

CASTLIGHT HEALTH, INC.
Form S-8
October 27, 2017

As filed with the Securities and Exchange Commission on October 27, 2017
Registration No. 333-_____

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

FORM S-8
REGISTRATION STATEMENT
Under
The Securities Act of 1933

Castlight Health, Inc.
(Exact name of Registrant as specified in its charter)

Delaware
(State or Other Jurisdiction
of Incorporation or Organization)

26-1989091
(I.R.S. Employer
Identification No.)

150 Spear Street, Suite 400
San Francisco, CA 94105
(415) 829-1400
(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

Options to Purchase Common Stock Granted under the Jiff, Inc. 2010 Stock Plan and Assumed by the Registrant
(Full title of plans)

Siobhan Nolan Mangini
Chief Financial Officer
Castlight Health, Inc.
150 Spear Street, Suite 400
San Francisco, CA 94105
(415) 829-1400
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Please send copies of all communications to:

Robert A. Freedman, Esq.
Fenwick & West LLP
Silicon Valley Center
801 California Street
Mountain View, California 94041

(650) 988-8500

Indicate by check mark whether the Registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See definitions of “large accelerated filer,” “accelerated filer,” “smaller reporting company” and “emerging growth company” in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer [] Accelerated filer [x]
 Non-accelerated filer [] Smaller reporting company []
 (Do not check if a smaller reporting company) Emerging growth company [x]

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 7(a)(2)(B) of the Securities Act. [x]

CALCULATION OF REGISTRATION FEE

Title of Securities To Be Registered	Amount To Be Registered (1)	Proposed Maximum Offering Price Per Share (2)	Proposed Maximum Aggregate Offering Price (3)	Amount of Registration Fee (3)
Class B Common Stock, \$0.0001 par value per share to be issued under assumed stock options under the Jiff, Inc. 2010 Stock Plan (2)	5,382,613 (2)	\$0.96 (3)	\$5,167,309 (3)	\$644 (3)

Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the “Securities Act”), this Registration Statement shall also cover any additional shares of the Registrant’s Class B Common Stock that become issuable by (1) reason of any stock dividend, stock split, recapitalization or other similar transaction effected without the Registrant’s receipt of consideration that increases the number of the outstanding shares of the Registrant’s Class B Common Stock.

(2) Represents shares subject to issuance upon the exercise of stock options outstanding under the Jiff, Inc. 2010 Stock Plan, and assumed by the Registrant on April 3, 2017 pursuant to an Agreement and Plan of Merger by and among the Registrant, Neptune Acquisition Subsidiary, Inc., a wholly owned subsidiary of the Registrant, Jiff, Inc., and Fortis Advisors LLC, as the Stockholders’ Agent, dated as of January 4, 2017.

(3) Calculated solely for the purposes of this offering under Rule 457(h) of the Securities Act of 1933, as amended, on the basis of the weighted average exercise price of the outstanding options.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Item 1. Plan Information.

The documents containing the information specified in this Item 1 have been or will be sent or given by Castlight Health, Inc. (the “Registrant”) to participants in the Jiff, Inc. 2010 Stock Plan (the “Plan”) in accordance with Rule 428(b)(1) under the Securities Act of 1933, as amended (the “Securities Act”). In accordance with the rules and regulations of the Securities and Exchange Commission (the “Commission”) and the instructions to Form S-8, such documents are not being filed with the Commission either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 under the Securities Act.

Item 2. Registrant Information and Employee Plan Annual Information.

The documents containing the information specified in this Item 2 have been or will be sent or given by the Registrant to participants in the Plans in accordance with Rule 428(b)(1) under the Securities Act. In accordance with the rules and regulations of the Commission and the instructions to Form S-8, such documents are not being filed with the Commission either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 under the Securities Act.

PART II

Information Required in the Registration Statement

Item 3. Incorporation of Documents by Reference.

The Registrant hereby incorporates by reference into this Registration Statement the following documents previously filed with the Commission:

(a) the Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2016, filed with the Commission on March 1, 2017;

All other reports filed pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the (b) "Exchange Act") since the end of the fiscal year covered by the Registrant's Annual Report referred to in (a) above; and

the description of the Registrant's Class B common stock contained in the Registrant's Registration Statement on (c) Form 8-A (Registration No. 001-36330) filed with the Commission on March 4, 2014, including any amendments or reports filed for the purpose of updating such description.

All reports and definitive proxy or information statements filed by the Registrant pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the filing of this Registration Statement and prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which de-registers all securities then remaining unsold shall be deemed to be incorporated by reference into this Registration Statement and to be a part hereof from the date of filing of such documents, except as to documents or information deemed to have been furnished and not filed in accordance with the rules of the Commission. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained in any subsequently filed document which also is deemed to be incorporated by reference herein modifies or supersedes such statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interest of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

Section 145 of the Delaware General Corporation Law authorizes a court to award, or a corporation's board of directors to grant, indemnity to its directors and officers under certain circumstances and subject to certain limitations. The terms of Section 145 of the Delaware General Corporation Law are sufficiently broad to permit indemnification under certain circumstances for liabilities, including reimbursement of expenses incurred, arising under the Securities Act.

As permitted by the Delaware General Corporation Law, the Registrant's restated certificate of incorporation contains provisions that eliminate the personal liability of its directors for monetary damages for any breach of fiduciary duties as a director, except liability for the following:

- any breach of the director's duty of loyalty to the Registrant or its stockholders;
- acts or omissions not in good faith or that involve intentional misconduct or knowing violation of law; under Section 174 of the Delaware General Corporation Law (regarding unlawful dividends, stock purchases or redemptions); or
- any transaction from which the director derived an improper personal benefit.

As permitted by the Delaware General Corporation Law, the Registrant's restated bylaws provide that: the Registrant is required to indemnify its directors and officers to the fullest extent permitted by the Delaware General Corporation Law, subject to very limited exceptions;

the Registrant may indemnify its other employees and agents as set forth in the Delaware General Corporation Law; the Registrant is required to advance expenses, as incurred, to its directors and officers in connection with a legal proceeding to the fullest extent permitted by the Delaware General Corporation Law, subject to very limited exceptions; and

the rights conferred in the restated bylaws are not exclusive.

In addition, the Registrant has entered into indemnity agreements with each of its current directors and executive officers to provide these directors and executive officers with additional contractual assurances regarding the scope of the indemnification set forth in the Registrant's restated certificate of incorporation and restated bylaws and to provide additional procedural protections. The indemnification provisions in the Registrant's restated certificate of incorporation and restated bylaws and the indemnity agreements entered into between the Registrant and each of its directors and executive officers may be sufficiently broad to permit indemnification of the Registrant's directors and executive officers for liabilities arising under the Securities Act.

The Registrant carries directors' and officers' liability insurance.

In addition, certain of the Registrant's non-employee directors may, through their relationships with their employers, be insured and/or indemnified against certain liabilities incurred in their capacity as members of the Registrant's board of directors.

See also the undertakings set out in response to Item 9 hereof.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

Exhibit		Incorporated by Reference		Filed	
Number	Exhibit Description	Form	File No.	Exhibit Filing Date	Herewith
4.1	<u>Restated Certificate of Incorporation of the Registrant, as currently in effect.</u>	10-Q	001-36330	3.1 5/12/2014	
4.2	<u>Amended and Restated Bylaws of the Registrant, as currently in effect.</u>	10-Q	001-36330	3.2 5/12/2014	
4.3	<u>Form of Registrant's Class B common stock certificate.</u>	S-1/A	333-193840	4.1 3/3/2014	
5.1	<u>Opinion of Fenwick & West LLP.</u>				X
23.1	<u>Consent of Independent Registered Public Accounting Firm.</u>				X
23.2	<u>Consent of Frank Rimerman + Co. LLP</u>				X
23.2	<u>Consent of Fenwick & West LLP (contained in Exhibit 5.1).</u>				X
24.1	<u>Power of Attorney (incorporated by reference to Page II-4 of this Registration Statement).</u>				X
99.1	<u>Jiff, Inc. 2010 Stock Plan and form of option agreement</u>				X

II-2

Item 9. Undertakings.

A. The undersigned Registrant hereby undertakes:

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement;
 - (i) To include any prospectus required by Section 10(a)(3) of the Securities Act;
 - (ii) To reflect in the prospectus any facts or events arising after the effective date of this Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this Registration Statement—notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set for the in the “Calculation of Registration Fee” table in this Registration Statement; and
 - (iii) To include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement; provided, however, that paragraphs A(1)(i) and A(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the Registrant pursuant to Section 13 or 15(d) of the Exchange Act that are incorporated by reference in this Registration Statement.
- (2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

B. The undersigned Registrant hereby undertakes that, for purposes of determining liability under the Securities Act, each filing of the Registrant’s annual report pursuant to Section 13(a) or 15(d) of the Exchange Act that is incorporated by reference in this Registration Statement shall be deemed a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

C. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Francisco, State of California, on this 27th day of October, 2017.

Castlight Health, Inc.

By: /s/ John C. Doyle
John C. Doyle
Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that the undersigned officers and directors of Castlight Health, Inc., a Delaware corporation, do hereby constitute and appoint John C. Doyle and Siobhan Nolan Mangini, and each of them, the lawful attorneys-in-fact and agents with full power and authority to do any and all acts and things and to execute any and all instruments which said attorneys and agents, and any one of them, determine may be necessary or advisable or required to enable said corporation to comply with the Securities Act of 1933, as amended, and any rules or regulations or requirements of the Securities and Exchange Commission in connection with this Registration Statement. Without limiting the generality of the foregoing power and authority, the powers granted include the power and authority to sign the names of the undersigned officers and directors in the capacities indicated below to this Registration Statement, to any and all amendments, both pre-effective and post-effective, and supplements to this Registration Statement, and to any and all instruments or documents filed as part of or in conjunction with this Registration Statement or amendments or supplements thereof, and each of the undersigned hereby ratifies and confirms that all said attorneys and agents, or any one of them, shall do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons on behalf of the Registrant in the capacities and on the dates indicated.

Signature	Title	Date
/s/ John C. Doyle John C. Doyle	Chief Executive Officer and Director (Principal Executive Officer)	October 27, 2017
/s/ Siobhan Nolan Mangini Siobhan Nolan Mangini	Chief Financial Officer (Principal Financial Officer)	October 27, 2017
/s/ Eric Chan Eric Chan	Chief Accounting Officer (Principal Accounting Officer)	October 27, 2017
/s/ Bryan Roberts Bryan Roberts	Chairman of the Board of Directors	October 27, 2017
/s/ Michael L. Eberhard Michael L. Eberhard	Director	October 27, 2017
/s/ David Ebersman David Ebersman	Director	October 27, 2017
/s/ Derek Newell Derek Newell	Director	October 27, 2017
/s/ Ed Park Ed Park	Director	October 27, 2017
/s/ David B. Singer	Director	October 27, 2017

David B. Singer
/s/ Kenny Van Zant
Kenny Van Zant

Director

October 27, 2017

II-4

EXHIBIT INDEX

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Herewith
		Form	File No.	Exhibit Filing Date	
4.1	<u>Restated Certificate of Incorporation of the Registrant, as currently in effect.</u>	10-Q	001-36330	3.1 5/12/2014	
4.2	<u>Amended and Restated Bylaws of the Registrant, as currently in effect.</u>	10-Q	001-36330	3.2 5/12/2014	
4.3	<u>Form of Registrant's Class B common stock certificate.</u>	S-1/A	333-193840	4.1 3/3/2014	
5.1	<u>Opinion of Fenwick & West LLP.</u>				X
23.1	<u>Consent of Independent Registered Public Accounting Firm.</u>				X
23.2	<u>Consent of Frank Rimerman + Co. LLP</u>				X
23.2	<u>Consent of Fenwick & West LLP (contained in Exhibit 5.1).</u>				X
24.1	<u>Power of Attorney (incorporated by reference to Page II-4 of this Registration Statement).</u>				X
99.1	<u>Jiff Inc. 2010 Stock Plan and form of option agreement</u>				X