

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

**STRATFOR ENTERPRISES, LLC AND
STRATEGIC FORECASTING, INC.,**

Plaintiffs,

vs.

**DAVID STERLING AND STERLING &
STERLING, INC.,**

Defendants.

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CIVIL ACTION NO. 1:12-CV-00125-SS

AGREED JOINT MOTION TO EXTEND STAY

Plaintiffs Stratfor Enterprises, LLC and Strategic Forecasting, Inc. and Defendants David Sterling and Sterling & Sterling, Inc. file this Agreed Joint Motion to Extend Stay. In support thereof, the parties would respectfully show the Court as follows:

PROCEDURAL POSTURE AND BACKGROUND

On February 22, 2012, Sterling and Stratfor agreed to stay this suit and the New York Action for the next sixty (60) days, in order to allow the parties and their counsel the opportunity to explore and discuss the possibility of settlement. The parties also agreed that if additional time was necessary to pursue settlement discussions after the expiration of sixty days, then the stay agreement could be extended at thirty (30) day intervals.

On March 1, 2012, this Court issued an Order, (Dkt. 12), staying this case and tolling all deadlines of any nature for sixty (60) days.

On April 3, 2012, the Parties conducted a mediation before David R. Cohen, Esq. (Federal Special Master) and there came to an agreement in principle to settle both this case and the action stayed in the Eastern District of New York.

On April 4, 2012, the Parties executed a Memorandum of Understanding documenting their agreement to settle both actions.

On April 27, 2012, the Parties filed a motion for this Court to extend the stay for an additional thirty (30) days, (Dkt. 13).

On April 30, 2012, this Court stayed all deadlines in this case until May 30, 2012 (Dkt. 14).

On May 1, 2012, the Parties executed a Settlement Agreement to settle both actions.

On May 14, 2012, Sterling, plaintiffs in the putative class action, filed an Unopposed Motion for Preliminary Approval of Class Action Settlement in the Eastern District of New York. The relevant portions of that motion are attached hereto, including, *inter alia*, the Notice of Unopposed Motion for Preliminary Approval of Class Action Settlement, Memorandum of Law in Support of Unopposed Motion for Preliminary Approval of Class Action Settlement, and the Settlement Agreement itself (an exhibit—an insurance policy—has been omitted because of its size). Section VIII(C) of the Settlement Agreement promises that, upon entry of a Final Judgment and Order in the New York putative class action, Stratfor shall, within ten (10) days, move for the dismissal of this action from the Western District of Texas.

On May 22, 2012, Judge Denis R. Hurley of the Eastern District of New York scheduled a preliminary approval hearing for the New York action on June 11, 2012.

The Parties have worked diligently to effectuate a Settlement Agreement that would resolve both the New York action and this action. Because the Settlement Agreement conditions resolution of this action upon the entry of a Final Judgment and Order in the putative class action in the Eastern District of New York, the Parties believe that the relief requested is necessary to effectuate settlement of both actions.

PRAYER FOR RELIEF

Sterling and Stratfor jointly request that the Court extend the stay of the above-entitled and numbered cause, toll all pleading deadlines or filing deadlines of any nature for an additional sixty (60) days from May 30, 2012, and further that the Court grant such other and further relief which the parties show themselves to be justly entitled.

Respectfully submitted,

JACKSON WALKER L.L.P.

By: _____

Bill Cobb
Bar No. 00796372

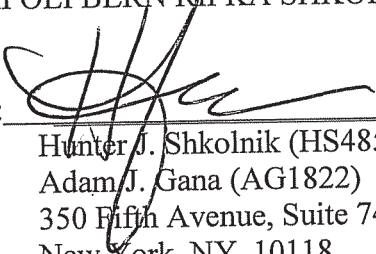
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STRATFOR ENTERPRISES, LLC and
STRATEGIC FORECASTING, INC.**

AGREED:

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**ATTORNEYS FOR DEFENDANTS
DAVID STERLING AND STERLING & STERLING, INC.**

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of May, 2012, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will electronically mail notification of such filing to all counsel of record who have appeared in this case.

/s/ Bill Cobb

Bill Cobb

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

-----X
DAVID STERLING, an Individual and
STERLING & STERLING, INC., a corporation on
behalf of themselves and others similarly situated,

CIVIL ACTION NO.:
2:12-CV-00297(DRH-ARL)

Plaintiffs,

Judge Denis R. Hurley

v.

STRATFOR ENTERPRISES, LLC, STRATEGIC
FORECASTING, INC., and GEORGE FRIEDMAN

Defendants.
-----X

**NOTICE AND UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

NOTICE IS HEREBY GIVEN that the Plaintiffs will move the Court, pursuant to Federal Rule of Civil Procedure 23, to certify a Settlement Class of All persons, corporations, or entities who were current or former subscribers to the Stratfor Service on December 24, 2011.

Plaintiffs will apply to this Court for preliminary approval of a proposed class action settlement on June 11, 2012, at 9:30 a.m., or as soon thereafter as counsel may be heard by the above-entitled Court, located at 100 Federal Plaza Central Islip, New York 11722, in Courtroom 6, 17th Floor, before the Honorable Denis R. Hurley.

This Motion is based on this Notice of Motion, the Memorandum of Law in Support of the Motion and the authorities cited therein, oral argument of counsel, and any other matter that may be submitted at the hearing.

[CONTINUED ON NEXT PAGE]

Dated: New York, New York
May 14, 2012

Respectfully submitted,
NAPOLI BERN RIPKA SHKOLNIK, LLP

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 14, 2012 I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will electronically mail notification of such filing to all counsel of record who have appeared in this case.

Date: May 14, 2012

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

-----X
DAVID STERLING, an Individual and
STERLING & STERLING, INC., a corporation on
behalf of themselves and others similarly situated,

Plaintiffs,

CIVIL ACTION NO.:
2:12-CV-00297(DRH-ARL)

Judge Denis R. Hurley

v.

STRATFOR ENTERPRISES, LLC, STRATEGIC
FORECASTING, INC., and GEORGE FRIEDMAN

Defendants.
-----X

**MEMORANDUM OF LAW IN SUPPORT OF UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

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Under Rule 23(e) of the Federal Rules of Civil Procedure, Plaintiffs David Sterling individually and on behalf of Sterling & Sterling, Inc. (“Plaintiffs”) apply to this Court for preliminary approval of a proposed class action settlement, as set forth below. Strategic Forecasting, Inc., Stratfor Enterprises, LLC and George Friedman (collectively “Stratfor” or “Defendants”) (collectively with Plaintiffs, the “Parties”) do not oppose Plaintiffs’ motion.

INTRODUCTION

Plaintiffs submit their unopposed motion for preliminary approval of a proposed settlement in the action *Sterling v. Stratfor Enterprises, LLC, et al.*, Case No. 2:12-cv-00297-DRH-ARL (E.D.N.Y.). This litigation arose as a result of a security breach of Stratfor’s database and the subsequent unauthorized disclosure of current and former subscribers’ sensitive credit card information by a third party in December 2011 (“Stratfor Breach”). On January 20, 2012, Plaintiffs filed a Complaint against Strategic Forecasting, Inc. and George Friedman and alleged (i) violation of the Stored Communications Act, 18 USC § 2701 *et seq*; (ii) violation of New York General Business Law §§ 349 and 350; (iii) breach of contract; (iv) quasi contract; and (v) negligence. On February 8, 2012, Plaintiffs amended their complaint to add Stratfor Enterprises, LLC as a party.

After extensive negotiations, including mediation before David R. Cohen, Esq. (Federal Special Master) on April 3, 2012, Plaintiffs and Stratfor have been able to achieve a fair, reasonable, and adequate settlement resolving the above described litigation. A copy of the Settlement Agreement is attached hereto.¹

¹ The Parties’ Settlement Agreement, together with all attachments, thereto is submitted herewith as Exhibit A to the Declaration of Hunter J. Shkolnik in support of Plaintiffs’ Application for Preliminary Approval of Class Action Settlement.

Plaintiffs now ask this Court to enter the Hearing Order, submitted herewith, which: 1) appoints the Class Representatives as the representatives of the Settlement Class²; 2) appoints Hunter J. Shkolnik and Adam J. Gana as Class Counsel (“Class Counsel”); 3) conditionally certifies the Settlement Class for settlement purposes; 4) preliminarily approves the Settlement Agreement as fair and reasonable; 5) approves the form of Class Notice and the Notice Plan; and 6) schedules the Fairness Hearing.

As identified and detailed in the proposed Order, Plaintiffs recommend that the Court order that the following actions occur on the dates specified in the proposed Order: (1) notice be provided to Settlement Class; (2) requests for exclusion from the settlement be sent and postmarked; (3) objections to the settlement or the award of attorneys’ fees and reimbursement of expenses in favor of Class Counsel be served on counsel and filed with the Court; and (4) a Fairness Hearing be held at the Court’s convenience.

THE PROPOSED SETTLEMENT

Plaintiffs’ counsel engaged in extensive arms-length negotiations for over two months with Stratfor’s counsel regarding the terms of a possible settlement of this action. Since March 2012, the Parties have engaged in in-person and telephonic discussions related to settlement. Accordingly, on April 3, 2012, the Parties conducted a mediation in Houston, Texas before David R. Cohen, Esq. (Federal Special Master), in which the parties entered into a binding Memorandum of Understanding. Since early April, the Parties have worked to draft the attached Settlement Agreement, notices and accompanying papers and addressed various issues as they arose. This Settlement is the culmination of these efforts.

² Settlement Class is defined: “All persons, corporations, or entities who were current or former subscribers to the Stratfor Service on December 24, 2011.” *Infra*, at pg. 3

A. The Settlement Class

The proposed settlement has been reached on behalf of the “Settlement Class,” defined in Paragraph 1(D) of the Settlement Agreement as follows:

All persons, corporations, or entities who were current or former subscribers to the Stratfor Service on December 24, 2011.

B. The Settlement

The settlement provides various benefits to eligible members of the Settlement Class, including: 1) one month access to the Stratfor Service free of charge; 2) an “e-book” entitled “The Blue Book” published by Stratfor Enterprises, LLC; 3) one year CSID credit monitoring service offered on December 28, 2011; 4) enhanced data protection services for the future security and safety of subscribers; and 5) insurance proceeds from the Scottsdale Insurance Policy (EKI3034951), if and to the extent recovery is available.³ The total estimated value of all of these benefits equals approximately \$7.8 million and is set forth in the Settlement Agreement Section III.

In return for these benefits, the action will be dismissed and members of the Settlement Class that do not exclude themselves from this settlement will be deemed to have released all claims against Stratfor, as set forth in the Settlement Agreement.

In addition, the Settlement Agreement provides that Class Counsel will petition the Court for up to, but not exceeding the amount remaining in the Common Fund after the payment of the Class Administrator’s fees and all fees and costs related to the class administration, and also 1/3 of any insurance proceeds recovered under the Scottsdale Insurance Policy.⁴

³ As detailed in the Settlement Agreement, eligible Class Members are to receive a pro rata distribution of the amount recovered under the insurance policy less a 1/3 gross recovery fee for Plaintiffs’ Counsel.

⁴ See Section X of the Settlement Agreement.

The attorneys' fees were negotiated separate and apart from the other terms of the agreement, with the active participation of David R. Cohen, Esq. (Federal Special Master) as mediator. Stratfor does not oppose Class Counsels' proposed fee petition.

Plaintiffs also intend to make an application for an award of incentive stipends to Class Representatives David Sterling and Sterling & Sterling, Inc. in the amount of \$10,000 total as compensation for their time and effort serving as class representatives in this litigation.

PRELIMINARY SETTLEMENT APPROVAL

A. Role of the Court

It is well established that the law favors the compromise and settlement of class action suits. "We are mindful of the 'strong judicial policy in favor of settlements, particularly in the class action context.'" *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116 (2d Cir. 2005) (citing *In re PaineWebber Ltd. P'ships Litig.*, 147 F.3d 132, 138 (2d Cir.1998)). Rule 23(e) of the Federal Rules of Civil Procedure requires judicial approval for any compromise of claims brought on a class basis. Approval of a proposed settlement is a matter within the broad discretion of the district court. *Maywalt v. Parker & Parsley Petroleum Co.*, 67 F.3d 1072, 1079 (2d Cir. 1998) (citing *In re Ivan F. Boesky Secs. Litig.*, 948 F.2d 1358, 1368 (2d Cir. 1991)). . Courts, however, must give "proper deference to the private consensual decision of the parties." *Clark v. Ecolab, Inc.*, No. 07 Civ. 8623(PAC), No. 04 Civ. 4488(PAC), No. 06 Civ. 5672(PAC), 2009 U.S. Dist. LEXIS 108736 at *13-14 (S.D.N.Y. Nov. 17, 2009) (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998)). The Court's role is to ensure that the settlement is fair, reasonable and adequate. FED. R. CIV. P. 23(e)(1)(C).

B. The Proposed Settlement Class May Be Certified by the Court

Class certification under Rule 23(c) is a prerequisite to preliminary approval of the Settlement Agreement. *See* MANUAL FOR COMPLEX LITIGATION (FOURTH) § 21.632 (2011);

Amchem Prods. Inc. v. Windsor, 521 U.S. 591, 620 (1997). Class certification requires satisfaction of all four elements in Rule 23(a), along with one of the three categories of Rule 23(b). *Amchem*, 521 U.S. at 619-20; *Bourlas v. Davis Law Assocs.*, 237 F.R.D. 345, 349-50 (E.D.N.Y. 2006). The following four requirements must be satisfied under Rule 23(a): 1) numerosity; 2) commonality; 3) typicality; and 4) adequacy of representation. FED. R. CIV. P. 23(a). Rule 23(b)(3) requires predominance of common issues and superiority of a class action. FED. R. CIV. P. 23(b). Per the Settlement Agreement, Stratfor does not contest that these requirements are met here for the purposes of requesting the Court's preliminary approval of the Settlement Agreement.

1. The Class Should Be Certified Because Plaintiffs Have Satisfied all of the Prerequisites Under Rule 23(a)

Plaintiffs have satisfied the numerosity, commonality, typicality and adequacy of representation requirements under Rule 23.

a) The Requirement of Numerosity is Satisfied

The proposed Class is so numerous that the joinder of all members of the settlement class is impracticable. FED. R. CIV. P. 23(a)(1). The proposed Settlement Class, which includes over 800,000 current and former Stratfor subscribers, satisfies the numerosity requirement. Joinder of in excess of 800,000 members is clearly impracticable and far exceeds previous classes that have met the numerosity requirement. *See, e.g., Consolidated Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir. 1995) ("Numerosity is presumed at a level of 40 members."); *Grant v. Sullivan*, 131 F.R.D. 436, 446 (M.D.Pa.1990) (a court "may certify a class even if it is composed of as few as 14 members"); *Folsom v. Blum*, 87 F.R.D. 443, 445 (S.D.N.Y.1980) ("hundreds" of welfare recipients). "Moreover, plaintiffs need not provide a precise quantification of their class, since a court may make 'common sense assumptions' to support a finding of numerosity." *Pecere*

v. Empire Blue Cross & Blue Shield, 194 F.R.D. 66, 70 (E.D.N.Y. 2000) (citing *LeGrand v. New York City Transit Auth.*, No. 95–CV–0333, 1999 WL 342286, at *3 (E.D.N.Y. May 26, 1999)).

b) The Requirement of Commonality is Satisfied

The “commonality” requirement of Rule 23(a)(2) is satisfied where at least one common question of law or fact exists. See *In re Agent Orange Prod. Liab. Litig. MDL No. 381*, 818 F.2d 145, 166-67 (2d Cir.1987); *Baby Neal ex rel. Kanter v. Casey*, 43 F.3d 48, 56 (3d Cir. 1994); 5 JAMES WM. MOORE ET AL., MOORE’S FEDERAL PRACTICE ¶ 23.23 (3d ed. 1999). Here, the common issues affecting each Settlement Class member are, *inter alia*: 1) whether Stratfor used reasonable care and commercially reasonable methods to secure and safeguard its subscribers’ personal and financial information; and 2) whether Stratfor’s conduct violated the claims as set forth in the Complaint. Because all members of the Settlement Class provided information to Stratfor at the time of the Breach, questions of fact regarding whether such information was disclosed, and if so, without authorization, and questions of law related to the legality of any alleged disclosure and the adequacy of Stratfor’s security are common to the Settlement Class. Therefore, commonality is satisfied.

c) The Requirement of Typicality is Satisfied

Rule 23(a)(3) requires the class representatives’ claims to be typical of the class’s claims. “[Typicality] is satisfied when each class member’s claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant's liability.” *In re Drexel Burnham Lambert, Group, Inc.*, 960 F.2d 285, 291 (2nd Cir. 1992) (citing *Eisen v. Carlisle & Jacquelin*, 391 F.2d 555, 562 (2d Cir. 1968)), *vacated on other grounds*, 417 U.S. 156 (1974)). Here, Plaintiffs’ claims are typical of the Settlement Class. Sterling was a subscribing member to the Stratfor service as of December 24, 2010. Sterling and Sterling & Sterling, Inc.

have alleged that their sensitive information was disclosed during the unauthorized hack of Stratfor's servers. As such, Plaintiffs' claims are typical of the claims of the Settlement Class.

d) The Requirement of Adequate Representation is Satisfied

Plaintiffs have and will continue to "fairly and adequately protect the interests of the class." FED. R. CIV. P. 23(a)(4). Under Rule 23(a)(4), adequacy of representation is measured by two standards: 1) class counsel must be "qualified, experienced and generally able" to conduct the litigation; and 2) the class members must not have interests that are "antagonistic" to one another. *In re Drexel Burnham Lambert*, 960 F.2d at 291; (citing *Eisen*, 391 F.2d at 562).

Plaintiffs and Class Counsel are adequate representatives of the Settlement Class. Plaintiffs are typical of the Settlement Class and have no interests antagonistic to the members of the Settlement Class. As set forth in more detail below, Plaintiffs' counsel are experienced and qualified to litigate this action. Class Counsel has represented plaintiffs in numerous consumer class actions and have substantial experience in complex litigation.

2. The Class Should Be Certified Because Plaintiffs Have Satisfied all of the Requirements of Rule 23(b)(3)

Certification of a class under Rule 23(b)(3) requires that (1) common questions must "predominate over any question affecting only individual members," and (2) class resolution must be "superior to other available methods for fair and efficient adjudication of the controversy." FED R. CIV. P 23(b)(3). The predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation. *Amchem*, 521 U.S. at 623. "Implicit in the satisfaction of the predominance test is the notion that the adjudication of common issues will help achieve judicial economy." *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996) (citing 1 HERBERT B. NEWBERG & ALBA CONTE, NEWBERG ON CLASS ACTIONS, 4:25 at 4-86 (3d ed. 1992)).

The Settlement Agreement satisfies Rule 23(b)(3) because it resolves legal disputes common to the Settlement Class arising from a set of facts which are common to all members of the class. As detailed above, Plaintiffs' claims are typical of the Settlement Class, because their claims arise from the same breach of Stratfor's servers and subsequent unauthorized disclosure of information to third-parties. Therefore, adjudication of all of the common issues related to the Stratfor Breach as part of one class action will help achieve judicial economy. *See In re Nassau County Strip Search Cases*, 461 F.3d 219, 228 (2d Cir. 2006) (predominance test concerned with dominance of common nucleus of facts and potential legal remedies) (citing *Waste Mgmt. Holdings, Inc. v. Mowbray*, 208 F.3d 288, 299 (1st Cir. 2000)).

The Supreme Court has determined that when evaluating a settlement, courts need not reach the superiority requirement of 23(b)(3). Because the Settlement Agreement obviates further litigation, there is no concern about the manageability of class litigation. *See Amchem*, 521 U.S. at 620 ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, for the proposal is that there be no trial") (citation omitted).

Further, the class settlement under the Settlement Agreement is superior to individual litigation because it resolves the Settlement Class claims and provides relief which simply could not be obtained economically in individual litigation. *See Morangelli v. Chemed Corp.*, 275 F.R.D. 99, 116 (E.D.N.Y. 2011) ("The superiority inquiry directs the Court to compare alternative methods of adjudication. If this evaluation reveals no other 'realistic possibilities,' then the element is satisfied..." (citing C. WRIGHT, A. MILLER & E. COOPER, 17A FEDERAL PRACTICE AND PROCEDURE 3d § 1779 (2011))).

C. The Court Should Appoint Hunter J. Shkolnik and Adam J. Gana as Class Counsel

Rule 23(g) directs the Court to examine, *inter alia*, the following factors when appointing lead counsel: “(i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel’s experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel’s knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class.” FED. R. CIV. P. 23(g)(1)(A).

The Court should appoint Hunter J. Shkolnik and Adam J. Gana of Napoli Bern Ripka Shkolnik, LLP, to serve as class counsel pursuant to Rule 23(g). As set forth in the Napoli Bern’s resume presented to the Court, Napoli Bern has significant experience in class action and complex litigation. (Shkolnik Decl. ¶ 3; Ex. B to Shkolnik Decl.) Proposed Class Counsel has diligently investigated, prosecuted, and settled this action, dedicated substantial resources to the investigation and prosecution of the claims at issue in the action, and demonstrated their knowledge of the facts and law at issue. Accordingly, Napoli Bern satisfies all of the requirements under Fed. R. Civ. P. 23(g)(1)(A).

D. The Court Should Provide Preliminary Approval of the Settlement Agreement

Preliminary approval of a proposed settlement is the first in a two-step process required before a class action may be settled. *In re Nasdaq Mkt.-Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y. 1997) (citing MANUAL FOR COMPLEX LITIGATION (THIRD) § 30.41 (1995)); *see also In re Prudential Sec. Inc. Ltd. P’ships Litig.*, 163 F.R.D. 200, 209 (S.D.N.Y.1995) (preliminary approval determines whether the settlement is “possibly fair, reasonable and adequate”). The Manual for Complex Litigation characterizes the preliminary approval stage as an “initial evaluation” of the fairness of the proposed settlement made by the court on the basis of written submissions and informal presentation from the settling parties. MANUAL FOR COMPLEX LITIGATION (FOURTH)§ 21.632 (2011). “Where the proposed settlement appears to be

the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and falls within the range of possible approval, preliminary approval is granted.” *In re Nasdaq Mkt.-Makers Antitrust Litig.*, 176 F.R.D. at 102 (citing MANUAL FOR COMPLEX LITIGATION, § 30.41).

As shown below, the proposed Settlement Agreement falls well within the range of possible approval, is non-collusive, fair and reasonable, and thus satisfies the requirements of preliminary approval. Further, the Settlement Agreement provides a significant benefit to the Settlement Class by providing various benefits to eligible members, including: 1) one month access to the Stratfor Service free of charge; 2) an “e-book” entitled “The Blue Book” published by Stratfor Enterprises, LLC; 3) one year CSID credit monitoring service offered on December 28, 2011; 4) enhanced data protection services for the future security and safety of subscribers; and 5) insurance proceeds from the Scottsdale Insurance Policy (EKI3034951) if and to the extent recovery is provided. The total estimated value of all of these benefits equals approximately \$7.8 million and is set forth in the Settlement Agreement Section III. At the same time, the Settlement eliminates the substantial risk and delay of litigation.

1. The Settlement is the Result of Arms-Length Negotiations

The first consideration in the preliminary approval analysis is whether the settlement is the result of serious, informed, and non-collusive negotiations. A strong presumption of fairness attaches to proposed settlements that have been negotiated at arms-length. *In re Sterling Foster & Co., Inc., Secs. Litig.*, 238 F.Supp.2d 480, 484 (E.D.N.Y. 2002) (citing *Chatelain v. Prudential-Bache Sec.*, 805 F.Supp. 209, 212 (S.D.N.Y.1992)).

The proposed settlement here is the result of thorough investigation and extensive arms-length negotiations that took place over the course of several months. Plaintiffs’ counsel conducted a detailed investigation into the facts and law relating to the matters alleged in the

amended complaint, which occurred prior to the filing of the original complaint and continued throughout the settlement negotiations. Further, David Sterling and Sterling & Sterling, Inc. conducted extensive research concerning the Stratfor data breach and shared those findings with Plaintiffs' counsel. Thus, Plaintiffs' counsel was fully informed when negotiating the Settlement Agreement.

Throughout negotiations, Stratfor and its Counsel represented to Plaintiffs' counsel that if a settlement was not reached expeditiously, then Stratfor's financial position would continue to deteriorate and it would not be able to satisfy its financial obligations, including litigation costs, accounts payable and payroll. Don Kuykendall and Isaiah Massey Affidavit ¶ 15. Stratfor executives, Don Kuykendall and Isaiah Massey, represented the following:

There are not adequate funds within Company in its current state to meet any requirements under a settlement of this litigation. Such settlement funds will result exclusively from an additional equity/debt raise, and any such infusion of new capital would be contingent upon a complete settlement agreement and subsequent approval by the courts.

Id. As a result, both parties recognized the value in resolving this matter expeditiously.

The parties' settlement negotiations culminated in mediation before David R. Cohen, Esq. (Federal Special Master) on April 3, 2012. Shkolnik Decl. ¶ 6. The parties negotiated attorneys' fees only after they had agreed on all of the other material elements of the settlement.

Id. Accordingly, the settlement is the result of extensive arms-length negotiations.

2. The Settlement Falls Within the Range of Possible Approval

The Settlement Agreement achieves the primary objectives of the litigation. This case arose from the unauthorized disclosure of personal and financial information from Stratfor's servers. Plaintiffs' amended complaint alleged that Stratfor's negligent actions or omissions in maintaining their security system led to this disclosure. Further, Plaintiffs alleged that they were

denied their contractually guaranteed access to the server for a period of time in January while Stratfor worked to repair the site. While Defendants deny liability, and the Settlement Agreement explicitly does not establish liability, the benefits to the class directly relate to the claims alleged in the amended complaint. The benefits include 1) access to the Stratfor Service for one month free of charge; 2) an “e-book” entitled “The Blue Book” published by Stratfor Enterprises, LLC; 3) one year CSID credit monitoring service offered on December 28, 2011; 4) enhanced data protection services for the future security and safety of subscribers; and 5) insurance proceeds from the Scottsdale Insurance Policy (EKI3034951), if and to the extent recovery is provided. Thus, eligible class members receive more secure access to the Stratfor service due to the credit monitoring and the enhanced data protection services, and they receive access to the Stratfor service for free for one month, which exceeds the amount of time the Stratfor website was down.

Plaintiffs’ counsel, a law firm with a great deal of experience in the prosecution and resolution of class actions and complex consumer litigation, has carefully evaluated the merits of this case and the proposed settlement. Even if this matter were to proceed to trial, Plaintiffs’ counsel acknowledges that there is no assurance that they will prevail. Furthermore, even if a judgment were obtained against Defendant at trial, the relief might be no greater, and indeed might be less, than that provided by the proposed Settlement Agreement. Moreover, Stratfor’s precarious financial condition and its likelihood of entering bankruptcy should this action fail to settle significantly increases the risks of litigating the action. The Settlement Agreement guarantees significant benefits to the class; litigation may have left them with nothing. Accordingly, the Court should provide preliminary approval of the Settlement Agreement. *Ecolab, Inc.*, 2009 U.S. Dist. LEXIS at *15 (“If, after a preliminary evaluation of the proposed settlement, the court finds that it ‘appears to fall within the range of possible approval,’ the court

should order the class members receive notice of the settlement.” (*citing* NEWBERG ON CLASS ACTIONS, *supra*, § 11.25)).

THE PROPOSED PLAN OF CLASS NOTICE

“The court may direct appropriate notice to the class.” *Parker v. Time Warner Entm’t Co., L.P.*, 239 F.R.D. 318, 330 (E.D.N.Y. 2007) (*citing* FED. R. CIV. P. 23(a)). Rule 23(c)(2)(B) states, “For any class certified under Rule 23(b)(3), the court must direct to class members the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” FED. R. CIV. P. 23(c)(2)(B). Rule 23(e)(B) similarly states, “The court must direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, voluntary dismissal, or compromise.” Fed. R. Civ. P. 23(e)(B).

Here, the parties propose an extensive notice campaign that is designed to reach as many members of the Settlement Class as possible. Notice shall be disseminated in two ways: 1) a third-party website created to provide neutral information about the settlement and containing the Notice of Proposed Class Action Settlement (the “Settlement Website”); and 2) a notification, emailed by Stratfor to all members of the Settlement Class whom Stratfor can identify through reasonable efforts, which email notification shall include a hypertext link to the Settlement Website. Under the Settlement Agreement, the costs associated with the Settlement Website and the fees and costs of the Class Action Administrator, including payment for Notice-related work, shall be paid out of the Common Fund. (¶ V.B). The proposed methods of notice comport with Rule 23 and the requirements of due process and should be approved by the Court.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully ask that the Court grant preliminary approval of the proposed settlement and enter the proposed Preliminary Order in Connection with Settlement Proceedings, submitted herewith.

Dated: New York, New York
May 14, 2012

Respectfully submitted,
NAPOLI BERN RIPKA SHKOLNIK, LLP

/s/ Hunter J. Shkolnik
Hunter J. Shkolnik (HS4854)
Adam J. Gana, Esq. (AG 1980)
350 Fifth Avenue, Suite 7413
New York, New York 10118
Tel: 212-267-3700
Fax: (212) 587-0031


Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 14, 2012 I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will electronically mail notification of such filing to all counsel of record who have appeared in this case.

Date: May 14, 2012

NAPOLI BERN RIPKA SHKOLNIK LLP

By: 
Rachel Allen
350 Fifth Avenue, Suite 7413
New York, New York 10118
(212) 267-3700
rallen@napolibern.com

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

-----X
DAVID STERLING, an Individual and
STERLING & STERLING, INC., a corporation on
behalf of themselves and others similarly situated,

Plaintiffs,

v.

STRATFOR ENTERPRISES, LLC, STRATEGIC
FORECASTING, INC., and GEORGE FRIEDMAN

Defendants.
-----X

CIVIL ACTION NO.:
2:12-CV-00297(DRH-ARL)

Judge Denis R. Hurley

**DECLARATION OF
HUNTER J. SHKOLNIK**

Hunter J. Shkolnik, pursuant to 28 U.S.C. § 1746 this 14th of May, 2012, declares that the following is true and correct under penalty of perjury:

1. I am a senior partner at Napoli Bern Ripka Shkolnik, LLP (“Napoli Bern”). I submit this declaration in support the motions for preliminary approval of class certification, appointment of class counsel and class action settlement.

2. Napoli Bern concentrates on various types of complex consumer law class action litigation on a national and international basis.

3. Both my firm and I have served as class counsel in numerous consumer cases similar to this case. Attached hereto as Exhibit B is a copy of Napoli Bern Ripka Shkolnik, LLP’s (“Napoli Bern”) firm resume.

4. As part of the proposed settlement in this matter, Napoli Bern will receive reasonable attorneys’ fees. The parties did not agree on attorneys’ fees and costs until after we reached agreement on the substantive terms of the settlement.

5. My firm has been involved in researching and prosecuting the case against the above-referenced Defendants since approximately January 2011. Napoli Bern will provide the

Court with a final accounting of all attorneys' fees, an amount not to exceed the parameters outlined in Section X of the Settlement Agreement.

6. Since March 2012, Adam Julien Gana, Senior Litigation Counsel at my firm, and I have engaged in in-person and telephonic discussions with defense counsel on a variety of subjects, including potentially resolving this action prior to trial. Accordingly, on April 3, 2012, the parties reached a settlement through mediation before David R. Cohen, Esq. (Federal Special Master). The settlement is the product of extensive and arms-length negotiations. Attached hereto as Exhibit A is a copy of the Settlement Agreement and all Exhibits thereto (A-C).

7. I declare under penalty of 28 U.S.C. § 1746 that the foregoing is true and correct.

Dated: New York, New York
May 14, 2012

Respectfully submitted,
NAPOLI BERN RIPKA SHKOLNIK, LLP

/s/ Hunter J. Shkolnik
Hunter J. Shkolnik (HS4854)
Adam J. Gana, Esq. (AG 1980)
350 Fifth Avenue, Suite 7413
New York, New York 10118
Tel: 212-267-3700
Fax: (212) 587-0031

Attorneys for Plaintiffs

EXHIBIT A

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is entered into as of May 1, 2012, by and among the following Settling Parties: (a) David Sterling, individually and on behalf of Sterling & Sterling, Inc. and the Settlement Class (“Plaintiffs”), by and through Napoli Bern Ripka Shkolnik, LLP, proposed Class Counsel to Plaintiffs; and (b) George Friedman, Stratfor Enterprises, LLP, and Strategic Forecasting, Inc. (“Defendants”) (collectively with Plaintiffs the “Parties”). The Parties agrees as follows:

WHEREAS, a purported class action complaint was filed by Plaintiffs in *Sterling v. Stratfor Enterprises, LLC, et al.*, Case No. 2:12-cv-00297-DRH-ARL (E.D.N.Y.) for violations of (i) the Stored Communications Act, 18 USC § 2701 *et seq*; (ii) violation of New York General Business Law §§ 349 and 350; (iii) breach of contract; (iv) quasi contract; and (v) negligence, and Plaintiffs might have amended their Complaint to add other claims if this settlement had not been reached; and

WHEREAS, the Parties have engaged in extensive, arms-length negotiations, for a period of approximately two months, including a mediation conducted on April 3, 2012, before David R. Cohen, Esq. (Federal Special Master) and the Parties agree that this Settlement Agreement satisfies the obligations undertaken in the Parties’ Memorandum of Understanding of Proposed Settlement executed on April 4, 2012; and

WHEREAS, Class Counsel has conducted significant investigations and analyzed and evaluated the merits of the claims made to date against Defendants in the Action, and the impact of this Agreement on Plaintiffs and the Class, and based upon their analysis and their evaluation of a number of factors, including Defendants’ financial health and recognizing the substantial risks of continued litigation, including the possibility that the Action, if not settled now, might

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not result in any recovery whatsoever for the Class, or might result in a recovery that is less favorable to the Class, and that any recovery would not occur for several years, Class Counsel are satisfied that the terms and conditions of this Agreement are fair, reasonable, and adequate and that this Agreement is in the best interests of the Class; and

WHEREAS, Defendants, while denying any alleged wrongdoing or liability whatsoever, have similarly concluded that this Agreement is desirable in order to avoid the time, risk, and expense of protracted litigation, and to resolve finally and completely the pending and potential claims of Plaintiffs and the Class; and

WHEREAS, the Parties agree that all potential Settlement Class members shall have an individual right to be excluded (“opt out”) from the Settlement Class (as provided in this Agreement), such that participation in the settlement benefit shall be voluntary;

NOW THEREFORE, subject to Court approval and the other conditions set forth herein, it is hereby agreed by the Parties that, in consideration of the undertakings, promises, and payments set forth in this Agreement and upon the entry by the Court of a Final Order and Judgment approving the settlement and directing the implementation of the terms and conditions of this Agreement, the Action shall be settled and compromised upon the terms and conditions set forth below.

I. DEFINITIONS

- A. “Action” means Case No. 2:12-cv-00297-DRH-ARL, *Sterling et al. v. Strategic Forecasting, Inc. et al.*; U.S. District Court, Eastern District of New York.
- B. “Administrative Expenses” means all reasonable expenses associated with administration of the Agreement.

- C. "Agreement" or "Settlement Agreement" means this Settlement Agreement, including all exhibits hereto.
- D. "Class" or "Class Members" or "Settlement Class" means all persons, corporations, or entities who were current or former subscribers to the Stratfor Service on December 24, 2011.
- Excluded from the Class are: (1) Defendants, or any entity in which Defendants have a controlling interest, and their respective legal representatives, officers, directors, employees, assigns and successors; (2) the judge to whom this case is assigned and any member of the judge's staff and immediate family; and (3) any person who, in accordance with the terms of this Agreement, properly executes and submits a timely request for exclusion from the Class.
- E. "Class Action Administrator" means a mutually agreeable party, to be appointed by the Court, who will facilitate administrative matters and distribution of class consideration under the direction of Class Counsel, and who will be paid from the Common Fund.
- F. "Class Counsel" means Plaintiffs' counsel, Napoli Bern Ripka Shkolnik LLP.
- G. "Class Representatives" means David Sterling and Sterling & Sterling, Inc.
- H. "Common Fund" means the total payment described in subsection III(G) .
- I. "Court" means the United States District Court for the Eastern District of New York.
- J. "Defendants' Counsel" means Jackson Walker L.L.P.

- K. “Fairness Hearing” means the settlement approval hearing(s) to be conducted by the Court in connection with the final determination that the Agreement is fair, reasonable, and adequate and in the best interest of the Class as a whole.
- L. “Final Order and Judgment” means the order entered by the Court, in a form that is mutually agreeable to the Parties.
- M. “Notice Date” means the first day on which the email referred to in Section V(A) is sent.
- N. “Notice of Proposed Class Action Settlement” means the Notice of Pendency of Class Action, Proposed Settlement and Hearing, in a form agreed to by the Parties, and substantially in the form attached hereto as Exhibit A.
- O. “Opt-out Deadline” means the deadline for a Class Member to opt out of the settlement as set forth in Section VI of this Agreement and in the Preliminary Approval Order and which shall be sixty (60) Days from the date of entry of the Preliminary Approval Order.
- P. “Party” or “Parties” means Plaintiffs, Class Members, and Defendants, or each of them.
- Q. “Person” means an individual or legal entity, including an association, or his, her, or its respective successors or assigns.
- R. “Plaintiffs” means the named Plaintiffs in the Action.
- S. “Preliminary Approval Order” means the Court’s Order granting preliminary approval of this Agreement, approving the Notice of Proposed Class Action Settlement and the manner of providing notice to the Class, and setting forth a schedule for briefing regarding the fairness of the settlement and dates for

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submitting exclusion requests and the Fairness Hearing, in a form as agreed to by the Parties. The proposed form of the Preliminary Approval Order is attached hereto as Exhibit B.

- T. “Released Party(ies)” means Defendants, their predecessors, successors, assigns, their past, present and future parents, subsidiaries, affiliates, divisions, departments, and all of the past, present and future officers, directors, employees, stockholders, partners, agents, servants, successors, attorneys, auditors, consultants, representatives, and subrogees, of any and all of the forgoing. It is expressly understood that Scottsdale is not a Released Party.
- U. “Releasing Parties” means Class Members and their respective heirs, administrators, devisees, predecessors, successors, attorneys, representatives, shareholders, partners, directors, officers, owners, affiliates, subrogees, assignees, or insurers.
- V. “Request for Exclusion” is the written communication that must be filed with the Claims Administrator that is postmarked on or before the end of the Opt Out Period if a Class member wants to be excluded from the Settlement Class.
- W. “Scottsdale” means Scottsdale Indemnity Company
- X. “Scottsdale Policy” means Scottsdale Business and Management Indemnity Policy with Scottsdale Indemnity Company, Policy Number EKI3034951, attached hereto as Exhibit C.
- Y. “Scottsdale Action” means the lawsuit described in subsection III(F) of this Agreement.

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Z. “Settled Claims” means any claim, Unknown Claim, allegation, right, demand, action or cause of action for damages of any kind (including, but not limited to, compensatory, consequential, special, statutory, exemplary or punitive), injunctive relief, penalties, administrative remedies, or other form of relief based upon any statute, common law principle, rule or regulation of any governmental, regulatory or self-regulatory authority or organization or any other legal theory whatsoever, whether known or unknown, asserted or unasserted, latent or patent that (i) is, has been or could have been asserted by the Releasing Parties against the Released Parties arising from or relating to any of the matters, events or facts alleged in the Action and/or (ii) arises from or relates in any way to an alleged unauthorized disclosure to, or unauthorized acquisition by, any Person on or before December 24, 2011 of any information provided to Defendants by Plaintiffs and/or Settlement Class Members, including but not limited to claims based upon any statements or alleged misrepresentations or omissions in Defendants’ privacy statement and/or any alleged increased risk of identity theft or actual identity theft. Settled Claims shall not release or discharge any liability for: (1) actions by governmental or state authorities; and (2) actions for personal injuries or death.

AA. “Settlement Date” means the later of (1) the date on which the Final Order and Judgment, after entry by the Court, becomes final by expiration of the time for appeal; (2) the date the mandate issues if the Final Order and Judgment is appealed and is affirmed in full; or (3) the date the Parties elect to proceed with

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the Agreement under subsection XI(B) if the Final Order and Judgment is appealed and is not affirmed in full.

- BB. "Stratfor" means Stratfor Enterprises, LLC, Strategic Forecasting, Inc., Stratcap Management Company, LLC, and Stratfor Holdings, LLC, and all officers and directors of Stratfor Enterprises, LLC, Strategic Forecasting, Inc., Stratcap Management Company, LLC, and Stratfor Holdings, LLC.
- CC. "Stratfor Service" or "the Service" means access to the geopolitical analysis provided by Stratfor Enterprises, LLC, since August 1, 2011, and as provided by Strategic Forecasting, Inc., prior thereto, as governed by the terms in the Individual and Enterprise Licenses attached here as Exhibits D and E respectively
- DD. "Unknown Claim" means any claim arising out of newly discovered facts and/or facts not now known but which could reasonably be discovered, and/or facts found hereafter to be other than or different from the facts now believed to be true.

II. SETTLEMENT PURPOSES ONLY

- A. This Agreement is for settlement purposes only, and to the fullest extent permitted by law neither the fact of, nor any provision contained in, this Agreement or its attachments, nor any action taken hereunder, shall constitute, be construed as, or be admissible in evidence as any admission of the validity of any claim or any fact alleged by Plaintiffs in the Action or in any other pending or subsequently filed action or of any wrongdoing, fault, violation of law, or liability of any kind on the part of Defendants or admission by any of the Parties of the validity or lack

thereof of any claim, allegation, or defense asserted in the Action or in any other action.

- B. For settlement purposes only, the Parties stipulate to the certification of the Settlement Class.
- C. Further, the Parties stipulate to the appointment of the named Plaintiffs as the Class Representatives of the Settlement Class and subclasses, and to appointment of Lead and Class Counsel as Plaintiffs' counsel for the Settlement Class. Simultaneously with the motion for certification of the Settlement Class, the Parties will cooperate with each other in good faith and present the Settlement Agreement to the Eastern District of New York for preliminary approval.
- D. This Agreement is without prejudice to the rights of Defendants to (i) oppose Class certification in this Action if this Agreement is not approved or implemented for any reason; (ii) oppose certification in any other proposed or certified class action, or (iii) use the certification of the Class to oppose certification of any other proposed or existing class.

III. RELIEF

Defendants have agreed to take the following actions, provided the Court approves this Agreement and enters the Final Order and Judgment.

- A. For all members of the Class who were current paying subscribers to the Stratfor Service on December 24, 2011, whose credit card information Stratfor had on file on December 24, 2011, and whose credit card information was obtained by third-parties due to the breach of Stratfor's computer storage systems, Defendant Stratfor Enterprises, LLC shall offer one month of access to the Stratfor Service

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free of charge at an approximate value of twenty nine dollars and eight cents (\$29.08) per qualifying Class Member, which is equal to nine hundred fifty-four thousand six hundred and ninety six dollars and forty cents (\$954,696.40) in the aggregate for all potential qualifying Class Members.

- B. For all members of the Class who were not paying subscribers to the Service on December 24, 2011 but who were former paying subscribers, whose credit card information Stratfor had on file on December 24, and whose credit card information was obtained by third-parties due to the breach of Stratfor's computer storage systems, if those qualifying members re-subscribe with Stratfor for an annual subscription, Defendant Stratfor Enterprises, LLC shall offer one month of access to the Stratfor Service free of charge at an approximate value of twenty nine dollars and eight cents (\$29.08) per qualifying Class Member. If all qualifying Class Members resubscribe, the value of this offer in the aggregate is approximately seven hundred ninety thousand one hundred and three dollars and sixty cents (\$790,103.60). Defendant Stratfor Enterprises, LLC shall make best efforts to identify those qualifying Class Members who re-subscribe with Stratfor Enterprises, LLC for an annual subscription, with the caveat that technological impediments may render it impossible to do so with complete accuracy.
- C. For all current or former paying subscribers to the Stratfor Service on December 24, 2011, whose credit card information Stratfor had on file on December 24, 2011, and whose credit card information was obtained by third-parties due to the breach of Stratfor's computer storage systems, Defendant Stratfor Enterprises, LLC shall offer, at no cost to the Plaintiffs, an "e-book"

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entitled "The Blue Book" published by Stratfor Enterprises, LLC at an approximate value of twelve dollars and ninety nine cents (\$12.99) (exclusive of tax and shipping) per Class Member, which is equal to seven hundred seventy nine thousand four hundred dollars (\$779,400.00) in the aggregate for the Class.

- D. Defendant Stratfor Enterprises, LLC shall continue the one year CSID credit monitoring service offered on December 28, 2011, by Stratfor Enterprises, LLC at a cost of one hundred seventy eight thousand two hundred dollars (\$178,200.00) to those subscribers who affirmatively requested it, and lasting until the previously established date the credit monitoring service was to expire.
- E. Defendant Stratfor Enterprises, LLC, to ensure the future security of subscribers to the Stratfor Service, has pursued or will pursue the engagement of SecTheory to provide IT Security at a value of eighteen thousand nine hundred dollars (\$18,900.00); Verizon Wireless, provider of IT Security, at a value of one hundred eighty thousand eight hundred fifty four dollars and sixty two cents (\$180,854.62); Tag1, providers of IT Performance and Development at a value of twenty four thousand six hundred fifteen dollars and thirty four cents (\$24,615.34); and Acquia, provider of IT Data Migration and Development at a value of four hundred seventy six thousand and sixty two dollars (\$476,062.00).
- F. Subject to the limitations contained in this paragraph, Defendants shall pay over to Plaintiffs all of the insurance proceeds from the Scottsdale Policy if and to the extent recovered as provided herein. Such amounts recovered (after costs and attorneys' fees) shall be equally distributed amongst all Class Members who were current or former paying subscribers to the Stratfor Service as of December 24,

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2011, whose credit card numbers Stratfor had on file on December 24, 2011, and whose credit card information was obtained by third-parties due to the breach of Stratfor's computer storage systems. George Friedman agrees to bring an action against Scottsdale, if necessary, to enforce any and all rights under the policy terms of the Scottsdale Policy arising out of the action and agrees to assist Plaintiffs' counsel as reasonably required in obtaining monies with respect thereto under the Scottsdale Policy. Plaintiffs agree that any settlement or judgment reached in the Scottsdale Action shall not include any recovery, directly or indirectly, against any directors or officers of Stratfor, and that they shall not pursue and shall release any and all claims against the directors and officers of Stratfor. The Parties further agree that no action against Scottsdale shall be brought until the Final Order and Judgment in this Lawsuit has been entered with the Court and that Plaintiffs will bear all of the costs of the Scottsdale Action. Nothing in this Settlement Agreement may be interpreted or understood to mean that the Settlement Agreement is conditioned or dependent upon the successful outcome of any potential action taken against Scottsdale seeking recovery under the Policy. The Parties also agree that Plaintiffs' Counsel will represent George Friedman in the Scottsdale Action, that Plaintiffs' Counsel retains complete and sole discretion whether and on what terms to settle or litigate the Scottsdale Action, subject to the limitations in this paragraph, and that Plaintiffs' Counsel will be entitled to a fee of 1/3 of the amount recovered from the Scottsdale Action. Stratfor reserves all other rights and claims under the Scottsdale policy to the extent they do not conflict with the rights granted pursuant to this Agreement.

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- G. Defendant Stratfor Enterprises, LLC, agrees to and shall deposit in an interest-bearing bank account established by Stratfor Enterprises, LLC, the total sum of Four Hundred Thousand Dollars (\$400,000.00) as a Common Fund for Class Administrator fees and expenses related to notice and claims administration, attorneys' fees and costs, and payment of \$10,000 total to David Sterling and Sterling & Sterling, Inc. as lead plaintiffs. The first installment of One Hundred Fifty Thousand Dollars (\$150,000.00) shall be deposited within ten (10) business days of entry of the Preliminary Approval Order. The remainder shall be deposited within thirty (30) days after entry of the Final Order and Judgment. The interest earned on such deposits shall accrue to the benefit of the Common Fund. The Class Action Administrator will maintain control over the Common Fund and shall be responsible for all disbursements. In the event that Class Administration fees and costs exceed \$400,000, Plaintiffs shall pay for all excess fees and costs. In addition, under no circumstances will Defendants have any liability for taxes or tax expenses under this Settlement Agreement. All monies in the Common Fund shall be paid out in full, and no monies shall revert to Stratfor Enterprises, LLC, unless the Court rejects the Final Order and Judgment, in which case all monies paid into the Common Fund shall immediately be returned to Stratfor Enterprises, LLC.
- H. The Parties shall have no other financial obligations other than those specified in subsections III(A)-III(G) above.

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IV. SUBMISSION TO COURT FOR PRELIMINARY APPROVAL

A. Upon execution of this Agreement by both Parties, Class Counsel shall submit this Agreement to the Court and request that the Court enter the Preliminary Approval Order. This Agreement is subject to and conditioned upon judicial approval with all applicable procedural and due process requirements being satisfied and the issuance of the Final Order and Judgment granting final approval of this Agreement.

V. NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

A. The notice program and content shall be submitted for Court approval through the Preliminary Approval order and shall consist of the following: (1) a third-party website created to provide neutral information about the settlement and containing the Notice of Proposed Class Action Settlement (the "Settlement Website"); and (2) a notification, emailed by Stratfor to all Class Members whom Stratfor can identify through reasonable efforts, which email notification shall include a hypertext link to the Settlement Website.

B. The notice program set forth in paragraph V(A) above, shall be established, and the emails sent, within thirty (30) days of entry of the Preliminary Approval Order. Notice under V(A)(2) above and the costs associated with the Settlement Website and the fees and costs of the Class Action Administrator, including payment for Notice-related work, shall be paid out of the Common Fund. Notwithstanding section III(G), any amounts expended on the notice described in paragraph V(A) are non-refundable to Defendants even if the Court does not enter the Final Order and Judgment.

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- C. The Settlement Website shall (1) notify Class Members of their rights to object or opt out; (2) notify Class Members that no further notice will be provided to them that the settlement has been approved; and (3) inform Class Members that they should monitor the settlement information website for developments. The notice shall provide that any objection to the proposed Settlement Agreement, and any papers submitted in support of said objection, shall be received by the Court at the Fairness Hearing, only if, on or before a date to be specified in the Class Notice, the Person making an objection shall file notice of his or her intentions to do so and shall file copies of such papers he or she proposes to submit at the hearing with the Clerk of the Court on or before the dates specified in the Class Notice
- D. Within ten (10) days after the filing of this Agreement with the Court, Stratfor shall notify the appropriate state and federal officials of this Agreement pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

VI. CLASS MEMBERS' RIGHT OF EXCLUSION/INCLUSION

- A. Except for those Persons who properly request exclusion as described below, all members of the Class will be deemed Class Members for all purposes under this Agreement. Any Person who properly requests exclusion shall not be entitled to relief under, and shall not be affected by, this Agreement or any relief provided by this Agreement.
- B. A Class Member may request exclusion from the Class up until the Opt-Out Deadline. To request exclusion, the Class Member must complete, sign, and mail to the Class Action Administrator a Request for Exclusion. The Request must be

signed by the Class Member under penalty of perjury. The Request must be postmarked on or before the Opt-Out Deadline.

- C. The Parties shall have the right to challenge the timeliness and validity of any exclusion request. The Court shall determine whether any contested exclusion request is valid.
- D. Within ten (10) days after the Opt-Out Deadline, the Class Action Administrator, will provide to Defendants a list of all Persons who opted out by validly requesting exclusion. In the event that 10% or more of Class Members opt-out of the Settlement, Defendants may elect to terminate this Agreement on the ground that exclusion at that level threatens to frustrate the essential purpose of this Agreement. Defendants may exercise their right to terminate under this subsection by notifying Class Counsel of its election no later than seven (7) days after receipt of the list of Persons who opted out.

VII. OBJECTIONS

- A. Any Class Member who does not file a timely written request for exclusion may object to the fairness, reasonableness or adequacy of the Settlement. Class Members may not seek to exclude themselves from the Class and file an objection to the Settlement.
- B. Any Class Member who wishes to object to any aspect of the Settlement must deliver to Class Counsel and Defendants' Counsel as set forth in subsection XIII(K) below, no later than 21 days before the Fairness Hearing, and file with the Court, no later than 21 days before the Fairness Hearing, a written statement of the objection(s). The written statement of the objection(s) must include (a) a

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detailed statement of the Class Member's objection(s), as well as the specific reasons, if any, for each objection, including any evidence and legal authority the Class Member wishes to bring to the Court's attention and any evidence the Class Member wishes to introduce in support of his/her objection(s); (b) the Class Member's name, address and telephone number; and (c) information demonstrating that the Class Member is entitled to be included as a member of the Class.

- C. Class Members may raise an objection either on their own or through an attorney hired at their Class Members' own expense. If a Class Member hires an attorney other than Class Counsel to represent him or her, the attorney must (a) file a notice of appearance with the Clerk of Court no later than 21 days before the Fairness Hearing or as the Court otherwise may direct, and (b) deliver a copy of the notice to Class Counsel and Defendants' Counsel, as set forth in subsection XIII(K) below, no later than 21 days before the Fairness Hearing. Class Members, or their attorneys, intending to make an appearance at the Fairness Hearing, must deliver to Class Counsel and Defendants' Counsel, and file with the Court, no later than 21 days before the Fairness Hearing or as the Court otherwise may direct, a notice of their intention to appear at the Fairness Hearing.
- D. Any Class Member who fails to comply with the provisions of the preceding subsections shall waive and forfeit any and all rights he or she may have to appear separately and/or object, and shall be bound by all the terms of this Settlement and by all proceedings, orders, and judgments in the Action.

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VIII. EXCLUSIVE REMEDY; DISMISSAL OF THE ACTION; JURISDICTION OF THE COURT

- A. This Agreement shall be the sole and exclusive remedy for any and all Settled Claims of Class Members. Upon entry of the Final Order and Judgment, each Class Member shall be barred from initiating, asserting, or prosecuting against Stratfor any Settled Claims that are released by operation of this Agreement and the Final Order and Judgment. In the event any Class Member attempts to prosecute an action in contravention of the Final Order and Judgment, counsel for any of the Parties may forward this Agreement and the Final Order and Judgment to such Class Member and advise him, her, or it of the releases provided pursuant to this Agreement. If so requested by Stratfor or counsel for Stratfor, Class Counsel shall provide this notice.
- B. Upon entry of Final Order and Judgment, the Action shall be dismissed with prejudice.
- C. Upon entry of the Final Order and Judgment, Stratfor shall within ten (10) days move to dismiss Civil Action No. 1:12-cv-125, *Stratfor Enterprises, LLC, et al. v. Sterling et al.*, U.S. District Court, Western District of Texas.
- D. The Court retains exclusive and continuing jurisdiction over the Action and all Parties to interpret and enforce the terms, conditions, and obligations of this Agreement.

IX. RELEASES

- A. Upon entry of the Final Order and Judgment, and regardless of whether any Class Member executes and delivers a written release, each Releasing Party shall be deemed to release and forever discharge Stratfor from any and all Settled Claims.
- B. The Releasing Parties shall, by operation of the Final Order and Judgment, be deemed to assume the risk that facts additional, different, or contrary to the facts which each believes or understands to exist, may not exist or may be discovered after the release set forth in this Agreement becomes effective, and the Releasing Parties shall, by operation of the Final Order and Judgment, be deemed to have agreed that any such additional, different, or contrary facts shall in no way limit, waive, or reduce the foregoing releases, which shall remain in full force and effect.
- C. Nothing in this Agreement shall be construed in any way to prejudice or interfere with any Releasing Party's ability to pursue his, her, or its rights under any applicable insurance policies, with the exception of the rights as set forth in subsection III(F).

X. CLASS COUNSEL FEES

- A. Class Counsel may apply to the Court for a determination of their reasonable attorneys' fees and costs. Class Counsel agrees that it will seek up to, but not exceeding the amount remaining in the Common Fund after the payment of the Class Administrator's fees and all fees and costs related to class administration, and also 1/3 of any insurance proceeds recovered from the Scottsdale Action, as stated in subsection III(F). Defendants will not object to this amount. Attorneys'

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fees and costs as awarded by the Court in this Action shall be paid out of the Common Fund by the Class Action Administrator at the close of the class administration. Any attorneys fees earned or awarded in pursuit of insurance proceeds in the Scottsdale Action shall not be paid out of the Common Fund.

- B. Except as otherwise provided in this section, each Party will bear its own costs, including attorneys' fees, incurred in connection with this Action.

XI. TERMINATION OF THE AGREEMENT

- A. The performance of this Agreement is expressly contingent upon entry of the Final Order and Judgment. If the Court fails to issue the Final Order and Judgment following conclusion of the Fairness Hearing, or if Defendants terminate the Agreement as provided in subsection VI(D), the Agreement will be terminated.
- B. If the Final Order and Judgment is materially vacated, modified, or reversed, in whole or in part, the Agreement will be deemed terminated, unless, within thirty (30) days of receipt of such ruling, Plaintiffs (through Class Counsel) and Defendants each provide written notice to proceed with the Agreement as modified by the Court or on appeal.
- C. If this Agreement is terminated pursuant to this section or subsection VI(D), it will have no force or effect whatsoever, shall be null and void, and will not be admissible as evidence in any pending or future litigation in any jurisdiction.

XII. CONFIDENTIALITY

Other than responses to inquiries from governmental entities, publication of Notice of Proposed Class Action Settlement, or as necessary to comply with federal and state tax

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and securities law, no Party shall initiate any publicity relating to or make any public comment regarding this Settlement Agreement until the Final Order and Judgment is entered by the Court.

XIII. MISCELLANEOUS PROVISIONS

- A. This Agreement, including all attached exhibits, shall constitute the entire Agreement among the Parties with regard to the subject matter of this Agreement and shall supersede any previous agreements or understandings between the Parties, including but not limited to the Memorandum of Understanding executed on April 4, 2012.
- B. This Agreement may not be changed, modified, or amended except in writing signed by Class Counsel and Defendants' counsel, subject to Court approval if required.
- C. Each Party represents and warrants that it enters into this Agreement of his, her, or its own free will. Each Party is relying solely on its own judgment and knowledge and is not relying on any statement or representation made by any other Party or any other Party's agents or attorneys concerning the subject matter, basis, or effect of this Agreement.
- D. This Agreement has been negotiated at arms' length by Class Counsel and Defendants' counsel. In the event of any dispute arising out of this Agreement, or in any proceeding to enforce any of the terms of this Agreement, no Party shall be deemed to be the drafter of this Agreement or of any particular provision or provisions, and no part of this Agreement shall be construed against any Party on the basis of that Party's identity as the drafter of any part of this Agreement. Any

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and all ambiguities regarding whether a claim, controversy or dispute has been settled, plus any ambiguities regarding whether a person is covered by this Agreement, shall be resolved in favor of settlement and/or coverage.

- E. The Parties agree to cooperate fully and to take all additional action that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.
- F. This Agreement shall be binding upon and inure to the benefit of all the Parties and their respective representatives, heirs, successors, and assigns.
- G. The headings of the section of this Agreement are included for convenience only and shall not be deemed to constitute part of this Agreement or to affect its construction.
- H. Prior to pursuing relief or submitting any dispute relating to this Settlement Agreement to the Court, the Parties agree to mediate the dispute before David R. Cohen, Esq. (Federal Special Master). In the event that the Parties cannot resolve a dispute relating to this Settlement through mediation, the Parties agree to bring the dispute before the Eastern District of New York. This Settlement shall be construed under and governed by the laws of the State of Texas, applied without regard to laws applicable to choice of law. All Parties to this Settlement Agreement consent to jurisdiction before the Eastern District of New York for the purposes of resolving any disputes related to this Settlement. Should the Court not enter the Final Order and Judgment, the Parties expressly reserve the right to contest jurisdiction, venue, and choice of law in any further proceedings..

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- I. If any provision, paragraph, section, subsection, or other portion of this Agreement is found to be void (except for Section IX), all of the remaining provisions of this Agreement shall remain in full force and effect.
- J. Any notice, instruction, court filing, or other document to be given by any Party to any other Party shall be in writing and delivered by: (a) email; and (b) personally, or sent by registered or certified mail postage prepaid, or by overnight delivery service to the respective representative identified below or to other recipients as the Court may specify. As of the date of this Agreement, these respective representatives are as follows:

For the Class:

Hunter J. Shkolnik
Adam J. Gana
Napoli Bern Ripka Shkolnik, LLP
350 Fifth Avenue, Suite 7413
New York, NY 10118
Hunter@napolibern.com
agana@napolibern.com

For Defendants:

Bill Cobb
Jackson Walker L.L.P.
100 Congress Avenue, Suite 1100
Austin, Texas 78701
bcobb@jw.com

- K. The Parties each represent and warrant that they have not sold, assigned, transferred, conveyed, or otherwise disposed of any claim or demand covered by this Agreement.

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L. The signatories to this Agreement represent that they have been duly authorized to execute this Agreement on behalf of the Parties they purport to represent.

M. This Agreement may be executed by the Parties in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

Dated this 1st day of May, 2012.

By: 

Hunter J. Shkolnik (NY Bar No. HS4854)
Adam J. Gana (NY Bar No. AG1822)
Napoli Bern Ripka Shkolnik, LLP
350 Fifth Avenue, Suite 7413
New York, NY 10118
(212) 267-3700 (Phone)
(212) 587-0031 (Fax)

**PROPOSED CO-LEAD ATTORNEYS
PLAINTIFFS FOR THE CLASS**

By: 

Bill Cobb (TX Bar No. 00796372)
Jackson Walker L.L.P.
100 Congress Avenue, Suite 1100
Austin, TX 78701
(512) 236-2326 (Phone)
(512) 691-4446 (Fax)

**PROPOSED LEAD ATTORNEYS FOR THE
DEFENDANTS GEORGE FRIEDMAN,
STRATFOR ENTERPRISES, LLP, AND
STRATEGIC FORECASTING, INC.**

SETTLEMENT AGREEMENT

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY _____
DEPUTY

STRATFOR ENTERPRISES, LLC AND
STRATEGIC FORECASTING, INC.,

Plaintiffs,

vs.

DAVID STERLING AND STERLING &
STERLING, INC.,

Defendants.

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CIVIL ACTION NO. 1:12-CV-00125-SS

ORDER ON AGREED JOINT MOTION TO EXTEND STAY

CAME ON TO BE CONSIDERED, the Parties' Agreed Joint Motion to Extend Stay, and the Court, having duly considered the Motion and the arguments of counsel, is of the opinion the Motion should be GRANTED.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that the above-entitled and numbered cause is STAYED, and all deadlines of any nature TOLLED, for an additional sixty (60) days from May 30, 2012. By granting the stay, the Court does not dismiss the case or otherwise decide issues of jurisdiction over this case.

SIGNED this 29th day of May, 2012.

Barnes
JUDGE PRESIDING

✓