

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

This Agreement¹ is entered into between the Class Representative—individually and on behalf of the Class Members—and Defendant.

By this Agreement, the Parties intend, with judicial approval, to settle the Action by fully, finally and forever resolving, discharging and settling all released rights and claims to the extent set forth below, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth in this Agreement, as well as the good and valuable consideration provided for herein, the Parties hereto agree to settle the Action on the following terms and conditions:

1. Definitions.

The defined terms—which appear throughout this Agreement in initial capital letters—shall have the following meanings ascribed to them.

1.1. Action. “Action” means: the lawsuit filed by Plaintiff in the United States District Court for the Southern District of New York, captioned *Gambles v. Sterling Infosystems, Inc.*, Case No. 1:15-cv-09746-PAE; and the lawsuit filed by Thomas Merck in the Court of Common Pleas, Cuyahoga County, Ohio, captioned *Merck v. Sterling Infosystems-Ohio, Inc.*, Case No. CV 16 868471, which was removed to the United States District Court for the Northern District of Ohio (and assigned Case No. 1:16-cv-02415-SO), and subsequently transferred to the United States District Court for the Southern District of New York (and assigned Case No. 1:17-cv-02033-PAE), and then consolidated with *Gambles v. Sterling Infosystems, Inc.*, Case No. 1:15-cv-09746-PAE.

1.2. Administrative Costs. “Administrative Costs” means the fees, costs, and expenses incurred by the Settlement Administrator to carry out its obligations under this Agreement.

1.3. Agreement. “Agreement” means this Class Action Settlement Agreement and Release, which includes all of the recitals in Section 2 below and all of the attached *Exhibits A through D*.

1.4. CAFA. “CAFA” means the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1715(a)-(d).

1.5. CAFA Notice. “CAFA Notice” means notice of this proposed settlement to the appropriate federal and state officials, as required by CAFA, which shall be prepared and mailed as provided for in Section 6.5 below.

¹ Capitalized terms shall have the meaning and definitions set forth in Section 1.

1.6. Class Counsel. “Class Counsel” refers to 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.

1.7. Class Counsel Fees. “Class Counsel Fees” refers to the amount of attorneys’ fees and costs that the Court awards to Class Counsel in accordance with Section 8.3 below.

1.8. Class List. “Class List” means the list prepared by Class Counsel on or about March 30, 2020 that identifies the names and addresses of the 200,423 unique individuals who, according to Class Counsel, and based on data provided by Defendant, are members of the Outdated Adverse Information Class, because they fall within the following definition: (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.

1.9. Class Members. “Class Members” refers to the 200,423 members of the Outdated Adverse Information Class identified on the Class List.

1.10. Class Representative. “Class Representative” refers to Plaintiff Ralph Michael Gambles.

1.11. Class Representative Service Payment. “Class Representative Service Payment” refers to any payment the Court approves as payment for service as a class representative in accordance with Section 8.4 below.

1.12. Court. “Court” means the United States District Court for the Southern District of New York, where the Action is currently pending.

1.13. Defendant. “Defendant” refers to Sterling Infosystems, Inc.

1.14. Defense Counsel. “Defense Counsel” refers to Michael O’Neil and Albert E. Hartmann of Reed Smith LLP.

1.15. Effective Date. The “Effective Date” of the Settlement means the date when the last of the following with respect to the Final Approval Order approving the Settlement has occurred: (i) the expiration of fifteen (15) business days after the time to file a motion to alter or amend the Final Approval Order under Federal Rule of Civil Procedure 59(e) has passed without any such motion having been filed; (ii) the expiration of fifteen (15) business days after the time in which to appeal the Final Approval Order has passed without any appeal having been filed; and (iii) if such motion to alter or amend is filed, or if an appeal is taken, fifteen (15) business days after a final determination of any such motion or appeal that permits the consummation of the Settlement in substantial accordance with the terms and conditions of this Agreement without further opportunity for either an appeal or Rule 59(e) motion.

1.16. FCRA. “FCRA” means the Fair Credit Reporting Act, 15 U.S.C. § 1681, *et seq.*

1.17. Final Approval. “Final Approval” means the approval of the Agreement by the Court at or after the Final Fairness Hearing, and entry on the Court’s docket of the Final Approval Order.

1.18. Final Approval Order. “Final Approval Order” means the final order and judgment entered by the Court giving Final Approval to the Settlement and dismissing with prejudice the claims of the Settlement Class and the Class Representative and entering a judgment according to the terms set forth in this Agreement in the form of *Exhibit D* hereto.

1.19. Final Fairness Hearing. “Final Fairness Hearing” means the hearing at which the Court will consider arguments relating to finally deciding whether to approve this Settlement, whether to enter the Final Approval Order, and whether to make such other rulings as are contemplated by this Agreement.

1.20. First Consolidated Class Action Complaint. “First Consolidated Class Action Complaint” means the First Consolidated Class Action Complaint filed in the Action (ECF 85).

1.21. Gross Settlement Amount. “Gross Settlement Amount” means the Fifteen Million Dollars and Zero Cents (\$15,000,000.00) to be paid by Defendant pursuant to the Agreement.

1.22. Individual Settlement Payment. “Individual Settlement Payment” refers to the amount the Settlement Administrator distributes from the Net Settlement Amount to each Settlement Class Member in accordance with Section 8.5 below.

1.23. Judgment. “Judgment” shall have the same meaning as Final Approval Order.

1.24. Long-Form Notice of Settlement. “Long-Form Notice of Settlement” means a notice to be provided to Class Members in accordance with Section 6.7 below, and in the form attached as *Exhibit A*, or in another form agreed to by the Parties that contains the same information as *Exhibit A* hereto.

1.25. Motion for Preliminary Approval. “Motion for Preliminary Approval” refers to the motion that Plaintiff shall file seeking Preliminary Approval pursuant to Federal Rule of Civil Procedure 23(e)(2).

1.26. Motion for Final Approval. “Motion for Final Approval” refers to the motion that Plaintiff shall file seeking Final Approval Order pursuant to Federal Rule of Civil Procedure 23(e)(2).

1.27. Net Settlement Amount. “Net Settlement Amount” refers to the amount calculated in accordance with Section 5.1 below.

1.28. Objection. “Objection” means an objection made by a Settlement Class Member to this Settlement by written notice of such objection postmarked during the Objection and Exclusion Period in accordance with Section 7.4 below.

1.29. Objection and Exclusion Period. “Objection and Exclusion Period” refers to the 60-day period after the mailing of the Postcard Notice in accordance with Section 6.9 below during which time a Class Member may submit (a) an Objection or (b) a Request for Exclusion.

1.30. Objector. “Objector” refers to a Class Member who has submitted an Objection.

1.31. Outdated Adverse Information Class. “Outdated Adverse Information Class” means the putative class of the same name alleged in the First Consolidated Class Action Complaint.

1.32. Parties. “Parties” refers collectively to (1) Plaintiff and (2) Defendant.

1.33. Plaintiff. “Plaintiff” refers to the Class Representative, Ralph Gambles.

1.34. Postcard Notices. “Postcard Notices” refers to a postcard mailed to Class Members in accordance with Section 6.9 below, and in the form attached as *Exhibit B*, or in another form agreed to by the Parties that contains the same information as *Exhibit B* hereto.

1.35. Preliminary Approval. “Preliminary Approval” means preliminary approval of the Agreement by the Court by entry on the Court’s docket of the Preliminary Approval Order

1.36. Preliminary Approval Order. “Preliminary Approval Order” means the order entered by the Court granting Preliminary Approval in the form of *Exhibit C* hereto.

1.37. Qualified Settlement Fund. “Qualified Settlement Fund” means a qualified settlement fund established pursuant to U.S. Treasury Regulation section 468B-1, 29 C.F.R. § 468B-1.

1.38. Released Claims. “Released Claims” means the claims against Defendant and Released Parties released by Section 9 below.

1.39. Released Parties. “Released Parties” means Defendant and each of its members, owners, shareholders, unitholders, predecessors, successors (including, without limitation, acquirers of all or substantially all of Defendant's assets, stock, units or other ownership interests) and assigns; the past, present, and future, direct and indirect, parents (including, without limitation, holding companies), subsidiaries and affiliates of any of the above; and the past, present and future principals, trustees, partners, insurers, reinsurers, officers, directors, employees, agents, advisors, attorneys, vendors, members, owners, shareholders, unitholders, predecessors, successors, assigns, representatives, heirs, executors, and administrators of any of the above.

1.40. Request for Exclusion. “Request for Exclusion” refers to a written, opt-out request signed by a Class Member and submitted in accordance with Section 7.3 below.

1.41. Settlement. “Settlement” means the agreement between the Class Representative, on behalf of himself and Settlement Class Members, and Defendant to fully,

finally and forever settle and compromise the Released Claims, as memorialized in this Agreement and the accompanying documents attached hereto.

1.42. Settlement Administrator. “Settlement Administrator” refers to the entity selected in accordance with Section 6.1 below.

1.43. Settlement Class. “Settlement Class” means all Settlement Class Members.

1.44. Settlement Class Members. “Settlement Class Members” shall mean all Class Members who do not file a timely and valid Request for Exclusion.

2. Recitals.

2.1. WHEREAS, by the Action, the Class Representative asserts claims, including the Released Claims, against Defendant for alleged violations of the FCRA;

2.2. WHEREAS, Class Representative and Class Counsel have investigated the facts and law, have engaged in discovery and settlement negotiations relating to the Action, and believe that it is desirable and in the best interests of the Class Members to enter into this Agreement;

2.3. WHEREAS, the purpose of this Agreement is to settle the Released Claims of the Settlement Class and Class Representative;

2.4. WHEREAS, Defendant denies any liability under the FCRA and denies that class certification is appropriate in this Action for any purpose other than to effectuate this Settlement. Defendant further denies that it engaged in any non-willful or willful violation of the FCRA. As part of the Agreement, Defendant specifically denies that it engaged in any wrongdoing, denies the allegations in the Complaint, denies that Defendant is liable for damages, penalties, interest, restitution, attorneys’ fees or costs or any other remedy, and denies that any claim asserted by Plaintiffs is suitable for class treatment other than for settlement purposes. The Agreement is not and shall not in any way be deemed to constitute an admission or evidence of any wrongdoing or liability on the part of Defendant, nor of any violation of any federal, state, or municipal statute, regulation, or principle of common law or equity. Defendant has agreed—conditioned on the entry of a Final Approval of this Settlement and certification of the Settlement Class—to settle the Action solely to avoid the burden, expense, and possible uncertainty of litigation. Any statements in this Agreement are made for settlement purposes only.

2.5. WHEREAS, the Parties have engaged in arms-length negotiations with a view toward achieving substantial benefits while avoiding the cost, delay, and uncertainty of further litigation. The Parties reached a settlement after jointly retaining the services of two experienced mediators, Rod Max of Upchurch Watson White & Max Mediation Group, and Nancy Lesser of PAX ADR Dispute Resolution and Mediation Services.

2.6. WHEREAS, Plaintiff will urge that the Court approve this Agreement after considering (1) the factual and legal defenses to the claims asserted, which render uncertain the ultimate outcome of the Action, (2) the potential difficulties Plaintiff would encounter in establishing his claims and maintaining class treatment, (3) the substantial benefits produced by

this Agreement, (4) that this Agreement provides relief in an expeditious and efficient manner, compared to any manner of recovery possible after litigation and potential appeal, and (5) that this Agreement allows Class Members to opt out of the Action and individually pursue the claim alleged in the Action.

3. Certification of Settlement Class for Settlement Purposes Only.

3.1. As part of the Settlement, and for purposes of Settlement only, Defendant conditionally agrees to certification of the Settlement Class under Rule 23 of the Federal Rules of Procedure by entry of the Preliminary Approval Order attached hereto as *Exhibit C*.

3.2. Defendant expressly reserves the right to challenge the propriety of class certification should the Court not approve the Agreement.

4. The Gross Settlement Amount.

4.1. No Additional Payments by Defendant. In no event shall Defendant be obligated to pay more than the Gross Settlement Amount in connection with this Agreement or the Settlement.

4.2. Use of Gross Settlement Amount. The Gross Settlement Amount will be used to pay all Individual Settlement Payments, any Class Representative Service Payment, all Administrative Costs, and the Class Counsel Fees.

4.3. No Reversion. No portion of the Gross Settlement Amount will revert to Defendant.

5. The Net Settlement Amount.

5.1. Calculation of the Net Settlement Amount. The Net Settlement Amount is the amount of the Gross Settlement Amount that remains after deducting amounts for any Class Representative Service Payment, Administrative Costs, and the Class Counsel Fees.

5.2. Calculation of Individual Settlement Payment. The Individual Settlement Payment for each Settlement Class Member shall be the Net Settlement Amount divided by the number of Settlement Class Members other than Plaintiff.

6. Selection of Settlement Administrator and Long-Form Notice of Settlement.

6.1. Selection of Settlement Administrator. After obtaining competitive bids from at least three (3) reputable administrators, Class Counsel shall recommend the name of the settlement administrator to Defendant. Subject to Defendant's consent, which shall not be unreasonably withheld, Class Counsel shall propose the appointment of the selected Settlement Administrator in the Motion for Preliminary Approval.

6.2. Settlement Administrator's Agreement with Class Counsel. Class Counsel shall enter into an agreement with the Settlement Administrator that shall require the Settlement Administrator to abide by all Court orders in this Action and to perform the functions described

in this Agreement, the Preliminary Approval Order, and the Final Approval Order, within the time limits specified in this Agreement, the Preliminary Approval Order, and the Final Approval Order, as well as such other services as are customarily performed by class action administrators.

6.3. Settlement Administration.

6.3.1. The Settlement Administrator will update the address information included on the Class List and use its best efforts to obtain the last known address for all Class Members.

6.3.2. The Settlement Administrator will, as necessary, print, copy, format, and translate materials, and mail (as specified herein) at least one version of the Postcard Notice (*Exhibit B*) to each Class Member.

6.3.3. The Settlement Administrator will also perform a skip trace for undeliverable addresses, establish and maintain a Qualified Settlement Fund, obtain appropriate tax identification numbers, calculate Individual Settlement Payments, file all required IRS forms, mail Individual Settlement Payments and tax forms, create a mutually approved settlement website (with a URL that is mutually agreed to by the Parties) so that Class Members can access such materials as the operative complaint, the Agreement, all Court orders related to the settlement, and the Long-Form Notice of Settlement (*Exhibit A*), remit all required documentation to taxing authorities, implement the process for any uncashed settlement checks, and perform all other duties associated with settlement administration, including, but not limited to, all those specified in this Agreement.

6.3.4. Any dispute relating to the obligations of, or the performance by, the Settlement Administrator, shall be, after good-faith efforts by the Parties to resolve the dispute, referred to the Court.

6.4. Information security. The Settlement Administrator shall ensure that the information that it receives from Class Counsel, Defense Counsel, and Settlement Class Members is secured and managed in such a way as to protect the security and confidentiality of the information. Except as specifically provided in this Agreement, the Settlement Administrator shall not disclose or disseminate any information that it receives from Class Counsel, Defense Counsel, and Settlement Class Members without the prior written consent of all Parties.

6.5. CAFA Notice.

6.5.1. The Settlement Administrator will prepare and mail, subject to the approval of Class Counsel and Defense Counsel, the notice(s) required by CAFA. This notice shall be mailed within seven (7) calendar days of the filing by Class Counsel of the Motion for Preliminary Approval.

6.5.2. Within five (5) business days of mailing the CAFA Notice, the Settlement Administrator shall provide to Class Counsel and Defense Counsel a declaration that the CAFA

Notice has been served and upon whom it has been served. The Parties will then file that declaration with the Court.

6.6. Qualified Settlement Fund Documents. No later than three (3) business days after filing of the Motion for Final Approval, the Settlement Administrator shall send Defense Counsel all necessary tax and wiring information for the Qualified Settlement Fund.

6.7. Internet Posting of Long-Form Notice of Settlement and Other Case Documents.

6.7.1. Before mailing the Postcard Notices, the Settlement Administrator will post on the settlement website a mutually agreed and Court-approved Long-Form Notice of Settlement in the form of *Exhibit A* hereto, or in another form agreed to by the Parties that contains the same information as *Exhibit A* hereto.

6.7.2. The Settlement Administrator shall also post the operative complaint, the Agreement (with exhibits), and the Motion for Preliminary Approval.

6.7.3. Within 24 hours, any other settlement-related filings made with the Court (including but not limited to the motion for Class Counsel Fees, for a Class Representative Service Payment and the Motion for Final Approval) shall also be posted.

6.8. The Class List. At least seven (7) days prior to Class Counsel filing a Motion for Preliminary Approval, Class Counsel shall provide to the Settlement Administrator and Defense Counsel the Class List.

6.9. Mailing Postcard Notices to Class Members.

6.9.1. The Settlement Administrator will make reasonable efforts to update and verify Class Member address data on the Class List before mailing, including use of the national change-of-address website to update mailing addresses.

6.9.2. Within fifteen (15) calendar days of Preliminary Approval, the Settlement Administrator shall send the Court-approved Postcard Notices (in the form of *Exhibits B* hereto, or in another form agreed to by the Parties that contains the same information as *Exhibit B* hereto) to all Class Members via First Class U.S. mail.

6.9.3. Undeliverable Notices. Any physical mailing returned as undeliverable shall be sent weekly via First Class U.S. Mail to any available forwarding address, using publicly available databases as practical to update mailing addresses. If no forwarding address is available, then the Settlement Administrator shall attempt to determine the correct address by using a computer-based skip-trace search, and shall then perform, if feasible, a re-mailing via First Class U.S. Mail weekly. If no current address is available for a Class Member, then the Postcard Notice for that Class Member will be deemed undeliverable.

6.10. Proof of Mailing. No more than sixty-seven (67) calendar days after mailing of the Postcard Notices, the Settlement Administrator shall provide a declaration of due diligence and proof of mailing with regard to mailing of the Postcard Notice to Class Counsel and

Defense Counsel, which Class Counsel shall in turn provide to the Court in connection with the Motion for Final Approval.

6.11. Settlement Administrator Obligation to Provide Information to the Parties and the Court.

6.11.1. Within three (3) calendar days of receipt of any Objection or Request for Exclusion, the Settlement Administrator shall provide copies of any Objection or Request for Exclusion to Class Counsel and Defense Counsel.

6.11.2. The Settlement Administrator shall also provide periodic updates regarding the number of Class Members whose Postcard Notices have been deemed undeliverable.

6.11.3. At least seven (7) calendar days prior to the deadline for filing the Motion for Final Approval, the Settlement Administrator shall provide Class Counsel with a declaration attesting that all the Settlement Administrator's responsibilities under this Agreement and the Administrator's separate agreement have been fulfilled. At a minimum, the declaration shall attest to: (1) the number, manner, and timing of all Postcard Notices mailed, returns received, undeliverable Postcard Notices, and Postcard Notices re-mailed; (2) the number of Objections received, and attach copies thereof; (3) the number of Request for Exclusions received, and attach copies thereof; (4) the Settlement Administrator's fulfillment of all other responsibilities of the Settlement Administrator pursuant to this Agreement or the Settlement Administrator's contractual agreement with Class Counsel; and (5) any other information requested for inclusion by the Parties or the Court.

7. Objections and Requests for Exclusion.

7.1. Objection and Exclusion Period. Within the Objection and Exclusion Period, Class Members may, as provided below, submit to the Settlement Administrator (a) a Request for Exclusion or (b) an Objection. Except as specifically provided herein, no Request for Exclusion or Objection postmarked (or submitted online after midnight Pacific time) after the Objection and Exclusion Period shall be considered.

7.2. Automatic Individual Settlement Payments. Class Members need not submit anything in order to be entitled to an Individual Settlement Payment.

7.3. Requests for Exclusion and Opt Out Rights. Class Members will have the opportunity to opt out by timely submitting a Request for Exclusion. 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.

7.3.1. Opt-Out Procedure. Class Members may opt out of this Agreement by mailing the Settlement Administrator a Request for Exclusion postmarked within sixty (60) days of the mailing of the Postcard Notice. 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.

7.3.2. 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.

7.3.3. Effect of Opting Out. Any Class Member who opts out of this Agreement may not submit an Objection and shall not receive any Individual Settlement Payment, and shall not be bound by the releases included within this Agreement. 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. Each Class Member who does not submit a timely, valid Request for Exclusion shall be bound by the Releases in Section 9 below.

7.4. Objections. Unless otherwise provided in this Agreement, only those Class Members who do not submit a Request for Exclusion shall be entitled to object to the terms of the Agreement.

7.4.1. Objection Procedure. Any Objection must be in writing and made using the procedures set forth in the Long-Form Notice of Settlement, must be submitted within sixty (60) days of the mailing of the Postcard Notice, and must contain (1) the Objector's full name and current mailing address, (2) the last four digits of the Objector's social security number, (3) the specific reason(s) for the Objection, (4) all evidence and supporting papers (including, without limitation, all briefs, written evidence, and declarations) for the Court to consider, and (5) identification of all counsel representing or assisting the Objector, if any.

7.4.2. Obligations of Individuals Who Object. 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.

7.4.3. Waiver of Objections. Class Members who fail to submit an Objection in the manner specified in the Long-Form Notice of Settlement shall be deemed to have waived any objection and shall be foreclosed from objecting to this Agreement, whether by appeal or otherwise.

7.5. Binding Effect of Settlement. A Class Member who does not timely submit a Request for Exclusion shall be bound by this Agreement, including the releases in Section 9 below, even if the Class Member's inability to timely submit a Request for Exclusion is the result of the inability of the Settlement Administrator to locate them or for other reasons beyond the Class Member's control.

7.6. No Interference with Class Member Responses. Each Party agrees not to encourage any Class Member to submit an Objection or a Request for Exclusion and agrees not to retaliate against any Class Member participating in this Agreement.

8. Administration of Settlement Proceeds.

8.1. Final Funding of Gross Settlement Amount. Within twenty-five (25) business days of the Effective Date, Defendant will deposit (or cause to be deposited) the Gross Settlement Amount into the Qualified Settlement Fund.

8.2. Administrative Costs. Class Counsel has obtained an estimate of Administrative Costs and will seek approval in the Motion for Final Approval for the Settlement Administrator to be paid that estimated amount from the Gross Settlement Amount.

8.3. Class Counsel Fees. Class Counsel intend to request a payment from the Gross Settlement Amount for (a) attorneys' fees and (b) reasonable out-of-pocket expenses in representing the interests of the Settlement Class, supported by adequate documentation. Class Counsel may seek fees not to exceed one-third of the Gross Settlement Amount as well as reasonable litigation expenses.

8.3.1. Timing of Class Counsel Fees. The Settlement Administrator shall issue the Class Counsel Fees within five (5) business days of the funding of the Gross Settlement Amount in accordance with Section 8.1 above. Prior to the Effective Date, Class Counsel shall instruct the Settlement Administrator with wiring instructions as to how the Class Counsel Fee may be paid and shall also provide any necessary tax information to the Settlement Administrator, including a form W-9. The Settlement Administrator shall issue an appropriate Internal Revenue Service Form 1099 to Class Counsel. Class Counsel shall be solely responsible for paying all applicable taxes on any Class Counsel Fees and shall indemnify and hold harmless the Released Parties from any claim or liability for taxes, penalties, or interest arising as a result of the Class Counsel Fees.

8.4. Class Representative Service Payment. Class Counsel intends to request a Class Representative Service Payment for the Class Representative. Class Counsel may seek a service payment not to exceed \$7,500. The Class Representative shall not be entitled to receive an Individual Settlement Payment.

8.4.1. Approval of Class Representative Service Payment Not Material. Approval of a Class Representative Service Payment is not a material term. If the Court does not approve a Class Representative Service Payment or approves only a lesser amount than that requested, then the other terms of this Agreement shall remain in effect.

8.4.2. Timing of Class Representative Service Payment. The Settlement Administrator shall pay any Class Representative Service Payment within five (5) business days of the funding of the Gross Settlement Amount in accordance with Section 8.1 above, and shall issue an IRS Form 1099 to Plaintiff. Plaintiff shall be solely responsible for paying all applicable taxes on any Class Representative Service Payment and shall indemnify and hold harmless the Released Parties from any claim or liability for taxes, penalties, or interest arising as a result of the Class Representative Service Payment.

8.4.3. Release by Class Representative. The Class Representatives agrees to the releases in Section 9 below, regardless of the amount of any Class Representative Service Payment approved by the Court.

8.5. Individual Settlement Payments. Each Settlement Class Member shall be entitled to one Individual Settlement Payment calculated in accordance with Section 5.2 above.

8.5.1. Timing of Individual Settlement Payments. The Settlement Administrator shall issue Individual Settlement Payments no later than ten (10) business days after the funding of the Gross Settlement Amount in accordance with Section 8.1 above.

8.5.2. Responsibility for Taxes. Each Class Member shall be solely responsible for complying with any and all income tax liabilities and obligations which are or may become due or payable in connection with this Agreement and the Settlement.

(1) The Settlement Administrator shall provide each Settlement Class Member with a notice advising him or her to seek personal tax advice regarding any tax consequences of the Individual Settlement Payment. The notice regarding the potential tax treatment to Settlement Class Members shall be included with each disbursement to Settlement Class Members. For the avoidance of doubt, none of the Released Parties, Defense Counsel, or Class Counsel, have made, or are making in connection with the Settlement, any representations regarding possible tax consequences relating to the Individual Settlement Payments to Settlement Class Members, and none of the Defendant, Defense Counsel or Class Counsel shall be held responsible for any such tax consequences.

8.5.3. Undeliverable or Uncashed Checks. All Individual Settlement Payment checks will remain negotiable for ninety (90) days from the date of their mailing. The Settlement Administrator shall notify Class Counsel and Defense Counsel of any undeliverable and uncashed checks. After ninety (90) days from the mailing, the total amount of any settlement checks from the Net Settlement Amount that has not been cashed will be donated in equal portions to the Salvation Army and the Center for Employment Opportunities, or another *cy pres* recipient as jointly agreed to by the Parties and identified in the Final Approval Order.

8.6. Certification of Completion. Upon fully administering this Agreement, the Settlement Administrator will certify the completion to the Court and counsel for all Parties in a declaration, summarizing the total money paid and the status of any uncashed checks.

9. Releases.

9.1. Plaintiff's Individual Release. By entry of the Final Approval Order, Plaintiff will release and forever discharge Defendant and the Released Parties from any and all individual claims, actions, causes of action, including claims for attorneys' fees, asserted or which could have been asserted as of the date of this Agreement. This release includes the claims that were, or could have been, asserted in the Action, as well as all claims, whether known or unknown, asserted or unasserted, which Plaintiff may currently have against Defendant and the Released Parties, or that may arise in the future, up to and including the Effective Date.

9.2. Settlement Class Members' Release. By entry of the Final Approval Order, each Settlement Class Member will have their claims against Sterling dismissed with prejudice, and each Settlement Class Member—and each Settlement Class Member's executors, administrators, representatives, agents, heirs, successors, assigns, trustees, spouses, or guardians—hereby releases and forever discharges Defendant and the Released Parties from any and all claims, actions, and causes of action, including claims for attorneys' fees, that were asserted, or which could have been asserted against Sterling and the Released Parties in the Action as of the Effective Date.

9.3. Release of Unknown Claims. Class Representative and each Settlement Class Member further acknowledge that this Agreement is a full and final accord and release of each and every matter specifically and generally referred in Sections 9.1 above and 9.2 above. Class Representative and each Settlement Class Member acknowledge that they may hereafter discover facts in addition to or different from those which they now know or believe to be true, but it is their intention to fully and finally and forever settle and release any and all matters, disputes, and differences known or unknown, suspected or unsuspected, which heretofore have existed with or relating to Defendant and the Released Parties with respect to any alleged acts or failures to act on the part of Defendant or the Released Parties specifically and generally referred in Sections 9.1 above and 9.2 above. In furtherance of this intention, the release herein shall be, and will remain, in effect as a full and complete general release notwithstanding the discovery or existence of any such additional or different facts. Accordingly, Class Representative and each Settlement Class Member hereby waives all rights or benefits under California Civil Code Section 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Class Representative and each Settlement Class Member accept and assume the risk for claims arising before or after the Effective Date of this Agreement, known or unknown, and they specifically waive any rights they may otherwise have under Section 1542.

10. Settlement Approval Procedure.

10.1. Motion for Preliminary Approval. Plaintiff will request that the Court enter the Preliminary Approval Order.

10.1.1. Contents of Motion. The Motion for Preliminary Approval shall include the bases for demonstrating that certification of a settlement class is appropriate, that the settlement terms are reasonable in light of the facts and law pertaining to the claims alleged.

10.2. Motion for Final Approval. Class Counsel will request that the Court enter the Final Approval Order at or after the Final Fairness Hearing.

10.3. Schedule of Final Fairness Hearing. The date of any Final Fairness Hearing shall be scheduled for a date no earlier than ninety (90) days after the CAFA Notice is sent.

10.4. Motion for Class Counsel Fees and Class Representative Service Payment.

Class Counsel may move for approval of attorneys' fees in the amount of up to one-third of the Gross Settlement Amount as well as reasonable litigation expenses, supported by adequate documentation. Class Counsel may also move for approval of the Class Representative Service Payment of \$7,500 to Plaintiff. The motion for Class Counsel Fees and a Class Representative Service Payment shall be filed in advance of the Final Fairness Hearing as directed by the Court, and shall be promptly posted on the settlement website, so that Class Members will have the opportunity to review it prior to the Objection and Opt-Out Deadline.

10.5. Entry of Judgment. The Final Approval Order shall contain a provision by which the Court enters Judgment in accordance with this Agreement, without an award of further fees or costs to any Party, or Class Member.

10.5.1. Posting of Final Approval Order. The Final Approval Order as entered by the Court will be posted on the settlement website.

11. Modification by Court or Non-Approval of Agreement.

11.1. This Agreement, and the Settlement, shall be null and void if the Court requires changes to the Agreement that alter in any way the Parties' rights or duties before approving the Settlement, or if the Agreement is approved by the Court, but such approval is later reversed, modified, or vacated on appeal. Provided, however, that the Parties, in their sole discretion, can consent to modify this Agreement, in accordance with Section 12.4.1 below, to be consistent with any modifications requested or required by the Court.

11.2. Defendant shall have the right, but not the obligation, to terminate and rescind this Agreement if more than two hundred (200) Settlement Class Members file valid Requests for Exclusion. To exercise this right, Defendant must provide written notice to Class Counsel no later than fourteen (14) days following the Objection and Exclusion Period. This Agreement, and the Settlement, shall be null and void upon Defendant's delivery of such notice.

11.3. In the event that the Agreement does not receive Final Approval, or otherwise becomes null and void, the Parties shall return to the *status quo ante* as of December 17, 2019, as if no Agreement had been negotiated or entered into. Moreover, the Parties shall be deemed to have preserved all of their rights or defenses as of December 17, 2019, and shall not be deemed to have waived any substantive or procedural rights of any kind that they may have as to each other or any Class Members. In that event, the Settlement and all negotiations and proceedings related to the Settlement will be without prejudice of the rights of the Parties, and evidence of the Settlement, negotiations, and proceedings will be inadmissible and will not be discoverable.

12. Miscellaneous.**12.1. Execution of this Agreement.**

12.1.1. Parties' Authority. Class Counsel, on behalf of the Settlement Class, are expressly authorized by Class Representatives and the Settlement Class Members to take all appropriate action required or permitted to be taken by the Settlement Class pursuant to the Agreement to effectuate its terms, and also are expressly authorized to enter into any

modifications or amendments to the Agreement on behalf of the Settlement Class that they deem necessary or appropriate. Each attorney or other person executing the Agreement on behalf of any Party hereto hereby warrants that such attorney or other person has the full authority to do so.

12.1.2. Binding Effect. This Agreement shall apply to and be binding upon and shall inure to the benefit of the Parties hereto, the Settlement Class Members, the Released Parties, and Class Counsel, as well as their respective successors, heirs and assigns. The Parties acknowledge it is their intent to consummate this Agreement and agree to cooperate to the extent reasonably necessary to effect and implement all terms and conditions of the Agreement and to exercise their best efforts to accomplish the foregoing terms and conditions of the Agreement

12.1.3. No Claims Arising From This Agreement. No person shall have any claim against the Released Parties, Defendant, Defense Counsel, the Class Representative, or Class Counsel based on distribution of benefits made substantially in accordance with this Agreement or any Settlement-related order(s) of the Court.

12.1.4. Counterparts. This Agreement may be executed in counterparts, execution in counterparts shall have the same force and effect as if all Parties had signed the same instrument.

12.1.5. Facsimile or Scanned Signatures. Any signature made and transmitted by facsimile, email, PDF or other electronic methods for the purpose of executing this Agreement shall be deemed an original signature for purposes of this Agreement and shall be binding upon the Party whose counsel transmits the signature page by such electronic means.

12.2. Construction.

12.2.1. Materiality of Terms. All terms and conditions of this Agreement in the exact form set forth in this Agreement are material to this Agreement and have been relied upon by the Parties in entering into this Agreement.

12.2.2. No Construction Against the Author. The Parties have negotiated all the terms and conditions of this Agreement at arm's length. Each Party participated jointly in drafting this Agreement, and therefore its terms are not intended to, and shall not be, construed against any Party by virtue of draftsmanship.

12.2.3. Exhibits Incorporated by Reference. This Agreement include the terms set forth in any attached exhibit. Any exhibit to this Agreement is an integral part of it.

12.2.4. Headings. The headings within this Agreement appear for convenience of reference only and shall not affect the construction or interpretation of any part of this Agreement.

12.3. No Media Announcements or Other Undue Publicity. In order to preserve the integrity of the notice process, no Party shall make any public statement to the news, print, electronic, or Internet media concerning this Agreement Class Counsel shall decline to

respond to media inquiries concerning this Agreement. Nothing in this Agreement prevents Class Counsel from making truthful representations to this Court or other Courts about the resolution of this matter.

12.4. Parties' Entire Agreement. This Agreement, with its definitions, recitals, and exhibits, constitutes the entire agreement on its subject matter, and supersedes all prior and contemporaneous negotiations and understandings between the Parties. All prior and contemporaneous negotiations and understandings between the Parties (including the Parties' Term Sheet Regarding Settlement Agreement) shall be deemed merged into this Agreement.

12.4.1. Waivers and Modifications to Be in Writing. No waiver, modification, or amendment of this Agreement, whether purportedly made before or after the Court's approval of this Agreement and the Settlement, shall be valid or binding unless it appears in a writing signed by or on behalf of all Parties, and then only to the extent set forth in such written waiver, modification or amendment, subject to any required Court approval. Any failure by any Party to insist upon the strict performance by the other Party or Parties of any of the provisions of this Agreement shall not be deemed a waiver of future performance of the same provisions or of any of the other provisions of this Agreement, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

12.5. Inadmissibility of Settlement Documents. The Parties agree that this Agreement and all exhibits thereto, shall be inadmissible in any action or proceeding, except a proceeding to approve or enforce this Agreement. This Agreement will operate as a complete defense to—and may be used as the basis for an injunction against—any proceeding attempted in breach of this Agreement.

12.6. No Tax Advice. Nothing in this Agreement is advice by Class Counsel or Defense Counsel regarding taxes or tax liability, and no Party of Settlement Class Member is relying upon Class Counsel or Defense Counsel for such advice. Each Party instead is relying exclusively on the Party's own independent tax counsel in connection with this Agreement.

12.7. No Prior Assignments or Undisclosed Liens. The Class Representative and the Class Counsel represent that they have not assigned, transferred, conveyed, or otherwise disposed of any Released Claim or claim to attorneys' fees and costs to be paid under this Agreement. Each Class Representative and the Class Counsel further represent and warrant that there are not any liens or claims against any amount that Defendant is to pay under this Agreement.

12.8. Other Claims and Other Named Plaintiffs. The claims asserted in this Action on behalf of putative classes other than the Settlement Class will be dismissed without prejudice, without any payment by Defendant, and without any award of attorney's fees or costs to any party. All individual claims made on behalf of named plaintiffs Elsie Compo and Thomas Merck have been resolved by a separate individual settlement agreement.

12.9. Cooperation of the Parties. The Parties will comply with the covenants of good faith and fair dealing and otherwise cooperate and use their best efforts to obtain the Court's approval of this Agreement and all of its terms, including as follows.

12.9.1. Affirmative Duty to Cooperate. Each Party, upon the request of another, agrees to perform such acts and to execute and to deliver such documents as are reasonably necessary to carry out this Agreement. In the same spirit, the Parties agree to make all reasonable efforts to avoid unnecessary Administrative Costs.

12.10. Confidential Information. As required by Paragraph 8(b) of the Stipulated Protective Order entered by the Court in the Action (ECF 100), Class Counsel will destroy all "CONFIDENTIAL" documents and information produced by Defendant within sixty (60) calendar days of the Effective Date. Class Counsel further agree that no information provided by Defendant shall be used for any purpose other than prosecution of this Action.

12.11. Disputes. If the Parties dispute the interpretation of this Agreement, then they will attempt to resolve the dispute informally. If those efforts fail, they will mediate the dispute. The Parties will split the costs of the mediator, and the Parties will bear their own fees and costs. The Court shall retain jurisdiction over enforcement and implementation of this Agreement, and can require specific performance, although the Court lacks jurisdiction to modify the terms of this Agreement. If a Party institutes legal action to enforce this Agreement, then the prevailing Party will be entitled to recover attorney's fees and costs incurred in vindicating that Party's position.

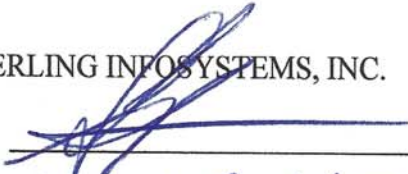
[SIGNATURES APPEAR ON FOLLOWING PAGES]

SO AGREED BY:

Date: 4/3/2020

DocuSigned by:
Ralph M. Gambles
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RALPH GAMBLES

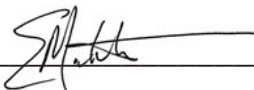
Date: April 3, 2020

STERLING INFOSYSTEMS, INC.
By: 
Its: *Executive Vice President*

Approved as to form and content:

For Ralph Gambles

BERGER & MONTAGUE, P.C.

By:  4/3/2020

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For Sterling Infosystems, Inc.:

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