

FALCONSTOR SOFTWARE INC  
Form SC 13D/A  
June 03, 2016

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 13D/A

Under the Securities Exchange Act of 1934

(Amendment No. 2)

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)

May 31, 2016

(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)

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\* 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**

30,000

SHARED VOTING POWER

7,317,073 Shares of Common Stock issuable upon conversion of Series A Convertible Preferred Stock

**8**

NUMBER OF  
SHARES  
BENEFICIALLY  
OWNED BY  
EACH  
REPORTING  
PERSON WITH:

1,073,319 Shares of Common Stock

SOLE DISPOSITIVE POWER

**9**

30,000

SHARED DISPOSITIVE POWER

7,317,073 Shares of Common Stock issuable upon conversion of Series A Convertible Preferred Stock

**10**

1,073,319 Shares of Common Stock

**11** AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH PERSON

7,317,073 Shares of Common Stock issuable upon conversion of Series A Convertible Preferred Stock

1,103,319 Shares of Common Stock

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

P

(See Item 5)

PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

**13**

16.67%\*

TYPE OF REPORTING PERSON

**14**

IN

\*Based on 43,188,374 shares of Common Stock outstanding as of April 27, 2016 as disclosed in the Quarterly Report on Form 10-Q of Falconstor Software, Inc. (the "Issuer") for the quarterly period ended March 31, 2016. Pursuant to the 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

7,317,073 Shares of Common Stock issuable upon conversion of Series A Convertible Preferred Stock

**8**

NUMBER OF  
SHARES  
BENEFICIALLY  
OWNED BY  
EACH  
REPORTING  
PERSON WITH:

1,073,319 Shares of Common Stock  
SOLE DISPOSITIVE POWER

**9**

0

SHARED DISPOSITIVE POWER

7,317,073 Shares of Common Stock issuable upon conversion of Series A Convertible Preferred Stock

**10**

1,073,319 Shares of Common Stock

**11** AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH PERSON

7,317,073 Shares of Common Stock issuable upon conversion of Series A Convertible Preferred Stock

1,073,319 Shares of Common Stock

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

P

(See Item 5)

PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

**13**

16.61%\*

TYPE OF REPORTING PERSON

**14**

OO

\*Based on 43,188,374 shares of Common Stock outstanding as of April 27, 2016 as disclosed in the Issuer's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2016. Pursuant to the 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

7,317,073 Shares of Common Stock issuable upon conversion of Series A Convertible Preferred Stock

**8**

NUMBER OF  
SHARES  
BENEFICIALLY  
OWNED BY  
EACH  
REPORTING  
PERSON WITH:

1,073,319 Shares of Common Stock

SOLE DISPOSITIVE POWER

**9**

0

SHARED DISPOSITIVE POWER

7,317,073 Shares of Common Stock issuable upon conversion of Series A Convertible Preferred Stock

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1,073,319 Shares of Common Stock

**11** AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH PERSON

7,317,073 Shares of Common Stock issuable upon conversion of Series A Convertible Preferred Stock

1,073,319 Shares of Common Stock

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

P

(See Item 5)

PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

**13**

16.61%\*

TYPE OF REPORTING PERSON

**14**

PN

\*Based on 43,188,374 shares of Common Stock outstanding as of April 27, 2016 as disclosed in the Issuer's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2016. Pursuant to the 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

7,317,073 Shares of Common Stock issuable upon conversion of Series A Convertible Preferred  
Stock

**8**

NUMBER OF  
SHARES  
BENEFICIALLY  
OWNED BY  
EACH  
REPORTING  
PERSON WITH:

1,073,319 Shares of Common Stock  
SOLE DISPOSITIVE POWER

**9**

0

SHARED DISPOSITIVE POWER

7,317,073 Shares of Common Stock issuable upon conversion of Series A Convertible Preferred  
Stock

**10**

1,073,319 Shares of Common Stock

**11** AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH PERSON

7,317,073 Shares of Common Stock issuable upon conversion of Series A Convertible Preferred Stock

1,073,319 Shares of Common Stock

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

P

(See Item 5)

PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

**13**

16.61%\*

TYPE OF REPORTING PERSON

**14**

PN

\*Based on 43,188,374 shares of Common Stock outstanding as of April 27, 2016 as disclosed in the Issuer's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2016. Pursuant to the 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

NUMBER OF  
SHARES  
BENEFICIALLY  
OWNED BY  
EACH  
REPORTING  
PERSON WITH:

**8**

7,317,073 Shares of Common Stock issuable upon conversion of Series A Convertible Preferred  
Stock

SOLE DISPOSITIVE POWER

**9**

0

SHARED DISPOSITIVE POWER

**10**

7,317,073 Shares of Common Stock issuable upon conversion of Series A Convertible Preferred  
Stock

AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH PERSON

**11**  
7,317,073 Shares of Common Stock issuable upon conversion of Series A Convertible Preferred Stock

P

**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**  
14.49%\*

TYPE OF REPORTING PERSON

**14**  
OO

\*Based on 43,188,374 shares of Common Stock outstanding as of April 27, 2016 as disclosed in the Issuer's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2016. Pursuant to the 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. 2 (“Amendment No. 2”) 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 (the Original Schedule 13D, Amendment No. 1 and this Amendment No. 2 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 2 Huntington Quadrangle, Melville, NY 11747. Capitalized terms used herein and not otherwise defined in this Amendment No. 2 have the meanings set forth in the Schedule 13D. This Amendment No. 2 amends Item 5 as set forth below.

**Item 5. INTEREST IN SECURITIES OF THE ISSUER**

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

(a) See rows (11) and (13) of the cover pages to this Amendment No. 2 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. 2 are calculated based upon an aggregate of 43,188,374 shares of Common Stock outstanding as of April 27, 2016 as disclosed in the Issuer’s Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2016, filed by the Issuer on April 28, 2016.

(b) See rows (7) through (10) of the cover pages to this Amendment No. 2 for the number of shares of Common Stock 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.

On April 27, 2016, the Issuer issued 10,000 shares of restricted Common Stock to MH under the Issuer’s 2016 Outside Directors Equity Compensation Plan in connection with his service as a director of the Issuer.

(c) On May 31, 2016, the Issuer issued 143,737 shares of Common Stock to HCP-FVA upon conversion of the accrued dividends due and owing to HCP-FVA, in respect of the Series A Convertible Preferred Stock of the Issuer held by HCP-FVA, for the quarterly period ending March 31, 2016 in accordance with the Certificate of Designations, Preferences and Rights of the Series A Convertible Preferred Stock.

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: June 2, 2016

/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