

FALCONSTOR SOFTWARE INC
Form SC 13D/A
October 19, 2018

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 13D/A

Under the Securities Exchange Act of 1934

(Amendment No. 6)

FALCONSTOR SOFTWARE, INC.

(Name of Issuer)

Common Stock, Par Value \$0.001 Per Share

(Title of Class of Securities)

306137100

(CUSIP Number)

Martin M. Hale, Jr.

17 State Street, Suite 3230

New York, NY 10004

(212) 751-8800

(Name, Address and Telephone Number of Person

Authorized to Receive Notices and Communications)

October 9, 2018

(Date of Event Which Requires Filing of This Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of Rule 13d-1(e), Rule 13d-1(f) or Rule 13d-1(g), check the following box. "

(Page 1 of 9 Pages)

* The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

NAME OF REPORTING PERSON

1
Martin M. Hale, Jr.

(a)
..

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP

(b)
x

3 SEC USE ONLY
SOURCE OF FUNDS

4
AF

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDING IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e)

CITIZENSHIP OR PLACE OF ORGANIZATION

6
United States

SOLE VOTING POWER

7

70,815

SHARED VOTING POWER

4,536,585 Shares of Common Stock issuable upon conversion of Series A Convertible Preferred Stock

8

NUMBER OF
SHARES
BENEFICIALLY
OWNED BY
EACH
REPORTING
PERSON
WITH:

54,820,992 Shares of Common Stock

304,922,695 shares of Common Stock issuable upon exercise of Warrants

SOLE DISPOSITIVE POWER

9

70,815

SHARED DISPOSITIVE POWER

4,536,585 Shares of Common Stock issuable upon conversion of Series A Convertible Preferred Stock

10

54,820,992 Shares of Common Stock

304,922,695 shares of Common Stock issuable upon exercise of Warrants

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH PERSON

4,536,585 Shares of Common Stock issuable upon conversion of Series A Convertible Preferred Stock

54,891,807 Shares of Common Stock

304,922,695 shares of Common Stock issuable upon exercise of Warrants

12 CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

(See Item 5)

PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

13

89.43%*

TYPE OF REPORTING PERSON

14

IN

*Based on 97,937,491 shares of Common Stock outstanding as of July 31, 2018 as disclosed in the Quarterly Report on Form 10-Q of Falconstor Software, Inc. (the "Issuer") for the fiscal quarter ended June 30, 2018. Pursuant to the Amended and Restated Certificate of Designations for the Series A Convertible Preferred Stock of the Issuer, the holders of Series A Convertible Preferred Stock are entitled to vote, together with the Common Stock, on all matters as to which the holders of Common Stock are entitled to vote. Each share of Series A Convertible Preferred Stock is entitled to a number of votes per share equal to the number of shares of Common Stock issuable upon conversion of a share of Series A Convertible Preferred Stock, based on an assumed conversion price of \$1.23 (subject to adjustment for stock splits, stock dividends, stock combinations and similar events, as applicable, with respect to the Common Stock).

NAME OF REPORTING PERSON

1
Hale Fund Management, LLC

(a)
..

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP

(b)
x

3 SEC USE ONLY
SOURCE OF FUNDS

4
AF

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDING IS REQUIRED PURSUANT TO ITEMS 2(d) or ..
2(e)

CITIZENSHIP OR PLACE OF ORGANIZATION

6
Delaware

SOLE VOTING POWER

7

0

SHARED VOTING POWER

4,536,585 Shares of Common Stock issuable upon conversion of Series A Convertible Preferred Stock

8

NUMBER OF
SHARES
BENEFICIALLY

54,820,992 Shares of Common Stock

OWNED BY
EACH

304,922,695 shares of Common Stock issuable upon exercise of Warrants

REPORTING
PERSON

9

0

WITH:

SHARED DISPOSITIVE POWER

4,536,585 Shares of Common Stock issuable upon conversion of Series A Convertible Preferred Stock

10

54,820,992 Shares of Common Stock

304,922,695 shares of Common Stock issuable upon exercise of Warrants

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH PERSON

4,536,585 Shares of Common Stock issuable upon conversion of Series A Convertible Preferred Stock

54,820,992 Shares of Common Stock

304,922,695 shares of Common Stock issuable upon exercise of Warrants

..

12 CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

(See Item 5)

PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

13

89.41%*

TYPE OF REPORTING PERSON

14

OO

*Based on 97,937,491 shares of Common Stock outstanding as of July 31, 2018 as disclosed in the Quarterly Report on Form 10-Q of the Issuer for the fiscal quarter ended June 30, 2018. Pursuant to the Amended and Restated Certificate of Designations for the Series A Convertible Preferred Stock of the Issuer, the holders of Series A Convertible Preferred Stock are entitled to vote, together with the Common Stock, on all matters as to which the holders of Common Stock are entitled to vote. Each share of Series A Convertible Preferred Stock is entitled to a number of votes per share equal to the number of shares of Common Stock issuable upon conversion of a share of Series A Convertible Preferred Stock, based on an assumed conversion price of \$1.23 (subject to adjustment for stock splits, stock dividends, stock combinations and similar events, as applicable, with respect to the Common Stock).

NAME OF REPORTING PERSON

1
Hale Capital Management, LP

(a)
..

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP

(b)
x

3 SEC USE ONLY
SOURCE OF FUNDS

4
AF

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDING IS REQUIRED PURSUANT TO ITEMS 2(d) or ..
2(e)

CITIZENSHIP OR PLACE OF ORGANIZATION

6
Delaware

SOLE VOTING POWER

7

0

SHARED VOTING POWER

4,536,585 Shares of Common Stock issuable upon conversion of Series A Convertible Preferred Stock

8

NUMBER OF
SHARES
BENEFICIALLY
OWNED BY
EACH
REPORTING
PERSON
WITH:

54,820,992 Shares of Common Stock

304,922,695 shares of Common Stock issuable upon exercise of Warrants

SOLE DISPOSITIVE POWER

9

0

SHARED DISPOSITIVE POWER

4,536,585 Shares of Common Stock issuable upon conversion of Series A Convertible Preferred Stock

10

54,820,992 Shares of Common Stock

304,922,695 shares of Common Stock issuable upon exercise of Warrants

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH PERSON

4,536,585 Shares of Common Stock issuable upon conversion of Series A Convertible Preferred Stock

54,820,992 Shares of Common Stock

304,922,695 shares of Common Stock issuable upon exercise of Warrants

12 CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

..
(See Item 5)

PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

13

89.41%*

TYPE OF REPORTING PERSON

14

PN

*Based on 97,937,491 shares of Common Stock outstanding as of July 31, 2018 as disclosed in the Quarterly Report on Form 10-Q of the Issuer for the fiscal quarter ended June 30, 2018. Pursuant to the Amended and Restated Certificate of Designations for the Series A Convertible Preferred Stock of the Issuer, the holders of Series A Convertible Preferred Stock are entitled to vote, together with the Common Stock, on all matters as to which the holders of Common Stock are entitled to vote. Each share of Series A Convertible Preferred Stock is entitled to a number of votes per share equal to the number of shares of Common Stock issuable upon conversion of a share of Series A Convertible Preferred Stock, based on an assumed conversion price of \$1.23 (subject to adjustment for stock splits, stock dividends, stock combinations and similar events, as applicable, with respect to the Common Stock).

NAME OF REPORTING PERSON

1
Hale Capital Partners, LP

(a)
..

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP

(b)
x

3 SEC USE ONLY
SOURCE OF FUNDS

4
WC, AF

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDING IS REQUIRED PURSUANT TO ITEMS 2(d) or ..
2(e)

6
CITIZENSHIP OR PLACE OF ORGANIZATION
Delaware

7
SOLE VOTING POWER
0

SHARED VOTING POWER

NUMBER OF
SHARES
BENEFICIALLY
OWNED BY
EACH
REPORTING
PERSON
WITH:

8
4,536,585 Shares of Common Stock issuable upon conversion of Series A Convertible Preferred
Stock

54,820,992 Shares of Common Stock

304,922,695 shares of Common Stock issuable upon exercise of Warrants

9
SOLE DISPOSITIVE POWER
0

SHARED DISPOSITIVE POWER

10
4,536,585 Shares of Common Stock issuable upon conversion of Series A Convertible Preferred
Stock

54,820,992 Shares of Common Stock

304,922,695 shares of Common Stock issuable upon exercise of Warrants

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH PERSON

4,536,585 Shares of Common Stock issuable upon conversion of Series A Convertible Preferred Stock

54,820,992 Shares of Common Stock

304,922,695 shares of Common Stock issuable upon exercise of Warrants

..

12 CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

(See Item 5)

PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

13

89.41%*

TYPE OF REPORTING PERSON

14

PN

*Based on 97,937,491 shares of Common Stock outstanding as of July 31, 2018 as disclosed in the Quarterly Report on Form 10-Q of the Issuer for the fiscal quarter ended June 30, 2018. Pursuant to the Amended and Restated Certificate of Designations for the Series A Convertible Preferred Stock of the Issuer, the holders of Series A Convertible Preferred Stock are entitled to vote, together with the Common Stock, on all matters as to which the holders of Common Stock are entitled to vote. Each share of Series A Convertible Preferred Stock is entitled to a number of votes per share equal to the number of shares of Common Stock issuable upon conversion of a share of Series A Convertible Preferred Stock, based on an assumed conversion price of \$1.23 (subject to adjustment for stock splits, stock dividends, stock combinations and similar events, as applicable, with respect to the Common Stock).

NAME OF REPORTING PERSON

1
HCP-FVA, LLC

(a)
..

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP

(b)
x

3 SEC USE ONLY
SOURCE OF FUNDS

4
WC

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDING IS REQUIRED PURSUANT TO ITEMS 2(d) or ..
2(e)

CITIZENSHIP OR PLACE OF ORGANIZATION

6
Delaware

SOLE VOTING POWER

7

0

SHARED VOTING POWER

4,536,585 Shares of Common Stock issuable upon conversion of Series A Convertible Preferred Stock

8

NUMBER OF
SHARES
BENEFICIALLY
OWNED BY
EACH
REPORTING
PERSON
WITH:

54,221,955 Shares of Common Stock

304,922,695 shares of Common Stock issuable upon exercise of Warrants

SOLE DISPOSITIVE POWER

9

0

SHARED DISPOSITIVE POWER

4,536,585 Shares of Common Stock issuable upon conversion of Series A Convertible Preferred Stock

10

54,221,955 Shares of Common Stock

304,922,695 shares of Common Stock issuable upon exercise of Warrants

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH PERSON

4,536,585 Shares of Common Stock issuable upon conversion of Series A Convertible Preferred Stock

54,221,955 Shares of Common Stock

304,922,695 shares of Common Stock issuable upon exercise of Warrants

12 CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

..
(See Item 5)

PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

13

89.27%*

TYPE OF REPORTING PERSON

14

OO

*Based on 97,937,491 shares of Common Stock outstanding as of July 31, 2018 as disclosed in the Quarterly Report on Form 10-Q of the Issuer for the fiscal quarter ended June 30, 2018. Pursuant to the Amended and Restated Certificate of Designations for the Series A Convertible Preferred Stock of the Issuer, the holders of Series A Convertible Preferred Stock are entitled to vote, together with the Common Stock, on all matters as to which the holders of Common Stock are entitled to vote. Each share of Series A Convertible Preferred Stock is entitled to a number of votes per share equal to the number of shares of Common Stock issuable upon conversion of a share of Series A Convertible Preferred Stock, based on an assumed conversion price of \$1.23 (subject to adjustment for stock splits, stock dividends, stock combinations and similar events, as applicable, with respect to the Common Stock).

This Amendment No. 6 (“Amendment No. 6”) amends and supplements the statement on Schedule 13D filed with the Securities and Exchange Commission (the “SEC”) on September 26, 2013 (the “Original Schedule 13D”) and as amended by Amendment No. 1 (“Amendment No. 1”) filed with the SEC on August 11, 2015, Amendment No. 2 (“Amendment No. 2”) filed with the SEC on June 3, 2016, Amendment No. 3 filed with the SEC on November 27, 2017 (“Amendment No. 3”), Amendment No. 4 filed with the SEC on March 6, 2018 (“Amendment No. 4”) and Amendment No. 5 filed with the SEC on May 10, 2018 (“Amendment No. 5”; the Original Schedule 13D, Amendment No. 1, Amendment No. 2, Amendment No. 3, Amendment No. 4, Amendment No. 5 and this Amendment No. 6 are collectively referred to as, the “Schedule 13D”) with respect to the common stock, par value \$0.001 per share (the “Common Stock”), of FalconStor Software, Inc., a Delaware corporation (the “Issuer”). The Issuer’s principal executive offices are located at 823 Congress Avenue, Suite 1300, Austin, TX 78701. Capitalized terms used herein and not otherwise defined in this Amendment No. 6 have the meanings set forth in the Schedule 13D. This Amendment No. 6 amends and supplements Items 4, 5, 6 and 7 of the Schedule 13D as set forth below.

ITEM 4 PURPOSE OF TRANSACTION

On October 9, 2018, the Issuer closed on the final tranche of its Financing (the “Final Closing”) pursuant to which certain eligible stockholders (each, an “Eligible Participating Stockholder”) purchased Units. Each Unit consisted of the following for a per Unit offering price of \$0.371063:

(i) \$0.10 of the Term Loan;

(ii) Financing Warrants to purchase 12.233 shares of the Company’s Common Stock for a nominal exercise price; and

(iii) 0.0225 shares of Series A Preferred Stock at a per Unit price of \$0.271063, all such shares to be acquired directly from their current holder, HCP-FVA.

Each Eligible Participating Stockholder purchased Units pursuant to a subscription agreement (each, a “Subscription Agreement” and collectively, the “Subscription Agreements”) among the Issuer, HCP-FVA and such Eligible Participating Stockholder. Pursuant to the Subscription Agreements, Eligible Participating Stockholders purchased (i) \$520,000 of the Term Loan held by HCP-FVA due to the Financing’s oversubscription and (ii) 342,000 shares of Series A Preferred Stock held by HCP-FVA at a per share purchase price of \$12.05. In connection with the Final Closing, 63,610,935 of the Financing Warrants previously issued by the Issuer to HCP-FVA in connection with HCP-FVA’s purchase of \$3,000,000 of Units were cancelled for no consideration.

The foregoing does not purport to be a complete description of the Subscription Agreements and is qualified in its entirety by the terms of the Subscription Agreements which are incorporated by reference herein. The form of Subscription Agreement is attached to Exhibit 1 of this Amendment No. 6.

ITEM 5 INTEREST IN SECURITIES OF THE COMPANY

Paragraphs (a) – (c) of Item 5 of Schedule 13D are hereby amended and restated in their entirety as follows:

See rows (11) and (13) of the cover pages to this Amendment No. 6 for the aggregate number of shares of Common Stock and percentage of Common Stock beneficially owned by each of the Reporting Persons. Percentages of the (a) Common Stock outstanding reported in this Amendment No. 6 are calculated based upon an aggregate of 97,937,491 shares of Common Stock outstanding as of July 31, 2018 as disclosed in the Issuer's Quarterly Report on Form 10-Q for the fiscal quarter ended June 30, 2018 as filed by the Issuer on August 14, 2018.

See rows (7) through (10) of the cover pages to this Amendment No. 6 for the number of shares of Common Stock (b) as to which each Reporting Person has the sole or shared power to vote or direct the vote and sole or shared power to dispose or to direct the disposition.

In connection with the Final Closing, HCP-FVA sold 342,000 shares of Series A Preferred Stock to Eligible (c) Participating Stockholders at a per share purchase price of \$12.05. In connection with the Final Closing, 63,610,935 of the Financing Warrants previously issued by the Issuer to HCP-FVA in connection with HCP-FVA's purchase of \$3,000,000 of Units were cancelled for no consideration.

ITEM 6 CONTRACTS, ARRANGEMENTS, UNDERSTANDINGS OR RELATIONSHIPS WITH RESPECT TO SECURITIES OF THE COMPANY

As described in Item 4 above, on October 9, 2018, HCP-FVA and the Issuer entered into Subscription Agreements with the Eligible Participating Stockholders in connection with their purchase of Units. The terms of the Subscription Agreements are incorporated by reference herein, and a copy of the form of Subscription Agreement is attached to Exhibit 1 of this Amendment No. 6.

Except as otherwise set forth in the Schedule 13D, the Reporting Persons do not have any contract, arrangement, understanding or relationship with any person with respect to securities of the Issuer.

ITEM 7 MATERIALS TO BE FILED AS EXHIBITS

1. Form of Subscription Agreement (incorporated by reference to Exhibit 10.1 to the Issuer's Current Report on Form 8-K filed on October 11, 2018).

SIGNATURES

After reasonable inquiry and to the best of our knowledge and belief, the undersigned certify that the information set forth in this statement is true, complete and correct.

Date: October 19, 2018

/s/ Martin M. Hale, Jr.

HALE CAPITAL
MANAGEMENT, LP

By: Hale Fund Management, LLC,
its General Partner

By: /s/ Martin M. Hale, Jr.
Name: Martin M. Hale, Jr.
Title: Chief Executive Officer

HALE CAPITAL PARTNERS,
LP, for itself and as the sole
member of HCP-FVA, LLC

By: Hale Fund Management, LLC,
its General Partner

By: /s/ Martin M. Hale, Jr.
Name: Martin M. Hale, Jr.
Title: Chief Executive Officer

HALE FUND MANAGEMENT,
LLC

By: /s/ Martin M. Hale, Jr.
Name: Martin M. Hale, Jr.
Title: Chief Executive Officer