

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

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

Date of Report (date of earliest event reported)
September 3, 2024

electroCore, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

001-38538
(Commission
File Number)

20-3454976
(I.R.S. Employer
Identification Number)

200 Forge Way, Suite 205
Rockaway, NJ 07866
(Address of principal executive offices and zip code)

(973) 290-0097
(Registrant's telephone number, including area code)

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

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

<u>Title of each class</u>	<u>Trading symbol(s)</u>	<u>Name of each exchange on which registered</u>
Common Stock, Par Value \$0.001 Per Share	ECOR	The NASDAQ Capital Market

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

Emerging growth company

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

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

Retirement of Brian M. Posner as Chief Financial Officer

On September 3, 2024, the Chief Financial Officer of electroCore, Inc. (the “Company”), Brian M. Posner, informed the Board of Directors (the “Board”) of the Company that he will be retiring effective as of October 4, 2024 for personal and family reasons. It is expected that Mr. Posner and the Company will enter into an agreement pursuant to which Mr. Posner will provide financial and accounting consulting services to the Company on an hourly basis for 12 months after the effective date of his retirement, subject to potential extension upon mutual agreement.

Appointment of Joshua S. Lev as Chief Financial Officer

On September 3, 2024, the Board appointed Joshua S. Lev, as Chief Financial Officer of the Company, effective as of Mr. Posner’s retirement on October 4, 2024.

Mr. Lev, age 40, has served as the Chief Strategy Officer of the Company since January 2022, previously having served as VP of Business Development, Strategy and Financial Planning since February 2020. Prior to joining the Company, Mr. Lev had over 15 years of experience in the financial services industry as an investment banker and investor focusing on emerging growth companies. From 2011 to February 2020, Mr. Lev served as Director of Business Development at Wellfleet Partners, Inc. focusing on capital raising, M&A, strategic transactions and institutional client relations. From March 2014 through February 2020, he was also a co-founder of Araclie Capital, LLC, an investment firm with a focus on early-stage and emerging-growth companies. Mr. Lev received an M.B.A. from the University of North Carolina’s Kenan-Flagler Business School and a B.S. in Business & Management from the Sy Syms School of Business at Yeshiva University.

In connection with his appointment as Chief Financial Officer, the Company and Mr. Lev entered into an amendment (the “Offer Letter Amendment”) to the offer letter dated January 29, 2020 (the “Lev Offer Letter”) pursuant to which, effective as of October 4, 2024, he will receive an annual base salary of \$415,000, subject to periodic review and adjustment by the Company, and will be eligible for a discretionary annual bonus of up to 40 percent of the annual base salary upon achievement of certain individual and company goals. Mr. Lev is also eligible to continue receiving healthcare benefits as may be provided from time to time by the Company to its employees generally, to participate in a 401(k) plan and to receive paid time off annually in accordance with the Company’s policies in effect from time to time. Pursuant to the Offer Letter Amendment, Mr. Lev will be covered by the Company’s Executive Severance Policy, as such policy may be in effect from time to time; provided that in connection with the appointment of Mr. Lev as Chief Financial Officer effective October 4, 2024, the Company agreed to (i) increase the severance period for Mr. Lev under the Executive Severance Policy from six months to 12 months and (ii) the severance multiple (as defined in the Executive Severance Policy) payable to Mr. Lev shall be 1.0. Additionally, Mr. Lev and the Company have entered into the Company’s standard form of indemnification agreement for directors and executive officers.

The foregoing descriptions of the Lev Offer Letter and the Offer Letter Amendment are incomplete and are qualified in their entirety by reference to the full text of the Lev Offer Letter and Offer Letter Amendment, which are attached hereto as Exhibits 10.1 and 10.2 and incorporated herein by reference.

There are no arrangements or understandings between Mr. Lev and any other persons pursuant to which he was appointed as Chief Financial Officer. There are also no family relationships between Mr. Lev and any director or executive officer of the Company, and he has no direct or indirect material interest in any transaction required to be disclosed pursuant to Item 404(a) of Regulation S-K.

Item 5.07. Submission of Matters to a Vote of Security Holders.

On September 3, 2024, the Company held its Annual Meeting (the “Meeting”). The total number of shares of common stock, par value \$0.001 per share (the “Common Stock”), of the Company entitled to vote at the Meeting was 6,446,866 and there were present, in person or by proxy, 3,366,675 shares of Common Stock, which constituted a quorum for the Meeting. The matters voted upon and the results of the vote were as follows:

Proposal 1: Election of two Class III Director to the Board of Directors for a three-year term of office expiring at the 2027 Annual Meeting of Stockholders.

The following directors were elected to a three-year term of office expiring at the 2027 Annual Meeting of Stockholders:

NOMINEE	FOR (#)	FOR (%)	AGAINST (#)	AGAINST (%)	BROKER NON- VOTES
John P. Gandolfo	1,822,264	96.05%	34,608	1.82%	1,469,414
Charles S. Theofilos, M.D	1,839,298	96.95%	28,998	1.53%	1,469,414

Proposal 2: Ratification of Appointment of Marcum LLP as Independent Registered Public Accounting Firm.

A proposal to ratify the selection of Marcum LLP as the Company’s independent registered public accounting firm for its fiscal year ending December 31, 2024, was adopted with the votes shown:

FOR	AGAINST	ABSTAIN	BROKER NON-VOTES
3,279,990	33,819	52,866	n/a

Proposal 3: Approval, by non-binding advisory vote, of the resolution approving named executive officer compensation.

The compensation of the Company's named executive officers was approved, by a non-binding advisory vote, as follows:

FOR	AGAINST	ABSTAIN	BROKER NON-VOTES
1,527,076	328,210	41,975	1,469,414

Proposal 4: Approval, by non-binding advisory vote, of the frequency of future non-binding advisory votes on resolutions approving future named executive officer compensation.

1 YEAR	2 YEARS	3 YEARS	ABSTAIN	BROKER NON-VOTES
1,499,911	85,159	286,527	25,664	1,469,414

In accordance with the voting results on this proposal which sets forth the preference of a majority of the Company's stockholders, the board of directors has determined that the Company shall hold an advisory vote on executive compensation every year until the next required say-on-frequency vote.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit Number	Description
10.1	Offer Letter by and between the Company and Joshua Lev, dated as of January 29, 2020.
10.2	Amendment to the Offer Letter by and between the Company and Joshua Lev, dated as of September 3, 2024.

SIGNATURES

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

September 6, 2024

electroCore, Inc.

/s/ Brian M. Posner

Brian M. Posner
Chief Financial Officer



150 Allen Road, Suite 201
Basking Ridge, New Jersey 07920 USA
Phone: 973-290-0097

January 29, 2020

Mr. Joshua Lev

Dear Mr. Lev,

On behalf of ElectroCore, Inc., a Delaware corporation (the "Company"), I am pleased to offer you a position as Vice President of Business Development, Strategy and Financial Planning effective as of February 3, 2020 or such other date as we shall mutually agree. This offer and your employment are subject to the successful completion of the Company's standard background check. In this role, you will report to Brian Posner, Chief Financial Officer.

This letter, when signed by you, will constitute our agreement (the "Agreement") concerning your role as an employee of the Company.

1. Duties; Termination. During the term of this Agreement, you hereby agree to serve in the capacity noted above (or such other capacity as we shall mutually hereafter agree) and to perform such services as are customarily required of such position and as are assigned to you by the Company's Chief Financial Officer, or other authorized senior executive.

As of February 3, 2020, and through the remainder of your term of employment with the Company, you shall devote your full business time to your duties to the Company or its affiliates and you shall not engage in any other business activities without the prior written consent of the Company. Either party may terminate this Agreement at any time by providing the other with written notice of such termination.

2. Compensation. As full compensation for your service to the Company hereunder and in consideration of the other covenants contained herein, you shall receive:

(a) during the term of your employment, an annual salary of \$275,000 less applicable withholding taxes and other deductions, paid semi-monthly in accordance with the Company's customary payroll practices (as such amount may be adjusted from time to time at the Company's discretion);

(b) an annual discretionary bonus, targeted at 35% of your base salary, based on your individual performance as well as the performance of the Company. Such bonus shall be paid, if at all, at the discretion of the Company's Board of Managers and you must be employed with the Company on the bonus payment date to receive any such bonus;

(c) during the term of your employment, healthcare benefits as may be provided from time to time by the Company to its employees generally; participation in the Company's 401(k) plan; and 15 days of paid time off (PTO) annually. This PTO is in addition to 5 days of paid sick leave and 12 company paid holidays annually (which may vary based on the Company issued annual holiday calendar). A package describing certain of these benefits is attached;



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Basking Ridge, New Jersey 07920 USA
Phone: 973-290-0097

(d) subject to the approval by the Compensation Committee of the Company's Board of Directors, a one-time grant of a stock option to purchase 250,000 shares of the Company's common stock. Such option grant will be made pursuant to the Company's standard Stock Option Agreement (a copy of which will be provided to you after grant and which you will be required to execute as a condition to such grant) and its Omnibus Equity Incentive Plan. The Stock Options will vest 25% on the one-year anniversary of your Start Date and the balance to vest in equal annual installments of the succeeding three-year period (subject to your being employed by the Company on any applicable vesting date). The strike price of the options will be at least \$1.50 per share and no greater than the closing price on the date of grant.

(e) subject to the approval by the Compensation Committee of the Company's Board of Directors, 50,000 Restricted Stock Units (the "RSUs") of the Company's Common Stock to vest 25% on the one-year anniversary of your Start Date and the balance to vest in equal annual installments over the succeeding three-year period (subject to your being employed by the Company on any applicable vesting date).

3. At-Will Employment. You acknowledge and agree that your employment with the Company is "at will," meaning that either you or the Company (acting through its Board of Directors or an officer expressly authorized to so act) may terminate your employment with the Company at any time and for any reason (or no reason) upon notice to the other party.

The Company agrees that you shall be covered by the Company's Executive Severance Policy. A copy of such policy, as currently in effect, has been provided to you.

4. Confidential Information and IP Assignment. You hereby agree to execute and be bound by the Company's standard Employee Confidentiality and Assignment Agreement, a copy of which has been provided to you.

5. Miscellaneous. This Agreement, together with the documents referred to herein, contains the entire agreement of the parties with respect to the subject matter hereof and may be amended only by a written instrument signed by you and the Company. Because of the personal nature of the services to be rendered by you under this Agreement, you may not assign this agreement without the prior written consent of the Company. Any provision of this Agreement, which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

6. Governing Law; Jurisdiction. This Agreement shall be governed in accordance with the laws of the State of New Jersey. The parties hereto consent to the jurisdiction of the courts of the State of New Jersey for all disputes arising pursuant to this Agreement.



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Basking Ridge, New Jersey 07920 USA
Phone: 973-290-0097

If you are in agreement with the foregoing terms, please indicate such agreement by signing the enclosed duplicate original of this letter in the space provided and returning it to the Company.

Very truly yours,
ElectroCore, Inc.

By: /s/ Brian M. Posner
Brian M. Posner
Chief Financial Officer

Acknowledged and Agreed.

/s/ Joshua S. Lev
Joshua S. Lev



ELECTROCORE, INC.
200 Forge Way, Suite 205
Rockaway, NJ 07866

September 3, 2024

Mr. Joshua S. Lev
c/o ElectroCore, Inc.
200 Forge Way, Suite 205
Rockaway, NJ 07866

Dear Joshua:

Reference is hereby made to the letter agreement, dated January 29, 2020, between you ("Employee") and electroCore, Inc., a Delaware corporation (the "Company"), relating to your employment by the Company (the "Employment Letter"), and the addendum dated July 20, 2022 between Employee and the Company, related to your entitlement to potential future severance pay by the Company (the "Addendum"). The purpose of this letter (the "Amendment") is to amend the Employment Letter and Addendum as set forth herein.

We hereby agree as follows:

1. Title. Effective October 4, 2024, your position will be Chief Financial Officer of the Company. In this role, you will report to Daniel S. Goldberger, Chief Executive Officer of the Company, and shall perform such services as are customarily required of such role and as are assigned to you by the Company's Chief Executive Officer or Board of Directors.

2. Compensation. Effective as of October 4, 2024, Sections 2(a) and (b) of the Employment Letter are hereby amended by deleting them in full and replacing them with the following provisions:

"(a) during the term of your employment, an annual salary of \$415,000 less applicable withholding taxes and other deductions, paid semi-monthly in accordance with the Company's customary payroll practices (as such amount may be adjusted from time to time at the Company's discretion);

(b) an annual discretionary bonus, targeted at 40% of your base salary, based on your individual performance as well as the performance of the Company. Such bonus shall be paid, if at all, at the discretion of the Company's Board of Directors or Compensation Committee thereof and you must be employed with the Company on the bonus payment date to receive any such bonus;"

3. Severance. Effective as of October 4, 2024, the second paragraph of Section 3 of the Employment Letter shall be deleted in its entirety, the Addendum shall be deemed to be terminated in its entirety and of no further force and effect, and the Employment Letter shall hereby be further amended to add the following as Section 2(f):

“(f) the Company agrees that you shall be covered by the Company’s Executive Severance Policy, as such policy may be in effect from time to time (the “Severance Policy”); provided that, notwithstanding anything in the Severance Policy to the contrary, (i) the “Severance Period” for all purposes of Section 2.24 of the Severance Policy as it applies to you shall be 12 months (and not 6 months), (ii) the “Severance Multiple” payable to you for all purposes of Section 4.01 (b) of the Severance Policy shall be 1.0 and (iii) be entitled to bonus payments as laid out under section 4.04 of the Severance Policy. A copy of such policy, as currently in effect, has been provided to you. You acknowledge and agree that the Company reserves the right to amend such policy from time to time or to terminate such policy; provided, that no such amendment or termination shall reduce the amount of severance benefits payable to you upon an involuntary termination of employment without your prior consent.”

4. Employment Status. This Amendment does not impose on the Company any obligation to (i) retain Employee as an employee, (ii) change the status of Employee as an “at-will” employee, or (iii) change its policies regarding termination of employment.

5. Notices. Any notices provided hereunder must be in writing and such notices or any other written communication shall be deemed effective upon the earlier of personal delivery (including personal delivery by e-mail) or the third day after mailing by first class mail, to the Company at its primary office location and to Employee at his or her address as listed in the Company’s payroll records.

6. Severability. Whenever possible, each provision of this Amendment will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Amendment is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or any other jurisdiction, but this Amendment will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provisions had never been contained herein.

7. Headings. Headings are inserted for convenience only and shall not be deemed to constitute a part hereof nor to affect the meaning thereof.

8. Successors and Assigns. This Amendment is intended to bind and inure to the benefit of and be enforceable by Employee and the Company, and their respective successors, assigns, heirs, executors and administrators; provided, however, that Employee may not assign any of his duties hereunder and he may not assign any of his rights hereunder without the written consent of the Company.

9. Withholding of Taxes. To the extent that the Company is required to withhold federal, state, local or foreign taxes in connection with any benefit realized by Employee under this Amendment, the Company shall withhold such taxes from payment of the benefit.

10. Choice of Law. This Amendment shall be governed in accordance with the law of the State of New Jersey. The parties hereto consent to the jurisdiction of the courts of the State of New Jersey for all disputes arising pursuant to this Amendment.

11. No Prior Funding. No amounts payable under this Amendment shall actually be funded, set aside or otherwise segregated prior to payment. The obligation to pay the benefits hereunder shall at all times be an unfunded and unsecured obligation of the Company and be paid out of the general assets of the Company. Employee shall have the status of a general creditor.

12. Code Section 409A.

- (a) Benefits payable under this Amendment are intended to be exempt from the requirements of Section 409A of the Internal Revenue Code (the “Code”) as a short-term deferral and/or as exempt separation pay to the maximum extent permitted under Section 409A of the Code and this Amendment shall be construed consistent with that intent. Notwithstanding any provision of this Amendment, to the extent any benefits payable hereunder are not exempt from the requirements of Section 409A of the Code, this Amendment shall be construed and interpreted to comply with Section 409A of the Code, and if necessary, any provision shall be held null and void to the extent such provision (or part thereof) fails to comply with Section 409A of the Code or regulations thereunder.
- (b) For purposes of the limitations on nonqualified deferred compensation under Section 409A of the Code, each payment of nonqualified deferred compensation under the Amendment shall be treated as a separate payment of such compensation for purposes of applying the Section 409A of the Code deferral election rules and the exclusion from Section 409A of the Code for certain short-term deferral amounts.
- (c) If, as of the date of Employee’s “separation from service” (as determined under Section 409A), Employee is a “specified employee” within the meaning of Treasury Regulation Section 1.409A-1(i), then to the extent that any amount or benefit that would be paid or provided to Employee under this Amendment within six (6) months of his “separation from service” constitutes an amount of deferred compensation for purposes of Section 409A and is considered for purposes of Section 409A to be owed to Employee by virtue of his separation from service, then such amount or benefit will not be paid or provided during the six-month period following the date of Employee’s separation from service and instead shall be paid or provided on the first business day that is more than six (6) months following the date of Employee’s separation from service, except to the extent that, in the Company’s reasonable judgment, payment during such six-month period would not cause Employee to incur additional tax, interest or penalties under Section 409A.
- (d) In no event whatsoever shall the Company be liable for any additional tax, interest or penalties that may be imposed on the Employee by Code Section 409A or any damages for failing to comply with Code Section 409A.
- (e) If payment of any amount of “deferred compensation” (as defined under Section 409A of the Code, after giving effect to the exemptions thereunder) is contingent upon the Employee’s taking any employment related action, including but not limited to, execution of a release and waiver of claims, and if the period within which Employee must take the employment related action would begin in one calendar year and expire in the following calendar year, then, notwithstanding the provisions of the Amendment specifying the date of payment, any payments contingent on such employment-related action shall be made in such following calendar year (regardless of the year of execution of such release) if payment in such following calendar year is required in order to avoid taxes, interest and penalties under Section 409A of the Code.

Except as amended hereby, your Employment Letter shall remain in full force and effect, and you reconfirm your covenants and agreements contained therein. If you are in agreement with the foregoing terms, please indicate such agreement by signing the enclosed duplicate original of this letter in the space provided and returning it to the Company.

[Signature Page Follows]



Very truly yours,

ELECTROCORE, INC.

By: /s/ Daniel S. Goldberger

Name: Daniel S. Goldberger

Title: Chief Executive Officer

ACCEPTED AND AGREED TO:

/s/ Joshua S. Lev

Joshua S. Lev