

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

JACOB SILVER, *on behalf of herself and others
similarly situated,*

Plaintiff,

v.

LIVEWATCH SECURITY, LLC d/b/a BRINKS
HOME SECURITY f/k/a BOLSTER LLC d/b/a
SAFEMART; MONITRONICS
INTERNATIONAL, INC. d/b/a BRINKS HOME
SECURITY

Defendants.

20-CV-02478 (JS) (AYS)

CLASS SETTLEMENT AGREEMENT

This Settlement Agreement and Release (the “Settlement Agreement”) is entered into by Plaintiff Jacob Silver (“Representative Plaintiff”), acting individually and on behalf of the Settlement Class defined below, and Defendants Livewatch Security, LLC d/b/a Brinks Home Security f/k/a Bolster LLC d/b/a Safemart; Monitronics International, Inc. d/b/a Brinks Home Security (“Defendants”). Representative Plaintiff and Defendants shall each be known as a “Party” and collectively be known as the “Parties.” This Settlement Agreement is subject to preliminary and final approval by the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure.

I. RECITALS

1. On June 3, 2020, Representative Plaintiff filed a putative class action Complaint in the United States District Court for the Eastern District of New York, asserting claims for violation of New York General Business Law § 349 and § 350, et seq. (“NYGBL”) and for breach of contract

and unjust enrichment. Docket No. 1. The Complaint asserted these claims on behalf of Representative Plaintiff and a state-wide (New York) class.

2. The Complaint was subsequently amended, *inter alia*, to include a nationwide breach of contract class. Docket No. 28.

3. Defendants filed an Answer denying the allegations in the Complaint as amended. Docket No. 29.

4. Early informal and mediated settlement efforts were unsuccessful, and the Parties engaged in extensive document discovery, including extensive ESI discovery, internal company communications, policies and procedures and compilation of multiple aggregated spreadsheets containing account level data for all potential class members, e.g. when each customer began and stopped receiving service, payment history, refund history, etc. The discovery process was vigorous and contested, requiring numerous meet and confers regarding discovery issues, pre-motion letters, discovery conferences on disputed issues, etc.

5. The Parties eventually stipulated to a partial stay of discovery in order to focus on production of nationwide class data in advance of a second mediation. Docket No. 38.

6. On September 30, 2021, the Parties participated in a second mediation with the assistance of mediator Richard C. Byrne, Esq. of National Arbitration and Mediation. After extensive negotiation, the Parties reached a class settlement in principle, executed a term sheet, and filed a notice of settlement with the Court. Docket No. 40.

7. The Parties reached the class settlement after the mediator, with the benefit of briefing and input from both sides, made a mediator's proposal, which the Parties accepted.

8. Defendants have entered into this Agreement to resolve any and all controversies and disputes arising out of or relating to the allegations made in the Complaint, including, but not

limited to the allegations that the Brinks Home Security Messaging powered by ASAPer service (“ASAPer”) failed to work as intended prior to discontinuation, and to avoid the burden, risk and expense of further litigation. Defendants do not in any way acknowledge, admit to or concede any of the allegations made in the Complaint, expressly disclaim and deny any fault or liability or any charges of wrongdoing that have been or could have been asserted in the Complaint, and maintain that they have a number of meritorious defenses to the claims. Nevertheless, Defendants recognize the risks and uncertainties inherent in litigation, the significant expense associated with defending class actions, the costs of any appeal, and the disruption to their business operations arising out of this litigation. They also recognize the danger which a successful trial on class-wide claims might present to them. Accordingly, Defendants believe that settlement is in their best interests. Nothing contained in this Agreement shall be used or construed as an admission of liability. This Agreement shall not be offered or received in evidence in any action or proceeding in any court or other forum as an admission or concession of liability or wrongdoing of any nature other than to enforce the terms of this Agreement.

9. Representative Plaintiff has entered into this Agreement to avoid the risk, delay, and uncertainty of continued litigation. Representative Plaintiff does not in any way concede the claims alleged in the Complaint lack merit or are subject to any valid defenses.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated into and are an integral part of this Agreement, and in consideration of the mutual promises below, the Parties agree that the Litigation and all claims of the Representative Plaintiff and the proposed Settlement Class are settled, compromised, and dismissed on the merits and with prejudice as to Defendants, subject to Court approval as required by Rule 23 of the Federal Rules of Civil Procedure, on the following terms and conditions:

II. TERMS OF THE SETTLEMENT

10. **Definitions:** As used in this Agreement, the following terms have the following meanings:

- a. “Litigation” means and refers to the action styled *Silver et al. v. Livewatch Security, LLC et al.*, Civil Action No. 2:20-cv-02478 (JS)(AYS) (E.D.N.Y.).
- b. “Class Counsel” or “Plaintiff’s Counsel” means Daniel Schlanger, Esq. of Schlanger Law Group, LLP and Beth E. Terrell of Terrell Marshall Law Group PLLC.
- c. “Class Member List” means the list of individuals who are within the Settlement Class, as defined below and not otherwise excluded, that is to be compiled by Defendants and provided to Class Counsel and the Settlement Administrator.
- d. “Complaint” refers to the First Amended Complaint filed in the Litigation.
- e. “Court” means the United States District Court for the Eastern District of New York.
- f. “Effective Date” means the earliest of (i) the date of Final Approval, if no Settlement Class Member objects to or intervenes in the Settlement; (ii) thirty (30) days after the date of Final Approval, if a Settlement Class Member objects to the Settlement but no appeal by a Settlement Class Member is filed; (iii) the date of the final affirmance on appeal, if a Settlement Class Member objects to the Settlement and an appeal is filed; or (iv) the final dismissal of any appeal.
- g. “Final Approval” means the order approving the Settlement and certifying the Settlement Class as final.
- h. “Fairness Hearing” refers to the hearing at which the Court shall:

- i. determine whether to grant final approval to this Settlement;
 - ii. consider any timely objections to this Settlement and all responses thereto;
 - iii. consider requests for a Service Award to the Representative Plaintiff, and Class Counsel's fees and expenses; and
 - iv. shall take place no earlier than 170 days after entry of Preliminary Approval Order.
- i. "Notice of Proposed Class Action Settlement" means the notice to Settlement Class Members approved by the Court in the Preliminary Order.
 - j. "Parties" means the Representative Plaintiff and Defendants.
 - k. "Person" means an individual, corporation, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government, or any political subdivision or agency thereof, and any business or legal entity and their spouses, former spouses, heirs, executors, administrators, predecessors, successors, representatives, agents, partners, and assignees.
 - l. "Preliminary Approval Date" means the date the Court enters the Preliminary Order approving the Settlement.
 - m. "Preliminary Order" means that certain order entered by the Court, preliminarily approving the Settlement, provisionally certifying the Settlement Class, and approving notice to Settlement Class Members.
 - n. "Released Claims" means and includes any and all charges, complaints, claims, debts, liabilities, demands, obligations, damages, costs, expenses, attorneys' fees, actions, and causes of action of every nature, character, and description, whether

known or unknown, from the beginning of the world to the Effective date, whether based on any federal law, state law, common law, territorial law, foreign law, contract, rule, regulation, any regulatory promulgation (including, but not limited to, any opinion or declaratory ruling), common law, or equity, asserted or unasserted, suspected or unsuspected, fixed or contingent, pled in the Litigation or unpled in the Litigation, which Representative Plaintiff and those Settlement Class Members who do not opt-out now have, own or hold against Defendants that arise out of a common nucleus of operative fact relating to Defendants' statements or advertising in connection with ASAPer, Defendants' provision of the ASAPer service, and fees charged for the ASAPer service. Notwithstanding the foregoing, nothing herein shall be construed to allow Defendants to undo or reverse any account credits that were provided to Settlement Class Members during the pendency of this action.

- o. "Released Persons" means Defendants and their past and present agents, directors, officers, employees, shareholders, principals, members, managers, insurers, representatives, attorneys, predecessors, successors and assigns, parents and subsidiaries, divisions, and affiliates, individually and as representatives of Defendants, and each of the insurers, its partners, affiliates, subsidiaries, principals, associates, predecessors, successors, officers, directors, administrators, agents, representatives, insurers, attorneys, and employees, individually and as representatives of each of the Insurers.
- p. "Representative Plaintiff" refers to Jacob Silver.

- q. “Settlement” refers to the settlement, release, and final dismissal of claims contemplated by this Settlement Agreement.
- r. “Settlement Administrator” means American Legal Claim Services LLC.
- s. “Settlement Class”, “Class” and “Settlement Class Members” means only those persons included within the Settlement Class as defined below and who are not otherwise excluded.
- t. “Gross Settlement Fund” means the total sum of \$395,000.00 (three hundred and ninety-five thousand dollars) that Defendants will pay to settle the Litigation and obtain a release of all Released Claims as described herein.
- u. “Net Settlement Fund” shall mean the Gross Settlement Fund less the costs of settlement administration and all amounts approved by the Court with regard to Representative Plaintiff’s Service Award and Class Counsel’s attorney’s fees and costs, as set forth in more detail below.
- v. “Defendants” means Livewatch Security, LLC d/b/a Brinks Home Security f/k/a Bolster LLC d/b/a Safemart; and Monitronics International, Inc. d/b/a Brinks Home Security.

11. **Conditional Class Certification.** For purposes of this Settlement only and its implementation, the Parties hereby stipulate and agree that this Litigation may be certified as a class action under Fed. R. Civ. P. 23(b)(3) in accordance with the terms of this Settlement Agreement. This stipulation and agreement is without prejudice to Defendants’ right to contest class certification in the event this Settlement Agreement is not fully implemented in accordance with its terms. If this Settlement Agreement is not approved or otherwise fails to be fully implemented, Defendants reserve all of their rights to object to any subsequent motion to certify

a class in this Litigation and no representation or concession made in connection with the Settlement or in this Settlement Agreement shall be considered law of the case or an admission by Defendants or give rise to any form of estoppel or waiver by Defendants in this Litigation or any other proceeding. Defendants do not agree to certification of the Settlement Class for any purpose other than to effectuate this Settlement Agreement. If this Settlement Agreement is approved, no representation or concession made in connection with the Settlement or in this Settlement Agreement shall be considered to have *res judicata* or collateral estoppel effect against Defendants or to be an admission by Defendants or to give rise to any form of estoppel or waiver by Defendants in any other proceeding.

12. **Settlement Class.**

A. The Settlement Class:

The Parties hereby stipulate and agree that the Settlement Class shall be defined as follows:

All persons in the United States who paid one or more fees on or after September 1, 2019 to Defendants for Brinks Home Interactive Messaging powered by ASAPer.

B. Exclusions:

Excluded from the Settlement Class and all subclasses are: (i) Any individual who now is, or ever has been, an officer of Defendants as well as the spouses, parents, siblings and children of all such individuals; (ii) Any Judge of the United States District Court for the Eastern District of New York, as well as his or her immediate family and staff.

C. Class Period and Approximate Class Size:

The Class Period is from September 1, 2019 through the date of Preliminary Approval. The Parties agree that there are approximately 5,000 Settlement Class Members.

13. **Class Counsel.** The Parties agree that Daniel A. Schlanger, Esq. of Schlanger Law

Group LLP, and Beth E. Terrell of Terrell Marshall Law Group PLLC shall be appointed Class Counsel, without prejudice to Defendants' right to contest the appointment as Class Counsel in the event that this Settlement Agreement is not fully implemented in accordance with its terms.

14. Class Member List.

- a. Defendants have provided the Class Member List to Class Counsel. Defendants will supplement the Class Member List as necessary to effectuate the Settlement (including, *inter alia*, with regard to the provisions regarding notice to Settlement Class Members via email).
- b. Defendants will provide Class Counsel with a sworn affidavit describing in a meaningful level of detail the methodology and the work done to confirm the Class Member List.
- c. To the extent the Parties have any dispute regarding the Class Member List, the Parties shall meet and confer. To the extent the Parties' meet and confer does not resolve any differences with regard to the Class Member List or the affidavit referenced above, the Parties shall submit their dispute to the Court for a determination.
- d. Representative Plaintiff, Class Counsel, and the Settlement Administrator agree and acknowledge that the Class Member List contains certain confidential information and that the account information identified in the Class Member List constitutes confidential material. Therefore, Representative Plaintiff, Class Counsel, and the Settlement Administrator agree to treat the Class Member List as confidential and to use the Class Member List and the information contained therein solely for the purpose of providing the settlement benefits offered by this

Settlement Agreement to Settlement Class Members and otherwise implementing the terms of this Settlement Agreement (including, if applicable, responding to any objections) and for no other purpose. Except to the extent authorized by this Settlement Agreement, Representative Plaintiff, Class Counsel, and the Settlement Administrator further agree not to disclose the Class Member List or any of the information contained in the Class Member List to Settlement Class Members or any third party, except pursuant to a valid subpoena. Class Counsel and the Settlement Administrator may, however, disclose to any individual Settlement Class Member information related to that Settlement Class Member's account contained on the Class Member List, and may disclose to any consumer who is not a Class Member and who inquires, that he or she is not on the Class Member List. Notwithstanding any contrary language contained in this Settlement Agreement, the provisions of this section shall survive any termination or modification of this Settlement Agreement and shall continue to be binding regardless of whether the Settlement is fully implemented.

15. **Class Relief.**

- a. **Creation of Gross Settlement Fund:** Subject to the approval and further order of the Court, and after Representative Plaintiff's execution and delivery of this Agreement as well as all necessary payment instruction documents including provision by the Settlement Administrator to Defendants' counsel of a W-9 form for the Qualified Settlement Fund in which the Gross Settlement Fund is to be deposited Defendants shall pay the sum of Three Hundred Ninety-Five Thousand Dollars (\$395,000.00) (the "Gross Settlement Fund") in settlement of all claims, inclusive

of all relief to the class, all attorney's fees and costs, the Service Award to the Representative Plaintiff, and the cost of settlement administration. Specifically, the Gross Settlement Fund shall be used for the following purposes:

- payment and distribution of all Cash Awards to Settlement Class Members, pursuant to Section 15(d);
- payment of the Court-ordered Service Award to the Representative Plaintiff, pursuant to Section 20;
- payment of the Settlement Administrator; and
- payment of the Court-ordered award of Class Counsel's attorneys' fees, costs, and expenses pursuant to Section 30;

b. **Deposit of Gross Settlement Fund.** Defendants shall transfer Twenty Thousand Dollars (\$20,000) of the Gross Settlement Fund to the Settlement Administrator (to be held in a Qualified Settlement Fund/468B Settlement Trust) within thirty (30) days of the Preliminary Approval Date. Defendants shall transfer Three Hundred Seventy Five Thousand Dollars (\$375,000) within fifteen (15) days after Final Approval. In the event the Settlement is not approved by the Court, this Agreement is terminated by either party as provided in Section 28 of this Agreement or the Settlement is not fully implemented for any reason (other than any failure or refusal of Defendants to abide by and implement in good faith its terms without legal justification, as determined by the Court) and Defendants already transferred the Gross Settlement Fund to the Settlement Administrator, the Gross Settlement Fund (including accrued interest, if any), less expenses actually incurred by the Settlement Administrator or due and owing to the Settlement Administrator in

connection with the Settlement, shall be refunded to Defendants within two (2) business days.

- c. **Calculation of the Net Settlement Fund.** The Net Settlement Fund is equal to the Gross Settlement Fund plus any interest earned on that fund, less the following:
- the amount of the Court-ordered Service Award to the Representative Plaintiff;
 - the amount owed to the Settlement Administrator; and
 - the amount of the Court-ordered award of Class Counsel’s attorneys’ fees, costs, and expenses.
- d. **Distribution of the Net Settlement Fund:** The Settlement Administrator shall distribute the Net Settlement Fund equally to all Settlement Class members, by check (“Cash Awards”).
- e. **Negotiation of Checks.** Each check issued pursuant to this Settlement Agreement shall be void if not negotiated within one hundred (100) days after its issue date, and shall contain a legend to such effect. Checks that are not negotiated within one hundred (100) days after their issue date shall not be reissued.
- f. **Unclaimed Checks.** All payments that are unclaimed by Settlement Class Members, including all returned checks and all checks not cashed within one hundred (100) days after the date of issue, shall revert to the Net Settlement Fund.
16. **Settlement Administrator.**
- a. The Settlement Administrator shall execute a retainer agreement that shall provide, among other things, that the Settlement Administrator shall be bound by and shall perform the obligations imposed on it under the terms of this Agreement.

- b. The Settlement Administrator shall be subject to the jurisdiction of the Court with respect to the administration of this Agreement.
- c. The Settlement Administrator shall keep all information regarding Settlement Class Members confidential except as otherwise provided herein. All data created and/or obtained and maintained by the Settlement Administrator pursuant to this Agreement shall be destroyed fifteen (15) months after the Effective Date.
- d. The Settlement Administrator will be responsible for administering the Settlement including:
 - i. effecting notice to the Settlement Class in a form and manner approved by the Court;
 - ii. conducting appropriate research, using a competent information broker on the Internet, the United States Postal Service Change of Address Database and/or a recognized credit bureau, to ensure that any mailed notice which is returned for the reason that the address is incorrect will be corrected and a second notice sent;
 - iii. opening an account at a bank with accounts insured by the FDIC for the deposit of the Gross Settlement Fund and for disbursing all funds from the Gross Settlement Fund in accordance with this Agreement;
 - iv. maintaining a post office box address to receive inquiries with respect to the Settlement for a period of two hundred eighty days (280) after the Preliminary Approval Date or one hundred ninety (190) days from the Effective Date, whichever is longer;
 - v. preparing reports regarding the mailed and emailed notices, as directed by

- the Parties' counsel and the Court;
- vi. accepting and reporting on written notice(s) to opt-out of the Settlement;
 - vii. creating and maintaining a website regarding the Settlement including basic information regarding the Settlement and links to, inter alia, the Settlement Agreement, Preliminary Order, Final Order and Class Notice;
 - viii. creating and maintaining an automated toll-free line providing basic information regarding the Settlement and instructions for obtaining relevant documents (e.g. copies of the Settlement Agreement, Preliminary Order, Final Order and Class Notice); and
 - ix. such other duties as directed by the Parties, provided that any modification of the duties referenced in subparts (i) – (viii) of this Section must be mutually agreed to by the Parties.

17. **Cost of Notice and Administration of Settlement.** All costs related to the administration of this Settlement Agreement and the costs related to the Settlement Administrator for effecting notice to the Settlement Class and distributing Cash Awards will be made out of the Gross Settlement Fund.

18. **Cy Pres.** A *Cy Pres* fund will be created which includes any residue of the Net Settlement Fund remaining for any reason (after the Settlement Administrator is paid \$2,000 for CAFA notice-related services, as provided in Section 34 of this Settlement Agreement), including checks that are not negotiated or are returned and remain undeliverable after one hundred (100) days following the mailing of the checks to Settlement Class Members under Section 15(d) of this Settlement Agreement. The *cy pres* fund shall be paid to the Public Justice Foundation. The *Cy Pres* funds shall be remitted by the Settlement Administrator to Schlanger Law Group Settlement

Trust (EIN 87-1100734) – which is a qualified settlement fund within the meaning of 1.468b of the Internal Revenue Code (“SLG Settlement Trust”)—with the words “cy pres award in Silver v Livewatch” written in the memo field of the check—within one hundred and thirty (130) days after the checks are mailed to the Settlement Class Members pursuant to Section 15(d) of this Settlement Agreement. Class Counsel shall provide proof of disbursement to the *Cy Pres* recipient to Defendants’ counsel.

19. **Full and Final Settlement.** Each Party agrees that the Litigation is being voluntarily settled after consultation with experienced legal counsel of their own choosing and that terms of the Settlement Agreement were negotiated at arm’s length and in good faith. It is the intent and purpose of this Settlement Agreement to effect a full and final settlement of the Released Claims. In order to effectuate that purpose, the Parties agree to cooperate with one another and with the Settlement Administrator and use their best efforts to obtain Court approval of the Settlement and this Settlement Agreement.

20. **Service Award.** Class Counsel will petition for a Service Award for the Representative Plaintiff in the amount of Ten Thousand Dollars (\$10,000) out of the Gross Settlement Fund within 40 days after the date Postcard Notice is mailed and Email Notice is emailed to the Settlement Class. If granted, within fifteen (15) days after the Effective Date, the Settlement Administrator shall disburse Ten Thousand Dollars (\$10,000.00), constituting the Representative Plaintiff’s Service Award out of the Gross Settlement Fund. Payment shall be by check payable to SLG Settlement Trust with the words “J. Silver Service Award” in the memo field.

21. **Releases.**

a. Upon the Effective Date and without any further action by the Court or by any Party

to this Settlement Agreement, Representative Plaintiff, on behalf of himself and all of his respective past, present and future predecessors, successors, assigns, devisees, relatives, heirs, legatees, and agents, and each of the Settlement Class Members, who do not opt-out of the Settlement, including their respective past, present and future predecessors, successors, assigns, devisees, relatives, heirs, legatees, insurers and agents, and each of the insurers, its partners, affiliates, subsidiaries, principals, associates, predecessors, successors, officers, directors, administrators, agents, representatives, insurers, attorneys, and employees, individually and as representatives of each of the Insurers shall be deemed to, and shall in fact, have remised, released and forever discharged any and all Released Claims, which they, or any of them, had or has or may in the future have or claim to have against the Released Persons.

- b. The release in Section 21.a is intended to be a specific release and not a general release. If, despite and contrary to the Parties' intention, a court construes the release as a general release with respect to the claims of the Litigation, as of the Effective Date, Representative Plaintiff and Settlement Class Members shall be deemed to have, and by operation of the Final Approval Order and Judgment shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, 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.

Representative Plaintiff and Settlement Class Members may hereafter discover facts in addition to or different from those they now know or believe to be true with respect to the subject matter of the Released Claims, but upon the Effective Date, shall be deemed to have, and by operation of the Final Approval Order and Judgment shall have, fully, finally, and forever settled and released any and all Released Claims whether known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct that is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts.

- c. In addition, Representative Plaintiff and Defendants hereby enter into the General Mutual Releases attached hereto as Exhibit D.

III. PROCEDURES FOR EFFECTUATING SETTLEMENT

22. **Cooperation.** Defendants and Class Counsel shall reasonably cooperate with each other to implement and monitor all aspects of this Settlement Agreement.

23. **The Motion for Preliminary Approval.** Representative Plaintiff shall move the Court on consent for an order preliminarily approving the settlement and providing notice of the Settlement through a Court-approved notice plan which shall include the mailing and emailing of the Notice of Proposed Class Action Settlement to the members of the Settlement Class. With regard to the motion for preliminary approval, the Parties shall submit, *inter alia*, the proposed preliminary order attached hereto as Exhibit A and the Proposed Postcard Settlement Class Notice (“Postcard Notice”) attached hereto as Exhibit B-1 and the Long Form Settlement Class Notice

(“Long Form Notice”) attached hereto as Exhibit B-2 and the Proposed Email Settlement Class Notice (“Email Notice”) attached here to as Exhibit B-3 (collectively the “Notice”). Mailing of the Postcard Notice and emailing of the Email Notice shall be accomplished no later than sixty days (60) days after the Preliminary Approval Date.

24. Right to Opt Out of Settlement.

- a. Any Settlement Class Member may elect to be excluded from this Settlement and from the Settlement by opting out of the Settlement. Any Settlement Class Member who desires to be excluded from the Settlement must give written notice of the election to be excluded to the Settlement Administrator at the address listed in the Notice, which must be received by the Settlement Administrator no later than the deadline set by the Court, which shall not be more than eighty-five (85) days after the date the Notice is mailed or emailed to the Settlement Class, or as otherwise ordered by the Court. Requests for exclusion must be signed by the person requesting exclusion from the Settlement and must include the requestor’s full name, current address, telephone number and a statement that the requestor seeking to be excluded from the Settlement Class wishes to opt-out of the Settlement.
- b. No person shall purport to exercise any exclusion rights for any other person, or purport to exclude any other Settlement Class Member as a group, aggregate or class involving more than one Settlement Class Member, or as an agent or representative, except upon proof of a legal power of attorney, conservatorship, trusteeship, or other legal authorization. Any such purported exclusion shall be void and the person that is the subject of the purported opt-out shall be treated as a Settlement Class Member and be bound by the Settlement.

- c. Any member of the Settlement Class who elects to be excluded shall not be entitled to receive any of the benefits of the Settlement, shall not be bound by the release of any claims pursuant to this Agreement, and shall not be entitled to object to the settlement or appear at the Fairness Hearing.
- d. The Settlement Administrator shall maintain the written notice(s) mailed to the Settlement Administrator and a list of persons who have excluded themselves and shall provide such written notice(s) and list to Defendants' Counsel and Class Counsel at least five (5) days prior to the date Class Counsel is required to file the Motion for Final Approval. The Settlement Administrator shall retain the originals of all written notices requesting to be excluded from the Settlement (including the envelopes with the postmarks).

25. **Right to Object to the Settlement.** Any Settlement Class Member shall have the right to object to the Settlement by filing a written objection with the Court at the address listed in the Notice and by mailing a copy thereof to the Settlement Administrator, not later than the deadline established by the Court, which shall not be more than eighty five (85) days after the date the Notice is mailed or emailed to the Settlement Class, or as otherwise ordered by the Court. Each objection must state the case name and case number of this litigation, be signed by the person(s) making the objection, or an attorney or legal guardian authorized to act on their behalf, and must set forth in detail each component of the Settlement to which they object, the reasons for each such objection, and any legal authority that they wish the Court to consider in support thereof. Objections must also include the objector's full name, current address, telephone number and whether he or she intends to appear at the Fairness Hearing, at which time their objections will be considered, if not previously withdrawn.

26. Any Settlement Class Member who fails to timely object in the manner set forth herein shall be deemed to have waived, and shall forever be foreclosed from raising, any objection or opposition, by appeal, collateral attack, or otherwise and shall be bound by all of the terms of this settlement upon Final Approval and by all proceedings, orders and judgments, including but not limited to the Release.

IV. CONDITIONS OF SETTLEMENT

27. **Approval of the Court.** This Agreement is subject to final approval by the Court. In connection with Representative Plaintiff's motion for final approval, which shall be filed fourteen (14) days prior to the Fairness Hearing, Representative Plaintiff shall submit the proposed final approval order attached hereto as Exhibit C. If the Court does not approve this Settlement Agreement or enter the Orders requested herein (or materially similar orders), or if the Court enters the judgment provided for herein but either the judgment is materially modified or reversed upon appellate review, then this Settlement Agreement shall be canceled and terminated, unless counsel for both sides, within fourteen (14) days from the receipt of a ruling or written notice of circumstances giving rise to termination, agree in writing to proceed with this Settlement Agreement.

28. **Termination of Agreement.** This Settlement Agreement shall terminate:

- a. Automatically if the Court fails to approve the Settlement Agreement;
- b. At the option of either Representative Plaintiff or Defendants if the Court or any other court materially modifies (or proposes to modify) this Settlement Agreement as a condition to approval of the Settlement.

29. **Effect of Termination of Agreement.** If this Settlement Agreement is terminated or canceled as set forth, the Parties shall be deemed to have reverted to their respective status as

of September 30, 2021, and they shall proceed in all respects as if this Agreement had not been executed and the related orders had not been entered, preserving in that event all of their respective claims and defenses in this case.

V. APPLICATION FOR ATTORNEYS' FEES, COSTS AND DISBURSEMENTS

30. Class Counsel Attorney Fees and Costs.

- a. Class Counsel will request attorneys' fees and costs in an amount that does not exceed one-third of the Gross Settlement Fund. Class Counsel shall file their petition within 40 days after the date Postcard Notice is mailed and Email Notice is emailed to the Settlement Class.
- b. All Court-approved attorneys' fees, costs and disbursements on behalf of or by Class Counsel shall be paid out of the Gross Settlement Fund. Defendants shall not be liable for any fees, costs or disbursements of Class Counsel apart from what is paid pursuant to this Agreement unless Representative Plaintiff is required to bring an action to enforce the terms of this Settlement Agreement and prevails in such action.
- c. Approval by the Court of Class Counsel's request for attorneys' fees and costs of litigation shall not be a precondition to approval of the Settlement or dismissal of the Litigation in accordance with this Settlement. Neither Representative Plaintiff, Class Counsel, nor Defendants may cancel or terminate the Settlement based on the Court's or any appellate courts' ruling with respect to fees, expenses and disbursements. Any appeal relating to Class Counsel's request for attorneys' fees and costs of litigation will not affect the finality of the Settlement, the entry of the dismissal order (beyond any modification of a standard dismissal order necessary

to effectuate implementation of all other aspects of the Settlement during the pendency of any litigation regarding fees and costs) or the releases provided herein. Class Counsel's request for attorneys' fees and costs of litigation may be considered separately from the Settlement.

- d. The Settlement Administrator shall, within 10 days of the Effective Date, disburse the amount approved by the Court for Class Counsel's fees and costs, payable to SLG Settlement Trust with the words "Silver v Livewatch – Counsel Fees and Costs" in the memo.

31. **Costs.** Except as otherwise provided in this Settlement Agreement, each Party shall bear its own costs.

32. **Responsibility for Taxes on Distribution.** Any person or entity that receives a distribution from the Settlement Fund shall be solely responsible for any taxes or tax-related expenses owed or incurred by that person or entity by reason of that distribution. Such taxes and tax-related expenses shall not be paid from the Settlement Fund.

33. **Defendants And Their Attorneys Are Not Responsible.** In no event shall Defendants or any of the other Released Persons have any responsibility or liability to Representative Plaintiff, Settlement Class Members, or to Class Counsel for taxes or tax-related expenses arising in connection with the payment or distribution of the Settlement Fund to Representative Plaintiff, Settlement Class Members, or Class Counsel.

VI. MISCELLANEOUS PROVISIONS

34. **CAFA Notice.** Not later than 10 days after this Settlement Agreement is filed with the Court, the Settlement Administrator, at Defendant's direction, shall serve notice of the Settlement and other required documents upon relevant government officials in accordance

with the Class Action Fairness Act (“CAFA”), 28 U.S. § 1715. Defendants shall file a certification with the Court that they have complied with CAFA’s notice requirements at least fourteen (14) days prior to the Fairness Hearing. As compensation for the services set forth in this paragraph, the first \$2,000 in uncashed or undeliverable Net Settlement Funds, if any, shall be paid to the Class Administrator, with all other such funds to go to the parties’ agreed upon *cy pres* recipient as provided in Section 18 of this Settlement Agreement.

35. No Admission of Liability. This Settlement Agreement, whether or not approved, or whether or not a final judgment is entered, and any and all negotiations, documents, and discussions associated with it, shall not be deemed or construed to be an admission or evidence of any violation of any statute or law, or of any liability or wrongdoing by Defendants, or of the truth of any of the claims or allegations made in the Litigation. Neither this Settlement Agreement, nor any of its terms, nor any of the negotiations or proceedings connected with it, shall be offered as evidence or received in evidence in any pending or future action or proceeding of any type whatsoever to establish any liability or admission by Defendants.

36. Amendments. This Settlement Agreement may be amended or modified only by a written instrument signed by Class Counsel and Defendants or their attorneys.

37. Entire Agreement. This Settlement Agreement constitutes the entire agreement among the Parties with respect to the subject matter of this Settlement Agreement and supersedes all prior negotiations, communications, and agreements between the Parties. No Party has entered into this Settlement Agreement in reliance upon any representations, warranties or

inducements outside this Settlement Agreement or its exhibits other than the representations, warranties, and covenants contained and memorialized in such documents.

38. **Extensions of Time.** The Parties may request that the Court allow reasonable extensions of time to carry out any of the provisions of the Settlement Agreement.

39. **Class Counsel's Authority.** Class Counsel, on behalf of the Representative Plaintiff, is expressly authorized to take all appropriate actions required or permitted to be taken by the Settlement Class pursuant to this Settlement Agreement to effectuate its terms, and is also expressly authorized to enter into any modifications or amendments to this Settlement Agreement on behalf of the Settlement Class.

40. **Counterparts and Facsimiles.** This Settlement Agreement may be executed in one or more counterparts and facsimile signatures shall be deemed to operate as original signatures. A full, executed copy of this Settlement Agreement, including all Exhibits shall be filed with the Court as an Exhibit to the motion for preliminary approval.

41. **Binding Nature.** This Settlement Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties.

42. **Construing the Agreement.** This Agreement shall not be construed more strictly against one Party than another merely by virtue of the fact that it may have been drafted initially by counsel for one of the Parties. It is acknowledged that all Parties have contributed substantially to the preparation of this Settlement Agreement.

43. **Applicable Law.** All the terms of this Settlement Agreement shall be governed by and interpreted in accordance with the laws of the State of New York, exclusive of choice of law principles, and applicable federal law.

44. **Headings.** The captions and section headings employed in this Settlement Agreement are for convenience only, are not part of the Settlement Agreement, and shall not be used in construing or interpreting the Agreement.
45. **Jurisdiction.** The Parties submit to the jurisdiction of the United States District Court for the Eastern District of New York for the purpose of implementing this Settlement Agreement and further consent and submit to the jurisdiction of this Court following the Effective Date over any disputes which later arise in connection with this Settlement Agreement or actions taken pursuant to the Settlement Agreement.
46. **Notification.** Any notice to be given to Class Counsel and/or Representative Plaintiff shall be sent by either first class mail, postage prepaid, or email as follows:

Daniel A. Schlanger, Esq.
Schlanger Law Group LLP
333 Fairview Avenue
Westwood, NJ 07675
dschlanger@consumerprotection.net

Any notice to be given to Defendants under the terms of this Agreement shall be sent by either first class mail, postage prepaid, or email:

A. Michael Furman
Spencer A. Richards
Furman, Kornfeld & Brennan LLP
61 Broadway, 26th Floor
New York, NY 10006
mfurman@fkblaw.com
srichards@fkblaw.com

[signatures on Next Page]

IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be executed by authorized individuals.

FOR REPRESENTATIVE PLAINTIFF: DEFENDANT LIVEWATCH SECURITY, LLC
D/B/A BRINKS HOME SECURITY F/K/A
BOLSTER LLC D/B/A SAFEMART

By: Jacob Silver
Jacob Silver
Date: 1/7/22

By: _____
Name: _____
Title: _____
Date: _____

FOR DEFENDANT MONITRONICS
INTERNATIONAL, INC. D/B/A BRINKS
HOME SECURITY

By: _____
Name: _____
Title: _____
Date: _____

IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be executed by authorized individuals.

FOR REPRESENTATIVE PLAINTIFF: DEFENDANT LIVEWATCH SECURITY, LLC
D/B/A BRINKS HOME SECURITY F/K/A
BOLSTER LLC D/B/A SAFEMART

By: _____ By: Jonathan R. Feber
Jacob Silver Name: Jonathan Feber
Title: Controller
Date: _____ Date: 1/10/2022

FOR DEFENDANT MONITRONICS
INTERNATIONAL, INC. D/B/A BRINKS
HOME SECURITY

By: Jonathan R. Feber
Name: Jonathan Feber
Title: Controller
Date: 1/10/2022

EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JACOB SILVER, on behalf of himself and all
others similarly situated,

Plaintiff,

v.

LIVEWATCH SECURITY, LLC d/b/a
BRINKS HOME SECURITY f/k/a
BOLSTER LLC d/b/a SAFEMART;
MONITRONICS INTERNATIONAL, INC.
d/b/a BRINKS HOME SECURITY,

Defendants.

Case No. 2:20-cv-02478-JS-AYS

**[PROPOSED] ORDER PRELIMINARILY APPROVING SETTLEMENT;
CERTIFYING CLASS; APPROVING NOTICE;
AND SETTING DATE FOR FAIRNESS HEARING**

WHEREAS, Plaintiff Jacob Silver (“Plaintiff”) and Defendants Livewatch Security, LLC and Monitronics International, Inc. (“Brinks Home Security”) (together the “Parties”), have reached a proposed settlement of this Litigation, which is set forth in the Settlement Agreement filed with the Court as ECF No. __; and

WHEREAS, Plaintiff has applied to the Court for preliminary approval of the proposed settlement, the terms and conditions of which are set forth in the Settlement Agreement, and for preliminary certification of a Settlement Class; and

WHEREAS, Defendants join in the request for preliminary approval of the settlement and preliminary certification of a Settlement Class; and

WHEREAS, the Court has fully considered the record of these proceedings, the Settlement Agreement and all exhibits thereto, the representations, arguments and recommendation of counsel

for the Parties and the requirements of law; and

WHEREAS, it appears to the Court that adequate investigation and research has been conducted such that the counsel for the Parties at this time are able to reasonably evaluate their respective positions. It further appears to the Court that settlement at this time will avoid substantial additional costs by all Parties, as well as avoid the delay and risks that would be presented by the further prosecution of this Litigation.

WHEREAS, it appears to the Court that the proposed settlement is fair, reasonable and adequate, and that a hearing should be held after notice to the Class of the proposed settlement to finally determine whether the proposed Settlement is fair, reasonable and adequate and whether a Final Approval Order and Judgment should be entered in this Litigation.

THIS COURT FINDS AND ORDERS AS FOLLOWS:

1. The capitalized terms used in this Preliminary Approval Order shall have the same meaning as defined in the Settlement Agreement except as may otherwise be ordered.
2. Preliminary approval of the proposed settlement is granted and the Parties are ordered to direct notice of the proposed settlement to the Settlement Class, in the manner set forth below. Pursuant to the standards for settlement approval set forth in Rule 23(e), the Court finds that it likely will be able to approve the settlement under Rule 23(e)(2)-(5) because the Class Representative and Class Counsel have adequately represented the Settlement Class and negotiated the settlement at arm's length; the settlement provides adequate relief for the Settlement Class, taking into account the costs, risks, and delay of trial and appeal; the proposed method of distributing relief to the Settlement Class is effective; the terms related to the award of attorneys' fees are reasonable; Class Counsel have identified all required agreements related to the settlement; the settlement treats all Settlement Class Members equitably relative to each other; and the Settlement provides Settlement

Class Members with an opportunity to opt out or object. Fed. R. Civ. P. 23(e)(2)-(3), (5). In addition, the Court finds that the *Grinnell* factors also support preliminary approval of the settlement and issuing notice to the Settlement Class, including the complexity, expense and likely duration of the Litigation; the amount of discovery completed at this stage of the Litigation; the risks of establishing liability and damages; the risk of certifying and maintaining a certified class through trial; the reasonableness of the settlement fund compared to the best possible recovery; and the reasonableness of the settlement fund, taking into account all the risks of continued litigation. *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974), *abrogated on other grounds by Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000).

3. The Settlement Agreement was entered into by experienced counsel after substantial adversarial proceedings, including significant discovery and motions, and only after extensive arm's-length negotiations, including a full-day private mediation conducted by Richard C. Byrne, Esq. of National Arbitration and Mediation, an experienced mediator, and free of any apparent collusion.

4. For purposes of the settlement only and subject to the Settlement Agreement, the Court finds that it will likely be able to certify the Settlement Class for purposes of judgment on the settlement proposal because it appears the prerequisites for class certification under Rule 23 of the Federal Rules of Civil Procedure have been preliminarily satisfied, and conditionally certifies the following Settlement Class for the Class Period September 1, 2019 through the date of this Order:

All persons in the United States who paid one or more fees on or after September 1, 2019 to Brinks Home Security for Brinks Home Interactive Messaging powered by ASAPer.

5. The persons comprising the Settlement Class and to whom Notice is to be mailed are identified in the Class Member List, as defined in the Settlement Agreement, which list will be

maintained as indicated in the Settlement Agreement.

6. For purposes of settlement only, the Court preliminarily finds that the proposed Settlement Class satisfies the prerequisites for a class action under Fed. R. Civ. P. 23(a) and 23(b)(3), and the Court, pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, conditionally certifies the Settlement Class. The Court finds, for purposes of settlement only, that the following requirements are met: (a) the above-described Settlement Class Members are so numerous that joinder is impracticable; (b) there are questions of law and fact common to the Settlement Class Members; (c) Plaintiff's claims are typical of Settlement Class Members' claims; (d) Plaintiff has fairly and adequately represented the interests of the Settlement Class and will continue to do so, and Plaintiff has retained experienced Class Counsel; (e) the questions of law and fact common to the Settlement Class Members predominate over any affecting any individual Settlement Class Member; and (f) a class action provides a fair and efficient method for settling the controversy under the criteria set forth in Rule 23 and is superior to alternative means of resolving the claims and disputes at issue in this Litigation. Accordingly, as required by Rule 23(e)(1)(B)(ii), the Court will likely be able to certify the Settlement Class for purposes of judgment on the proposal.

7. The Court finds that it has jurisdiction over the subject matter of this Litigation and personal jurisdiction over the Parties and all Settlement Class Members, including absent Settlement Class Members.

8. The Court appoints named Plaintiff Jacob Silver as Class Representative. The Court preliminarily finds that he will fairly and adequately represent and protect the interests of all Settlement Class Members, including absent Class Members.

9. The Court appoints Daniel A. Schlanger of Schlanger Law Group LLP, and Beth E. Terrell of Terrell Marshall Law Group PLLC, as Class Counsel. The Court preliminarily finds that

they are competent, capable of exercising all responsibilities as Class Counsel and will fairly and adequately represent and protect the interests of all Settlement Class Members, including absent Settlement Class Members.

10. Class Counsel is authorized to act on behalf of the Settlement Class with respect to all acts or consents required by, or which may be given pursuant to, the Settlement Agreement, and such other acts reasonably necessary to consummate the Settlement Agreement. Any Settlement Class Member may enter an appearance through counsel of his or her own choosing and at his or her own expense. Any Settlement Class Member who does not enter an appearance or appear on his or her own will be represented by Class Counsel.

11. The Court approves American Legal Claim Services LLC to serve as the Settlement Administrator, which shall fulfill the functions, duties, and responsibilities of the Settlement Administrator as set forth in the Agreement and this Order.

12. Any information comprising or derived from the Class Member List provided to the Settlement Administrator or Class Counsel pursuant to the Settlement Agreement shall be provided solely for the purpose of providing Notice, or following final approval, Cash Awards, to Settlement Class Members and informing such Settlement Class Members about their rights under the settlement; shall be kept in strict confidence; shall not be disclosed to any third party other than as set forth in the Settlement Agreement to effectuate the terms of the Agreement or the administration process; shall be used for no other cases; and shall be used for no other purpose.

13. To the extent that any federal or state law governing the disclosure and use of consumers' financial information (including but not limited to "nonpublic personal information" within the meaning of the Graham–Leach–Bliley Act, 15 U.S.C. § 6801 *et seq.*, and its implementing regulations) permits such disclosure only as required by an order of a court, this Order—

(a) qualifies as “judicial process” under 15 U.S.C. § 6802(e)(8); and

(b) authorizes the production of such information subject to this order’s protections, in which case the producing party’s production of such information in accordance with this Order constitutes compliance with the applicable law’s requirements. To the extent that any such law requires a producing or requesting party to give prior notice to the subject of any consumer financial information before disclosure, the Court finds that the limitations in this Order furnish good cause to excuse any such requirement, which the Court hereby excuses.

14. If the settlement is terminated or is not consummated for any reason, the foregoing conditional certification of the Class, appointment of the Class Representative and Class Counsel, and filing of the Second Amended Complaint shall be void and of no further effect, and the Parties to the proposed Settlement shall be returned to the status each occupied before entry of this Order, without prejudice to any legal argument that any of the parties to the settlement might have asserted but for the settlement.

15. A Fairness Hearing shall be held before this Court on _____, 2022, at _____ .m., to address, among other things: (a) whether the Court should finally certify the Settlement Class and whether the Class Representative and Class Counsel have adequately represented the Settlement Class; (b) whether the proposed settlement should be finally approved as fair, reasonable and adequate and whether the Final Approval Order and Judgment should be entered; (c) whether the Released Claims of the Settlement Class should be dismissed on the merits and with prejudice; (d) whether Class Counsel’s Motion for Attorneys’ Fees and Costs and the Class Representative’s Incentive Payment should be approved; and (e) such other matters as the Court may deem necessary or appropriate.

16. Papers in support of final approval of the settlement, the Class Representative’s

Incentive Payment, and Class Counsel's Motion for Attorneys' Fees and Costs shall be filed with the Court according to the schedule set forth in paragraph 28, below. The Fairness Hearing may be postponed, adjourned, or continued by order of the Court without further notice to the Settlement Class, except as provided in paragraph 28, below. After the Fairness Hearing, the Court may enter a Final Approval Order and Judgment in accordance with the Settlement Agreement that will adjudicate the rights of all Settlement Class Members with respect to the Released Claims being settled. The Court may finally approve the settlement at or after the Fairness Hearing with any modifications agreed to by Defendants and the Class Representative and without further notice to the Settlement Class, except such notice as may be provided through the Settlement Website.

17. The Court approves, as to form and content, the use of a Postcard Notice, a Long Form Notice, and an Email Notice (together the "Notice") substantially similar to the forms attached as Exhibits B-1, B-2, and B-3 to the Settlement Agreement, respectively. Postcard Notice will be provided to members of the Class by first-class U.S. mail using Defendants' records as well as other investigations deemed appropriate by the Settlement Administrator, updated by the Settlement Administrator in the normal course of business. Email Notice shall be delivered to those Settlement Class Members for whom Defendants have email addresses. Postcard Notices shall be mailed and Email Notices shall be emailed within 60 days of the date of entry of this Preliminary Approval Order. The Long Form Notice will be posted on the Settlement Website established by the Settlement Administrator after entry of this Preliminary Approval Order. Prior to the Fairness Hearing, the Settlement Administrator will submit to the Court a declaration of compliance with these notice provisions.

18. In the event the Postcard Notice is returned undeliverable with a forwarding address, the Settlement Administrator shall promptly re-mail the Postcard Notice to the indicated forwarding

address. In the event the Postcard Notice is returned undeliverable without a forwarding address, the Settlement Administrator shall promptly perform reasonable address traces for such returned notices. Except as set forth herein, there shall be no further obligation or attempt to obtain a forwarding address for any such returned mail or to further re-mail any such Postcard Notice or returned mail. Prior to the Fairness Hearing, the Settlement Administrator will submit to the Court a declaration of compliance with these notice re-mailing provisions.

19. Non-substantive changes may be made to the Notice by agreement of the Parties without further order of the Court.

20. The Notice, as directed in this Order and set forth in the Settlement Agreement, constitutes the best notice practicable under the unique circumstances of this case and is reasonably calculated to apprise the members of the Settlement Class of the pendency of this Litigation and of their right to object to the settlement or exclude themselves from the Settlement Class. The Court further finds that the Notice program is reasonable, that it constitutes due, adequate, and sufficient notice to all persons entitled to receive such notice and that it meets the requirements of due process and of Federal Rule of Civil Procedure 23.

21. The cost of Notice and settlement administration shall be paid from the Gross Settlement Fund as provided for in the Settlement Agreement.

22. Any member of the Settlement Class who desires to be excluded from the Settlement Class, and therefore not be bound by the terms of the Settlement Agreement, must mail a request for exclusion, which must be received by the Settlement Administrator no later than eighty-five (85) days after the date the Notice is mailed to the Settlement Class.

23. Each request for exclusion, or "Opt-Out", must be personally signed by the individual Settlement Class Member and include: (a) the Settlement Class Member's full name, address, and

telephone number; and (b) state unequivocally that the Settlement Class Member desires to be excluded from the Settlement Class and/or not to participate in the Settlement. a. No person shall purport to exercise any exclusion rights for any other person, or purport to exclude any other Settlement Class Member as a group, aggregate or class involving more than one Settlement Class Member, or as an agent or representative, except upon proof of a legal power of attorney, conservatorship, trusteeship, or other legal authorization. Any such purported exclusion shall be void and the person that is the subject of the purported opt-out shall be treated as a Settlement Class Member and be bound by the Settlement.

24. Any member of the Settlement Class who elects to be excluded shall not be entitled to receive any of the benefits of the Settlement, shall not be bound by the release of any claims pursuant to the Settlement Agreement, and shall not be entitled to object to the settlement or appear at the Fairness Hearing.

25. Any Settlement Class Member who does not submit a valid and timely request for exclusion may object to the proposed settlement. Any such Settlement Class Member shall have the right to appear and be heard at the Fairness Hearing, either personally or through an attorney retained at the Settlement Class Member's own expense. Any such Settlement Class Member must file with the Court and mail or hand-deliver to the Settlement Administrator and Counsel for the Parties a written a statement of the specific objections made no later than eighty-five (85) days after the date the Notice is mailed and emailed to the Settlement Class. Each objection must (i) state the case name and case number of this Litigation; (ii) set forth the Settlement Class Member's full name, current address, and telephone number; (iii) contain the objector's original signature; (iv) state that the objector objects to the settlement, in whole or in part; (v) set forth the reasons why the objector objects to the settlement along with copies of any supporting materials; (vi) set forth the identity of

any attorney who assisted, provided advice, or represents the objector as to this Litigation or such objection; and (vii) state whether the objector intends on appearing at the Fairness Hearing either *pro se* or through counsel and whether the objecting Settlement Class Member plans on offering testimony at the Fairness Hearing.

26. Any Settlement Class Member who fails to timely object in the manner set forth herein shall be deemed to have waived, and shall forever be foreclosed from raising, any objection or opposition, by appeal, collateral attack, or otherwise and shall be bound by all of the terms of this settlement upon Final Approval and by all proceedings, orders and judgments, including but not limited to the Release in the Litigation.

27. Pending entry of the Final Approval Order and Judgment, the Plaintiff, Settlement Class Members, and any person or entity allegedly acting on behalf of the Settlement Class, either directly, representatively or in any other capacity, are preliminarily enjoined from commencing or prosecuting against the Released Parties any action or proceeding in any court or tribunal asserting any of the Released Claims, provided, however, that this injunction shall not apply to individual claims of any Class Members who timely exclude themselves in a manner that complies with this Order and the Agreement. This injunction is necessary to protect and effectuate the settlement, this Order, and the Court's flexibility and authority to effectuate this settlement and to enter judgment when appropriate, and is ordered in aid of the Court's jurisdiction and to protect its judgments pursuant to 28 U.S.C. § 1651(a).

28. Further settlement proceedings in this matter shall proceed according to the following schedule:

<u>EVENT</u>	<u>SCHEDULED DATE</u>
--------------	-----------------------

Notice Deadline (mailing of Postcard Notice; posting of Long Form Notice on website)	60 days after entry of Preliminary Approval Order
Attorney's Fees and Costs and Incentive Payment application due by	40 days after the date Postcard Notice is mailed to the Settlement Class
Last day for Class Members to opt-out of Settlement (the Opt-Out Deadline)	85 days after the date Postcard Notice is mailed to the Settlement Class
Last day for Class Members to Object to the Settlement (the Objection Deadline)	85 days after the date Postcard Notice is mailed to the Settlement Class
Deadline to file briefs in support of Final Approval or Opposition to any Objections	14 days prior to the Fairness Hearing
Deadline to file certification regarding CAFA notice requirements	14 days prior to the Fairness Hearing
Fairness Hearing	On the date set in paragraph 15, but no earlier than 170 days after entry of Preliminary Approval Order

29. Service of all papers on counsel for the Parties shall be made as follows: for Class Counsel to Daniel A. Schlanger, Esq., Schlanger Law Group LLP, 333 Fairview Avenue, Westwood, NJ 07675; for Defendant to A. Michael Furman, Esq., Spencer A. Richards, Esq., Furman Kornfeld & Brennan LLP, 61 Broadway, 26th Floor, New York, New York, 10006

30. The address of this Court for purposes of any Objection as set forth in paragraph 25 is: Clerk of the Court, U.S. District Court for the Eastern District of New York, 100 Federal Plaza, Central Islip, NY 11722.

31. In the event that a Final Approval Order and Judgment is not entered by the Court, or the Effective Date of the Settlement does not occur, or the Settlement Agreement otherwise terminates according to its terms, this Order and all orders entered in connection therewith shall become null and void, shall be of no further force and effect, and shall not be used or referred to for any purposes whatsoever, including without limitation for any evidentiary purpose (including but not limited to class certification), in this Litigation or any other action. In such event the Settlement

Agreement, exhibits, attachments and all negotiations and proceedings related thereto shall be deemed to be without prejudice to the rights of any and all of the Parties, who shall be restored to their respective positions as of the date and time immediately preceding the execution of the Settlement Agreement.

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

33. The Parties are hereby authorized to establish the means necessary to administer the Settlement.

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

35. The settlement shall not constitute an admission, concession, or indication of the validity of any claims or defenses in the Litigation, or of any wrongdoing, liability, or violation by Defendants, who vigorously denies all of the claims and allegations raised in the Litigation.

It is SO ORDERED.

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

cc: All Counsel of Record

EXHIBIT B-1

This Notice Was Authorized by the United States District Court for the Eastern District of New York. This is not a solicitation from a lawyer.

Notice of Proposed Class Action Settlement and Fairness Hearing

Silver v. Livewatch Security, LLC, et al.
United States District Court, Eastern District of New York
Case No.: 2:20-cv-2478-JS-AYS

Class Member ID Number _____

[FRONT]

If You had an alarm monitoring system and received a charge from Brinks Home Security for a texting service called “ASAPer” you may be eligible for a cash payment from a class action settlement.

A settlement has been reached in a class action lawsuit against Defendants LiveWatch Security, LLC and Monitronics International, Inc., companies that do business collectively as Brinks Home Security. The lawsuit, *Jacob Silver v. Livewatch Security, LLC, et al.*, Case No. 2:20-cv-2478-JS-AYS (E.D.N.Y.), involves allegations that Defendants violated the law by charging for an alarm monitoring service after the service was deactivated.

Why am I being contacted? Records indicate that you were charged for the ASAPer texting on or after September 1, 2019. Thus, you are eligible to receive a payment from the settlement.

What does the settlement provide? The proposed settlement provides for a fund totaling \$395,000, which will be used to make payments to settlement class members after first making deductions for notice and administration costs, a payment to the Class Representative, and attorneys’ fees and costs for Class Counsel. **If you do not object or exclude yourself from this settlement and the settlement is approved by the court and becomes final, you will receive a check reflecting an equal share of the settlement.** Class Counsel estimate each settlement class member will receive \$45. You can learn more about this settlement including its benefits and your options, by visiting www.xxx.com.

Your Rights May Be Affected. If you do not want to be legally bound by the settlement, you must exclude yourself by [date]. If you do not exclude yourself, you will release your claims against Defendants, as more fully described in the Settlement Agreement available for review at www.xxx.com. If you stay in the settlement, you may object to it by [date]. The Long Form Notice available at www.xxx.com explains how to exclude yourself or object. The Court is scheduled to hold a hearing on [date] to consider whether to approve the settlement, Class Counsel’s request for attorneys’ fees of \$131,666, and an Incentive Payment for the Class Representative of up to \$10,000. You can appear at the hearing, but you do not have to appear. You can hire your own attorney, at your own expense, to appear or speak for you at the hearing.

For more information, visit www.xxx.com or call 1-999-999-9999.

Class Member ID Number: _____

[BACK]

Am I included in the settlement? Records indicate that you are entitled to compensation from this settlement because you were charged for the ASAPer messaging service during the Class Period, as defined in the Settlement Agreement with Defendants.

Please see the detailed Notice at www.xxx.com or call 1-999-999-9999 for a more detailed explanation of who is entitled to compensation from the settlement.

EXHIBIT B-2

NOTICE OF SETTLEMENT
LEGAL NOTICE BY ORDER OF COURT

IF YOU HAD AN ALARM MONITORING SYSTEM AND RECEIVED A CHARGE FROM BRINKS HOME SECURITY FOR A TEXTING SERVICE CALLED “ASAPER” YOU MAY BE ELIGIBLE FOR A CASH PAYMENT FROM A CLASS ACTION SETTLEMENT.

This Notice describes rights you may have in connection with the settlement of a lawsuit.

*The United States District Court for the Eastern District of New York authorized this Notice. This is not a solicitation from a lawyer. **This is not a legal action against you.***

- Defendants LiveWatch Security, LLC and Monitronics International, Inc., (collectively, “Brinks Home Security”) have agreed to pay \$395,000 into a fund from which eligible persons will receive Cash Awards. The fund also will be used to pay settlement administration expenses, any Court-awarded Incentive Payment, and Court-awarded attorneys’ fees and costs.
- The settlement resolves a lawsuit brought against Defendants regarding allegations they violated the law by charging for an alarm monitoring service called “ASAPER” after the service was deactivated.
- If You had an alarm monitoring system and received a charge from Brinks Home Security for a texting service called “ASAPER” and you fit the description of the Settlement Class (as defined below), then you are eligible to receive a payment.
- Court-appointed lawyers for the Settlement Class (“Class Counsel”) will ask the Court for a payment of up to \$131,666, which is equal to one-third of the fund, as attorneys’ fees and to reimburse them for the out-of-pocket expenses they paid to investigate the facts and litigate the case.
- The two sides disagree on whether Plaintiff and the Settlement Class could have won at trial.
- Your legal rights are affected whether you act or don’t act. Read this Notice carefully.

FOR ADDITIONAL INFORMATION REGARDING THIS SETTLEMENT, OR FOR INFORMATION ON HOW TO REQUEST EXCLUSION FROM THE SETTLEMENT CLASS OR FILE AN OBJECTION, PLEASE VISIT THE SETTLEMENT WEBSITE, www.xxx.com OR CALL (XXX) XXX-XXXX.

Please do not call or write the Court, the Court Clerk’s office, Defendants, or Defendants’ Counsel for more information. They will not be able to assist you.

BASIC INFORMATION

The purpose of this Notice is to let you know that a proposed settlement has been reached in a proposed class action case entitled *Jacob Silver v. Livewatch Security, LLC, et al.*, Case No. 2:20-cv-2478-JS-AYS, pending in the U.S. District Court for the Eastern District of New York. The Plaintiff has alleged that: (1) Defendants charged Settlement Class Members for a messaging service after it was discontinued in breach of the terms of customer contracts; (2) Defendants were unjustly enriched from charging Settlement Class Members for such service; and (3) Defendants' actions violated state consumer protection statutes. Defendants deny they did anything wrong. Defendants deny the allegations and maintain that they did nothing improper. The Court has not decided who is right.

You have legal rights and options that you may act on before the Court decides whether to approve the proposed settlement. Because your rights will be affected by this settlement, it is extremely important that you read this Notice carefully. This Notice summarizes the settlement and your rights under it.

YOUR LEGAL RIGHTS AND OPTIONS

ACCEPT PAYMENT	You do not need to submit a claim to receive a payment. You will receive a check reflecting your share of the settlement.
EXCLUDE YOURSELF BY DATE	Get no payment from the settlement fund. This is the only option that allows you to ever be part of any other lawsuit against Defendants about the legal claims in this case.
OBJECT BY DATE	Write to the Court explaining why you don't like the settlement.
ATTEND A HEARING ON DATE	Ask to speak in Court about the fairness of the settlement.

The Court in charge of this case still has to decide whether to approve the settlement. If it does and any appeals are resolved, benefits will be distributed to those who qualify and do not exclude themselves. Please be patient.

WHAT THIS NOTICE CONTAINS

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1. WHO IS IN THE SETTLEMENT CLASS?

The judge in the case has provisionally certified the following Settlement Class during the Class Period of September 1, 2019 through the date the settlement was preliminarily approved:

All persons in the United States who paid one or more fees on or after September 1, 2019 to Brinks Home Security for Brinks Home Interactive Messaging powered by ASAPer.

If you received notice of the settlement directed to you, records indicate that you are a member of the Settlement Class.

If you are not sure whether you are in the Settlement Class, or have any other questions about the Settlement, visit the Settlement Website at www.xxx.com or call the toll-free number 1-999-999-9999.

2. WHAT IS THIS LAWSUIT ABOUT?

In a class action, one or more people, called class representatives, sue on behalf of people who have similar claims. All of these people are a class, or class members. One court resolves the issues for all class members, except those who exclude themselves from the class.

The Class Representative alleges that Settlement Class Members had alarm monitoring systems through Brinks Home Security and were charged for the “ASAPer” messaging service after the service was discontinued. By so doing, Defendants purportedly breached their service contracts with Settlement Class Members, were unjustly enriched, and violated state consumer protection statutes. This is just a summary of the allegations. The complaint in the lawsuit is posted at www.xxx.com and contains all of the allegations. Defendants deny these allegations; however, in order to avoid the expense, inconvenience, and distraction of continued litigation, the Parties have agreed to the settlement described herein.

3. WHO IS REPRESENTING ME?

Jacob Silver sued Defendants and the Court has appointed him to be Class Representative for the Settlement Class.

The Court also approved Daniel A. Schlanger of Schlanger Law Group LLP and Beth E. Terrell of Terrell Marshall Law Group PLLC as Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

4. WHAT BENEFITS CAN I RECEIVE FROM THE SETTLEMENT?

Defendants have agreed to provide monetary compensation to Settlement Class Members who do not exercise their right to opt-out of the Settlement. Under the Settlement, Defendants are paying a total of \$395,000 in compensation to set up a settlement fund to be divided among all Settlement Class Members who do not exclude themselves from the Settlement after any fees, costs,

Incentive Payment, and settlement administration expenses have been deducted. Class Counsel estimate that your share of the settlement will be \$45. The amount is only an estimate.

If you do not exclude yourself from the Settlement Class, the Settlement Administrator will mail you a check.

If you receive a check, you will have 100 days from the date of the check to cash the check. If you do not cash the check within 100 days, your check will be void and the funds will be used as the Court deems appropriate, including redistribution to other Settlement Class Members or distribution to a charitable organization.

5. DO I HAVE TO PAY THE LAWYERS REPRESENTING ME?

No. Class Counsel will ask the Court to approve payment of up to \$131,666, which is one-third of the fund, for attorneys' fees and reimbursement of out-of-pocket expenses. These payments would pay Class Counsel for their time investigating the facts, litigating the case and negotiating the settlement. Class Counsel will also request an incentive payment of up to \$10,000 to the Class Representative in recognition of his service to the Settlement Class. The amount of any fee or service award will be determined by the Court. Class Counsel's contact information is as follows:

Beth E. Terrell TERRELL MARSHALL LAW GROUP PLLC 936 N. 34th Street, Suite 300 Seattle, WA 98103 Tel: 206-816-6603	Daniel A. Schlanger SCHLANGER LAW GROUP LLP 333 Fairview Avenue Westwood, NJ 07675 Tel: 212-575-3276 info@consumerprotection.net
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6. WHAT AM I AGREEING TO BY REMAINING IN THE SETTLEMENT CLASS IN THIS CASE?

Unless you exclude yourself, you will be part of the Settlement Class, and you will be bound by the release of claims in the settlement. This means that if the Settlement is approved, you cannot sue, continue to sue, or be part of any lawsuit against Defendants or the other Released Parties asserting a "Released Claim," as defined below. It also means that the Court's Order approving the settlement and the judgment in this case will apply to you and legally bind you.

The "Released Claims" that you will not be able to assert against Defendants or the Released Parties if you remain a part of the Settlement Class are as follows: any and all charges, complaints, claims, debts, liabilities, demands, obligations, costs, expenses, actions, and causes of action of every nature, character, and description, whether known or unknown, asserted or unasserted, suspected or unsuspected, fixed or contingent, pled in the Action or unpled in the Action, which

Representative Plaintiff and those Settlement Class Members who do not opt-out now have, own or hold against Defendants that arise out of a common nucleus of operative fact relating to Defendants' advertising and provision of the ASAPer service and the fees charged for the service.

"Released Parties" means Defendants and their past and present agents, directors, officers, employees, shareholders, members, managers, insurers, representatives, attorneys, predecessors, successors and assigns, parents and subsidiaries, divisions, and affiliates.

7. WHAT IF I DO NOT AGREE WITH THE SETTLEMENT

If you are a member of the Settlement Class, and you do not exclude yourself from the settlement, you may object to the settlement or any part of the settlement that you think the Court should reject, and the Court will consider your views. To object, you must send your objection to the Court and the Settlement Administrator, providing:

1. the case name and case number of this lawsuit (*Jacob Silver v. Livewatch Security, LLC, et al.*, Case No. 2:20-cv-2478-JS-AYS (E.D.N.Y.));
2. your full name, current address, and telephone number;
3. the reasons why you object to the settlement along with any supporting materials;
4. whether you intend to appear at the Fairness Hearing;
5. the identity of any lawyer who assisted, provided advice, or represents you as to this case or such objection, if any; and
6. your signature.

Your objection must be postmarked no later than [date]. Objections must be mailed to all of the following addresses:

Settlement Administrator:

TBD

The Court:

Clerk of the Court
United States District Court
Eastern District of New York
100 Federal Plaza
Central Islip, NY 11722

Plaintiff’s Counsel:

Defendants’ Counsel:

<p>Daniel A. Schlanger, Esq. Schlanger Law Group LLP 333 Fairview Avenue Westwood, NJ 07675 info@consumerprotection.net</p>	<p>A. Michael Furman Spencer A. Richards Furman, Kornfeld & Brennan LLP 61 Broadway, 26th Floor New York, NY 10006 mfurman@fkblaw.com srichards@fkblaw.com</p>
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8. HOW DO I EXCLUDE MYSELF FROM THE SETTLEMENT CLASS?

If you want to exclude yourself from the Settlement Class, sometimes referred to as “opting-out,” you will not be eligible to recover any benefits as a result of this settlement. However, you will keep the right to sue or continue to sue Defendants or Released Parties on your own and at your own expense about any of the Released Claims.

To exclude yourself from the Settlement Class, you must send a letter to the Settlement Administrator identifying:

1. your name, address, and telephone number;
2. the case name and case number of this lawsuit (*Jacob Silver v. Livewatch Security, LLC, et al.*, Case No. 2:20-cv-2478-JS-AYS (E.D.N.Y.));
3. a statement that you wish to exclude yourself from the Settlement Class; and
4. your signature.

If you wish to exclude yourself, you must submit the above information to the following address so that it is postmarked no later than [date]:

Brinks Home Security Settlement Administrator: [address]

REQUESTS FOR EXCLUSION FROM THE CLASS THAT ARE NOT POSTMARKED ON OR BEFORE [date] WILL NOT BE HONORED.

9. WHAT IS THE DIFFERENCE BETWEEN OBJECTING AND ASKING TO BE EXCLUDED?

Objecting means telling the Court that you do not like something about the settlement. You can object to the settlement only if you stay in the Settlement Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement. If you exclude yourself, you have no basis to object to the settlement because it no longer affects you.

10. WHAT IF I DO NOTHING AT ALL?

You will remain a member of the Settlement Class. See Part 4 above.

11. WHAT WILL BE DECIDED AT THE FAIRNESS HEARING?

The Court will hold a hearing to decide whether to approve the settlement and any requests for fees, expenses, and Service Award (“Fairness Hearing”). The Fairness Hearing is currently set for [date] at [time], at the United States District Court for the Eastern District of New York, Long Island Courthouse, located in Courtroom 1030, 100 Federal Plaza, Central Islip, New York, 11722. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check www.xxx.com and the Court’s docket for updates.

At the Fairness Hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. The Court will also consider the request by Class Counsel for attorneys’ fees and expenses and Incentive Payment for the Class Representative. If there are objections, the Court will consider them at the Fairness Hearing. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

You may attend the hearing, at your own expense, but you do not have to do so. You cannot speak at the hearing if you exclude yourself from the settlement. If you have objected to the settlement and want to attend the hearing you must state in your objection that you intend to appear at the Fairness Hearing either personally or through counsel.

12. DOES THIS NOTICE CONTAIN THE ENTIRE SETTLEMENT AGREEMENT?

No. This is only a summary of the settlement. If the settlement is approved and you do not exclude yourself from the Settlement Class, you will be bound by the release contained in the Settlement Agreement, and not just by the terms of this Notice. Capitalized terms in this Notice are defined in the Settlement Agreement. You can view the full Settlement Agreement online at www.xxx.com, or you can write to the address below for more information.

13. WHERE CAN I GET MORE INFORMATION?

For more information, you may visit www.xxx.com, you may call the Brinks Home Security Settlement Administrator at 1-999-999-9999, or you may contact Class Counsel as set forth in Section 5, above.

PLEASE MONITOR THE CASE WEBSITE, WWW.XXX.COM, FOR UPDATES AND OTHER IMPORTANT INFORMATION.

NOTE: PLEASE DO NOT CALL OR WRITE THE COURT, THE COURT CLERK’S OFFICE, DEFENDANTS, OR DEFENDANTS’ COUNSEL FOR MORE INFORMATION. THEY WILL NOT BE ABLE TO ASSIST YOU. If you have questions, please call [number] or visit www.XXX.com

EXHIBIT B-3

**THIS NOTICE WAS AUTHORIZED BY THE
UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK**

Class Member ID Number _____

Notice of Proposed Class Action Settlement and Fairness Hearing
Silver v. Livewatch Security, LLC, et al. Case No.: 2:20-cv-2478-JS-AYS
If You had an alarm monitoring system and received a charge from Brinks Home

**Security for an add-on texting service called “ASAPer” you may be eligible for a cash
payment from a class action settlement.**

A settlement has been reached in a class action lawsuit against Defendants LiveWatch Security, LLC and Monitronics International, Inc., companies that do business collectively as Brinks Home Security. The lawsuit, *Jacob Silver v. Livewatch Security, LLC, et al.*, Case No. 2:20-cv-2478-JS-AYS (E.D.N.Y.), involves allegations that Defendants violated the law by charging for an alarm monitoring service after the service was deactivated.

Why am I being contacted? Records indicate that you were charged for the ASAPer service on or after September 1, 2019. Thus, you are eligible to receive a payment from the settlement. Please see the detailed Notice at www.xxxxx.com or call 1-999-999-9999 for a more detailed explanation of who is entitled to compensation from the settlement.

What does the settlement provide? The proposed settlement provides for a fund totaling \$395,000, which will be used to make payments to settlement class members after first making deductions for notice and administration costs, a payment to the Class Representative, and attorneys’ fees and costs for Class Counsel. **If you do not object or exclude yourself from this settlement and the settlement is approved by the court and becomes final, you will receive a check reflecting an equal share of the settlement.** Class Counsel estimate each settlement class member will receive \$45. You can learn more about this settlement including its benefits and your options, by visiting www.xxxxx.com.

Your Rights May Be Affected. If you do not want to be legally bound by the settlement, you must exclude yourself by [date]. If you do not exclude yourself, you will release your claims against Defendants, as more fully described in the Settlement Agreement available for review at www.xxxxx.com. If you stay in the settlement, you may object to it by [date]. The Long Form Notice available at www.xxxxx.com explains how to exclude yourself or object. The Court is scheduled to hold a hearing on [date] to consider whether to approve the settlement, Class Counsel’s request for attorneys’ fees of \$131,666, and an Incentive Payment for the Class Representative of up to \$10,000. You can appear at the hearing, but you do not have to appear. You can hire your own attorney, at your own expense, to appear or speak for you at the hearing.

For more information, visit www.xxxxx.com or call 1-999-999-9999.

EXHIBIT C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JACOB SILVER, on behalf of himself and all
others similarly situated,

Plaintiff,

v.

LIVEWATCH SECURITY, LLC d/b/a
BRINKS HOME SECURITY f/k/a
BOLSTER LLC d/b/a SAFEMART;
MONITRONICS INTERNATIONAL, INC.
d/b/a BRINKS HOME SECURITY,

Defendants.

Case No. 2:20-cv-02478-JS-AYS

[PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS SETTLEMENT

WHEREAS, on _____ 2021, this Court entered an Order Granting Preliminary Approval of Proposed Settlement Agreement (the “Preliminary Approval Order”), preliminarily approving the proposed settlement of this Litigation pursuant to the terms of the Parties’ Settlement Agreement and directing that notice be given to the Settlement Class Members;

WHEREAS, pursuant to the Parties’ plan for providing notice to the Settlement Class (the “Notice Plan”), the Settlement Class was notified of the terms of the proposed settlement and of a Final Approval Hearing to determine, *inter alia*, whether the terms and conditions of the Settlement Agreement are fair, reasonable, and adequate for the release and dismissal of the Released Claims against the Released Parties as contemplated in the Settlement Agreement, and whether judgment should be entered dismissing the Litigation with prejudice; and

WHEREAS, a Final Approval Hearing was held on _____, 2022. Prior to the Final Approval Hearing, proof of completion of the Notice Plan was filed with the Court, along with declarations of compliance. Settlement Class Members were therefore notified of the terms of the

proposed settlement and their right to appear at the hearing in support of or in opposition to the proposed settlement, the amount of attorneys' fees and costs requested by Class Counsel and the Incentive Payment requested for the Class Representative;

NOW, THEREFORE, the Court, having heard the oral presentations made at the Final Approval Hearing, having reviewed all of the submissions presented with respect to the proposed settlement, having determined that the settlement is fair, adequate, and reasonable, having considered Class Counsel's Motion for Attorneys' Fees and Costs and the Class Representative's Incentive Payment, and having reviewed the materials in connection therewith, and good cause appearing, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. The capitalized terms used in this Order shall have the same meaning as defined in the Settlement Agreement except as otherwise ordered or defined.
2. The Court has jurisdiction over the subject matter of this Litigation, all claims raised therein, and all Parties thereto, including the members of the Settlement Class.
3. The Court finds, solely for purposes of considering this settlement and this Final Approval Order, that the requirements of Federal Rule of Civil Procedure 23 are satisfied, including requirements for the existence of numerosity, commonality, typicality, adequacy of representation, manageability of the Settlement Class for settlement purposes, that common issues of law and fact predominate over individual issues, and that settlement and certification of the Settlement Class is superior to alternative means of resolving the claims and disputes at issue in this Litigation.
4. The Settlement Class, which will be bound by this Final Approval Order, shall include all Settlement Class Members who did not submit a timely and valid Opt-Out request. The

individuals who have timely requested exclusion from the Settlement Class are identified in **Exhibit A** attached hereto. The individuals listed on **Exhibit A** are hereby excluded from the Settlement Class, are not bound by the Settlement Agreement, and shall not be entitled to any of the benefits afforded to Settlement Class Members under the Settlement Agreement.

5. For purposes of settlement only and this Final Approval Order, Plaintiff Jacob Silver (“Plaintiff”) is appointed and shall serve as Class Representative of the Settlement Class.

6. For purposes of settlement only and this Final Approval Order, the Court appoints the following as Class Counsel on behalf of Plaintiff and the Settlement Class: Daniel A. Schlanger of Schlanger Law Group LLP and Beth E. Terrell of Terrell Marshall Law Group PLLC.

7. For purposes of settlement only and this Final Approval Order, the Court hereby certifies the following Settlement Class for the Class Period of September 2, 2019 through the date of the Preliminary Approval Order:

All persons in the United States who paid one or more fees on or after September 1, 2019 to Brinks Home Security for Brinks Home Interactive Messaging powered by ASAPer.

8. The persons comprising the certified Settlement Class are identified in the Class Member List, as defined in the Settlement Agreement, which list will be maintained as indicated in the Settlement Agreement. The Settlement Class does not include the individuals listed on **Exhibit A**.

9. The Court finds for purposes of settlement only that the Settlement Class satisfies the prerequisites for a class action under Fed. R. Civ. P. 23(a) and 23(b)(3). The Court finds, for purposes of settlement only, that the following requirements are met: (a) the above-described Settlement Class Members are so numerous that joinder is impracticable; (b) there are questions of law and fact common to the Settlement Class Members; (c) Plaintiff’s claims are typical of

Settlement Class Members' claims; (d) Plaintiff has fairly and adequately represented the interests of the Settlement Class and will continue to do so, and Plaintiff has retained experienced Class Counsel; (e) the questions of law and fact common to the Settlement Class Members predominate over any affecting any individual Settlement Class Member; and (f) a class action provides a fair and efficient method for settling the controversy under the criteria set forth in Rule 23 and is superior to alternative means of resolving the claims and disputes at issue in this Litigation.

10. Notwithstanding the certification of the foregoing Settlement Class and the appointment of Class Counsel and of the Class Representative for purposes of effecting the settlement, if this Order is reversed on appeal, or the Settlement is terminated or is not consummated for any reason, the foregoing certification of the Settlement Class and appointment of Class Counsel and of the Class Representative shall be void and of no further effect, and the Parties to the proposed settlement shall be returned to the status each occupied before entry of this Order as if no Settlement Class was certified, without prejudice to any legal argument that any of the Parties to the settlement might have asserted but for the settlement.

11. The Court finds that the Notice Plan set forth in Sections 16 and 23 of the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order constitutes the best notice practicable under the circumstances and shall constitute, and was reasonably calculated to provide and did provide, due and sufficient notice to the Settlement Class of the pendency of this Litigation, certification of the Settlement Class for settlement purposes only, the existence and terms of the Settlement Agreement, the date of the Final Approval Hearing, and the right to object and to appear at the Final Approval hearing or to exclude themselves from the settlement, and satisfies the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and any other applicable law.

12. The Court hereby approves the settlement, finds that the settlement, as set forth in the Settlement Agreement and this Order, satisfies each of the requirements of Fed. R. Civ. P. 23(e)(2) and is in all respects fair, reasonable, adequate and in the best interests of the Settlement Class, taking into account the risks that both sides faced with respect to the merits of the claims alleged and remedies requested, the risks of maintaining a class action, and the expense and duration of further litigation, including trial and appeal; the effectiveness of the proposed relief to the Class, and the terms of the proposed award of attorneys' fees, including timing of payments, as described in more detail below. The Court further finds that the Class Representatives and Class Counsel have at all times adequately represented the Class and the settlement negotiations that resulted in the settlement were at all times conducted at arm's length. The Court also finds that Class Counsel have identified all required agreements related to the settlement and that, because the settlement provides for equal cash payments to all Settlement Class Members from the Net Settlement Fund, the settlement treats all Settlement Class Members equitable relative to one another. Fed. R. Civ. P. 23(e)(2). The Court finds that the recovery provided by the settlement is reasonable in light of the best possible recovery and the attendant risks of litigation; and the reaction of the Settlement Class to the settlement supports final approval. For all of these reasons the Court grants final approval of the settlement.

13. The Parties shall effectuate the Settlement Agreement according to its terms. The Settlement Agreement and every term and provision thereof shall be deemed incorporated herein as if explicitly set forth and shall have the full force of an Order of this Court.

14. Provided the Effective Date has occurred, distribution of the Cash Awards to Settlement Class Members shall be paid pursuant to the terms and conditions of the Settlement Agreement.

15. The Court has considered all objections to the settlement, including the objections of _____. The Court finds these objections do not counsel against settlement approval and they are hereby overruled in all respects. [*IF NO OBJECTIONS, modify*: Settlement Class Members were duly afforded an opportunity to object to the settlement and there were no objections to the settlement].

16. Upon the Effective Date, the Releasors shall have, by operation of this Final Approval Order, fully, finally, and forever released, relinquished, and discharged the Released Parties from all Released Claims pursuant to Section 21 of the Settlement Agreement.

17. Releasors are hereby permanently barred and enjoined from instituting, commencing, or prosecuting, either individually or as a class, or in any other capacity, any Released Claim against any of the Released Parties. In addition, Plaintiff and each Settlement Class Member are hereby enjoined from asserting as a defense, including as a set-off or for any other purpose, any argument that if raised as an independent claim would be a Released Claim.

18. This Final Approval Order, the Final Judgment, the Settlement Agreement, the settlement which it reflects, and any and all acts, statements, documents or proceedings relating to the settlement are not, and shall not be construed as or used as an admission by or against Defendants or any other Released Party of any fault, wrongdoing, or liability on their part, or of the validity of any Released Claim or of the existence or amount of damages. This Final Approval Order and the Agreement do not constitute a concession and shall not be used as an admission or indication of any wrongdoing, fault or omission by Defendant or any of the other Released Parties or any other person in connection with any transaction, event or occurrence, and neither this Final Approval Order nor the Agreement nor any related documents in this proceeding, nor any reports or accounts thereof, shall be offered or received in evidence in any civil, criminal, or administrative

action or proceedings, other than such proceedings as may be necessary to consummate or enforce this Final Approval Order, the Agreement, and all releases given thereunder, or to establish the affirmative defenses of *res judicata* or collateral estoppel barring the pursuit of claims released in the Agreement. This Final Approval Order also does not constitute any opinion or position of the Court as to the merits of the claims and defenses related to this Litigation.

19. The claims of the Class Representative and all Settlement Class Members in this Litigation, and as defined as Released Claims in Section 21 of the Settlement Agreement, are hereby dismissed in their entirety with prejudice. Except as otherwise provided in this Order and/or in this Court's Order Awarding Attorneys' Fees and Costs in this Litigation, entered in response to Class Counsel's motion therefor brought in connection with the settlement, the Parties shall bear their own costs and attorneys' fees. The Court reserves jurisdiction over the implementation of the settlement, including enforcement and administration of the Settlement Agreement, including any releases in connection therewith and any other matters related or ancillary to the foregoing.

20. Having reviewed the Motion for Attorneys' Fees and Costs and the Class Representative's Incentive Payment, the Court approves payment of attorneys' fees and reimbursement of costs and expenses in the amount of \$ \$131,666. Provided the Effective Date occurs, these amounts shall be paid from the Gross Settlement Fund in accordance with the terms of the Settlement Agreement. The Court finds the award of attorneys' fees, costs and expenses appropriate and reasonable for the following reasons: First, the Court finds that the settlement provides substantial benefits to the Settlement Class. Second, the Court finds the payment fair and reasonable in light of the substantial work performed by Class Counsel. Third, the Court concludes that the settlement was negotiated at arms-length without collusion and with the assistance of an experienced mediator. . Finally, the Court notes that the Class Notice specifically and clearly

advised the Settlement Class that Class Counsel would seek an award up to an amount no greater than the amount sought and Settlement Class Members had an opportunity to review the Motion for Attorneys' Fees and Costs and Class Representative's Incentive Payment prior to the deadline to object to the settlement. [IF NO OBJECTIONS: No Settlement Class Members objected to the request.]

21. The Court approves an Incentive Payment for the Class Representative in the amount of \$10,000 for Jacob Silver in settlement of his claims and in recognition of his services as Class Representative. The Court specifically finds this amount to be reasonable in light of the services performed by the Class Representative for the Settlement Class, including taking on the risks of litigation, providing discovery, and helping achieve the compensation being made available to the Settlement Class. Provided the Effective Date occurs, this amount shall be paid from the Gross Settlement Fund in accordance with the terms of the Settlement Agreement. Plaintiff shall not be entitled to any other payment under the Settlement Agreement. [IF NO OBJECTIONS: No Settlement Class Members objected to the request.]

22. The Court, being fully advised and having afforded Settlement Class Members with an opportunity to object, finds that the Class Settlement is fair and reasonable under Rule 23 of the Federal Rules of Civil Procedure, the Class Notice sent to Settlement Class Members satisfies the requirements of Rule 23 and due process, and the Parties have fully complied with the Preliminary Approval Order.

23. Class Counsel's requested fee award is fair and warranted given the results achieved for the Settlement Class, the risks undertaken by Class Counsel in litigating this Litigation, and the efforts undertaken by Class Counsel in reaching this settlement; and the requested Incentive Payment is warranted and commensurate with the amount of service awards

typically awarded in class actions brought in this District.

24. The Court finds that Defendants provided Class Action Fairness Act (“CAFA”) notice to the appropriate state and federal officials pursuant to 28 U.S.C. § 1715.

25. The Court finds that no reason exists for delay in entering this Final Approval Order. Accordingly, the Clerk is directed to enter this Final Approval Order and the accompanying Judgment of Dismissal.

26. The Parties, without further approval from the Court, are hereby permitted to agree to and adopt such amendments, modifications and expansions of the Settlement Agreement and its implementing documents (including all exhibits to the Settlement Agreement) so long as they are consistent in all material respects with the Final Approval Order and Judgment of Dismissal and do not limit the rights of the Settlement Class Members.

27. All Settlement Class Members are bound by this Final Approval Order and the Judgment of Dismissal. They are further bound by the terms of the Settlement Agreement including, but not limited to, its Release provisions.

28. Notice of entry of this Order and the ensuing Judgment of Dismissal has been given to Class Counsel on behalf of the Settlement Class. It shall not be necessary to send notice of entry of this Final Approval Order or ensuing Judgment of Dismissal to individual members of the Settlement Class.

29. In the event that the Settlement Agreement is terminated pursuant to its own terms; or the Settlement Agreement, Preliminary Approval Order, Final Approval Order, or Judgment of Dismissal are reversed, vacated, or modified in any material respect by this or any other court, then (a) all orders entered pursuant to the Settlement Agreement shall be vacated, including this Final Approval Order; (b) the instant action shall proceed as though a Settlement Agreement had never

been reached; and (c) no reference to the prior Settlement Agreement, or any documents or actions related thereto, shall be made for any purpose; provided, however, that the Parties to the Settlement Agreement agree to appeal an adverse ruling jointly and the Settlement Agreement, Preliminary Approval Order, Final Approval Order, or Judgment of Dismissal are upheld on appeal in all material respects, then the Settlement Agreement, Preliminary Approval Order, Final Approval Order, or Judgment of Dismissal shall be given full force and effect.

30. Without affecting the finality of this Final Approval Order or the Judgment of Dismissal for purposes of appeal, the Court retains jurisdiction as to all matters related to the administration, consummation, enforcement, and interpretation of the Settlement Agreement and this Final Approval Order and accompanying Judgment of Dismissal, and for any other necessary purpose.

It is SO ORDERED.

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

cc: All Counsel of Record

EXHIBIT D

GENERAL MUTUAL RELEASE

This General Mutual Release is entered into by and between Jacob Silver (“Plaintiff”) and Livewatch Security LLC and Monotronics International, Inc (“Defendants”) in consideration for the Settlement Agreement executed in the matter of *Silver v. LiveWatch Security LLC, et. al* (the “Litigation”). In the event that a Final Approval Order and Judgment is not entered by the Court, or the Effective Date of the Settlement does not occur, or the Settlement Agreement otherwise terminates according to its terms, this General Mutual Release shall become null and void, shall be of no further force and effect, and shall not be used or referred to for any purposes whatsoever, including without limitation for any evidentiary purpose in the Litigation or any other action.

1. **Release by Plaintiff:** Plaintiff and any other Person that might succeed to Plaintiff’s rights and responsibilities under the Settlement Agreement hereby forever release, acquit, and discharge Defendants and each of their respective past and present insurers, attorneys, partners, associates, and other employees, successors, predecessors, parents, subsidiaries, sister and affiliated corporations, divisions or other related entities, shareholders, officers, directors, governors, heirs, assigns, agents, trustees, administrators, subrogates, executors, fiduciaries, privies, beneficiaries, and any other person or entity that might succeed to their rights and responsibilities under the Settlement Agreement from any and all causes of action, suits, claims, liens, demands, judgments, indebtedness, costs, damages, obligations, attorney’s fees, losses, claims, controversies, liabilities, demands, and all other legal responsibilities in any form or nature, other than for breach of the Settlement Agreement, that arose or accrued at any time before the Effective Date of the Settlement.

Without limiting the generality of the foregoing, the Released Claims include all claims arising out of or in any way related to that arise out of a common nucleus of operative fact relating to Defendants' advertising and/or statements of the ASAPer service, provision of the ASAPer service and the fees charged for the service. All released rights shall be barred by principles of res judicata, collateral estoppel, and claim and issue preclusion.

2. Release by Defendants: Defendants and their respective past and present insurers, attorneys, partners, associates, and other employees, successors, predecessors, parents, subsidiaries, sister and affiliated corporations, divisions or other related entities, shareholders, officers, directors, governors, heirs, assigns, agents, trustees, administrators, subrogates, executors, fiduciaries, privies, beneficiaries, and any other person or entity that might succeed to their rights and responsibilities under the Settlement Agreement, hereby forever release, acquit, and discharge Plaintiff and his assigns, agents, employees, co-owners, lienholders, leaseholders, administrators, subrogates, executors, fiduciaries, privies, beneficiaries and any other person or entity that might succeed to his rights and responsibilities under the Settlement Agreement from any and all causes of action, suits, claims, liens, demands, judgments, indebtedness, costs, damages, obligations, attorney's fees, losses, claims, controversies, liabilities, demands, and all other legal responsibilities in any form or nature, other than for breach of the Settlement Agreement, that arose or accrued at any time before the Effective Date of the Settlement. All released rights shall be barred by principles of res judicata, collateral estoppel, and claim and issue preclusion.