

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

RALPH GAMBLES, THOMAS MERCK and
ELSIE COMPO, individually and as
representatives of the Classes,

Plaintiffs,

v.

STERLING INFOSYSTEMS, INC.,

Defendant.

No. 15 Civ. 9746 (PAE)

**ORDER CONDITIONALLY
CERTIFYING SETTLEMENT CLASS
AND PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT**

Plaintiff Ralph Gambles has moved for, and Defendant Sterling Infosystems, Inc. has indicated that it does not oppose, entry of this order, which (a) conditionally certifies the Settlement Class¹ for settlement purposes only; (b) appoints the Settlement Administrator; (c) provides for notice of the Settlement to Class Members in accordance with the terms of the Agreement; (d) establishes procedures for objecting to, and opting out of, the Settlement; and (e) sets a date for the Final Fairness Hearing.

The Court has considered the terms of the Agreement in light of the issues presented by the pleadings, the record in this case, the complexity of the proceedings, the absence of any evidence of collusion between the Parties, and the experience of Class Counsel, and is preliminarily satisfied that the Agreement is fair, reasonable and adequate. The Court also is satisfied that the plan for sending notice of the Settlement to the Class Members is adequate, sufficiently informs Class Members of the Settlement's terms and of the conditional certification

¹ Unless otherwise defined herein, all capitalized terms in this order have the same meaning as in the Agreement.

of the Settlement Class, and satisfies the requirements set forth in Rule 23 of the Federal Rules of Civil Procedure and due process.

THEREFORE, the Court having reviewed the Motion for Preliminary Approval and the Agreement, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Court has jurisdiction over the subject matter of this Action and personal jurisdiction over the Parties and the Class Members.

2. For purposes of the Settlement only, and conditioned upon the Settlement receiving Final Approval following the Final Fairness Hearing, this Court hereby conditionally certifies the Settlement Class, defined as follows

The 200,423 unique individuals identified on the Class List, who constitute, according to Class Counsel and based on data provided by Defendant (i) all natural persons about whom Defendant prepared a background report from December 14, 2013 and continuing through December 19, 2019; and (ii) whose background report contains a social security trace which includes at least one address where both the "first" and "last" seen dates antedate the report by more than seven years; and (iii) where at least one of the addresses in (ii) includes a "high risk" indicator.

3. For purposes of the Settlement only, the Court preliminarily finds that the proposed Settlement Class satisfies the prerequisites for a class action under Fed. R. Civ. P. 23(a) and 23(b)(3), and the Court, pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, conditionally certifies the Settlement Class. The Court finds, for purposes of the Settlement only, that the following requirements are met (a) the number of Class Members is so numerous that joinder is impracticable; (b) there are questions of law and fact common to the Class Members; (c) Plaintiffs' claims are typical of the claims of the Class Members; (d) Plaintiff has fairly and adequately represented the interests of the Settlement Class and will continue to do so, and Plaintiff has retained experienced Class Counsel; (e) the questions of law and fact common to the Class Members predominate over any affecting any individual Class Member; and (f) a

class action provides a fair and efficient method for settling the controversy under the criteria set forth in Rule 23 and is superior to alternative means of resolving the claims and disputes at issue in this Action.

4. In connection with this conditional class certification, and for purposes of Settlement only, the Court preliminarily finds that the Agreement entered into between the Class Representative and Defendant appears, upon preliminary review, to be fair, reasonable, and adequate to the Settlement Class. Accordingly, the Settlement is preliminarily approved, pending a Final Fairness Hearing as provided for herein.

5. The Court appoints named Plaintiff Ralph Gambles as Class Representative.

6. The Court appoints E. Michelle Drake and Joseph C. Hashmall of Berger Montague, P.C., David Seligman of Towards Justice, and Beth Terrell and Erika L. Nusser of Terrell Marshall Law Group PLLC as Class Counsel.

7. The Court appoints the Angeion Group as Settlement Administrator. Accordingly, the Angeion Group is ordered to fulfill the functions, duties, and responsibilities of the Settlement Administrator as set forth in the Agreement and this Order. By accepting this appointment, the Angeion Group has agreed to the Court's jurisdiction solely for purposes of enforcement of the Settlement Administrator's obligations under the Agreement.

8. The Court will hold a Final Fairness Hearing pursuant to Fed. R. Civ. P. 23(e) on **September 22, 2020 at 2 p.m.** If the public health situation permits, this conference will be held in Courtroom 1305 at the Thurgood Marshall U.S. Courthouse, 40 Centre Street, New York, New York 10007. At the conference, the Court will address whether

- a. Finally approve the proposed Settlement as fair, reasonable and adequate;
- b. Finally determine that the notice provided to Class Members (as described in Paragraph 9 below) was appropriate under Fed. R. Civ. P 23(c)(2)(A) and

under the circumstances, and is due and sufficient notice to the Settlement Class and fully satisfies the requirements of due process and Federal Rule of Civil Procedure 23,

- c. Finally certify the Settlement Class;
- d. Confirm that Class Representative and the Settlement Class Members have released all Released Claims and are permanently barred and enjoined from asserting, commencing, prosecuting, or continuing any of the Released Claims against the Released Parties;
- e. Enter a Final Approval Order and Judgment dismissing the Released Claims of the Settlement Class Members and Class Representative with prejudice;
- f. Allow the requests for the Class Representative Service Payment and Class Counsel Fees; and
- g. Rule upon other such matters as the Court may deem appropriate.

9. To the extent that the Court determines that telephonic or other remote participation at the Final Fairness Hearing is allowed, the Settlement Administrator shall post notice, details, and instructions relating to such participation on the settlement website.

10. The Court finds that the method of providing notice to Class Members specified in Sections 6.7 and 6.9 of the Agreement fully satisfies the requirements of Fed. R. Civ. P. 23 and the due process guarantees of the U.S. Constitution, constitutes the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.

11. The Court finds that the manner of providing for Requests for Exclusions and Objections specified in Section 7 of the Agreement is reasonable and appropriate, and satisfies the requirements of due process and the Federal Rules of Civil Procedure.

12. A Class Member may object to the Settlement.
 - a. To exercise this objection right, the Class Member must mail the Objection to the Settlement Administrator during the Objection and Exclusion Period.
 - b. For an Objection to be considered by the Court, such Objection shall be personally signed and must identify or include
 - i. The Objector's full name and current mailing address;
 - ii. The last four digits of the Objector's social security number,;
 - iii. The specific reason(s) for the Objection;
 - iv. All evidence and supporting papers (including, without limitation, all briefs, written evidence, and declarations) for the Court to consider; and
 - v. Identification of all counsel representing or assisting the Objector, if any.

13. Objectors can appear at the Final Fairness Hearing either in person or through counsel, but must state their intent to do so at the time they submit their Objection. An Objection may be withdrawn at any time.

14. Any Class Member who fails to timely comply with Paragraphs 12 and 13 of this Order will not be permitted to object to the Settlement at the Final Fairness Hearing, will be foreclosed from seeking any review of the Settlement by appeal or other means, will be deemed to have waived his or her objections, and will be forever barred from making any objections in the Action or any other related action or proceeding

15. No person or entity shall be permitted to submit an Objection or otherwise exercise any objection rights on behalf of any other person, whether as an agent or representative of another or otherwise, except upon proof of a legal power of attorney, conservatorship,

trusteeship, or other legal authorization, and no person or entity may make a Objection on behalf of other persons within the Settlement Class as a group, class, or in the aggregate. Objections may only be submitted on an individual basis, and to the extent any Objection purports to seeks exclusion *en masse* or on behalf of anyone other than the submitting individual it shall be deemed invalid except as to the submitting individual.

16. Class Members may also elect to opt-out, i.e., exclude themselves, from the Settlement Class by following the opt-out procedures set forth in the Agreement for doing so. In the event a Class Member wishes to be excluded from the Settlement Class and not to be bound by the Settlement and Agreement, that person must, prior to the end of the Objection and Exclusion Period, advise the Settlement Administrator in writing of that intent by submitting a written Request for Exclusion.

17. A Request for Exclusion, to be valid, must be signed and dated by the Class Member, must provide the Class Member's full name (and former names, if applicable), current address, current telephone number, and the last four digits of the Class Member's social security number, and must include an express statement that the Class Member wishes to be excluded from the terms of the Agreement. Any Request for Exclusion that does not include all of the required information or that is not submitted in a timely manner will be deemed ineffective.

18. Any Request for Exclusion must be postmarked during the Objection and Exclusion Period. The date of the postmark on the mailing envelope shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. The Court retains jurisdiction to resolve any disputed Request for Exclusion.

19. A Class Member who opts out of the Settlement Class may opt back in so long as the opt-in request is postmarked during the Objection and Exclusion Period.

20. No person or entity shall be permitted to submit a Request for Exclusion or otherwise exercise any exclusion or opt-out rights on behalf of any other person, whether as an agent or representative of another or otherwise, except upon proof of a legal power of attorney, conservatorship, trusteeship, or other legal authorization, and no person or entity may make a Request for Exclusion on behalf of other persons within the Settlement Class as a group, class, or in the aggregate. Requests for Exclusion may only be submitted on an individual basis, and to the extent any request purports to seek exclusion *en masse* or on behalf of anyone other than the submitting individual it shall be deemed invalid except as to the submitting individual.

21. Any individual who submits a valid and timely Request for Exclusion will not be a Settlement Class Member, shall not be bound by the terms of the Settlement, and shall relinquish their rights to benefits with respect to the Settlement, should it be finally approved, and may not file an Objection to the Settlement or to any application for reimbursement of attorneys' fees and costs or the Class Representative Service Payment or otherwise intervene in the Action. If a Class Member submits both a Request for Exclusion and an Objection, then the Request for Exclusion will be valid and will invalidate the Objection.

22. Any Class Member who does not submit a valid and timely Request for Exclusion shall be bound by all the terms and provisions of the Settlement and Agreement, including the release of Released Claims set forth therein, the Final Approval Order, whether or not such Class Member objected to the Settlement.

23. Pending entry of the Final Approval Order and Judgment, the Plaintiff, Class Members, and any person or entity allegedly acting on behalf of the Settlement Class, either directly, representatively or in any other capacity, are preliminarily enjoined from commencing or prosecuting against the Released Parties any action or proceeding in any court or tribunal

asserting any of the Released Claims, provided, however, that this injunction shall not apply to individual claims of any Class Members who timely exclude themselves in a manner that complies with this Order and the Agreement. This injunction is necessary to protect and effectuate the settlement, this Order, and the Court's flexibility and authority to effectuate this settlement and to enter judgment when appropriate, and is ordered in aid of the Court's jurisdiction and to protect its judgments pursuant to 28 U.S.C. § 1651(a).

24. For the benefit of the Settlement Class and to protect this Court's jurisdiction, this Court hereby retains jurisdiction over the Parties and the Class Members to ensure the effective administration of the Settlement and to consider all further matters arising out of or connected with the Settlement, including the implementation and enforcement of the Agreement.

25. All proceedings in this Action other than those that are necessary to carry out, or incidental to carrying out, the terms and conditions of this Order are stayed and suspended until further order of the Court.

26. In the event that the proposed Settlement is not finally approved by the Court, or in the event that the Agreement becomes null and void or terminates pursuant to its terms, this Preliminary Approval Order and all orders entered in connection with the Settlement and the Agreement shall become null and void, shall be of no further force and effect, and the Parties' rights and defenses shall be restored, without prejudice, to their respective positions as if the Agreement had never been executed in accordance with Section 11.3 of the Agreement. Further, if the Effective Date does not occur, the Parties will return to the status quo ex ante, for all litigation purposes, as if no settlement had been negotiated or entered into and thus this Order and all other findings or stipulations regarding the Settlement, including but not limited to, this

conditional certification of the Settlement Class, will be automatically void, vacated, and treated as if never entered or filed.

27. Any deadlines set in this Preliminary Approval Order may be extended, or other aspects of the Settlement modified, by order of the Court, for good cause shown, without further notice to the Settlement Class, except that notice of any such orders shall be posted by the Settlement Administrator to the website that the Settlement Administrator will establish and maintain in accordance with the Agreement. Class Members should check that website regularly for updates, changes, and/or further details regarding extensions of deadlines, orders entered by the Court, and other information regarding the Settlement.

28. All briefs, memoranda, petitions and affidavits to be filed in support of Final Approval of the Settlement, for a Class Representative Service Payment to the Class Representative and payment of Class Counsel Fees to Class Counsel shall be filed with the Court no later than **August 26, 2020**.

29. The Parties are hereby authorized to make, without further approval of the Court, minor changes to the form or content of the Postcard Notice, Long-Form Notice of Settlement, and Final Approval Order that the Parties jointly agree are reasonable or necessary, and which do not limit the rights of Settlement Class Members under the Settlement.

SO ORDERED.


Paul A. Engelmayer
United States District Judge

Dated: May 29, 2020
New York, New York