

**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): November 3, 2017**

**FIVE9, INC.**

**(Exact name of Registrant as specified in its charter)**

**Delaware**

**(State or other jurisdiction  
of incorporation)**

**001-36383**

**(Commission  
File No.)**

**94-3394123**

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

**Bishop Ranch 8**

**4000 Executive Parkway, Suite 400**

**San Ramon, California 94583**

**(Address of principal executive offices and Zip Code)**

**Registrant's telephone number, including area code: (925) 201-2000**

**Not Applicable**

**(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))

- o Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicated 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.**

On November 3, 2017, Michael Burkland notified the Board of Directors (the “Board”) of Five9, Inc. (the “Company”) that, for personal health reasons, he will resign from his positions as Chief Executive Officer and President of the Company effective December 2, 2017. Mr. M. Burkland will continue to serve on the Company’s Board and, on November 6, 2017, the Board appointed Mr. M. Burkland as Executive Chairman effective as of December 2, 2017. In his role as Executive Chairman, Mr. M. Burkland will assist the Company with strategic initiatives, investor relations, talent development, organizational and other matters.

Mr. M. Burkland and the Company entered into an independent contractor agreement in connection with his appointment as Executive Chairman. As Executive Chairman, Mr. M. Burkland will receive annual cash compensation of \$200,000, and will continue to receive healthcare benefits from the Company. Given his continued service on the Board and his role as Executive Chairman, Mr. M. Burkland’s existing stock options and restricted stock units will remain outstanding, will continue to vest according to the terms of the applicable award agreements and will accelerate in full immediately prior to a change in control, in each case, subject to Mr. M. Burkland’s continued service on the Board. In connection with Mr. M. Burkland’s resignation, his rights and benefits under the Key Employee Severance Benefit Plan (the “KESP”) terminated.

On November 6, 2017, the Board appointed Barry Zwarenstein, the Company’s Chief Financial Officer, to the additional position of Interim Chief Executive Officer, effective December 2, 2017.

As Interim Chief Executive Officer and Chief Financial Officer, Mr. Zwarenstein will continue to receive a base salary of \$367,000, will be eligible to receive a pro-rated cash bonus based on an annual target bonus level for 2017 of \$275,000 subject to the achievement of performance targets the Compensation Committee approved in February 2017, will retain the same rights and benefits under the KESP as he previously had as Chief Financial Officer and will receive equity awards with an aggregate grant date fair value equal to \$500,000, to be divided evenly (based on grant date fair value) between (i) stock options, which will vest as to 1/12 of the total number of shares subject to the stock options each month after the promotion date and (ii) time-based restricted stock units (“RSUs”) which will vest as to 25% of the total number of shares subject to the RSUs every three months after the promotion date, in each case, subject to his continued service with the Company on each vesting date.

On November 6, 2017, the Board appointed Daniel Burkland, formerly the Company’s Executive Vice President of Global Sales and Services, as President, effective December 2, 2017. In his new role, Mr. D. Burkland will continue to be responsible for global sales and services and will also be responsible for the Company’s marketing function.

As President, Mr. D. Burkland will receive a base salary of \$400,000, will continue to be eligible to receive a cash bonus based at the same annual target bonus level for 2017 of \$325,000 subject to the achievement of performance targets the Compensation Committee approved in February 2017 and will receive equity awards with an aggregate grant date fair value equal to \$1.8 million, to be divided evenly (based on grant date fair value) between (i) stock options, which will vest as to 25% of the total number of shares subject to the stock options on the first anniversary of his promotion date, and as to 1/48<sup>th</sup> of such total number of shares each month thereafter and (ii) time-based RSUs which will vest as to 25% of the total number of shares subject to the RSUs in December 2018, and as to 1/16<sup>th</sup> of such total number of shares every three months thereafter, in each case, subject to his continued service with the Company on each vesting date. The Compensation Committee intends for this equity award to largely, if not completely, replace Mr. D. Burkland’s ordinary course equity grant in 2018.

Biographical information regarding Mr. Zwarenstein and Mr. D. Burkland is set forth in the Company’s Proxy Statement for its 2017 Annual Meeting of Stockholders as filed with the Securities and Exchange Commission on March 30, 2017 and such information is incorporated by reference herein.

The foregoing description of Mr. M. Burkland’s independent contractor agreement is not complete and is qualified in its entirety by reference to the full text of the independent contractor agreement, a copy of which is filed as Exhibit 10.1 hereto and incorporated by reference herein.

This Current Report on Form 8-K contains certain forward-looking statements, including the statement regarding Mr. D. Burkland's equity award, that are based on our current expectations and involve numerous risks and uncertainties that may cause these forward-looking statements to be inaccurate. Risks that may cause these forward-looking statements to be inaccurate include, among others: (i) that our Compensation Committee may re-visit Mr. D. Burkland's eligibility to receive additional equity grants in 2018 in light of the Company's or his performance and (ii) the other risks detailed from time-to-time under the caption "Risk Factors" and elsewhere in our Securities and Exchange Commission filings and reports, including, but not limited to, our most recent quarterly report on Form 10-Q. Such forward looking statements speak only as of the date hereof and readers should not unduly rely on such statements. We undertake no obligation to update the information contained in this Current Report on Form 8-K, including in any forward-looking statements, except as required by law.

#### **Item 7.01 Regulation FD Disclosure.**

On November 8, 2017, the Company announced changes to its management team. The full text of the press release issued in connection with the announcement is furnished as Exhibit 99.1 to this Current Report on Form 8-K.

*The information in Item 7.01 of this Current Report on Form 8-K (including Exhibit 99.1 furnished herewith) shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934 (the "Exchange Act") or otherwise subject to the liabilities of that section, nor shall it be deemed incorporated by reference in any filing under the Securities Act of 1933 or the Exchange Act, except as expressly set forth by specific reference in such a filing.*

#### **Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
<a href="#"><u>10.1</u></a>	<a href="#"><u>Independent Contractor Agreement between the Company and Michael Burkland</u></a>
<a href="#"><u>99.1</u></a>	<a href="#"><u>Press release issued by the Company on November 8, 2017</u></a>

**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.

FIVE9, INC.

Date: November 8, 2017

By:           /s/ Barry Zwarenstein            
Barry Zwarenstein  
Chief Financial Officer

**INDEPENDENT CONTRACTOR AGREEMENT**

This Agreement is entered into as of November 8, 2017 by and between Five9, Inc., a Delaware corporation (hereinafter, "Company"), and Michael Burkland (hereinafter "Consultant") to be effective as of the Resignation Effective Date (as defined below). The Company and Consultant are jointly referred to herein as the "Parties" and in some cases individually as a "Party."

**BACKGROUND**

A. Consultant was employed by Company as its Chief Executive Officer and President pursuant to the Executive Employment Agreement dated January 1, 2012 between the Parties ("Employment Agreement").

B. On November 3, 2017, Consultant voluntarily resigned from the positions of Chief Executive Officer and President of the Company effective December 2, 2017 ("Resignation Effective Date").

C. Company desires to engage Consultant as an independent contractor to perform services as Executive Chairman as set forth herein.

D. Consultant desires, as an independent contractor, to provide Company services as Executive Chairman on the terms set forth herein, and the Parties desire to resolve all outstanding issues regarding Consultant's resignation of employment with Company.

**AGREEMENT**

In consideration of the mutual promises and agreements herein contained, Company and Consultant agree as follows:

1. **EMPLOYMENT AGREEMENT AND KESP:** Consultant acknowledges and agrees that all of Consultant's rights under the Employment Agreement and the Key Employee Severance Benefit Plan ("KESP") were terminated and ceased as of the Resignation Effective Date based on Consultant's voluntary resignation, Consultant is not eligible to receive any compensation or benefits under Section 6 of the Employment Agreement or under the KESP based on Consultant's voluntary resignation, and the Company has no continuing obligations to Consultant under the Employment Agreement or KESP. The Company, however, will pay Consultant a pro-rated share of the fourth quarter bonus Consultant was eligible to receive as Chief Executive Officer (for the period through December 1, 2017) under the Company's 2017 executive bonus plan, less applicable withholdings, at the time such bonuses are approved for the Company's other executive officers in the first quarter of 2018.

CONSULTANT: **MB** (initial) - PAGE 1 - COMPANY: **BZ** (initial)

2. **SERVICES:** Consultant shall, as Executive Chairman, perform the services described in Appendix A, Section I, attached hereto and incorporated by reference herein ("Services") for the Term of this Agreement as set forth in Section 4. Services shall be performed at such place or places as Company may from time to time designate. Consultant shall also continue to serve as a member of the Company's Board of Directors ("Board") during the Term of this Agreement, and will be eligible to receive medical benefits as a member of the Board. To the extent he is ineligible to receive medical benefits as a member of the Board, the Company will reimburse him for the cost of individual coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985, if available, and, if not available, through other means. Unless approved by the Board, Consultant shall not receive any additional compensation for his service on the Board, including under the Company's Non-Employee Director Compensation Policy.
3. **CONFIDENTIALITY, TRADE SECRETS, PROPRIETARY RIGHTS INTELLECTUAL PROPERTY:** Consultant and Company hereby agree that all of the restrictions, obligations and provisions set forth in the Agreement Regarding Confidential Information, Intellectual Property Non-Solicitation between them dated April 16, 2012, shall remain in full force and effect in accordance with its terms.
4. **TERM:** This Agreement shall begin on the Resignation Effective Date, and either Party may terminate this Agreement, with or without cause, at any time and for any reason upon giving the other Party at least fifteen (15) days' prior written notice of such termination ("Term"). The termination of this Agreement shall not affect Consultant's continued service on the Board nor his rights to vesting acceleration of his stock awards upon a change in control of the Company, as described in Appendix A, Section II.
5. **COMPENSATION:**
  - (a) Company shall pay to Consultant, as full and complete compensation for all Services performed by Consultant hereunder, at the rate described in Appendix A, Section II, entitled Compensation, for all efforts expended by Consultant in performance of Services hereunder.
  - (b) All compensatory equity awards granted to Consultant by Company prior to the date hereof shall continue vesting following the Resignation Effective Date subject to the terms of the Company's applicable plans and other applicable agreements between the Parties, subject to his continued service with the Company as a director on the Board. Consultant agrees that this Section 5(b) constitutes an amendment to the definition of Continuous Service (as defined in the Company's 2014 Equity Incentive Plan) with respect to such compensatory equity awards.

(c) With the approval of the Board or the Company's Chief Executive Officer, Company shall reimburse Consultant for reasonable expenses incurred by Consultant in connection with the performance of Services under this Agreement.

6. **ASSIGNMENT:** It is mutually acknowledged that this Agreement contemplates the personal services of Consultant and, accordingly, this Agreement or any rights hereunder or interest herein may not be assigned, transferred or otherwise delegated by Consultant without the express prior written consent by Company. Any attempted sale, assignment, transfer, conveyance, or delegation by Consultant in violation of this Section 6 shall be void.
7. **STATUS OF CONSULTANT:**
  - (a) Consultant enters this Agreement as, and intends to continue to be, an independent contractor. Consultant acknowledges that as an independent contractor Consultant is undertaking certain risks of loss not associated with an employment relationship. Under no circumstances shall Consultant look to Company or a client of Company as its employer.
  - (b) Consultant will be solely responsible for payment of all taxes owed, including payment, if any, of employment related taxes and Worker's Compensation Insurance (i.e., FICA, Federal, State, Local, etc.).
8. **EQUIPMENT AND FACILITIES:** Consultant may use equipment and facilities of Company provided such are available and such equipment and facilities shall be used solely at Company's discretion. In the event of voluntary or involuntary termination of this Agreement, all equipment and/or other property of Company, including without limitation all code, development tools, and other technology that were supplied by Company, or a client of Company, to Consultant, as well as notes, reports, documentation, and drawings pertaining to such code and technologies, or other trade secret information shall be returned to Company by Consultant upon the effective date of termination. Consultant shall be responsible for providing his own software and hardware as required for performance of services described in Appendix A. In the event that consultant does not possess items which are deemed necessary, Company may provide them and then Company shall retain ownership after the consulting period elapses.
9. **ARBITRATION:** Any dispute relating to the interpretation or performance of this Agreement shall be resolved at the request of either Party through binding arbitration conducted in Alameda County, California, in accordance with the then-existing rules of the American Arbitration Association. Judgment upon any award by the arbitrators may be entered by the state or federal court having jurisdiction. The Parties intend that this Agreement to Arbitrate be irrevocable.



10. NOTICES: Any notices in connection with the subject matter of this Agreement shall be in writing and shall be effective when delivered personally to the other Party for whom intended, or within five (5) days following deposit of same into the United States mail, certified mail, return receipt requested, first class postage prepaid, addressed to such Party at the address set forth below its signature to this Agreement. Either Party may designate a different address by notice to the other Party given in accordance herewith. In the alternative, a Party may give notice to the other Party via email, which, in the case of Company, shall be directed to Company's then-current Chief Executive Officer at his or her @five9.com email address, and, in the case of Consultant, shall be directed to his @five9.com email address.

11. GENERAL PROVISIONS:

- (a) This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- (b) This Agreement may not be changed or modified, in whole or part, except by a writing signed by both Parties.
- (c) If any provision of this Agreement shall be found to be invalid or unenforceable, such invalid or unenforceable provision shall be replaced by a valid and enforceable provision that as closely as possible reflects the intent of the Parties, and the remaining provisions shall nevertheless remain in full force and effect.
- (d) This Agreement sets forth the entire understanding between the Parties with respect to the subject matter hereof. It replaces and supersedes any other agreement, representation, or promise which may have existed between the Parties.
- (e) This Agreement is binding upon and shall inure to the benefit of the legal successors and assigns of the Parties.

[Signature page follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first set forth above.

**CONSULTANT:**

**COMPANY:**

/s/ Michael Burkland

Michael Burkland

/s/ Barry Zwarenstein

By: Barry Zwarenstein

Title: Chief Financial Officer

Address:

## APPENDIX A

### Section I ("Services")

The Services to be performed by Consultant as Executive Chairman under this Agreement shall be as follows:

- Advice and consultation on strategic initiatives, investor relations, talent development, organizational and other matters.

Consultant shall work under the direction of the Board and, as appropriate, in conjunction with the Company's Chief Executive Officer, or other employees of the Company, and shall provide such other services as requested by the Board or the Company's Chief Executive Officer and agreed to by Consultant.

### Section II ("Compensation")

Compensation to Consultant as full and complete consideration for Services rendered under this Agreement shall be as follows:

1. A monthly payment in the gross sum of \$16,666.67.
2. Consultant shall be eligible to receive additional equity awards under the Company's equity incentive plans, subject to the approval of the Board or Compensation Committee.
3. Consultant shall receive full vesting acceleration of Consultant's then-unvested and outstanding stock awards as of immediately prior to a Change in Control (as defined in the Company's 2014 Equity Incentive Plan), subject to his continued service with the Company as a director on the Board through such time.

CONSULTANT: MB (initial) - PAGE 4 - COMPANY: BZ (initial)



## **Five9 CEO Mike Burkland Transitions to Executive Chairman for Health Reasons**

*CFO Barry Zwarenstein named Interim CEO*

*EVP Dan Burkland Promoted to President*

**San Ramon, Calif. – November 8, 2017** - Five9, Inc. (NASDAQ:FIVN), a leading provider of cloud software for the enterprise contact center market, today said that Mike Burkland, Chairman, President and Chief Executive Officer, has informed the Company's Board of Directors that he will be transitioning from his roles as CEO and President to become Executive Chairman of the Board in order to focus more of his time on his health and family. In October, Mr. Burkland was diagnosed with Stage 4 cancer and will be undergoing aggressive treatment over the next several months.

Reflecting an orderly transition of duties, the Board has named Barry Zwarenstein, Five9's Chief Financial Officer, to the additional post of Interim CEO while a search for a permanent CEO commences. Dan Burkland, Executive Vice President of Global Sales and Services, has been promoted to President. These leadership changes will take effect December 2, 2017.

Mr. Burkland, Five9's President and CEO said, "While this is an extremely difficult situation for me personally – my decision was clear. With the ongoing leadership from Barry, Dan, the extended Five9 executive team and our Board, who have all been together for several years, I am extremely confident that Five9 will not miss a beat and continue its strong execution in this tremendous cloud contact center market opportunity. I would also like to express my confidence in the entire Five9 team of 800+ employees, who in my opinion are the best in the industry, period. For nearly 10 years I've had the honor and privilege to lead an amazing team of people on an incredibly exciting journey. I've enjoyed every minute of it and I want to thank each and every Five9 employee for their camaraderie, teamwork, dedication and great work over the years.

"While my health situation is a true life challenge, it gives me great comfort to know that Five9 is in such trusted hands as I make this transition to executive chairman.

"Barry has been CFO of six public companies over his career. He joined Five9 over five years ago, when we were a much smaller private company, and he has helped me in so many ways to grow Five9 into the successful public company that it is today.

"Dan has spent nearly 30 years in and around the contact center market and is a true industry veteran. He joined Five9 almost eight years ago, and has led our sales, business development, professional services and customer support teams. Dan's leadership has been key in scaling Five9's annual revenue from around \$20 million to nearly \$200 million.

"As I transition to Executive Chairman, I plan to remain actively involved with Five9 and continue to work closely with our Board and management team," Mr. Burkland concluded.

Dave Welsh, Five9 Board Member and Lead Independent Director, said, “We respect and understand Mike’s decision and are extraordinarily thankful to have benefited from his leadership. We are also appreciative that he will be continuing as Executive Chairman. In addition to his many accomplishments, he has built a broad, deep, and enduring management team, and we are pleased that Barry and Dan will be stepping into new roles during this transition period. We have engaged an executive search firm to find Mike’s permanent successor as CEO in a thoughtful manner.

“On a personal note, Mike has been a special colleague for many years, and I speak for the entire Board in wishing him and his family the strength and support they need during this very challenging period. The Five9 family will be with him every step of the way.”

## **Executive Bios**

### **Barry Zwarenstein**

Barry Zwarenstein has been Five9’s Chief Financial Officer since January 2012. He’s managed three successful IPOs (Five9, VeriFone and Logitech), and played a significant role in the sale of SMART Modular Technologies to Silver Lake Partners for \$635M and the sale of Acuson to Siemens Health Care for \$700M. Barry was also CFO of Iomega Corporation and Mellanox Technologies. From November 2007 to October 2015, Barry served on the board of directors of Dealertrack Technologies, Inc. Barry holds a Bachelor of Commerce from the University of Kwa-Zulu Natal, South Africa and an MBA from the Wharton School of Business, University of Pennsylvania. He is qualified as a Chartered Accountant (South Africa).

### **Dan Burkland**

Dan Burkland joined Five9 in 2009. As Executive Vice President of Global Sales and Services, he is responsible for global sales, including all direct, channels, and business development, as well as all implementation, professional services, and customer support organizations. His organizations cover the entire customer life-cycle from sales to implementation to ongoing support – all critical to customer success from a Cloud Software company. Dan has nearly 30 years of experience building and scaling successful sales and leadership teams. Before Five9, Dan was SVP of Sales at Transera Communications. He also ran worldwide sales for IP Unity, growing the business tenfold, and held sales management positions at Cisco and GeoTel.

## **About Five9**

Five9 is a leading provider of cloud software for the enterprise contact center market, bringing the power of the cloud to thousands of customers and facilitating more than three billion customer interactions annually. Since 2001, Five9 has led the cloud revolution in contact centers, helping organizations transition from legacy premise-based solutions to the cloud. Five9 provides businesses with cloud contact center software that is reliable, secure, compliant and scalable, which is designed to create exceptional customer experiences, increase agent productivity and deliver tangible business results. For more information visit [www.five9.com](http://www.five9.com).

## **Forward Looking Statements**

This news release includes certain forward-looking statements concerning events and trends that may affect the Company, including regarding Mr. Burkland’s continuing role with the Company, the Company’s future performance, execution and operation and the other statements in Mr. Burkland’s quote. Our actual results may be materially different from what we discuss in this news release and you should not unduly rely on such forward looking statements. Please refer to our most recent quarterly and annual reports on Form 10-Q or Form 10-K under the caption "Risk Factors" and elsewhere in such reports, for detailed information about factors that could cause our results to differ from those set forth in such

forward-looking statements. Such forward looking statements speak only as of the date hereof and we undertake no obligation to update any such forward-looking information.

**Investor Relations Contact:**

Five9, Inc.

Barry Zwarenstein

Chief Financial Officer

925-201-2000 ext. 5959

[IR@five9.com](mailto:IR@five9.com)

The Blueshirt Group for Five9, Inc.

Lisa Laukkanen

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