

FALCONSTOR SOFTWARE INC
Form SC 13D/A
December 31, 2018

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 13D/A

Under the Securities Exchange Act of 1934

(Amendment No. 7)

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)

December 18, 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 8 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:

358,200,057 Shares of Common Stock

1,543,630 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

358,200,057 Shares of Common Stock

1,543,630 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

358,270,872 Shares of Common Stock

1,543,630 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 97,934,091 shares of Common Stock outstanding as of October 31, 2018 as disclosed in the Quarterly Report on Form 10-Q of Falconstor Software, Inc. (the "Issuer") for the fiscal quarter ended September 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
OWNED BY
EACH
REPORTING
PERSON
WITH:

358,200,057 Shares of Common Stock

1,543,630 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

358,200,057 Shares of Common Stock

1,543,630 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

358,200,057 Shares of Common Stock

1,543,630 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 97,934,091 shares of Common Stock outstanding as of October 31, 2018 as disclosed in the Quarterly Report on Form 10-Q of the Issuer for the fiscal quarter ended September 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:

358,200,057 Shares of Common Stock

1,543,630 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

358,200,057 Shares of Common Stock

1,543,630 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

358,200,057 Shares of Common Stock

1,543,630 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 97,934,091 shares of Common Stock outstanding as of October 31, 2018 as disclosed in the Quarterly Report on Form 10-Q of the Issuer for the fiscal quarter ended September 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)

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:

358,200,057 Shares of Common Stock

1,543,630 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

358,200,057 Shares of Common Stock

1,543,630 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

358,200,057 Shares of Common Stock

1,543,630 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 97,934,091 shares of Common Stock outstanding as of October 31, 2018 as disclosed in the Quarterly Report on Form 10-Q of the Issuer for the fiscal quarter ended September 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

NUMBER OF
SHARES
BENEFICIALLY
OWNED BY
EACH
REPORTING
PERSON
WITH:

8

357,601,020 Shares of Common Stock

1,543,630 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

357,601,020 Shares of Common Stock

1,543,630 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

357,601,020 Shares of Common Stock

1,543,630 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 97,934,091 shares of Common Stock outstanding as of October 31, 2018 as disclosed in the Quarterly Report on Form 10-Q of the Issuer for the fiscal quarter ended September 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. 7 (“Amendment No. 7”) 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”), Amendment No. 5 filed with the SEC on May 10, 2018 (“Amendment No. 5”) and Amendment No. 6 filed with the SEC on October 19, 2018 (“Amendment No. 6”); the Original Schedule 13D, Amendment No. 1, Amendment No. 2, Amendment No. 3, Amendment No. 4, Amendment No. 5, Amendment No. 6 and this Amendment No. 7 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 701 Brazos Street, Suite 400, Austin, TX 78701. Capitalized terms used herein and not otherwise defined in this Amendment No. 7 have the meanings set forth in the Schedule 13D. This Amendment No. 7 amends and supplements Items 4, 5 and 6 of the Schedule 13D as set forth below.

ITEM 4 PURPOSE OF TRANSACTION

On December 18, 2018, HCP-FVA exercised its Financing Warrants to purchase 303,379,065 shares of Common Stock for an aggregate exercise price of \$303,379.

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. 7 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 Common Stock outstanding reported in this Amendment No. 7 are calculated based upon (i) an aggregate of (a) 97,934,091 shares of Common Stock outstanding as of October 31, 2018 as disclosed in the Issuer’s Quarterly Report on Form 10-Q for the fiscal quarter ended September 30, 2018 as filed by the Issuer on November 14, 2018 and (ii) the 303,379,065 shares of Common Stock issued to HCP-FVA upon exercise of its Financing Warrants.

See rows (7) through (10) of the cover pages to this Amendment No. 7 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.

(c)

On December 18, 2018, HCP-FVA exercised its Financing Warrants to purchase 303,379,065 shares of Common Stock, at a per share exercise price of \$0.001, for an aggregate exercise price of \$303,379.

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

As described in Item 4 above, on December 18, 2018, HCP-FVA exercised its Financing Warrants to purchase 303,379,065 shares of Common Stock for an aggregate exercise price of \$303,379.

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.

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: December 31, 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