

AUTHENTIDATE HOLDING CORP

FORM 8-K (Current report filing)

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

FORM 8-K

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

DATE OF REPORT (DATE OF EARLIEST EVENT REPORTED): May 31, 2016

AUTHENTIDATE HOLDING CORP.

(Exact name of registrant as specified in its charter)

COMMISSION FILE NUMBER: 0-20190

DELAWARE
(State or other jurisdiction of incorporation or organization)

14-1673067
(I.R.S. Employer Identification No.)

**225 Centennial Drive
Gainesville, GA 30504**
(Address and zip code of principal executive offices)

1-888-661-0225
(Registrant's telephone number, including area code)

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

CHECK THE APPROPRIATE BOX BELOW IF THE FORM 8-K FILING IS INTENDED TO SIMULTANEOUSLY SATISFY THE FILING OBLIGATION OF THE REGISTRANT UNDER ANY OF THE FOLLOWING PROVISIONS:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 1.01. Entry into Material Definitive Agreement.

As previously reported, (i) on November 18, 2015, Authentidate Holding Corp. (the “Company”) entered into an agreement and plan of merger with and a newly formed acquisition subsidiary of the Company and Peachstate Health Management LLC, d/b/a AEON Clinical Laboratories (“AEON”), (ii) on January 26, 2016, the parties executed an Amended and Restated Agreement and Plan of Merger (the “Amended and Restated Merger Agreement”), and (iii) on January 27, 2016, the parties completed the merger. Pursuant to the Amended and Restated Merger Agreement, among other things, in the event that the Company was unable, for any reason, to receive approval by its stockholders of the issuance of the additional shares of the Company’s common stock which may be issued to the former AEON members in excess of the initial 19.9% tranche under the Amended and Restated Merger Agreement by May 31, 2016, then the Company or AEON shall rescind the merger and all related transactions. On May 31, 2016, the parties entered into Amendment No. 1 (“Amendment No. 1”) to the Merger Agreement to provide, among other things, in the event that the Company shall fail, for any reason, to receive approval by its stockholders of the issuance of the additional shares of the Company’s common stock which may be issued to the former AEON members in excess of the initial 19.9% tranche under the Amended and Restated Merger Agreement by May 31, 2016, then AEON may, in its sole discretion at any time thereafter by written notice to the Company, rescind the Amended and Restated Merger Agreement and all transactions completed hereunder.

The foregoing summary of Amendment No. 1 is qualified in its entirety by reference to the full text of Amendment No. 1, a copy of which is attached as Exhibit 2.1 to this Current Report on Form 8-K and is incorporated herein by reference.

Cautionary Note Regarding Forward-Looking Statements

Certain statements in this communication constitute “forward-looking statements” within the meaning of Section 27A of the Securities Act and Section 21E of the Securities Exchange Act and are usually identified by the use of words such as “anticipates,” “believes,” “estimates,” “expects,” “intends,” “may,” “plans,” “projects,” “seeks,” “should,” “will,” and variations of such words or similar expressions. We intend these forward-looking statements to be covered by the safe harbor provisions for forward-looking statements contained in Section 27A of the Securities Act and Section 21E of the Securities Exchange Act and are making this statement for purposes of complying with those safe harbor provisions. These forward-looking statements reflect our current views about our plans, intentions, expectations, strategies and prospects, which are based on the information currently available to us and on assumptions we have made. Although we believe that our plans, intentions, expectations, strategies and prospects as reflected in or suggested by those forward-looking statements are reasonable, we can give no assurance that the plans, intentions, expectations or strategies will be attained or achieved. Furthermore, actual results may differ materially from those described in the forward-looking statements and will be affected by a variety of risks and factors that are beyond our control. Risks and uncertainties are described in our Annual Report on Form 10-K for the year ended June 30, 2015 filed with the Securities and Exchange Commission (the “SEC”), our Current Report on Form 8-K filed with the SEC on February 1, 2016, and in other filings that the Company makes and will make with the SEC in connection with the proposed transactions, including the proxy statement described below under “Additional Information and Where to Find It.” Existing and prospective investors are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date hereof. The statements made in

this report speak only as of the date stated herein, and subsequent events and developments may cause our expectations and beliefs to change. While we may elect to update these forward-looking statements publicly at some point in the future, we specifically disclaim any obligation to do so, whether as a result of new information, future events or otherwise, except as required by law. These forward-looking statements should not be relied upon as representing our views as of any date after the date stated herein.

Additional Information and Where to Find It

The terms of the transaction require that the Company file with the SEC a proxy statement, as well as other relevant documents related to the issuance of future tranches of the Company's common stock. The issuance of the initial tranche of the Company's common stock did not require any action or approval of stockholders of the Company. **STOCKHOLDERS ARE URGED TO READ THE PROXY STATEMENT REGARDING THE MERGER WHEN IT BECOMES AVAILABLE AND ANY OTHER RELEVANT DOCUMENTS FILED WITH THE SEC, AS WELL AS ANY AMENDMENTS OR SUPPLEMENTS TO THOSE DOCUMENTS, BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION.** A free copy of the proxy statement and other filings containing information about the Company and AEON may be obtained at the SEC's Internet site (<http://www.sec.gov>). You will also be able to obtain these documents, free of charge, from the Company at www.authentidate.com under the heading "Investors / SEC Filings."

The Company and AEON and their respective directors and executive officers may be deemed to be participants in the solicitation of proxies from the Company's stockholders. Additional information regarding the interests of those participants and other persons who may be deemed participants in the solicitation of proxies may be obtained by reading the proxy statement regarding the issuance of future tranches of the Company's common stock when it becomes available. Free copies of this document may be obtained as described in the preceding paragraph. This Form 8-K shall not constitute an offer to sell or the solicitation of an offer to sell or the solicitation of an offer to buy any securities, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction. No offer of securities shall be made except by means of a prospectus meeting the requirements of Section 10 of the Securities Act of 1933, as amended.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits:

2.1 Amendment No. 1 dated as of May 31, 2016 to Amended and Restated Merger Agreement, dated as of January 26, 2016.

SIGNATURE

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.

AUTHENTIDATE HOLDING CORP.
(Registrant)

Date: June 6, 2016

By: /s/ Richard Hersperger
Richard Hersperger
Chief Executive Officer

EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
2.1	Amendment No. 1 dated as of May 31, 2016 to Amended and Restated Merger Agreement, dated as of January 26, 2016.

**AMENDMENT NO. 1
TO
AMENDED AND RESTATED AGREEMENT AND PLAN OF MERGER**

This Amendment No. 1 to Amended and Restated Agreement and Plan of Merger, dated as of May 31, 2016 (this “**Amendment**”), by and among Authentidate Holding Corp., a Delaware corporation (“**Buyer**”), RMS Merger Sub LLC, a Georgia limited liability company (“**Merger Sub**”), and PeachState Health Management, d/b/a AEON Clinical Laboratories, a Georgia limited liability company (“**Target**”). Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Agreement (as hereinafter defined).

WITNESSETH:

WHEREAS, Buyer, Merger Sub, and Target entered into an Amended and Restated Agreement and Plan of Merger, dated as of January 26, 2016 (the “**Agreement**”); and

WHEREAS, Buyer, Merger Sub, and Target desire to amend the Agreement in accordance with Section 10.4 of the Agreement.

NOW, THEREFORE, Buyer, Merger Sub, and Target agree as follows:

1. Recitals. The foregoing recitals are true and made part of this Amendment.

2. Amendments to the Agreement.

(a) Section 7.15 of the Agreement is deleted in its entirety and replaced with the following:

“**Rescission of Merger**. In the event that Buyer shall fail for any reason to receive the Nasdaq Stockholder Approval on or prior to January 24, 2016 or the Buyer Stockholder Approval by May 31, 2016 or the Parties shall terminate this Agreement in accordance with Article 9 of this Agreement, then the Target may, in its sole discretion at any time thereafter by written notice to Buyer, rescind the Merger and all transactions completed hereunder. In accordance therewith, all equity interests of the Surviving Company shall be transferred to the Target Members without any additional consideration in accordance with written instructions delivered by the Target Members to Buyer. Target Members shall return to Buyer for cancellation all certificates representing the Buyer Common Stock originally issued to them under this Agreement. Buyer shall obtain the written resignation of any officer or manager of Surviving Company and deliver such resignation to the Target Members as requested by Target Members. Any nominees of the Target Members then serving as an Officer or Director of any Buyer Entity shall deliver to Buyer a written

resignation from such positions. The Parties shall use their best efforts to rescind the Merger within ten (10) business days after Target delivers written notice to Buyer demanding the rescission of the Merger in accordance with this Section. The Parties shall cooperate in good faith to complete the rescission and shall execute and deliver any and all documents and certificates to effectuate the rescission as may be necessary or desirable.”

(b) Section 9.2 of the Agreement is deleted in its entirety and replaced with the following:

“ **Effect of Termination** . In the event of the termination and abandonment of this Agreement pursuant to Section 9.1, this Agreement shall become void and have no effect, except that (a) the provisions of this Section 9.2 shall survive any such termination and abandonment, (b) no such termination shall relieve the breaching Party from Liability resulting from any breach by that Party of this Agreement, and (c) Target may rescind the Merger as provided under Section 7.15 hereof.”

3. Miscellaneous. The provisions of Article 10 of the Agreement shall apply mutatis mutandis to this Amendment.

4. Limited Amendment. This Amendment is limited by its terms and does not and shall not serve to amend or waive any provision of the Agreement except as expressly provided for in this Amendment. All references in the Agreement to “this Agreement” or terms such as “herein”, hereof” or similar terms shall mean the Agreement as amended by this Amendment.

[Remainder of page left intentionally blank]

IN WITNESS WHEREOF, the parties have caused this Amendment to be duly executed on the day and year first above written.

AUTHENTIDATE HOLDING CORP.

By: _____

Name:

Title:

RMS MERGER SUB LLC

By: _____

Name:

Title:

**PEACHSTATE HEALTH MANAGEMENT, LLC d/b/a/
AEON CLINICAL LABORATORIES**

By: _____

Name:

Title:

[Amendment No. 1 to Amended and Restated Agreement and Plan of Merger]