deferred revenue.

The Company does not believe there is a reasonable likelihood that there will be a material change in the future estimates or assumptions used to calculate the reserve for refunds. However, if actual results are not consistent with the estimates or assumptions stated above, the Company may be exposed to income or losses that could be material to the condensed consolidated financial statements.

Recent Accounting Pronouncements

In June 2011, the Financial Accounting Standards Board (FASB) issued an amendment to ASC 220, *Comprehensive Income,* which requires companies to present net income and other comprehensive income in one continuous statement or in two separate, but consecutive, statements. The Company adopted this guidance effective January 1, 2012.

EDIETS.COM, INC

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)

3. DISCONTINUED OPERATIONS

On August 6, 2012, the Company and its wholly-owned subsidiary, Nutrio.com, Inc. (together the Sellers), entered into an Asset Purchase Agreement (Purchase Agreement) with Nutrio, LLC. Pursuant to the terms of the Purchase Agreement, Nutrio, LLC purchased all of the Sellers right, title and interest in and to certain assets relating to the Sellers corporate services business (the Nutrio Business) for an aggregate purchase price of $255,000.

The Nutrio Business provides private label online nutrition, fitness and wellness programs to companies mainly in the health insurance, pharmaceutical and food industries, and has been referred to as eDiets Corporate Services and business-to-business in the Company s Annual Report on Form 10-K. The Company previously reported Nutrio Business revenue and cost of revenue separately on its consolidated statements of operations. The Nutrio Business generates three types of business-to-business revenue. Licensing and development revenues are accounted for in accordance with (ASU) 2009-13, *Multiple-Deliverable Revenue Arrangements* (amendments to FASB ASC 605, *Revenue Recognition*). Development revenue relates to the planning, design and development of websites for customers. Both licensing and development revenues are recognized on a straight-line basis over the license period once the website is launched. Consulting revenue relates to consulting services provided to customers and revenue is recognized when services and/or deliverables are completed and collection is probable.

Pursuant to ASC 360, *Accounting for the Impairment or Disposal of Long-Lived Assets,* and ASC 205, *Presentation of Financial Statements,* the operating results of the Nutrio Business have been included in Income from discontinued operations, net of tax within the accompanying Condensed Consolidated Statements of Operations, and certain assets and liabilities have been reclassified as assets and liabilities held for sale within the accompanying Condensed Consolidated Balance Sheets. As a result, prior period comparative financial statements have been restated. The Company has combined cash flows from discontinued operations with cash flows from continuing operations in the accompanying Condensed Consolidated Statement of Cash Flows for all periods presented.

Nutrio Business revenue and the income from discontinued operations are as follows:

	Three months ended June 30,		Six months ended June 30,	
	2012	2011	2012	2011
Revenue	$ 173	$ 319	$ 351	$ 714
Income from discontinued operations, net of tax	9	73	23	324

Assets and liabilities held for sale in the accompanying Condensed Consolidated Balance Sheets consist of the following:

	June 30, 2012	December 31, 2011
Accounts receivable, net	$ 100	$ 119
Prepaid expenses and other current assets		1
Current assets held for sale	$ 100	$ 120
Accounts payable	$ 11	$ 8
Accrued liabilities	17	16
Deferred revenue	111	60
Current liabilities held for sale	$ 139	$ 84

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EDIETS.COM, INC

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)

4. REVENUE RECOGNITION

Revenue by type is as follows (in thousands):

	Three months ended June 30,		Six months ended June 30,	
	2012	2011	2012	2011
Meal delivery	$ 5,081	$ 4,755	$ 11,424	$