

## **FIRST AMENDED AND RESTATED CLASS ACTION SETTLEMENT AGREEMENT**

This First Amended and Restated Class Action Settlement Agreement is entered into to be effective as of April 17, 2020 by and between Plaintiffs Kenneth Elliott (“Elliott”), Juan Romero (“Romero”), and Frank Tiscareno (“Tiscareno”), individually and on behalf of the Class Members they represent, and Defendant Securus Technologies, LLC. (“Securus” or “Defendant”). Each of Elliott, Romero, and Tiscareno may be individually referred to herein as a “Plaintiff” or “Class Representative.” They are collectively referred to herein as the “Plaintiffs” or “Class Representatives.” The Class Representatives and Securus are collectively referred to herein as the “Parties.”

This Settlement Agreement is: (a) subject to the approval of the court; (b) made pursuant to Fed. Rule Civ. Proc. 23(d),(e), and (h); and (c) made for the sole purpose of attempting to consummate settlement of the Action on a class-wide basis subject to the following terms and conditions.

### **I. DEFINITIONS**

As used herein, the following terms shall have the meanings indicated:

- A. **Action**: The class action case pending in the United States District Court for the Southern District of California captioned *Juan Romero, Frank Tiscareno, and Kenneth Elliott on behalf of themselves and all others similarly situated v. Securus Technologies, Inc.*, No. 16-cv-1283 JMM (MDD).
- B. **Agreement, Settlement Agreement or Settlement**: The settlement agreement reflected in this document, titled “First Amended and Restated Class Action Settlement Agreement.”
- C. **Approved Number**: A telephone number approved by a Securus customer for entry into Securus’s Call Platform so that calls to that number may be completed without being recorded.
- D. **Attorney Expenses and Fee Award**: The amount, not to exceed eight hundred and forty thousand dollars (\$840,000) finally approved by the Court and awarded to Class Counsel to compensate them for their attorneys’ fees, including their pre-filing investigation, their filing of the Action and all related litigation activities, this Settlement, all post-Settlement compliance procedures, and taxable and discretionary costs and expenses incurred.
- E. **Calling System or Call Platform**: Securus’s inmate telephone system, referred to as the “Securus Call Platform.”
- F. **Class Counsel**: Foley & Lardner, LLP, the Law Office of Ronald A. Marron, APLC, and the Law Office of Robert L. Teel.

- G. **Class**: Every person who was a party to any portion of a conversation between a person who was in the physical custody of a law enforcement officer or other public officer in California, and that person's attorney, on a telephone number designated or requested not to be recorded, any portion of which was eavesdropped on or recorded by Defendant Securus Technologies, Inc. by means of an electronic device during the Class Period.
- H. **Class Member**: Each person who is a member of the Class.
- I. **Class Period**: July 10, 2008 through whichever occurs first: (1) the date on which the court grants preliminary approval of the settlement; or (2) sixty (60) days after the full execution of this Settlement Agreement.
- J. **Complaint**: The Third Amended Complaint For: (1) Invasion of Privacy Cal. Penal Code § 636; (2) Unfair Competition, Cal. Bus. & Prof. Code §§ 17200, et seq.; (3) Concealment; (4) Fraud; (5) Negligence; and (6) Unjust Enrichment which is the operative complaint and was filed on February 8, 2017.
- K. **Court**: The United States District Court for the Southern District of California.
- L. **Effective Date**: The effective date of this Settlement will occur on the date the court enters judgment granting final approval of the settlement.
- M. **Final Approval, Final Judgment or Final Order**: The final order and judgment shall be substantially in accordance with terms and conditions set forth herein, or as required by the Court and reasonably approved by the Parties, and shall be attached to the Final Approval Motion as set forth below to be entered by the Court finally approving this Settlement.
- N. **Parties**: The Class Representatives and Securus.
- O. **Preliminary Approval or Preliminary Approval Order**: The Court's order preliminarily approving the proposed Settlement substantially in accordance with terms and conditions set forth herein, or as required by the Court and reasonably approved by the Parties.
- P. **Service Award**: The service or incentive award made to each Class Representative in an amount not to exceed twenty thousand dollars (\$20,000) in exchange for the general release of their claims, in recognition of their willingness to represent the interests of the Class Members, and to compensate them for initiating the Action, performing work in support of the Action, opportunity costs, notoriety and reputational risk, and undertaking all risks of liability for serving in a fiduciary capacity as the class representative for the Class Members in the prosecution of the Action. This payment is subject to the Court's approval.
- Q. **Term**: A five (5) year period beginning on the Effective Date.

## II. RECITALS

- A. Class Counsel represents that one or more of them conducted an extensive pre-filing investigation, followed by commencement of the Action on May 27, 2016. Plaintiffs filed several amendments resulting in the Complaint. On April 12, 2017, Securus filed its answer, including various affirmative defenses, denying any right by Plaintiffs to the requested relief.
- B. The Parties engaged in discovery, and on or about October 10, 2017, Plaintiffs filed a motion for class certification, which the Court denied on April 12, 2018, with leave to renew the motion.
- C. On May 22, 2018, Plaintiffs filed a motion for partial summary judgment seeking to eliminate a need to prove that Securus intended to violate Cal. Pen. Code § 636 to trigger its civil liability under Cal. Pen. Code § 637.2. On July 11, 2018, Plaintiffs filed a renewed motion for class certification.
- D. On October 3, 2018, while both of these motions were pending, the Parties attended a full day mediation with the Honorable Leo S. Papas (Retired), but did not settle the Action.
- E. On November 21, 2018, the Court denied Plaintiffs' motion for partial summary judgment,.
- F. On November 21, 2018, the Court granted the new motion for class certification of Plaintiffs' requests for monetary damages under CIPA and their requests for injunctive and declaratory relief, but limited certification for monetary damages to the Plaintiffs' claim under Cal. Penal Code § 636. The Court certified, pursuant to both Federal Rule of Civil Procedure 23(b)(2) and (b)(3), the following class:

“Every person who was a party to any portion of a conversation between a person who was in the physical custody of a law enforcement officer or other public officer in California, and that person's attorney, on a telephone number designated or requested not be recorded, any portion of which was eavesdropped on or recorded by Defendant Securus Technologies, Inc. by means of an electronic device during the period from July 10, 2008 to the applicable opt-out date, inclusive (the “Class Period”).”
- G. Plaintiffs filed an interlocutory request to appeal the denial of their motion for partial summary judgment. This request was denied. All the Parties also petitioned the Ninth Circuit Court of Appeals for permission to appeal the Court's certification order under Federal Rule of Civil Procedure 23(f). Plaintiffs' request was denied. Securus' request was granted. On April 17, 2019, the Court stayed all proceedings during the pendency of the appeal.

- H.** On August 16, 2019, the Parties attended a second mediation with Judge Papas. Thereafter, the Parties reached an agreement on settlement, the terms of which are memorialized here.
- I.** Plaintiffs and Class Counsel recognize the expense and length of continued proceedings necessary to continue the litigation against Defendants through trial and through any further appeals. Plaintiffs and Class Counsel also have taken into account the uncertainty and risk of further litigation, including the appeal of class certification allowed by the Ninth Circuit, as well as the potential outcome, and the difficulties and delays inherent in such litigation. Plaintiffs and Class Counsel have conducted extensive settlement negotiations. Based on the foregoing, Plaintiffs and Class Counsel believe the settlement set forth in this Agreement is fair, adequate, and reasonable and is in the best interests of the Class Members. It is in the best interests of the Class and the public to settle the Action because, without limitation: (1) the change in business practices called for herein eliminates virtually all risk of an inadvertent recording of attorney-detainee phone calls, thereby protecting the state and federal constitutional rights of the Class, as well as other detainees and their counsel; and (2) the Settlement avoids the considerable risks, delays, and the expense of further litigation.
- J.** Securus generally and specifically denies it committed any wrongful act or violated any law or duty. In addition, Securus maintains it has meritorious defenses to all claims alleged in the Action and is prepared to defend the Action. Despite its firm conviction in these regards, Securus recognizes that the defense of this litigation will be protracted and expensive. Substantial amounts of time, energy, and resources of Securus have been, and unless this Settlement is made, will continue to be devoted to the defense of the claims asserted by Plaintiffs. Defendant, therefore, has agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the Released Claims.
- K.** The Parties agree that nothing in this Agreement and its related documents shall be construed as any admission or concession by Plaintiffs that there is any uncertainty about the liability of Defendant, or the scope of damages and other relief to which they are entitled under the law. Conversely, the Parties agree that nothing in this Agreement and its related documents shall be construed as any admission or concession by Defendant that it bears any fault, liability, or that it committed any wrongdoing or caused any damage whatsoever.
- L.** The Parties have zealously advocated on behalf of their clients. The Parties have engaged in sufficient investigation and discovery to assess the relative merits of Plaintiffs' claims and of Securus's defenses, and to fairly and equitably compromise on a resolution of the claims.
- M.** The Parties believe that it is desirable that the Plaintiffs' claims be fully and finally compromised, settled, and terminated now, with prejudice, and be forever barred pursuant to the terms and conditions set forth in this Settlement Agreement. This

Agreement is a product of sustained arm's length negotiations. The Parties and their counsel have agreed to resolve the claims against Securus as a class action settlement according to the terms set forth herein.

- N. The Court granted preliminary approval to the Settlement subject to the following revisions and modifications to the language of the original settlement agreement to be set forth in the Preliminary Approval Order:
1. The first full sentence of Article III, "SETTLEMENT TERMS," Section E, Subpart 4, "Compliance Reporting," on page 6 of 17 of the original settlement agreement shall be amended and restated to read, "Within twelve (12) months of the Effective Date, and within each six-month period thereafter during the Term of this Settlement Agreement, Securus will serve on Class Counsel a declaration executed under penalty of perjury describing Securus' compliance with the requirements of this Agreement."
  2. The second full sentence of Article III, "SETTLEMENT TERMS," Section G, "Service Awards," on page 7 of 17 of the Settlement Agreement shall be amended and restated to read, "After preliminary approval of the Agreement, the Class Representatives may file a petition for Service Awards in an amount up to \$20,000 each."
  3. The last sentence of Article IV, "RELEASE OF CLAIMS," Section A on page 7 of 17 of the Settlement Agreement shall be amended and restated to read, "Plaintiffs shall release any further rights to file an Application for Attorneys' Fees and Costs and for a Service Award following entry of the Court's order in connection therewith and the Court's Final Approval Order."
  4. Article VIII, "MISCELLANEOUS PROVISIONS," Section V, "Continuing Jurisdiction," on page 15 of 17 of the Settlement Agreement shall be amended and restated in its entirety to read "Continuing Jurisdiction. The Court may have continuing jurisdiction to implement this Agreement's terms and the Final Judgment. The Parties submit to the jurisdiction of the Court for purposes of implementing the terms of the Settlement Agreement."
- O. Class Counsel and the Class Representatives believe that this Agreement is fair, reasonable, and adequate because it provides for settlement on behalf of the Class, even though the Ninth Circuit has granted interlocutory review to the class certification determination.
- P. In consideration of the promises, covenants, representations, conditions, and warranties contained herein, and for good and valuable consideration given hereunder, the receipt and sufficiency of which is hereby acknowledged by the signatories to this Settlement Agreement, the Parties hereby agree as follows.

### III. SETTLEMENT TERMS

- A. **Class Certification.** In consideration of all the other benefits they are receiving pursuant to this Settlement Agreement, Plaintiffs hereby: (a) settle and release their individual claims; and (b) abandon their request for monetary damages on behalf of the Class under the California Invasion of Privacy Act and accordingly request that the Court amend its class certification order so that it consists of only a Rule 23(b)(2) class for injunctive and declaratory relief. The Parties thus stipulate and agree that the Rule 23(b)(2) Class shall be defined as:

“Every person who was a party to any portion of a conversation between a person who was in the physical custody of a law enforcement officer or other public officer in California, and that person’s attorney, on a telephone number designated or requested not to be recorded, any portion of which was eavesdropped on or recorded by Defendant Securus Technologies, Inc. by means of an electronic device during the Class Period.”

- B. **Conditional Nature of Stipulation for Certification.** The Parties stipulate and agree to certification of the claims asserted on behalf of Plaintiffs and Class Members for purposes of this settlement only. If the settlement does not become effective, the fact that the Parties were willing to stipulate to certification as part of the settlement shall not be admissible or used in any way in connection with, the question of whether the Court should certify any claims in a non-settlement context. If the settlement does not become effective, Defendant reserves the right to contest any issues relating to class certification and liability.
- C. **Appointment of Class Representative.** Solely for the purposes of this Settlement, the Parties stipulate and agree Plaintiffs Elliott, Romero, and Tiscareno shall be appointed as representatives for the Class.
- D. **Appointment of Class Counsel.** Solely for the purpose of this Settlement, the Parties stipulate and agree that the Court appoint Class Counsel to represent the Class.
- E. **Injunctive Relief for the Benefit of Plaintiffs and the Class.**
1. **Verification and No Recording of Approved Numbers.** Within six (6) months of the Effective Date, Securus shall make available to its current and future California facility customers a “Private Call” option at no additional charge by Securus that allows persons who intend to make calls to what they believe to be Approved Numbers to so indicate at the commencement of the call. If the dialed number is an Approved Number, the call will be connected and will not be recorded. If the dialed number is not an Approved Number, the call will not be completed. In the latter circumstance, the calling party may elect to call the same number via other,

non-Private-Call options, in which case the call will be recorded and may be monitored. Securus agrees that it shall not unilaterally impose any additional charge or cost for Private Calls to Approved Numbers; however, the Parties agree and acknowledge that the rates charged by Securus for calls, including Private Calls to Approved Numbers, are dictated by Securus' facility customers.

2. Message Prompts. Within six (6) months of the Effective Date, Securus will make available to its current and future California customers the following message prompts as alternatives to its standard message prompts: (1) for all calls to non-Approved Numbers, a prompt advising that the call will be recorded and may be monitored, along with basic instructions to contact the facility and request Approved Number treatment; and (2) for all calls to Approved Numbers, a prompt advising that the call will not be recorded and cannot be monitored.
3. Designation of Approved Numbers. In addition to the other notice requirements set forth below, within six (6) months of the Effective Date, Securus shall post on its public facing website(s), in a reasonably conspicuous manner, information that will facilitate one's designation of a telephone number as an Approved Number at its California facilities. This information may include, but is not necessarily limited to, a description of the availability of the Private Lines for an Approved Number and contact information for relevant sections or persons of law enforcement who can assist in the privatization process.
4. Compliance Reporting. Within twelve (12) months of the Effective Date, and within each six-month period thereafter during the Term of this Settlement Agreement, Securus will serve on Class Counsel a declaration executed under penalty of perjury describing Securus' compliance with the requirements of this Agreement. Each declaration shall identify the number California customers and facilities it has offered the Private Call option to, and the number of customers and facilities that have and have not agreed to offer the Private Call option to its detainees and/or their attorneys (*i.e.*, the take rate for the Private Call option offer).
5. Exception for Compliance with Legislative/Regulatory Requirements. If any local, state, or federal legislative or regulatory body or agency has adopted or adopts legislation, regulations, or rules that conflict with the terms of this Settlement Agreement, and Securus in good faith concludes that it is legally required to depart from the requirements of this Settlement Agreement, it shall provide notice of such intended departure to Class Counsel and the Court.

F. Attorneys' Fees and Expenses. Securus agrees to pay attorneys' fees and costs to Class Counsel in the amount of eight hundred and forty thousand dollars

(\$840,000), subject to Court approval. After preliminary approval of the Agreement, Class Counsel shall move the Court for, and Securus agrees not to oppose, a petition for an Attorney Expense and Fee Award not to exceed eight hundred and forty thousand dollars (\$840,000). Payment of any Court-awarded fees and costs shall be made via wire to one or more accounts identified by Class Counsel within 30 days after the Effective Date. One or more Class Counsel shall have the option to receive any attorneys' fees awarded hereunder in the form of periodic payments in lieu of a lump sum payment. The Parties authorize a qualified settlement fund under 26 U.S.C. § 468B to be established with any qualified trustee, including the settlement administrator, if any Class Counsel desires to receive periodic payments in lieu of a lump sum payment of attorneys' fees. This is solely for convenience and Defendant shall have no further responsibility to pay attorneys' fees to Class Counsel after fulfilling its obligations hereunder.

- G. **Service Awards.** Securus agrees to pay a Service Award in the amount of up to twenty thousand dollars (\$20,000) to each Class Representative for their services on behalf of the Settlement Class and in exchange for their release of their individual claims as provided elsewhere herein, subject to Court approval. After preliminary approval of the Agreement, the Class Representatives may file a petition for Service Awards in an amount up to \$20,000 each. Securus agrees not to oppose the petitions for payment of the Service Awards. Payment of the Service Awards to the Class Representatives shall be made via wire to the trust account identified by Class Counsel within 30 days after the Effective Date.

#### IV. **RELEASE OF CLAIMS**

- A. **Released Parties and Claims.** Provided that this Agreement is finally approved by the Court, Plaintiffs, on behalf of themselves and their heirs, representatives, successor, assigns, trusts, executors, but not the Class Members (the "Releasing Parties"), hereby release and discharge Securus, and each of Securus's respective past and present officers, directors, employees, shareholders, members, partners, agents, representatives, predecessors, successors, parents, subsidiaries, affiliates, assigns, insurance companies, and attorneys (the "Released Parties"), from any and all liabilities, claims, causes of action, damages (whether actual, compensatory, statutory, punitive or of any other type), penalties, losses, or demands, whether known or unknown, existing or suspected or unsuspected, that Plaintiffs have or might have against them related to the subject matter of this litigation as of the date of the Agreement (the "Released Claims"). Plaintiffs shall release any further rights to file an Application for Attorneys' Fees and Costs and for a Service Award following entry of the Court's order in connection therewith and the Court's Final Approval Order.
- B. **Civil Code Section 1542.** The Releasing Parties knowingly and voluntarily waive the protections of California Civil Code Section 1542, and each Releasing Party is deemed to waive the protections of Section 1542 to the extent that Section 1542



applies to the release given by the Releasing Party. Section 1542 provides as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

**V. NOTICE, OBJECTIONS AND EXCLUSIONS**

- A. Injunctive Relief Only.** As the Settlement Agreement provides only for injunctive relief pursuant to Federal Rule of Civil Procedure 23(b)(2) and requires no release of any monetary remedies by any member of the Settlement Class, the Parties agree that only the following notice to the Settlement Class is necessary. Upon issuance of the Preliminary Approval Order, Securus will engage a third party administrator to provide notice of this settlement and its terms and the relevant dates, including any objection deadlines, substantially in the form and content attached hereto as Exhibit A (the “Notice”). The settlement administrator will email all individuals found in Securus’s database of customers to have address in California. The email will include a link to webpage to be maintained by the settlement administrator setting forth the Notice (the “Notice Page”). In the event of invalid email addresses, the administrator will mail hardcopies of the Notice to the address in Securus’s database.
- B. Notice Content.** The Notice shall include the date and time of the final approval hearing, how to object to the settlement, information about important dates and deadlines associated with the settlement, and relevant contact information. Defendant shall pay all costs and expenses in connection with giving notice as set forth herein and administration of the settlement, including, but not limited to, providing the Notice and processing objections. The administration costs shall be paid independently by the Defendant and not out of any payments to be made hereunder.
- C. No Opt-Out.** Because this Settlement Agreement is reached under Federal Rule of Civil Procedure 23(b)(2) only, Settlement Class Members may not exclude themselves from or opt-out of the Settlement Agreement.
- D. Objections.** Any Settlement Class Member may object to this Settlement Agreement as provided by law.

## **VI. PROCEDURE FOR APPROVING SETTLEMENT.**

### **A. Motion for Preliminary Approval**

1. Preliminary Approval Order. The Parties desire and intend to seek Court approval of the terms and conditions of the Settlement and a final order and judgment dismissing with prejudice the claims of the Class Representatives and the Class Members as set forth herein. The Parties shall undertake all steps reasonably necessary to effectuate the purpose of the Settlement, to secure the Court's approval of the Settlement, and to oppose any interventions and objections to the Settlement. Class Counsel reserves the right to appeal any award of expenses and fees less than \$840,000. Defendant shall not appeal any award of expenses and fees. The proposed Preliminary Approval Order will be substantially in accordance herewith and shall be attached to the Preliminary Approval Motion.
2. Form of Final Order. The proposed Final Order will be substantially in accordance herewith and shall be attached to the Final Approval Motion.
3. Dismissal of Appeal. Upon full execution of this Settlement Agreement, Securus shall file a motion dismissing without prejudice its pending appeal. Securus shall be responsible for all appellate costs and fees due or payable in connection with its appeal.
4. Preliminary Approval Motion. No later than 30 days after full execution of this Settlement Agreement, the Parties will jointly prepare and file a Preliminary Approval Motion in accordance with the terms of this Settlement Agreement, seeking an order that preliminarily approves the Settlement of the Action. The Parties will thereafter jointly prepare and file the Final Approval Motion for the Final Fairness and Approval Hearing of the Settlement and entry of the final order and notice of judgment.
5. Binding Effect. Except for the Class Representatives, no Class Member shall be bound by any Release of Settled Claims or other claims set forth in this Settlement Agreement notwithstanding the entry of the Final Judgment following the Final Order.

### **B. Motion for Final Approval.**

1. Motion for Final Approval. Class Counsel will file unopposed motions and memorandums in support of Final Approval no later than 45 days from the date of the Preliminary Approval Order. Class Counsel will also move the Court for final order (and associated entry of judgment) forever discharging the Released Parties from the Releasing Parties' Released Claims.
2. Failure to Obtain Final Approval. If the Court does not grant Final Approval of the Settlement, or if the Court's Final Approval of the

Settlement is reversed or materially modified on appellate review, then this Agreement will become null and void. If that occurs, the Parties will have no further obligations under the settlement, including any obligation by Defendant to pay any amounts that otherwise would have been owed under this Agreement. An award by the court of a lesser amount than sought by Plaintiffs and Class Counsel for the Service Award or Expenses and Fees will not constitute a material modification to the settlement within the meaning of this paragraph.

3. **Entry of Judgment.** Upon Final Approval of the Settlement, the Parties shall present to the Court a proposed Final Approval Order, approving of the Settlement and entering Judgment in accordance therewith. After entry of Judgment, the Court shall have continuing jurisdiction over this Action for purposes of: (1) enforcing this Agreement; (2) addressing settlement administration matters; and (3) addressing such post-judgment matters as may be appropriate under Court rules and applicable law, including without limitation the five year reporting requirement and the ongoing obligation to make available to its California facility customers a "Private Call" option that allows persons who intend to make calls to what they believe to be Approved Numbers to so indicate at the commencement of the call.
- C. **Waiver of Right to Appeal.** Provided that the judgment is consistent with the terms and conditions of this Agreement, any Class Member who fails to submit a viable objection shall have waived any right to object to the Settlement Agreement, shall not be permitted to object to this Settlement Agreement at the Final Fairness and Approval Hearing, and shall be foreclosed from seeking any review of this Settlement Agreement by appeal or other means.
- D. **Vacating, Reversing, or Modifying Judgment on Appeal.** If, after a notice of appeal, the reviewing court vacates, reverses, or modifies the Judgment such that there is a material modification of the Settlement, and that court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher court, then this Settlement will become null and void and the Parties will have no further obligations under it.

## **VII. EFFECT OF DENIAL OF PRELIMINARY OR FINAL APPROVAL**

- A. **Effective Date.** The Effective Date of this Settlement Agreement shall be the date upon which the Final Judgment has become final, or, in the event that the Court enters an order and Final Judgment in a form other than provided above but which is substantially consistent with this Agreement and to which the Parties have consented, that substantially consistent Judgment has become final.
- B. **Appeal of Settlement or Judgment.** There is no Settlement if the Court does not preliminarily approve the Settlement and finally approve the Settlement in substantially the same form as set forth herein, or if the Settlement or Final

Judgment approving the Settlement is appealed and is thereafter not approved on appeal in substantially the same form as set forth herein. In that case, or if this Settlement Agreement is otherwise terminated for any reason set forth herein: (a) this Settlement Agreement shall be of no force and effect and no Party shall be bound by any of its terms; (b) to the extent applicable, any preliminary order approving the Settlement or approving the Notice forms and notice procedures for providing notice to the Class shall be vacated; (c) the Settlement Agreement and all of its provisions and all negotiations, statements, and proceedings relating to the Settlement Agreement shall be without prejudice to the rights of any of the Parties; (d) each of the Parties shall be restored to their respective positions as of the first Execution Date of this Agreement; and (e) neither the Settlement nor any communications or negotiations leading up to the Settlement nor any of the Settlement's provisions or the fact that this Settlement Agreement has been made shall be deemed admissible in this Action except as otherwise permitted by law.

## **VIII. MISCELLANEOUS PROVISIONS**

**A. Representations and Warranties.** Each of the Parties to this Settlement Agreement represents warrants and agrees as follows:

1. No Assignment. No Party hereto has assigned, transferred or granted, or purported to assign, transfer, or grant, any of the claims, demands, or cause(s) of action disposed of by this Settlement Agreement.
2. Advice of Counsel. The Parties hereto acknowledge that they have had the opportunity to consult with independent legal counsel with respect to the advisability of making the Settlement provided for herein and of executing this Settlement Agreement and all other matters contained herein, including the waiver of rights under California Civil Code § 1542 and any other similar statute of any other jurisdiction.
3. Investigation. The Parties hereto acknowledge that they have been represented in the negotiations for, and in the preparation of, this Settlement Agreement by counsel of their choice; that they have read this Settlement Agreement and have had it fully explained to them by such counsel; and that they are fully aware of the contents of this Settlement Agreement and of the legal effect of each and every provision thereof. Each Party to this Settlement Agreement has made such investigation of the facts pertaining to this Settlement Agreement and of all of the matters pertaining thereto as it deems necessary.
4. Authority. The Parties hereto represent and warrant to each other that the person executing this Settlement Agreement on their behalf has full authority and capacity to execute this Settlement Agreement and to give the releases and other promises contained herein.

- B. **No Admission Of Liability.** This Settlement Agreement affects the settlement of claims which are denied and contested, and nothing contained herein shall be construed as an admission by Securus of any liability of any kind. Securus denies any liability in connection with any such claims. Except as otherwise set forth herein, each party is responsible for all its own costs and expenses.
- C. **Choice Of Law And Venue.** This Settlement Agreement is being executed in the State of California, and it shall be deemed to be made under, and shall be interpreted in accordance with, the laws of the State of California. Any litigation arising under this Agreement shall be brought exclusively in the United States District Court for the Southern District of California. The Court shall retain jurisdiction for purposes of enforcing this Agreement. The Parties consent to the personal and general jurisdiction of the Court and waive any objection that such venue is inconvenient or improper.
- D. **Publicity.** Any comments for publication in any media by any Party concerning the Settlement Agreement shall not provide any substantive information concerning the Agreement or any of its terms. Neither Party shall disparage the business or reputation of the other or their attorneys, make any statement concerning the negotiations which culminated in this Agreement, or mischaracterize the Agreement or any of its terms. Class Counsel and Class Representatives recognize that this provision has significant value to Securus.
- E. **Construction of Agreement.** Each Party has participated in the drafting and preparation of this Settlement Agreement. As such, in construing this Settlement Agreement, none of the Parties hereto shall have any term or provision, or any uncertainty or ambiguity as to any term or provision herein, construed against such Party solely by reason of such Party having drafted the same, as a result of the manner of the preparation of this Settlement Agreement, or otherwise. Each term and provision of this Settlement Agreement shall be construed and interpreted so as to render it enforceable. In the event any provision of this Settlement Agreement is held to be illegal or unenforceable, the remainder of this Settlement Agreement shall be binding and enforceable.
- F. **Headings or Pronouns.** Headings or captions contained in this Settlement Agreement are solely for the convenience of the Parties, are not a part of this Settlement Agreement, and shall not be used for the interpretation of, or determination of the validity of, this Settlement Agreement or any provision hereof. Whenever the context may so require, the masculine gender shall be deemed to refer to and include the feminine and neuter, and the singular shall be deemed to refer to and include the plural, and vice versa.
- G. **Entire Agreement.** This Settlement Agreement contains the entire agreement and understanding between the Parties concerning the subject matter hereof, and any and all prior oral or written agreements or understandings between the Parties related hereto are superseded. No representations, oral or otherwise, express or

implied, other than those specifically referred to in this Settlement Agreement, have been made by any Party hereto.

- H. **Waiver, Modification, and Amendment.** No provision of this Settlement Agreement may be waived unless in writing signed by all Parties hereto. Waiver of any one provision shall not be deemed to be a waiver of any other provision hereof. This Settlement Agreement may not be altered, amended or otherwise changed or modified, except in writing signed by all Parties. Prior to entry of the Final Judgment, this Agreement may, with approval of the Court, be modified by written agreement of Class Counsel and Securus' Counsel in their discretion without giving any additional notice to the Class, provided that such modifications are not materially adverse to the Class. Subsequent to the Final Approval Order becoming a Final Judgment, this Agreement may, with approval of the Court, be modified by written agreement of Class Counsel and Securus' Counsel in their discretion without giving any additional notice to the Class Members, provided that such modifications are not materially adverse to the Class and do not limit the rights of the Class Members under this Agreement.
- I. **Successors and Assigns.** This Settlement Agreement is binding upon, and shall inure to the benefit of, the Parties hereto and their respective successors, assigns, heirs, agents, employees, representatives, officers, parents, affiliates, and subsidiaries.
- J. **Execution in Counterparts.** This Settlement Agreement may be executed in counterparts and all counterparts shall collectively constitute one agreement binding all Parties. Signature by facsimile or in electronic format will constitute sufficient execution of this Settlement Agreement; original signatures must be available upon request. This Settlement Agreement shall become effective upon its execution by all Parties. The Parties may execute this Settlement Agreement in counterparts. Each counterpart shall be deemed to be an original, and execution of counterparts shall have the same force and effect as if all Parties had signed the same instrument.
- K. **Further Cooperation.** The Parties hereto agree to execute all such further and additional documents and instruments, as may be reasonably necessary to carry out the provisions of this Settlement Agreement, and shall promptly and in good faith undertake all commercially reasonable acts to effectuate the provisions of this Settlement Agreement. Class Counsel, Class Representatives, and Securus will use their best efforts to seek approval of Settlement Agreement by the Court, including in responding to any objectors, intervenors or other persons or entities seeking to preclude the final approval of this Settlement Agreement.
- L. **Severability.** In the event that any portion of this Agreement is adjudged to be void or unenforceable by a court of competent jurisdiction, the same shall be severable from the remainder of the Agreement. The Parties agree to abide by all of the terms of the Class Settlement in good faith.

- M. No Retaliation.** Securus understands and acknowledges that it has a legal obligation not to retaliate against any Class Member. The Class Representatives will refer any inquiries regarding this Class Settlement to Securus' counsel or Class Counsel, and will not discourage Class Members, directly or indirectly, from making claims or objecting to the Class Settlement. Securus' counsel shall immediately forward to Class Counsel copies of any inquiries it receives. In characterizing or describing the Settlement and resolution of the litigation, including the terms and conditions of this Settlement Agreement, neither Party will make any statements to third parties that such Party has been successful, attained a victory, or prevailed in the litigation or make any characterization to that effect. This Settlement Agreement does not constitute, is not intended to constitute, and will not under any circumstances be deemed to constitute, an admission by either Party as to the merits, validity, or accuracy, or lack thereof, of any of the allegations or claims in this Action, nor the waiver of any defense.
- N. Attorneys' Fees.** If any dispute arises between the Parties in connection with this Agreement, each Party shall attempt in good faith to resolve the matter through negotiation and, if unsuccessful, shall agree upon a neutral third party mediator (*e.g.*, a retired judge at Judicate West) to assist them in attempting to resolve the matter informally. Each Party shall bear its own fees and costs, and shall share any mutual costs, in connection with the attempts to resolve the matter informally (*e.g.*, Judicate West fee) regardless of the outcome of the dispute. Thereafter, if these measures are unsuccessful and either Party employs counsel to enforce or interpret this Settlement Agreement or the Final Order in any legal proceeding whatsoever, including without limitation insolvency, bankruptcy, arbitration, trial by reference, declaratory relief or other litigation, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and court costs (including without limitation the fees for service of process, filing fees, court and court reporter costs, investigative costs, expert witness fees, and the cost of any bonds, whether taxable or not) in addition to any other remedy it may obtain or be awarded. Such reimbursement shall be included in any judgment or final order issued in the legal proceeding. The "prevailing party" shall mean the Party determined by the court to most nearly prevail and not necessarily the Party in whose favor a judgment is rendered.
- O. Interpretation.** Wherever the context of this Agreement requires, all words used in the singular shall be construed to have been used in the plural, and vice versa, and the use of any gender specific pronoun shall include any other appropriate gender. The term "person" shall refer to any individual, corporation or legal entity having legal standing to bring an action in its own name under California law. The conjunctive "or" shall mean "and/or" unless otherwise required by the context in which the conjunctive "or" is used. The provisions of this Agreement and the Final Order shall be interpreted in a reasonable manner to accomplish the purposes of the Parties and this Agreement.

- P. **Exhibits.** All exhibits referred to in this Agreement are attached to this Agreement and incorporated by reference.
- Q. **Time.** Time is of the essence to the performance of each and every obligation under this Agreement. The time periods and dates described in this Settlement Agreement with respect to the giving of notices and hearings are subject to Court approval and modification by the Court or by written stipulation of the Parties' counsel.
- R. **Joint and Several Liability.** If more than one person shall comprise a Party under this Agreement, such persons shall be jointly and severally liable for all obligations of such Party under this Agreement. However, no Plaintiff shall be jointly and severally liable wholly or in part for any other Plaintiff's active or passive, direct or indirect, acts or omissions.
- S. **Jurisdiction and Forum.** The Parties hereto and each Class member hereby irrevocably submit to the exclusive jurisdiction of this Court for any suit, action, proceeding or dispute arising out of or relating to the Settlement Agreement or the applicability of the Agreement and exhibits thereto.
- T. **Notices.** All letters, notices, requests, demands and other communication required or permitted to be given to the Parties pursuant to this Settlement Agreement, excluding communications directed to Class Members, shall be in writing. Any such communication may be served personally, by mail at the addresses set forth on the signature blocks below, or by any other means authorized by California law or agreed and consented to by the Parties in care of their attorneys set forth below. Such communication or service shall be effective as provided under California law. The Parties further consent to service by electronic means. For documents not filed with the Court, service shall be made to those e-mail addresses for counsel set forth on the Court's electronic docket, with such service deemed complete upon transmission for service of documents prior to the Effective Date, provided that the sender does not receive any indication that such electronic transmission was unsuccessful. Any Party may change its address or email address by notice to the other Parties.
- U. **Invalidity on Modification or Disapproval.** If any court disapproves or sets aside this Settlement Agreement or any material part of this Settlement Agreement for any reason, or holds that it will not enter or give effect to the Final Judgment without material modification, or holds that the entry of the Final Judgment or any material part thereof should be overturned or modified in any material way, then:(a) if the Parties do not agree jointly to appeal such ruling, this Settlement Agreement will become null and void, and the Action will continue, and the Parties hereby stipulate to joint motions: (i) that any and all orders entered pursuant to this Settlement Agreement shall be vacated; and (ii) that any and all dismissals pursuant to this Agreement shall be vacated; or (b) if the Parties do agree to jointly appeal such ruling and if the Final Judgment or its equivalent in all material respects in respects is not in effect after the termination of all proceedings arising out of such



appeal, this Agreement will become null and void, and the Action will continue, and the Parties hereby stipulate to joint motions: (i) that any and all orders entered pursuant to this Agreement shall be vacated, including, without limitation, any order modifying the class certification order or permitting amendment of the complaint to conform to any class definition set out in this Agreement; and (ii) that any and all dismissals pursuant to this Agreement shall be vacated.

- V. **Continuing Jurisdiction.** The Court may have continuing jurisdiction to implement this Agreement's terms and the Final Judgment. The Parties submit to the jurisdiction of the Court for purposes of implementing the terms of the Settlement Agreement.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement as of the dates set forth below.

**ON BEHALF OF THE PLAINTIFFS**

Date: 6/25/20 Kenneth Elliott

By: Kenneth Elliott

Date: June 26, 2020

Juan Romero

By: Juan Romero

Date: \_\_\_\_\_

By: Frank Tiscareno

**ON BEHALF OF SECURUS**

Date: \_\_\_\_\_

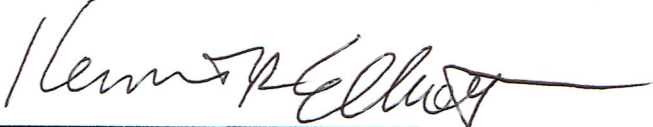
By: \_\_\_\_\_  
**SECURUS TECHNOLOGIES, LLC.**  
4000 International Parkway  
Carrollton, Texas 75007

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IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement as of the dates set forth below.

**ON BEHALF OF THE PLAINTIFFS**

Date: 6/25/20   
By: Kenneth Elliott

Date: \_\_\_\_\_  
By: Juan Romero

Date: Jun 25, 2020   
By: Frank Tiscareno

**ON BEHALF OF SECURUS**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
**SECURUS TECHNOLOGIES, LLC.**  
4000 International Parkway  
Carrollton, Texas 75007

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**ON BEHALF OF THE PLAINTIFFS**

Date: \_\_\_\_\_ By: Kenneth Elliott

Date: \_\_\_\_\_ By: Juan Romero

Date: \_\_\_\_\_ By: Frank Tiscareno

**ON BEHALF OF SECURUS**

Date: 6/25/2020 



By: David Abel  
**SECURUS TECHNOLOGIES, LLC.**  
4000 International Parkway  
Carrollton, Texas 75007

**APPROVED AS TO FORM  
AND CONTENT:**

Date: June 26, 2020



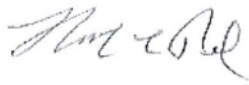
By: Eileen R. Ridley  
**FOLEY & LARDNER LLP**  
555 California St., 17<sup>th</sup> Floor  
San Francisco, CA 94104  
Telephone: (415) 434-4484  
Facsimile: (415) 434-4507  
eridley@foley.com  
Counsel for Class Representatives and the Class

Date: June 25, 2020



By: Ronald A. Marron  
**LAW OFFICES OF RONALD A. MARRON, APLC**  
651 Arroyo Drive  
San Diego, California 92103  
Telephone: (619) 696-9006  
Facsimile: (619) 564-6665  
ron@consumersadvocates.com  
Counsel for Class Representatives and the Class

Date: June 25, 2020



By: Robert Teel  
**LAW OFFICE OF ROBERT L. TEEL**  
1415 Broadway, Mail Code: 20-6690  
Seattle, Washington 98122  
Telephone: (866) 833-5529  
Facsimile: (855) 609-6911  
lawoffice@rlteel.com  
Counsel for Class Representatives and the Class

Date: \_\_\_\_\_

By: Adam R. Fox  
**SQUIRE PATTON BOGGS (US) LLP**  
555 South Flower Street, 31st Floor  
Los Angeles, California 90071  
Telephone: (213) 624-2500  
Facsimile: (213) 623-4581  
adam.fox@squirepb.com  
Attorneys for Defendant Securus Technologies, Inc.

**APPROVED AS TO FORM  
AND CONTENT:**

Date: \_\_\_\_\_

By: Eileen R. Ridley  
**FOLEY & LARDNER LLP**  
555 California St., 17<sup>th</sup> Floor  
San Francisco, CA 94104  
Telephone: (415) 434-4484  
Facsimile: (415) 434-4507  
eridley@foley.com  
Counsel for Class Representatives and the Class

Date: \_\_\_\_\_

By: Ronald A. Marron  
**LAW OFFICES OF RONALD A. MARRON, APLC**  
651 Arroyo Drive  
San Diego, California 92103  
Telephone: (619) 696-9006  
Facsimile: (619) 564-6665  
ron@consumersadvocates.com  
Counsel for Class Representatives and the Class

Date: \_\_\_\_\_

By: Robert Teel  
**LAW OFFICE OF ROBERT L. TEEL**  
1415 Broadway, Mail Code: 20-6690  
Seattle, Washington 98122  
Telephone: (866) 833-5529  
Facsimile: (855) 609-6911  
lawoffice@rlteel.com  
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Telephone: (213) 624-2500  
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adam.fox@squirepb.com  
Attorneys for Defendant Securus Technologies, Inc.