

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

**FORM 10 – Q/A**

**(AMENDMENT NO. 1)**

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

**For the quarterly period ended September 30, 2004**

**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 0-11365

**PHOTOMEDEX, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of  
incorporation or organization)

**59-2058100**

(I.R.S. Employer  
Identification No.)

147 Keystone Drive, Montgomeryville, Pennsylvania 18936  
(Address of principal executive offices, including zip code)

(215) 619-3600

(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant: (i) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (ii) has been subject to such filing requirements for the past 90 days.

Yes ☒ No ☐

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Exchange Act.)

Yes ☒ No ☐

The number of shares outstanding of the issuer's Common Stock as of November 9, 2004, were 40,014,404 shares.

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## **EXPLANATORY NOTE**

This Amendment No. 1 to the Quarterly Report on Form 10-Q/A("Form 10-Q") of PhotoMedex, Inc., a Delaware corporation (referred to in this Report as "we," "us," "our" or "registrant") originally filed with the Securities and Exchange Commission on November 9, 2004, is being filed solely for the purpose of amending and restating in its entirety Part I, Item 4 (Controls and Procedures) and to update the signature page and Exhibits 31.1, 31.2, 32.1 and 32.2 (including corrected Exhibits 31.1 and 31.2). The remainder of the Form 10-Q, is unchanged and is not reproduced in this Amendment No. 1. This Amendment No. 1 reflects only the changes discussed above. No other information included in the original Form 10-Q, including our financial statements and the footnotes thereto, has been modified or updated.

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## PART I – Financial Information

### ITEM 4. Controls and Procedures

At the end of October 2003 and prior to the release of our results and the filing of the Form 10-Q for the quarter ended September 30, 2003, our independent auditors identified an issue related to certain transactions for which we had initially recorded revenue in our internal consolidated financial statements on shipments of lasers to a master international distributor in the third quarter of 2003. Following the same analysis we had made for shipments made in the second quarter to the distributor, we initially had determined that such shipments made in the third quarter were collectible, based on the reputations of the principals of the distributor and on extensive conversations we had had with other suppliers of the distributor. Our independent auditors noted, however, that the adjustment in the third quarter of the contractual payment terms provided to the distributor in the second quarter suggested that the distributor might not have the ability to pay for the laser units until the distributor collected amounts due from its customers. Augmenting their concern was that the total credit then extended to the distributor would be material to the related financial statements.

Our auditors requested additional information regarding the financial capability of the distributor. We requested further assurance from the distributor that it had independent means to pay the receivables. We obtained further relevant information from the distributor, which had been initially unavailable to our management. Based on our independent auditors' review and analysis of information provided by our distributor relating to the collectibility of the revenue from shipments to this distributor, our independent auditors recommended that the revenue related to these particular shipments should be accounted for utilizing the "sell-through" method of accounting, provided the other criteria for revenue recognition under applicable accounting standards were met. The issue was discussed with management and with our Audit Committee. Upon consideration of the facts relevant to the issue, management and the Audit Committee subscribed to the position of our auditors that shipments should be accounted for under the "sell-through" method when collection could not be demonstrated to be more probable than non-collection. We therefore did not recognize \$260,000 of sales for shipments made to this distributor in the third quarter of 2003. Additionally, based upon the guidelines of Staff Accounting Bulletin No. 99 and APB No. 28, we offset third quarter 2003 revenues by \$281,000 for shipments made in the second quarter of 2003. We applied the same analysis with respect to all laser shipments, both foreign and domestic and imposed the "sell-through" method in appropriate cases. Under such method, sales would be recognized only when we had been paid the full amount due. We recognized revenue of \$310,000 in the first quarter of 2004 and \$110,000 in the second quarter of 2004 as a result of collections from units shipped in 2003 to the master distributor.

Based on the foregoing during the fourth quarter of 2003, we immediately implemented a revised internal control procedure to enhance the determination of the collectibility of receivables from sales to all of our distributors - both for our then current distributors and customers (including new and past distributors and customers) and as a policy on an ongoing basis for prospective distributors and customers. We determined going forward that, if we were to record revenues other than on payment in full of receivables, we would rely primarily on strong, objective evidence of a customer's ability to pay on a case-by-case basis. We considered that the best evidence with respect to discrete laser sales would be a letter of credit or payment in advance. Other evidence could be in the form of past payment records, third party credit reports, bank references, recent customer financial statements and industry/trade references. We also re-evaluated the various factors, and the relative weights we ascribe to these factors, which we take into account in determining collectibility. We further implemented these improvements to our internal controls and procedures by seeking to obtain such information with respect to all of our distributors and customers to whom we were selling our lasers. Senior management individually reviews each transaction.

Our auditors notified us that they had determined that there was a material weakness in our internal controls related to recognition of revenue on the sale of lasers under the collectibility criterion of Staff Accounting Bulletin No. 104 relating to the discrete sales of lasers. This material weakness related to the revenue recognition policy in our dealings with the specific distributor which had been raised in connection with the third quarter 2003 Form 10-Q. As described in the preceding paragraph, we developed and implemented improvements in our internal control procedures with respect to the analysis of the collectibility of receivables from sales of our lasers, not only with the specifically identified distributor, but with respect to all of our then current and prospective distributors and customers. These general policy improvements in our internal control procedures were implemented as of December 31, 2003.

As of the end of the period covered by this Quarterly Report on Form 10-Q for the quarters ended September 30, 2004, June 30, 2004 and March 31, 2004, we carried out an evaluation, under the supervision and with the participation of our chief executive officer and chief financial officer, of the effectiveness of the design and operations of our disclosure controls and procedures (as defined in Rule 13a-15(e) under the Securities Exchange Act of 1934).

In making this evaluation, we considered the material weakness identified by our independent auditors relating to our internal controls as they relate to recognition of revenue on the sale of lasers under the collectibility criterion of Staff Accounting Bulletin No. 104. In connection with this evaluation, we also considered the development and implementation of improvements in our internal control procedures described above with respect to the identified weakness.

Based on these evaluations, our chief executive officer and chief financial officer concluded that as of the end of the periods covered by each of these reports, such disclosure controls and procedures were effective to ensure that information required to be disclosed by us in the reports we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the Securities and Exchange Commission, and is accumulated and communicated to our management, including our chief executive officer and chief financial officer, as appropriate to allow timely decisions regarding required disclosure.

Except as described above, there were no changes in our internal controls over financial reporting during the quarter ended September 30, 2004 or in the quarters ended June 30, 2004 or March 31, 2004 that materially affected, or were reasonably likely to materially affect, our internal controls over financial reporting.

With regard to the identified material weakness, we did not restate any financial results for any prior periods and believe that the identified material weakness did not have any material effect on the accuracy of our financial statements prepared with respect to any prior fiscal period.

We are presently undertaking an analysis of our internal controls, as required by Section 404 of the Sarbanes Oxley Act of 2002.

## **PART II – Other Information**

### **ITEM 6. Exhibits**

[31.1](#) Rule 13a-14(a) Certificate of Chief Executive Officer

[31.2](#) Rule 13a-14(a) Certification of Chief Financial Officer

[32.1](#) Certificate of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

[32.2](#) Certificate of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

## **SIGNATURES**

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

PHOTOMEDEX, INC.

Date: November 24, 2004

By: /s/ Jeffrey F. O'Donnell

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Jeffrey F. O'Donnell  
President and Chief Executive Officer

Date: November 24, 2004

By: /s/ Dennis M. McGrath

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Dennis M. McGrath  
Chief Financial Officer

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER**

I, Jeffrey F. O'Donnell, certify that:

- (1) I have reviewed this quarterly report on Form 10-Q/A of PhotoMedex, 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(s) 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)) for the registrant and 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) 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
  - (c) 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(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors 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.

Dated: November 24, 2004

By: /s/ Jeffrey F. O'Donnell  
Jeffrey F. O'Donnell  
Chief Executive Officer

**CERTIFICATION OF CHIEF FINANCIAL OFFICER**

I, Dennis M. McGrath certify that:

- (1) I have reviewed this quarterly report on Form 10-Q/A of PhotoMedex, 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(s) 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)) for the registrant and 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) 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
  - (c) 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(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors 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.

Dated: November 24, 2004

By: /s/ Dennis M. McGrath  
Dennis M. McGrath  
Chief Financial Officer

**SECTION 906 CERTIFICATION**

I, Jeffrey F. O'Donnell, Chief Executive Officer of PhotoMedex, Inc., a Delaware corporation (the "Company"), do hereby certify, in accordance with 18 U.S.C. Section 1350, as created pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) the accompanying Quarterly Report on Form 10-Q/A of the Company for the three and nine months ended September 30, 2004 (the "Report") fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

PHOTOMEDEX, INC.

Dated: November 24, 2004

By: /s/ Jeffrey F. O'Donnell  
Jeffrey F. O'Donnell  
Chief Executive Officer

A signed original of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 ("Section 906"), or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to PhotoMedex, Inc. and will be retained by PhotoMedex, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.



**SECTION 906 CERTIFICATION**

I, Dennis M. McGrath, Chief Financial Officer of PhotoMedex, Inc., a Delaware corporation (the "Company"), do hereby certify, in accordance with 18 U.S.C. Section 1350, as created pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) the accompanying Quarterly Report on Form 10-Q/A of the Company for the three and nine months ended September 30, 2004 (the "Report") fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

PHOTOMEDEX, INC.

Dated: November 24, 2004

By: /s/ Dennis M. McGrath  
Dennis M. McGrath  
Chief Financial Officer

A signed original of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 ("Section 906"), or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to PhotoMedex, Inc. and will be retained by PhotoMedex, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.