

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

WILLIAM BURNS and THERESA BLACK,
Individually and on Behalf of All Others Similarly Situated,

Plaintiff,
-against-

FALCONSTOR SOFTWARE, INC.; ESTATE OF REIJANE HUAI;
SHUWEN HUAI, as Executor/Fiduciary of the ESTATE OF
REIJANE HUAI; and JAMES WEBER,

Defendants.

No. 10-CV-4572 (ERK) (CLP)

NOTICE OF PENDENCY AND
PROPOSED SETTLEMENT OF CLASS ACTION

If you purchased the common stock ("Stock") of FalconStor Software, Inc. ("FalconStor") during the period from March 12, 2008 through September 29, 2010, inclusive, you could receive a payment from a class action settlement (the "Settlement").

Under law, a federal court has authorized this notice.

- If approved by the Court, the settlement will provide five million dollars (\$5,000,000) (the "Settlement Amount"), plus interest as it accrues, to pay claims of investors who purchased FalconStor Stock during the period from March 12, 2008 through September 29, 2010, inclusive (the "Class Period").
- The Settlement represents an average recovery of \$0.15 per share of FalconStor for the 33 million estimated shares that Lead Plaintiff alleges were "damaged" and declined in value as a result of Defendants' misconduct during the Class Period. This number solely reflects the estimated average recovery per damaged share of FalconStor Stock. Your actual recovery will depend on the aggregate losses of all Class Members, the date(s) you purchased and sold FalconStor stock and the total number of claims filed.
- Attorneys for Lead Plaintiff ("Class Counsel") intend to ask the Court to award them fees of up to one-third of the Settlement Amount, and reimbursement of litigation expenses not to exceed forty-five thousand dollars (\$45,000). Class Counsel also intends to ask the Court to grant Lead Plaintiff an award not to exceed two thousand five hundred (\$2,500) dollars. Collectively, the attorneys' fees and litigation expenses and the award to Lead Plaintiff are estimated to average \$0.05 per damaged share of FalconStor Stock. If approved by the Court, these amounts will be paid from the Gross Settlement Fund.
- The approximate recovery, after deduction of attorneys' fees and expenses and awarded to Lead Plaintiff approved by the Court, is an average of \$0.10 per damaged share of FalconStor Stock. This estimate is based on the assumptions set forth in the preceding paragraph. Your actual recovery, if any, will vary depending on your purchase price and sales price and the number of Proof of Claim forms filed.
- The Settlement resolves the lawsuit concerning whether: (1) Defendants violated the federal securities laws by issuing materially false and misleading Sarbanes-Oxley Act certifications; and (2) whether Defendants ReiJane Huai and James Weber were individually liable for the alleged violations as control persons. The Defendants in this case are FalconStor; James Weber; the Estate of ReiJane Huai (the "Estate"); and ShuWen Huai as Executor/Fiduciary of the Estate. FalconStor and James Weber, who are collectively the "FalconStor Defendants," deny and continue to deny that they have committed any act or omission giving rise to any liability or violation of law, including the United States securities laws, as alleged in the Complaint. FalconStor Defendants and Lead Plaintiff disagree on liability and damages. Plaintiffs believe that, if they prevailed on all their claims and the Court accepted their theory of damages that they would recover approximately \$0.84 per damaged share, before deductions for fees and expenses and assuming that the full amount of the judgment was collectable. FalconStor Defendants believe that, if this matter is litigated, Plaintiffs are likely to recover nothing.
- Your legal rights will be affected whether you act or do not act. If you do not act, you may permanently forfeit your right to recover on this claim. Therefore, you should read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

SUBMIT A CLAIM FORM NO LATER THAN JANUARY 20, 2014	The only way to get a payment.
EXCLUDE YOURSELF NO LATER THAN JANUARY 20, 2014	Get no payment. This is the only option that allows you to be part of any other lawsuit against Defendants about the legal claims in this case.
OBJECT NO LATER THAN FEBRUARY 10, 2014	Write to the Court about why you do not like the settlement.
GO TO A HEARING ON MARCH 3, 2014	Speak in Court about the fairness of the settlement.
DO NOTHING	Get no payment. Give up rights.

INQUIRIES

Please do not contact the Court regarding this notice. All inquiries concerning this Notice, the Proof of Claim form, or any other questions by Class members should be directed to:

FalconStor Software Securities Litigation
Claims Administrator
c/o Strategic Claims Services
600 North Jackson Street—Suite 3
P.O. Box 230
Media, PA 19063
Tel: (866) 274-4004
www.strategicclaims.net

DEFINITIONS

All capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Stipulation and Agreement of Settlement, dated May 6, 2013.

BASIC INFORMATION

1. Why did I get this Notice?

You or someone in your family may have purchased FalconStor Stock during the Class Period.

2. What is this lawsuit about?

The case is known as Burns v. FalconStor Software, Inc., et al., Case No. 10-CV-4572 (ERK)(CLP), and the Court in charge of the case is the United States District Court for the Eastern District of New York.

Defendants in this case are FalconStor and certain of its former officers and directors. Defendant ReiJane Huai died during the pendency of this Litigation, thus his estate and related parties were substituted in his place. Plaintiffs allege that the defendants violated the federal securities laws by issuing false Sarbanes-Oxley Act certifications with FalconStor's financial statements in connection with an alleged bribery scheme involving defendant ReiJane Huai. FalconStor Defendants and Lead Plaintiff disagree on liability and damages. FalconStor Defendants deny they can be held liable under the federal securities laws. The Settlement resolves all of Plaintiffs' claims in the Litigation.

3. Why is this a class action?

In a class action, one or more persons and/or entities, called Lead Plaintiffs, sue on behalf of all persons and/or entities that have similar claims. All of these persons and/or entities are referred to collectively as a Class, and these individual persons and/or entities are known as Class Members. One court resolves all of the issues for all Class Members, except for those Class Members who exclude themselves from the Class.

4. Why is there a Settlement?

Lead Plaintiff and FalconStor Defendants do not agree regarding the merits of Lead Plaintiff's allegations with respect to liability or the average amount of damages per share that would be recoverable if Lead Plaintiff were to prevail at trial on each claim. The issues on which Lead Plaintiff and FalconStor Defendants disagree include: (1) whether FalconStor Defendants actionably issued materially false and misleading Sarbanes-Oxley Act certifications to investors during the Class Period; (2) whether the statements were the cause of the Class Members' alleged damages; and (3) the amount of damages, if any, suffered by the Class Members.

This matter has not gone to trial and the Court has not decided in favor of either Lead Plaintiff or the defendants. Instead, Lead Plaintiff and FalconStor Defendants have agreed to settle the Class Action. Lead Plaintiff and Class Counsel believe the settlement is best for all Class Members because of the risks associated with continued litigation and the nature of the defenses raised by the defendants. Among the reasons that Lead Plaintiff and Class Counsel believe the Settlement is fair is the fact that there is uncertainty about whether certifications made pursuant to the Sarbanes-Oxley Act require disclosure of fraud in the absence of inaccurate financial statements. There also were risks in proving damages as there were partial disclosures during the Class Period that FalconStor Defendants had contended were unrelated to the fraud. If the Court were to credit those contentions, then any investor losses from those partial disclosures would not be compensable. Moreover, FalconStor's financial resources are limited.

Because of these reasons, even if Plaintiffs win at trial, and also prevail on any on appeal, Plaintiffs might not be able to collect some, or all, of any judgment they are awarded. Moreover, while litigation of this type is usually expensive, it appears that, even if Plaintiffs' allegations are eventually found to be true, the total amount of damages to which Class Members would be entitled could be substantially reduced as Plaintiffs and FalconStor Defendants vastly differed on their view of damages.

WHO IS IN THE SETTLEMENT

5. How do I know if I am part of the Class settlement?

To be a Class Member, you must have purchased FalconStor Stock during the period from March 12, 2008 through September 29, 2010, inclusive, and suffered losses in your investment as a result of the decline in the value of FalconStor common stock.

6. Are there exceptions to being included?

Yes. You are not a Class Member if you are a Defendant, an officer or director of FalconStor during the Class Period, a member of their immediate families and their legal representatives, heirs, successors, and assigns and any entity in which any Defendant has or had a controlling interest. Also, if you exclude yourself from the Class, as described below, you are not a part of the Class.

7. I am still not sure whether I am included.

If you are still not sure whether you are included, you can ask for free help. For more information, you can contact the Claims Administrator, Strategic Claims Services, by phone at (866) 274-4004 or by facsimile at (610) 565-7985, visiting the website www.strategicclaims.net, or filling out and returning the claim form described in Question 9, to see if you qualify.

8. What does the Settlement provide?

a. What is the Net Settlement Fund?

The proposed Settlement calls for FalconStor to make a payment in the amount of five million dollars (\$5,000,000) (the "Settlement Amount"), which may include funds that FalconStor has received or will receive from its insurers. The Settlement will not become effective unless it is approved by the Court. Subject to the Court's approval, a portion of the Gross Settlement Fund will be used to pay Plaintiffs' attorneys' fees and reasonable litigation expenses and an award to Lead Plaintiff. A portion of the Gross Settlement Fund will also be used to pay taxes due, if necessary, and any notice and claims administration expenses permitted by the Court. After these deductions from the Gross Settlement Fund have been made, the amount remaining (the "Net Settlement Fund") will be distributed to Class Members who submit valid claims.

b. What can you expect to receive under the proposed Settlement?

If you are entitled to a payment, your share of the Net Settlement Fund will depend on (i) the number of valid claim forms that Class Members submit; (ii) the dates you purchased and sold FalconStor Stock; and (iii) the prices of your purchases and sales. By following the Plan of Allocation described below, you can calculate your "Recognized Loss." The Claims Administrator will distribute the Net Settlement Fund according to the Plan of Allocation after the deadline for submission of Proof of Claim forms has passed.

The Claims Administrator will determine each Class Member's *pro rata* share of the Net Settlement Fund based upon each Class Member's valid "Recognized Loss." The Recognized Loss formula is not intended to be an estimate of the amount that a Class Member might have been able to recover after a trial; it also is not an estimate of the amount that will be paid to Class Members pursuant to the Settlement. The Recognized Loss formula is the basis upon which the Net Settlement Fund will be proportionately allocated to the Class Members with valid claims.

The Net Settlement Fund will be distributed to Class Members who submit valid, timely claim forms ("Authorized Claimants") under the below Plan of Allocation, which reflects Lead Plaintiff's contention that because of the alleged misrepresentations and omissions made by defendants, the price of FalconStor common stock was artificially inflated during the Class Period and that disclosures and materialization of the true facts caused changes in the inflated stock price.

Plan of Allocation

For purposes of determining the amount an Authorized Claimant will recover from the Settlement, Lead Counsel with the aid of a financial consultant, has developed the Plan of Allocation. It is designed to fairly allocate the proceeds of the Net Settlement Fund to Authorized Claimants.

The Court has not made any finding that the Released Parties are liable to the Class or that the Class has suffered any compensable damages, nor has the Court made any finding that the payments allowed under this Plan of Allocation are an accurate measure of damages.

The Claims Administrator will determine each Class Member's *pro rata* share of the Net Settlement Fund based upon each claimant's "Recognized Claim" from transactions in FalconStor common stock during the entire Class Period.

- I. For shares of common stock purchased between March 12, 2008 and January 14, 2010, inclusive:**
 - A. For shares retained at the end of trading on September 29, 2010, the Recognized Loss shall be the lesser of:
 - (1) \$1.71 per share; or
 - (2) the difference between the purchase price per share and \$2.93.¹
 - B. For shares sold between March 12, 2008 and January 14, 2010, inclusive, the Recognized Loss shall be zero (\$0.00).
 - C. For shares sold between January 15, 2010 and September 28, 2010, inclusive, the Recognized Loss shall be the lesser of:
 - (1) \$0.80 per share; or
 - (2) the difference between the purchase price per share and the sales price per share for each share sold.
 - D. For shares sold on September 29, 2010, the Recognized Loss shall be the lesser of:
 - (1) \$1.71 per share; or
 - (2) the difference between the purchase price per share and the sales price per share for each share sold.
- II. For shares of common stock purchased between January 15, 2010 and September 29, 2010, inclusive:**
 - A. For shares retained at the end of trading on September 29, 2010, the Recognized Loss shall be the lesser of:
 - (1) \$0.91 per share; or
 - (2) the difference between the purchase price per share and \$2.93.
 - B. For shares sold between January 15, 2010 and September 28, 2010, inclusive, the Recognized Loss shall be zero.
 - C. For shares sold on September 29, 2010, the Recognized Loss shall be the lesser of:
 - (1) \$0.91 per share; or
 - (2) the difference between the purchase price per share and the sales price per share for each share sold.

HOW YOU RECEIVE A PAYMENT—SUBMITTING A CLAIM

9. How can I get a payment?

To qualify for a payment, you must send in a form entitled "Proof of Claim and Release" form. This claim form accompanies this Notice. You may also obtain a claim form on the Internet at www.strategicclaims.net. Read the instructions carefully, fill out the form, sign it in the location indicated, and mail the claim form together with all documentation requested in the form, postmarked no later than January 20, 2014, to:

FalconStor Software Securities Litigation
Claims Administrator
c/o Strategic Claims Services
600 North Jackson Street—Suite 3
P.O. Box 230
Media, PA 19063

The Claims Administrator will process your claim and determine whether you are an "Authorized Claimant."

¹Pursuant to Section 21(D)(e)(1) of the Private Securities Litigation Reform Act of 1995, "in any private action arising under this title in which the plaintiff seeks to establish damages by reference to the market price of a security, the award of damages to the plaintiff shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the subject security and the mean trading price of that security during the 90 day period beginning on the date on which the information correcting the misstatement or omission that is the basis for the action is disseminated." \$2.93 per share was the mean (average) daily closing trading price of FalconStor's common stock during the 90-day period beginning on September 30, 2010 and ending on December 28, 2010.

10. What am I giving up to get a payment or stay in the Class?

If you are a member of the Class, and do not exclude yourself, you will give up and release any claims you might have against the Defendants relating to the “Settled Claims,” as described more fully below. All of the Court’s orders will apply to you and legally bind you. ***If you are a Class Member, this will be true even if you do not submit or sign a Proof of Claim and Release form, unless you exclude yourself from the Class (in which case you will not receive any payment).***

If the proposed Settlement is approved, the Court will enter an Order and Final Judgment (the “Judgment”). The Judgment shall release and forever discharge the “Settled Claims” with prejudice as to all “Released Parties.” Each of the FalconStor Defendants shall release and forever discharge any and all Settled FalconStor Defendants’ Claims against Class Members. The Huai Estate shall release and forever discharge each and every one of the Released Huai Estate’s Claims.

“Released Parties” means Defendants (except to the extent the Huai Estate is not released for the Reserved Defendants’ Claims), and any of their current, former or future parents, subsidiaries, affiliates, partners, joint venturers, officers, directors, principals, shareholders, members, agents (acting in their capacity as agents), employees, attorneys, insurers (but only in such insurers’ capacity as insurers of the foregoing, and except to the extent such insurers are not released for the Reserved Defendants’ Claims), reinsurers, advisors, accountants, associates, representatives, and/or any other individual or entity in which any Defendant has a controlling interest or which is related to or affiliated with any of Defendants, and the current, former and future legal representatives, heirs, successors in interest, or assigns of Defendants.

“Released Huai Estate’s Claims” means any and all future claims for contribution arising out of the Litigation by the Huai Estate against any of the Settling Parties, pursuant to 15 U.S.C. § 78u-4(f)(7)(A)(i).

“Reserved Defendants’ Claims” means (i) any and all claims and potential claims by FalconStor against the Huai Estate, arising out of, relating to, or in connection with any of the acts, omissions, disclosures, statements, misrepresentations, facts, events, matters, transactions, or occurrences referred to in or that gave rise to this Litigation or to the Derivative Litigation, or that are otherwise claimed, alleged, asserted, or contended in this Litigation or in the Derivative Litigation, or the Settlement or resolution of this Litigation, such that all claims or potential claims by FalconStor against the Huai Estate shall be considered not to have been settled, released, or dismissed by the terms of this Settlement; and (ii) any and all claims by the Released Parties, or any of them, against their liability insurers (in their capacity as such), including, without limitation, any claims and potential claims arising out of, relating to, or in connection with any of the acts, omissions, disclosures, statements, misrepresentations, facts, events, matters, transactions, or occurrences referred to in or that gave rise to this Litigation or to the Derivative Litigation, or that are otherwise claimed, alleged, asserted, or contended in this Litigation or in the Derivative Litigation, or the Settlement or resolution of this Litigation.

“Settled Claims” means any and all claims, cross-claims, counterclaims, third-party claims, debts, demands, liabilities, rights, and causes of action of every nature and description whatsoever except the Reserved Defendants’ Claims (including, but not limited to, any claims for damages, interest, attorneys’ fees, expert or consulting fees, and any other costs, expenses, or liability whatsoever), whether based on federal, state, local, foreign, statutory, or common law, or any other law, rule, or regulation, whether fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, suspected or unsuspected, and whether class or individual in nature, including both known claims and Unknown Claims, (i) that have been asserted in the Litigation by any Plaintiffs, and/or any of their present, former, or future parents, subsidiaries, agencies, connected firms, instrumentalities, branches, divisions and affiliates, the present, former or future employees, members, partners, principals, associates, officers and directors, shareholders, attorneys, advisors, trustees, administrators, fiduciaries, consultants, representatives, accountants and auditors, insurers (in their capacity as such), attorneys, and agents (acting in their capacity as agents) or each of them, the predecessors, estates, heirs, owners, executors, trusts, trustees, administrators, successors and assigns, or any other individual or entity in which any Plaintiffs have a controlling interest, against any of the Released Parties, including without limitation any claim arising out of or relating in any way to or in connection with any of the acts, omissions, disclosures, statements, misrepresentations, facts, events, matters, transactions, or occurrences referred to in or that gave rise to the Litigation or are otherwise claimed, alleged, asserted, or contended in the Litigation or in any other forum, including in any federal or state court, or in any other court, arbitration proceeding, administrative agency, in the United States or elsewhere; (ii) that could have been alleged, asserted, or contended in any forum, including in this Court, in any federal or state court, or in any other court, arbitration proceeding, administrative agency, or other forum in the United States or elsewhere, by the named plaintiffs or Class Members or any of them against any of the Released Parties which arise out of or are based directly or indirectly upon any of the allegations, transactions, facts, matters or occurrences, representations, or omissions involved, set forth, or referred to in the Litigation by Plaintiffs against Defendants or the Released Parties or any of them (except the Reserved Defendants’ Claims); or (iii) that are within the scope of Released Huai Estate’s Claims. Settled Claims also include any and all claims by the Settling Parties arising out of, relating to, or in connection with the commencement, prosecution, resolution, or Settlement of the Litigation against or among the Released Parties (including Unknown Claims that arise out of, relate to, or are in connection with the Settlement or resolution of the Litigation against the Released Parties), except claims to enforce any of the terms of the Stipulation or any court order entered pursuant thereto. Settled Claims shall not include: (i) claims that have been brought in the Derivative Litigation; (ii) Reserved Defendants’ Claims; or (iii) claims to enforce the Settlement.

“Unknown Claims” means any Settled Claims which Lead Plaintiff or any Class Member does not know or suspect to exist in his, her or its favor at the time of the release of the Released Parties, which if known by him, her, or it, might have affected his, her, or its decision with respect to the Settlement, including, but not limited to, the decision not to object to the Settlement, and any Settled FalconStor Defendants’ Claims which any FalconStor Defendant, or any of them, does not know or expect to exist in his, her, or its favor, which if known by him, her, or it might have affected his, her, or its decision(s) with respect to the Settlement. With respect to any and all Settled Claims and Settled FalconStor Defendants’ Claims, the Settling Parties stipulate and agree that upon the Effective Date, Lead Plaintiff and FalconStor Defendants shall expressly, and each of the members of the Class shall be deemed to have, and by operation of the Order and Judgment shall have, expressly waived any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 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.” Lead Plaintiff, Class Members, or FalconStor Defendants may hereafter discover facts, legal theories, or authorities in addition to or different from those which he, she, or it now knows or believes to be true with respect to the subject matter of the Settled Claims and Settled FalconStor Defendants’ Claims. Nevertheless, it is the intention of the Settling Parties as of the date hereof to fully, finally, and forever settle and release all Settled Claims as to all Released Parties, including existing claims for damages and losses that are currently unknown or unanticipated. In furtherance of this intention, the releases given in the Stipulation are and will remain in effect as full and complete mutual release of Settled Claims as to all Released Parties, notwithstanding the discovery or existence of any additional or different facts, legal theories, or authorities relative to them. Each Settling Party assumes the risk of any mistake in executing the Stipulation and furnishing the releases set forth in the Stipulation. The Settling Parties acknowledge, and Class Members by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Settled Claims and Settled FalconStor Defendants’ Claims was separately bargained for and was a key element of the Settlement. Unknown Claims shall not include any claims that have been brought in the Derivative Litigation.

“Settled FalconStor Defendants’ Claims” means any and all claims, demands, rights, duties, remedies, liabilities, and causes of action of every nature and description whatsoever, whether based on federal, state, local, statutory, or common law, or any other law, rule, or regulation, including both known and Unknown Claims, that have been or could have been asserted in the Litigation by FalconStor Defendants, or any of them, or the successors and assigns of any of them against any of Plaintiffs or their attorneys, or any FalconStor Defendants or their attorneys, which arise out of or relate in any way to the institution, prosecution, or Settlement of this Litigation or the Settled Claims, including, but not limited to, all claims for malicious prosecution or sanctions, except claims to enforce any of the terms of the Stipulation. Settled FalconStor Defendants’ Claims shall not include: (i) claims that have been brought in the Derivative Litigation; (ii) Reserved Defendants’ Claims; or (iii) claims to enforce the Settlement.

If you desire, please read the Stipulation and Agreement of Settlement at www.strategicclaims.net (or call for a copy of it) for a fuller explanation of the definition of “Settled Claims,” and the other terms above.

If you do not exclude yourself, you may sign and submit a Proof of Claim to claim a share in the Net Settlement Fund and this will be the only compensation from the Settlement you will receive for any losses you may have incurred from purchases of FalconStor common stock during the Class Period.

EXCLUDING YOURSELF FROM THE SETTLEMENT

11. How do I get out of the Settlement?

If you do not want to receive a payment from this Settlement, and you want to keep the right to sue or continue to sue the Defendants with respect to the Settled Claims, then you must take steps to get out of the Settlement. This is called excluding yourself from – or “opting out” of – the Settlement. To exclude yourself from the Settlement, you must mail a letter, first class, postage prepaid, stating you want to be excluded as a Class Member from Burns v. FalconStor Software, Inc., et al., No. 10-CV-4572 (ERK) (CLP). You must include your name, address, telephone number, e-mail address and your signature, along with an accurate list of all of your purchases and sales of FalconStor common stock in the Class Period, including the dates of each purchase and sale, the number of shares in each transaction, and the amounts paid or received in each transaction (excluding commissions, taxes and other charges). You must mail your exclusion request, so that it is received no later than January 20, 2014, to the Claims Administrator at the following address:

FalconStor Software Securities Litigation
Claims Administrator
c/o Strategic Claims Services
600 North Jackson Street—Suite 3
P.O. Box 230
Media, PA 19063

You cannot exclude yourself by telephone or by e-mail.

If you properly exclude yourself, you will not receive a settlement payment, you cannot object to the Settlement, and you will not be legally bound by the judgment in this case.

12. If I do not properly exclude myself, can I sue defendants for the same thing later?

No. Unless you followed the procedure outlined in the Class Notice, you have given up any right to sue Defendants or the Released Parties for the claims that the Settlement resolves. If you have a pending lawsuit against any of the Defendants or any of the Released Parties, speak to your lawyer immediately. You must have excluded yourself from the Settlement to continue your own lawsuit against the Defendants or the Released Parties.

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in this case?

The Court appointed The Rosen Law Firm, P.A. to represent you and the other Class Members. These lawyers are called Lead Plaintiff's Counsel or Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense. Contact information for The Rosen Law Firm is provided below.

14. How will the lawyers be paid?

Class Counsel have expended considerable time litigating this action on a contingent fee basis, and have paid for the expenses of the litigation themselves with the expectation that if they are successful in recovering money for the Class, they will receive attorneys' fees and be reimbursed for their litigation expenses from the Gross Settlement Fund, as is customary in this type of litigation. Class Counsel will not receive attorneys' fees or be reimbursed for their litigation expenses except from the Gross Settlement Fund. Therefore, Class Counsel will file a motion asking the Court at the Settlement Hearing to make an award of attorneys' fees in an amount not to exceed one-third of the five million dollar (\$5,000,000) Settlement amount, and for reimbursement of their already paid or incurred litigation expenses not to exceed forty-five thousand dollars (\$45,000). Class Counsel also intends to ask the Court to grant Lead Plaintiff an award not to exceed two thousand five hundred dollars (\$2,500). This request is in the range of fees awarded to counsel in other cases of this type. The Court may award less than these amounts. Any amounts awarded by the Court will come out of the Gross Settlement Fund.

If the above amounts for fees, expenses, and award to Lead Plaintiff are requested and approved by the Court, the average cost per share of FalconStor common stock will be \$0.05.

On or before February 1, 2014, the filed copy of Class Counsel's request for attorneys' fees and expenses will be made available at the FalconStor settlement website at www.strategicclaims.net.

OBJECTING TO THE SETTLEMENT

15. How do I tell the Court that I do not like the Settlement or any part of it?

If you are a Class Member, you can tell the Court you do not agree with the Settlement or any part of it, including the proposed Plan of Allocation, the request for attorneys' fees and expenses to Class Counsel, or the request for payment to Lead Plaintiff. You must mail a letter stating that you object to the Settlement in Burns v. FalconStor Software, Inc., et al., No. 10-CV-4572 (ERK) (CLP) and must include your name, address, telephone number, e-mail address, signature, a list of your purchases and sales of FalconStor Stock in the Class Period in order to show your membership in the Class, and all of the reasons you object to the Settlement or any part of it or any request for payment. Be sure to mail the letter to the following addresses, so that it is postmarked no later than February 10, 2014, and to file the letter with the Court, so the Court will consider your views:

COURT	PLAINTIFFS' COUNSEL	DEFENSE COUNSEL
Clerk of the Court United States District Court Eastern District New York 225 Cadman Plaza East Brooklyn, NY 11201	Phillip Kim, Esq. The Rosen Law Firm, P.A. 275 Madison Avenue, 34th Floor New York, NY 10016 <i>Class Counsel for Plaintiffs</i>	Daniel J. Kramer, Esq. James L. Brochin, Esq. Paul, Weiss, Rifkind, Wharton, & Garrison LLP 1285 Avenue of the Americas New York, NY 10019 <i>Counsel for FalconStor Defendants</i>

16. What is the difference between objecting and requesting exclusion?

Objecting is telling the Court you do not like something about the Settlement, the proposed Plan of Allocation, or the requests for attorneys' fees or similar payments. You can object only if you stay in the Class.

Requesting exclusion is telling the Court that you do not want to be part of the Class and Settlement. If you exclude yourself, you cannot object to the Settlement because it no longer affects you.

THE COURT'S FINAL SETTLEMENT HEARING

17. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Settlement Hearing on March 3, 2014, at 2:00 p.m., Courtroom 8A, at the United States District Court for the Eastern District, 225 Cadman Plaza East, Brooklyn, New York 11201.

At this hearing, the Court will consider whether (i) whether the proposed Settlement should be approved as fair, reasonable and adequate; (ii) whether all Settled Claims should be dismissed with prejudice; (iii) whether an order approving the Settlement should be entered; (iv) whether the allocation of the Gross Settlement Fund should be approved; (v) whether the application for an award of Attorneys' Fees and Expenses should be approved; and (vi) other matters as the Court may deem appropriate. If there are objections, the Court will consider them, and the Court will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay Class Counsel for attorneys' fees and expenses. The Court may adjourn or postpone the date of the hearing without further notice to the Class.

18. Do I have to come to the hearing?

No, although you are welcome to attend at your own expense. If you object to the Settlement in writing, and do so in compliance with the instructions set forth in this Notice, the Court will consider it, and you do not have to come to Court to talk about it. If, however, you, or an attorney you hire at your own cost, intend to appear and speak at the hearing, you must indicate that you will do so in the letter containing your objections or in a separate letter which must be mailed to the same persons by the same postmark deadline as noted in Question No. 15 above. You must indicate who will speak, any witnesses you will question and all evidence you will ask the Court to consider.

IF I DO NOTHING

19. What happens if I do nothing at all?

If you do nothing, you will not receive a payment from the Settlement. However, unless you exclude yourself, if the Settlement is approved, you or anyone acting or purporting to act on your behalf will be permanently and forever enjoined from prosecuting, attempting to prosecute, or assisting others in the prosecution of any Settled Claims against the Released Parties.

20. How can I get more information about the Settlement and Class Counsel's request for attorneys' fees and expenses or Lead Plaintiff's request for a payment?

This is only a summary of the Settlement and the other matters discussed here. You can get more information about the Settlement by contacting the Claims Administrator at the addresses and numbers noted above. A copy of the Stipulation and Agreement of Settlement, which has been filed with the Court, and all related documents can be found on the Claims Administrator's web site at www.strategicclaims.net.

The papers submitted in support of the Settlement and Class Counsel's request for the Court's approval of an award of fees and expenses, and Lead Plaintiff's request for an award, will be made available by February 1, 2014 and posted on www.strategicclaims.net.

PLEASE DO NOT TELEPHONE THE COURT REGARDING THIS NOTICE

SPECIAL NOTICE TO NOMINEES

If you purchased FalconStor common stock during the Class Period for the beneficial interest of a person or organization other than yourself, the Court has directed that within seven (7) days after you receive this Notice, you must either: (1) send a copy of this Notice and the Proof of Claim form by first class mail to all such persons or entities, or (2) provide a list of the names and addresses of such persons or entities to the Claims Administrator.

If you choose to mail the Notice and Proof of Claim yourself, you may obtain from the Claims Administrator (without cost to you) as many additional copies of these documents as you will need to complete the mailing.

In either case, you may obtain reimbursement for or advancement of reasonable administrative costs actually incurred or expected to be incurred in connection with forwarding the Notice and which would not have been incurred but for the obligation to forward the Notice, upon submission of appropriate documentation to the Claims Administrator.

DATED: NOVEMBER 1, 2013.

BY ORDER OF THE UNITED STATES
DISTRICT COURT FOR THE EASTERN
DISTRICT OF NEW YORK

**FalconStor Software Securities Litigation
Claims Administrator
c/o Strategic Claims Services
600 North Jackson Street—Suite 3
P.O. Box 230
Media, PA 19063**

PROOF OF CLAIM AND RELEASE

DEADLINE FOR SUBMISSION: JANUARY 20, 2014

IF YOU PURCHASED THE COMMON STOCK OF FALCONSTOR SOFTWARE, INC. DURING THE PERIOD FROM MARCH 12, 2008 THROUGH SEPTEMBER 29, 2010, INCLUSIVE (THE “CLASS PERIOD”), YOU MAY BE A “CLASS MEMBER” AND YOU MAY BE ENTITLED TO SHARE IN THE SETTLEMENT PROCEEDS.

IF YOU ARE A CLASS MEMBER, YOU MUST COMPLETE AND SUBMIT THIS FORM IN ORDER TO BE ELIGIBLE FOR ANY SETTLEMENT BENEFITS. HOWEVER, FILING A PROOF OF CLAIM IS NOT A GUARANTEE THAT YOU WILL SHARE IN THE PROCEEDS OF THE SETTLEMENT.

YOU MUST COMPLETE AND SIGN THIS PROOF OF CLAIM AND RELEASE (“PROOF OF CLAIM”) AND MAIL IT BY FIRST CLASS MAIL, POSTMARKED NO LATER THAN JANUARY 20, 2014 TO STRATEGIC CLAIMS SERVICES, THE CLAIMS ADMINISTRATOR, AT THE FOLLOWING ADDRESS:

FalconStor Software Securities Litigation
Claims Administrator
c/o Strategic Claims Services
600 North Jackson Street—Suite 3
P.O. Box 230
Media, PA 19063

YOUR FAILURE TO SUBMIT YOUR CLAIM BY JANUARY 20, 2014 WILL SUBJECT YOUR CLAIM TO REJECTION AND PRECLUDE YOUR RECEIVING ANY MONEY IN CONNECTION WITH THE SETTLEMENT OF THIS LITIGATION. DO NOT MAIL OR DELIVER YOUR CLAIM TO THE COURT OR TO ANY OF THE PARTIES OR THEIR COUNSEL AS ANY SUCH CLAIM WILL BE DEEMED NOT TO HAVE BEEN SUBMITTED. SUBMIT YOUR CLAIM ONLY TO THE CLAIMS ADMINISTRATOR.

IF YOU ARE A CLASS MEMBER AND DO NOT SUBMIT A PROOF OF CLAIM OR REQUEST FOR EXCLUSION FROM THE CLASS, YOU WILL BE BOUND BY THE TERMS OF ANY ORDER AND JUDGMENT ENTERED IN THE LITIGATION.

If you are NOT a member of the Class, as defined in the Notice, DO NOT submit a Proof of Claim.

DEFINITIONS AND RELEASE

All capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Stipulation and Agreement of Settlement, dated May 6, 2013.

INSTRUCTIONS FOR COMPLETING THIS FORM

1. How to identify yourself for the form:

You are a beneficial and record acquirer if you:

- Purchased FalconStor common stock between March 12, 2008 through September 29, 2010, inclusive, on a national securities exchange or an electronic quotation system, and
- Held the certificate(s) in your name.

You are the beneficial acquirer and a third party is the record acquirer if:

- The certificate(s) were registered in the name of a third party. A third party could be a nominee or brokerage firm.

Please Note: This Proof of Claim must be filed by the actual beneficial acquirer(s), or the legal representative of such acquirer(s), of the FalconStor common stock purchased or sold in the Class Period.

2. All joint purchasers of FalconStor common stock must complete and sign this Proof of Claim and Release. Executors, administrators, guardians, conservators and trustees must complete and sign this Proof of Claim on behalf of persons represented by them; a copy of proof of their authority must accompany this Proof of Claim, and their titles or capacities must be stated. Failure to provide the foregoing information could delay verification of your claim or result in rejection of the claim.

3. Use Part II, entitled “Schedule of Transactions in FalconStor Securities”, to supply all required information regarding your ownership of and transaction(s) in FalconStor common stock. If you need more space or additional schedules, attach separate sheets with all of the same information. Sign and print or type your name on each additional sheet.

4. List each purchase and sale from March 12, 2008 through and including September 29, 2010, separately and in chronological order, by trade date. Start with the earliest date. You must accurately provide the month, day and year of each transaction you list, along with the quantity and price.

5. Any loans of FalconStor common stock to persons engaged in a “short sale” are not considered a sale.

6. You must attach photocopies of documentation for all of your transactions in FalconStor common stock. This includes any of these documents: broker confirmation slips, broker statements, or other documentation. Failure to provide this documentation will delay verification of your claim and could result in rejection of your claim. Please do not send original documents. Do not highlight the documents.

7. The Claims Administrator may request additional information as required to calculate your claim. If the Claims Administrator cannot perform the calculation accurately or at a reasonable cost to the Class, it may require the production of additional information.

Notice Regarding Electronic Files: Certain claimants with a large number of transactions, such as institutional holders, may ask (or be asked) to submit claim information in an electronic format. The Claims Administrator will decide when electronic filing of information will be authorized. In these cases, all claimants **must also submit** a manually-signed paper Proof of Claim and Release form, listing all transactions in FalconStor common stock. Only electronic files authorized by the Claims Administrator will be considered properly submitted.

CLAIMANT’S STATEMENT

1. I (we) purchased common stock in FalconStor Software, Inc. (“FalconStor”) and was (were) damaged thereby. (Do not submit this Proof of Claim if you did not purchase FalconStor common stock during the designated Class Period).

2. By submitting this Proof of Claim, I (we) state that I (we) believe in good faith that I am (we are) a Class Member as defined above and in the Notice of Pendency and Proposed Settlement of Class Action (the “Notice”), or am (are) acting for such person(s); that I am (we are) not a Defendant in the Litigation or anyone excluded from the Class; that I (we) have read and understand the Notice; that I (we) believe that I am (we are) entitled to receive a share of the Net Settlement Fund, as defined in the Notice; that I (we) elect to participate in the proposed Settlement described in the Notice; and that I (we) have not filed a request for exclusion. (If you are acting in a representative capacity on behalf of a Class Member [e.g., as an executor, administrator, trustee, or other representative], you must submit evidence of your current authority to act on behalf of that Class Member. Such evidence would include, for example, letters testamentary, letters of administration, or a copy of the trust documents.)

3. I (we) submit this Proof of Claim and Release under the terms of the Stipulation and Agreement of Settlement (“Stipulation”) described in the Notice. I (we) consent to the jurisdiction of the United States District Court for the Eastern District of New York with respect to my claim(s) as a Class Member and for purposes of enforcing the release set forth herein, all questions concerning the validity of this Proof of Claim, and any Judgment which may be entered in the Litigation. I (we) understand and agree that my (our) claim(s) may be subject to investigation and discovery under the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to my (our) status as a Class Member(s) and the validity and amount of my (our) claim. No discovery shall be allowed on the merits of the Litigation or Settlement in connection with processing of the Proof of Claim.

4. I (we) have set forth where requested below all relevant information with respect to each purchase of FalconStor common stock during the Class Period, and each sale, if any, of such securities. I (we) agree to furnish additional information to the Claims Administrator to support this claim if requested to do so.

5. I (we) have enclosed photocopies of the stockbroker’s confirmation slips, stockbroker’s statements, or other documents evidencing each purchase, sale or retention of FalconStor common stock listed below in support of my (our) claim. (IF ANY SUCH DOCUMENTS ARE NOT IN YOUR POSSESSION, PLEASE OBTAIN A COPY OR EQUIVALENT DOCUMENTS FROM YOUR BROKER BECAUSE THESE DOCUMENTS ARE NECESSARY TO PROVE AND PROCESS YOUR CLAIM.)

6. I (we) understand that the information contained in this Proof of Claim is subject to such verification as the Claims Administrator may request or as the Court may direct, and I (we) agree to cooperate in any such verification. (The information requested herein is designed to provide the minimum amount of information necessary to process most simple claims. The Claims Administrator may request additional information as required to efficiently

and reliably calculate your recognized claim. In some cases, the Claims Administrator may condition acceptance of the claim based upon the production of additional information, including, where applicable, information concerning transactions in any derivatives securities such as options.)

7. Upon the occurrence of the Court's approval of the Settlement, as detailed in the Notice, I (we) agree and acknowledge that my (our) signature(s) hereto shall effect and constitute a full and complete release, remise and discharge by me (us) and my (our) heirs, joint tenants, tenants in common, beneficiaries, executors, administrators, predecessors, successors, attorneys, insurers and assigns (or, if I am (we are) submitting this Proof of Claim on behalf of a corporation, a partnership, estate or one or more other persons, by it, him, her or them, and by its, his, her or their heirs, executors, administrators, predecessors, successors, and assigns) of each of the "Released Parties" of all "Settled Claims," as defined in the Notice.

8. The claimant(s) waive(s) the right to trial by jury, to the extent it exists, and agree(s) to the Court's summary disposition of the determination of the validity or amount of claim made by this Claim Form.

9. I (we) acknowledge that the claimant(s) will be bound by and subject to the terms of any judgment(s) that may be entered in the Litigation.

10. I (we) have not submitted any other claim covering the same acquisition or sales of FalconStor common stock. I (we) know of no other Person having done so on my (our) behalf.

11. I (we) hereby warrant and represent that I (we) have not assigned or transferred or purported to assign or transfer, voluntarily or involuntarily, any matter released pursuant to this release or any other part or portion thereof.

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Sales:

C. Separately list each and every sale of FalconStor common stock during the period from March 12, 2008 through September 29, 2010 inclusive, and provide the following information (*must be documented*):

Trade Date (List Chronologically) (Month/Day/Year)	Number of Shares Sold	Price per Share	Amount Received (Excluding Commissions, Taxes, and Fees)
/ /		\$.	\$.
/ /		\$.	\$.
/ /		\$.	\$.
/ /		\$.	\$.

Ending Holdings:

D. State in the box at the right the total number of shares of FalconStor common stock owned at the close of trading on September 29, 2010, long or short (*must be documented*).

If additional space is needed, attach separate, numbered sheets, giving all required information, substantially in the same format, and print your name and Social Security or Taxpayer Identification number at the top of each sheet.

III. SUBSTITUTE FORM W-9

Request for Taxpayer Identification Number:

Enter taxpayer identification number below for the Beneficial Owner(s). For most individuals, this is your Social Security Number. The Internal Revenue Service ("I.R.S.") requires such taxpayer identification number. If you fail to provide this information, your claim may be rejected.

Social Security Number (for individuals)
 - -

OR

Taxpayer Identification Number
(for estates, trusts, corporations, etc.)
 -

IV. CERTIFICATION

I (We) certify that I am (we are) NOT subject to backup withholding under the provisions of Section 3406 (a)(1)(c) of the Internal Revenue Code because: (a) I am (We are) exempt from backup withholding, or (b) I (We) have not been notified by the I.R.S. that I am (we are) subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the I.R.S. has notified me (us) that I am (we are) no longer subject to backup withholding.

NOTE: If you have been notified by the I.R.S. that you are subject to backup withholding, please strike out the language that you are not subject to backup withholding in the certification above.

UNDER THE PENALTIES OF PERJURY, I (WE) CERTIFY THAT ALL OF THE INFORMATION I (WE) PROVIDED ON THIS PROOF OF CLAIM AND RELEASE FORM IS TRUE, CORRECT AND COMPLETE.

Signature of Claimant (If this claim is being made on behalf of Joint Claimants, then each must sign):

 (Signature)

 (Signature)

 (Capacity of person(s) signing, e.g. beneficial purchaser(s), executor, administrator, trustee, etc.)

Check here if proof of authority to file is enclosed.
 (See Item 2 under Claimant's Statement)

THIS PROOF OF CLAIM MUST BE SUBMITTED NO LATER THAN JANUARY 20, 2014 AND MUST BE MAILED TO:

FalconStor Software Securities Litigation
Claims Administrator
c/o Strategic Claims Services
600 North Jackson Street—Suite 3
P.O. Box 230
Media, PA 19063

A Proof of Claim received by the Claims Administrator shall be deemed to have been submitted when posted, if a postmark date on or before January 20, 2014, is indicated on the envelope and it is mailed First Class, and addressed in accordance with the Proof of Claim instructions. In all other cases, a Claim Form shall be deemed to have been submitted when actually received by the Claims Administrator.

You should be aware that it will take a significant amount of time to process fully all of the Proofs of Claim and to administer the Settlement. This work will be completed as promptly as time permits, given the need to investigate and tabulate each Proof of Claim. Please notify the Claims Administrator of any change of address.

REMINDER CHECKLIST

- Please be sure to sign this Proof of Claim on page 14. If this Proof of Claim is submitted on behalf of joint claimants, then both claimants must sign.
- Please remember to attach supporting documents.
- Do NOT send any stock certificates.
- Keep copies of your Proof of Claim and Release form and all copies of all supporting documentation you submit.
- If you desire an acknowledgment of receipt of your claim form, please send it Certified Mail, Return Receipt requested.
- Do NOT use highlighter on the Proof of Claim or any supporting documents.

If you move after submitting this Proof of Claim, please notify the Claims Administrator of the change in your address.

- **These forms and your supporting documentation must be *postmarked* no later than January 20, 2014.**

FalconStor Software Securities Litigation
Claims Administrator
c/o Strategic Claims Services
600 North Jackson Street—Suite 3
P.O. Box 230
Media, PA 19063

PRESORTED FIRST CLASS MAIL U.S. POSTAGE PAID PERMIT NO. 138 PHILADELPHIA, PA

PLEASE FORWARD

FIRST CLASS MAIL

PLEASE FORWARD—IMPORTANT LEGAL NOTICE