



banking association v. New York Merchants Protective Co., Inc., New York Merchants Alarm Response Inc., and NY Merch Prot Co., Inc. (the “EDNY Litigation”).

2. By Court Order dated October 19, 2011, the sale (the “Sale”) of substantially all of the assets of New York Merchants Protective Co., Inc. (“NYMP”), in accordance with the terms of an asset purchase agreement, was approved and Professional Security Technologies LLC (“Professional Security”) was the designated purchaser. A copy of this Order is annexed as Exhibit “A”. Upon information and belief, Applicant, NYMP Acquisition LLC is the designee of Professional Security Technologies LLC. It is unclear whether and/or how Professional Security assigned its rights to the Applicant.

3. On or about October 5, 2012, opposition (the “Opposition”) was filed to Applicant, NYMP Acquisition LLC, DBA New York Merchants Protective Company’s (“Applicant”), registration of the Mark and Words PROTECTING NY · NJ · CT SINCE 1910 BURGLARY FIRE HOLD-UP CCTV NEW YORK MERCHANTS PROTECTIVE COMPANY (888) NYMP-911 (888) 696-7911 (and Design) in International Class 37 and 45 for “installation and repair of fire alarm, burglar alarm and security systems” as shown in Application Serial No. 85-646,051 (the “Application”).

4. On or about March 25, 2013, Applicant filed an Answer to the Opposition.

5. On or about July 15, 2013, Opposer filed and served its Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1).

6. Thereafter, Opposer responded to Applicant’s First Request for Admissions and Requests for Production of Documents and Things (the “Response”).

7. While the proceedings before the United States Patent and Trademark Office (the “Trademark Proceedings”) were progressing as is evidenced by the pleadings and discovery that were filed and exchanged among the parties, the EDNY Litigation continued.

8. At certain times during the pendency of the Trademark Proceedings, deadlines were suspended while negotiations for a global resolution of the EDNY Litigation continued.

9. Ultimately, the EDNY Litigation was concluded and on November 27, 2013 United States District Court Judge Denis R. Hurley “So Ordered” the Stipulation Resolving All Claims (the “Stipulation”). As part of the Stipulation, the Receiver provided a General Release to Opposer (the “Release”). A copy of the Stipulation is attached as Exhibit “B”. The Release included the trademarks.

10. Opposer maintains that Opposer itself and/or through related companies has used in commerce the trade name and mark United States Merchants Protective Co., Inc., alone and/or with other words and/or design elements (“Opposer’s Marks”), in connection with, but not limited to, the installation, monitoring and maintenance of burglar and/or fire alarms. Opposer has promoted and advertised its services offered in connection with Opposer’s Marks.

11. On or about June 5, 2012, Applicant filed the Application for the mark PROTECTING NY · NJ · CT SINCE 1910 BURGLARY FIRE HOLD-UP CCTV NEW YORK MERCHANTS PROTECTIVE COMPANY (888) NYMP-911 (888) 696-7911 (and Design) for “installation and repair of fire alarm, burglar alarm and security systems” in International Class 37 and 45, based on an alleged use in commerce. However, Applicant does not have standing to pursue the Application and, upon information and belief, has not paid for the Assets under the Sale Order or substantially consummated the Sale.<sup>1</sup>

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<sup>1</sup> Interestingly, Applicant and the Receiver are adverse parents yet the same counsel represents both of them.

12. The services in the Application are identical to and closely related to the services rendered by Opposer in connection with Opposer's Marks.

13. Applicant NYMP Acquisition, LLC, DBA New York Merchants Protective Company's Design, Mark and Words so resembles Opposer's United States Merchants Protective Co., Inc., in respect to the words, the design and the shadings as to be likely, when used in connection with Applicant's services, to cause confusion, to cause mistake, and to deceive the trade and public, who are likely to believe that Applicant's services have their origin with Opposer and/or that such services are approved, endorsed or sponsored by Opposer or associated in some way with Opposer. Opposer would be injured by the granting to Applicant of a registration for Applicant NYMP Acquisition, LLC, DBA New York Merchants Protective Company's Design, Mark and Words.

14. At the time the Opposition was filed it was unclear as to whether the Sale had been completely consummated. A review of the docket does not reveal any accounting or filing by the Receiver that the Sale was consummated. This was a private sale under 28 U.S.C. §2001 *et seq.* without any active bidding or marketing of the assets. At the hearing, after the Sale Order was contemplated, the Court directed that all Sale proceeds received from buyer (Applicant) be placed in escrow and a motion be filed with the Court to direct the disposition of those Sale proceeds. The EDNY Litigation docket does not reveal any of this.

15. Opposer maintains that Applicant has nothing to protect as the Sale contemplated in the EDNY Litigation has not been consummated. Moreover, the Receiver has provided the Opposer with a Release which extends to the Design, Mark and Words at issue here. That Release was approved by the Court in the EDNY Litigation and Applicant had prior knowledge

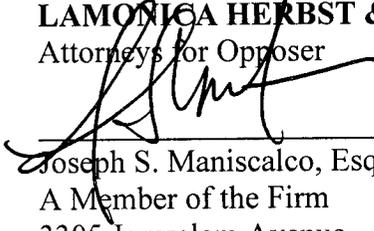
of the Stipulation and Release and never filed an objection. The Stipulation and Order approving it are final and no longer appealable by anyone.

**WHEREFORE**, Opposer respectfully requests that the Motion to Dismiss be denied as it is clear the Trademark Proceedings progressed and were not stagnant, or in the alternative, Opposer requests that the Opposition be sustained and that the Application be dismissed as the Applicant does not have a Mark, Design or Words to protect.

Dated: Wantagh, New York  
February 28, 2014

**LAMONICA HERBST & MANISCALCO, LLP**  
Attorneys for Opposer

By: \_\_\_\_\_

  
Joseph S. Maniscalco, Esq.  
A Member of the Firm  
3305 Jerusalem Avenue  
Wantagh, New York 11793  
(516) 826-6500

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 28<sup>th</sup> day of February 2014 she caused a true copy of the foregoing **OPPOSITION TO MOTION TO DISMISS** to be served by overnight service to the following:

Arlana S. Cohen, Esq.  
Cowan, Liebowitz & Latman, P.C.  
1133 Avenue of the Americas  
New York, New York 10036

By:   
Melanie A. FitzGerald



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
BANK OF AMERICA, N.A., *individually and  
as successor to LaSalle Bank, National  
Association, a national banking association,*

11 CV 38 (DRH)(ARL)

Plaintiff,

- against -

NEW YORK MERCHANTS PROTECTIVE  
CO., INC., NEW YORK MERCHANTS  
ALARM RESPONSE INC.; and NY  
MERCH PROT CO., INC.,

Defendants.

-----X  
HURLEY, District Judge:

**ORDER AUTHORIZING AND APPROVING ASSET PURCHASE AGREEMENT  
PROVIDING FOR THE TERMS AND CONDITIONS OF THE RECEIVER'S  
SALE OF SUBSTANTIALLY ALL OF THE ASSETS OF THE BUSINESS**

Upon the motion (the "Motion") dated July 20, 2011 of Ronald J. Friedman, as the receiver of New York Merchants Protective Co., Inc. ("NYMP"), New York Merchants Alarm Response, Inc. and NY Merch. Prot. Co., Inc. (the "Receiver") seeking the entry of an order under 28 U.S.C. §2001 et. seq. (a) authorizing and approving the asset purchase agreement (the "APA"), providing for the terms and conditions of sale between the Receiver and Professional Security Technologies LLC (the "Buyer"), which among other things, provides for the sale (the "Sale") of substantially all of the assets of the receivership estate, including, but not limited to, accounts, customer lists, contracts, furniture, inventory, and certain intangible assets as more particularly set forth therein (as defined in the APA, the "Acquired Assets"), free and clear of any and all liens, claims,

encumbrances and interests in such property, whether known or unknown, contingent or non-contingent, and liquidated or unliquidated, including any claims for successor liabilities, (collectively, the "Liens"), with such Liens to attach to the net proceeds of the Sale in the amount and priority as they existed against the Acquired Assets immediately prior to the consummation of the Sale; and upon the Court's consideration and review of the Opposition to the Sale filed by Nationwide Central Station Monitoring Corp. ("NCSM"); the Opposition to the Sale filed by Wayne Wahrsager, the Opposition to the Sale filed by Scott Mishkin, Esq. on behalf of Eric R. Wahrsager, the Motion for Joinder filed by Bank of America and the Declaration in Support of the Sale filed by Marc S. Fischer, and upon the Hearings held on July 28, 2011, September 20, 2011, September 26, 2011, and October 17, 2011 before the Honorable Denis R. Hurley, United States District Judge, United States District Court for the Eastern District of New York, Central Islip, New York (the "Hearings"), the transcripts of which are incorporated by reference herein, to consider the Motion; and upon the public notices of the contemplated sale (the "Notices") and the Hearings having been conducted on July 28, 2011, September 20, 2011, September 26, 2011, and October 17, 2011 pursuant to this Court's Orders dated July 22, 2011 and July 28, 2011 setting the notice and procedures for the Hearings (the "Procedures Order"); and the Buyer having signed the APA and tendered the required deposit and the Receiver having determined that the Buyer's offer and the APA represent the highest and best offer received prior to and at the Hearings; and upon the APA and the terms of sale contained therein and promulgated in connection with the Notices and Hearings; and the Court having found that the relief requested by the Motion is necessary

and in the best interest of the receivership estate; and sufficient cause having been shown; and appropriate Notices having been given and additional notice being neither necessary nor required; and after due deliberation by this Court; it is hereby

ADJUDGED, DECREED AND FOUND AS FOLLOWS:

- A. The Motion seeks the entry of an order under 28 U.S.C. §§ 2001 and 2004: authorizing and approving the APA between the Receiver and the Buyer, which, among other things, provides for the sale of the Acquired Assets free and clear of the Liens and subject to the Court's approval following notice and a hearing.
- B. The APA provides a substantial benefit to the estate through an immediate sale of the Acquired Assets. The terms of sale in the APA provide for, among other things, the sale of the Acquired Assets for a purchase price as follows: (a) fair market value for inventory and vehicles, (b) a sixteen (16) multiple for all performing customers of NYMP, New York Merchants Alarm Response, Inc. and NY Merch. Prot. Co., Inc. (the "Sellers"), (c) the ability to procure a substantial upward purchase price adjustment of a fifteen (15) multiple as each of the performing customers become "perfected" (i.e. contracted), and (d) an additional two (2) multiple for those customers who remain performing and but do not become "perfected" customers.
- C. The Receiver, on behalf of the Sellers, and Buyer have each acted in good faith and at an arms' length in negotiating and consummating the APA, and the terms

and conditions set forth in the APA are fair and reasonable and in the best interests of the estate.

- D. The consideration to be paid by Buyer is fair and is reasonably equivalent to the value of the Acquired Assets.
- E. The Receiver has demonstrated good, sufficient and sound business reasons and justifications for entering into the transactions contemplated by the APA, and the APA represents the reasonable exercise of the Receiver's business judgment and the highest and best offer received by the Receiver. Specifically, the APA reflects the best opportunity in the Receiver's business judgment to obtain a fair purchase price for the Assets, provides a substantial benefit to the receivership estate, and limits the necessity to expend additional funds to continue to maintain the operations of the business while preserving the going concern value.
- F. Proper, timely, adequate and sufficient notice of the Motion, the APA, and the Hearings have been provided in accordance with the Procedures Order and 28 U.S.C. § 2001(b), and no other or further notice of the Motion, or the hearing is, or shall be, required. A reasonable opportunity to object or to be heard regarding the relief requested in the Motion has been afforded to all interested persons and entities.
- G. Based on the nature of Acquired Assets, the due diligence performed by the Receiver and his professionals regarding the Sale, the market-driven sale process executed under the Receiver's direction, and the valuation performed by Michael S. Barnes dated September 9, 2011 all comply with 28 U.S.C. §§2001 and 2004.

- H. The Sale meets and satisfies all of the applicable provisions of 28 U.S.C. §§ 2001, and 2004 such that upon the Sale the Acquired Assets shall be free and clear of all Liens, claims, interests and encumbrances of any kind or nature whatsoever, including any claims of successor liability against the Buyer, but excluding those claims expressly assumed by the Buyer pursuant to the APA, with all such Liens, claims, interests and encumbrances to attach to the net proceeds of the Sale in the order of their priority, and with the same validity, force and effect, as existed immediately prior to the Sale, subject to any claims and defenses that the Receiver or any other party in interest may possess with respect thereto.
- I. Cause exists to approve the Motion. The Receiver has served notice of the hearing and the Motion on Mayer Brown, counsel for Bank of America, N.A.; Olshan Grundman of Frome Rosenzweig & Wolosky, LLP, counsel for Ironwood Capital, Ltd.; Jeffrey Stark, Esq., Meyer Suozzi English & Klein, P.C., court-appointed counsel for New York Merchants Protective Co., Inc., New York Merchants Alarm Response, Inc., NY Merch Prot Co., Inc.; Steinberg, Fineo, Berger & Fischhoff, PC, counsel for Wayne Wahrsager; Mark Fischer, and the Wahrsager Family Trust, all attorneys for parties who have filed notices of appearance in this case, as well as the related actions pending in this Court under CV-11-00637 and CV-11-0815, the New York State Commissioner of Taxation and Finance, and the Internal Revenue Service. The Receiver has also served a copy of the scheduling order upon all other known creditors of NYMP affected by the contemplated transaction, and all parties that have expressed interest in, or are

reasonably believed to be interested in, purchasing the Acquired Assets. The foregoing notice is reasonable under the circumstances and is good and proper notice and no additional notice necessary or required.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein and for the reasons set forth on the record at the October 17, 2011 hearing.
2. Except as otherwise provided herein, all objections to the Motion or the relief requested therein that have not been withdrawn, waived or settled, and all reservations of rights included therein, are hereby denied or abrogated with prejudice.
3. The Receiver is authorized to (a) execute the APA and any additional instruments or documents that may be necessary to document and implement the transactions contemplated by the APA, provided that such additional documents do not materially change its terms; (b) consummate the Sale in accordance with the terms and conditions of the APA and the instruments and agreements contemplated thereby; (c) take all further actions as may reasonably be requested by the Buyer for the purpose of transferring the Assets; and (d) expend such funds as are reasonably necessary to consummate the transactions contemplated by the APA.
4. Each and every federal, state and local government agency or department is authorized and directed to accept any and all documents and instruments

necessary and appropriate to consummate the transactions contemplated by the APA.

5. Pursuant to the prior orders of this Court, 28 U.S.C. §§754, 2001 and 2004 and this Order, upon the consummation of the Sale, the Acquired Assets shall be free and clear of all Liens, claims, interests and encumbrances of any kind or nature whatsoever, including any claims of successor liability against the Buyer, except those expressly assumed by the Buyer pursuant to the APA, with all such Liens, claims, interests and encumbrances to attach to the net proceeds of the Sale in the order of their priority, and with the same validity, force and effect, as existed immediately prior to the Sale, and all persons and entities holding any such Liens, including, but not limited to, all debt security holders, equity security holders, governmental, tax and regulatory authorities, lenders, employees, and other creditors, holding claims or interests of any kind or nature whatsoever against or in the Seller or the Acquired Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or noncontingent, senior or subordinate), arising under or out of, in connection with, or in any way relating to, the Sellers, the Acquired Assets, the operation of the Sellers' business prior to the Sale, or the transfer of the Acquired Assets to the Buyer, will be forever barred, estopped and permanently enjoined from asserting such Liens against the Buyer, its successors or assigns, and the Acquired Assets, unless the Buyer has expressly assumed the liabilities for such Liens under the APA.

6. If any person or entity that has filed financing statements, mortgages, mechanic's liens, lis pendens, liens, other documents evidencing interests in the Acquired Assets has not delivered to the Receiver, prior to the Closing Date (as defined in the APA) termination statements, instruments of satisfaction, and/or releases of their interests in and to the Acquired Assets, then the Receiver is authorized to execute and file such statements, instruments, releases and other documents on behalf of such person or entity. This Order shall be deemed a satisfaction or release of such interest and all federal, state and local governmental agencies and departments shall accept this Order for filing as evidencing same.
7. The consideration provided by the Buyer for the Acquired Assets is and shall be deemed to constitute reasonably equivalent value and fair consideration under applicable state and federal law.
8. The Buyer is not and shall not be deemed to be a successor to the Sellers or to the Receiver or to the Sellers' business operations, and the Buyer shall not be subject to any liabilities based on any theory of successor liability. All parties with Liens in or on the Acquired Assets as that term is defined in the APA, and any other third parties, including, but not limited to, all debt security holders, equity security holders, governmental, tax and regulatory authorities, lenders, employees, and other creditors, are hereby permanently enjoined from asserting or prosecuting any claims (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or noncontingent, senior or subordinated) against the Buyer or any of its affiliates arising under or out of, in connection with, or in any

way relating to the Sellers, their receivership estate, and/or the Acquired Assets purchased, except with respect to liabilities expressly assumed by the Purchaser under the APA or otherwise provided by law.

9. In the event of a conflict between the terms of this Order and the terms of the APA, the terms of this Order shall govern. However, the failure to specifically reference any particular provisions of the APA in this Order shall not diminish or impair the effectiveness of such provisions in the APA; it being the intent of the Court that the Receiver's approval, consent and implementation of the transactions contemplated by the APA and the Motion be approved in their entirety.
10. The APA and any related agreements, documents or instruments may be modified, amended or supplemented by the parties thereto, without further Order of the Court, provided that any such modification, amendment or supplement does not have a material effect on the Receivership estate, the current terms of the APA, or this Order.
11. This Order shall be effective immediately upon entry and the Court hereby waives the fourteen (14) day stay set forth in Federal Rule of Civil Procedure 62 in order that the sale of the Assets under the APA may be closed prior to the expiration of such 14 day period.
12. The Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the implementation or enforcement of this Order and the terms of the APA or any instruments or documents necessary to implement the transaction contemplated therein.

13. The Receiver acknowledges that it is not his intention to sell, transfer, or assign any of the assets asserted to be owned by Nationwide Central Station Monitoring Corp. ("NCSM") as identified on Exhibit D to the Supplemental Affirmation Establishing Ownership of Monitoring Signals, Docket Entry 126 ("NCSM Alleged Assets"), a copy of which is annexed to this Order, without first providing notice and an opportunity to be heard to counsel for NCSM. NCSM thereby reserves its rights to object in the event the Receiver attempts to sell NCSM Alleged Assets.
14. The Receiver shall be, and hereby is authorized and directed to take such steps, execute such documents and expend such funds as may be reasonably necessary to effectuate and implement the terms and conditions of this Order.
15. The Receiver shall hold all proceeds (the "Proceeds") from the Sale of the Acquired Assets in the Receivership Account. Further, the Receiver must file a motion with the Court for leave to make any distribution from the proceeds in accordance with the Court's individual rules.
16. Nationwide Central Station Monitoring Corp. ("NCSMC"), its officers, agents, employees and any entity or individual acting on its behalf, are directed to and shall cooperate in good faith with the Receiver to efficiently and effectively transfer any and all (a) customer information of Sellers, (including but not limited to the zones, passcodes, contact data, response directions); (b) related telephone and other data lines of Sellers' accounts, and (c) intellectual property of the Sellers

which may be in NCSMC's possession, custody or control to Buyer's central station, keeping the customers' safety and protection as their paramount concern.

SO ORDERED.

Dated: Central Islip, New York  
October 19, 2011

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/s  
Denis R. Hurley  
Unites States District Judge

Operator Stations

20 - Central Station Operator Terminal Computers (Various Brands)  
44 - Central Station Operator Terminal Monitors (Various Brands)  
2 - Cannon Laser 710 Fax / Printers  
All UPS & Power Supplies to Power Above  
All Desks, Chairs, fixtures, etc contained in the Central Station room

Receiving Equipment

2 - UHS IP Receivers  
1 - BDR Backup Server  
4 - DMP SCS-1R (3 Belong to NCSMC Dealers)  
2 - Honeywell 7810IR  
1 - Sur-Gard 2E Receiver (1-SG-CPM2 6-SG-DRL2E)  
2 - INC CM-756 CSU  
2 - Versus ATU-6000 (with WYSE Terminals)  
1 - Napco Netlink IP Receiver  
2 - HP DL-360GS CPUs  
2 - Sur-Gard System III Receivers (with Redundant Systems)  
2 - Adtran Atlas 550 & Access 750  
1 - TrendNet TK-801R  
1 - Xincom XC-DPG502  
All UPS & Power Supplies to Power Above

Automation Equipment

4 - Rack Mount CPUs (NCSMC-Web02, NCSMC-Reports SVR, NCSMC-MLR-2000, NCSMC-Kerl SVR)  
2 - IBM xSeries x330 Servers (OZ & RSI)  
1 - HP DL320 (VD)  
1 - Video Cells Server  
1 - Evertide VR725  
1 - IBM xSeries x300 Web Server - SC911  
1 - IBM xSeries x305 Email Server (NYMPC's email was already removed by Receiver)  
All UPS & Power Supplies to Power Above

Mastermind Servers

2 - HP DL320  
6 - Compaq DL320  
2 - HP DL380  
3 - Nport 5610 RS232  
All UPS & Power Supplies to Power Above

Network

1 - Cisco 2600  
1 - Cisco PIX 515E  
1 - Netgear JGS524  
2 - Netgear GS748TS  
1 - Netgear GS748T  
1 - Netgear JFS524  
2 - Xincom XC-DPG502

1 – Cisco 5505  
1 – Cisco Catalyst 2900  
All UPS & Power Supplies to Power Above

Panasonic Phone System

1 – KX-TDA200 w/Expansion Cage  
1 – TVS325  
All Desk Panasonic Phones (KX-T7633 & similar)  
All UPS & Power Supplies to Power Above

General Office Equipment / Computers

1 – PowerSpec CPU that contains Time Clock Software with Monitor (Occasionally used by Fran Ditomas)  
Computers, Printers, Scanners, Monitors, Desks, Chairs, etc of all NCSMC Officers and Employees

Aaron Wahrsager

Yuriy Bas

Olga Bas

Alan Ankeles

Ray Kerr

Ujamma Davis

Eric Wahrsager – Currently being occupied by TRG

1 – Destroy-It 4004 Shredder

All UPS & Power Supplies to Power Above

All permanently affixed desks, counters, cabinets, and file racks

Kohler Generator and Transfer Switch

All Software & Software Licenses for the above

Domain Names

www.nationwidedigital.com

www.nwdm.info

www.nationwidedigitalmonitoring.com

Trade names

Nationwide Central Station Monitoring

Nationwide Digital Monitoring

Any variation of the trade name containing "Nationwide"

**Nationwide Lines Designated for the use of New York Merchants and "Way-Mar" Dealers**

Telephone #		
(800) 221-0826		
(800) 248-7111		
(516) 561-7100		
(888) 356-7211		
(516) 396-0674		
(516) 396-0678		
(800) 227-1699		
(516) 294-3794		
(516) 294-3972		
(516) 294-6486		
(516) 294-6511		
(516) 294-8713		
(516) 295-1123		
(516) 561-7147		
(516) 561-7191		
(516) 561-7194		
(516) 561-7196		
(516) 561-7576		
(516) 561-7597		
(516) 561-7694		
(516) 561-7846		
(516) 561-7847		
(516) 561-7971		
(516) 561-7977		
(516) 568-1297		
(516) 632-7860		
(516) 632-7915		
(516) 741-7103		
(516) 872-2330		
(516) 872-2374		
(516) 872-2564		
(516) 872-2756		
(516) 872-3205		
(516) 872-3206		
(516) 872-3207		
(516) 872-3208		
(516) 872-3424		
(516) 872-3858		
(516) 872-3685		
(516) 872-4201		
(516) 872-6582		
(516) 872-6737		
(516) 872-6775		

**Nationwide Lines Designated for the use of New York Merchants and "Way-Mar" Dealers**

(516) 872-8420		
(516) 872-8529		
(516) 872-8815		
(516) 873-2129		
(718) 471-0207		
(718) 518-7775		
(718) 823-5851		
(718) 823-7602		
(718) 823-9033		
(718) 961-0456		
(914) 667-1465		
(914) 667-1570		
(914) 840-4000		
(516) 632-7853		
(516) 632-7855		
(516) 823-9479		
(516) 823-9483		
(718) 253-7429		
(718) 332-4603		
(718) 332-5587		
(718) 332-5589		
(718) 975-9123		
(718) 975-9124		
DMP Radio	IP	Goes to Nationwide DMP Receiver - Used by Hundreds of Dealers besides NYMP
DMP Internet	IP	Goes to Nationwide DMP Receiver - Used by Hundreds of Dealers besides NYMP
DSC Radio	IP	Goes to Nationwide System III Receiver - Used by Hundreds of Dealers besides NYMP
DSC Internet	IP	Goes to Nationwide System III Receiver - Used by Hundreds of Dealers besides NYMP
01-20	AlarmNet Radio Circuit	
01-1D	AlarmNet Radio Circuit	
01-4E	AlarmNet Radio Circuit	
All Other lines & circuits owned by Nationwide for the use of other dealers not related to NYMP		
line designation prefixes beginning with "N" and "S"		



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

**FILED**  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.  
★ **NOV 27 2013** ★  
LONG ISLAND OFFICE

-----X  
RONALD J. FRIEDMAN, ESQ.,  
as Receiver for New York Merchants Protective  
Co., Inc., a New York corporation; New York  
Merchants Alarm Response, Inc., a Delaware  
corporation, and NY Merch Prot Co., Inc.,  
a Delaware corporation,

Case No. CV 11-0815 (DRH) (ARL)

Plaintiff,

- against -

Judge Denis R. Hurley

WAYNE WAHRSAGER, AARON WAHRSAGER,  
ERIC R. WAHRSAGER, NATIONWIDE CENTRAL  
STATION MONITORING CORP.,  
NEW YORK MERCHANTS PROTECTIVE CO, INC.,  
NMP HOLDINGS CORP., NATIONWIDE DIGITAL  
MONITORING CO., INC., UNITED STATES  
MERCHANTS PROTECTIVE CO., INC., NEW  
YORK MERCHANTS ALARM RESPONSE, INC.,  
NY MERCH PROT CO., INC., and  
SENIORCARE911, LLC,

Defendants.  
-----X

**STIPULATION RESOLVING ALL CLAIMS AMONG THE  
RECEIVER, ERIC R. WAHRSAGER, AARON WAHRSAGER,  
NATIONWIDE CENTRAL STATION MONITORING CORP.,  
AND UNITED STATES MERCHANTS PROTECTIVE CO., INC.**

WHEREAS, on January 5, 2011, Bank of America, N.A. ("Bank of America") commenced an action against New York Merchants Protective Co., Inc., New York Merchants Alarm Response Inc., and NY Merch Prot Co., Inc. (collectively, "NYMP"), alleging, *inter alia*, breach of a loan agreement and breach of guaranty in an action entitled *Bank of America, N.A., v. New York Merchants Protective Co., Inc., New York Merchants Alarm Response Inc., and NY Merch Prot Co., Inc.*, assigned case number 2:11-CV-0038 (DRH)(ARL)(the "Bank of America Litigation" or "Related Action")[Docket Nos. 1 and 2 in the Bank of America Litigation]; and

**WHEREAS**, simultaneous with the commencement of the Bank of America Litigation, Bank of America filed a motion seeking the appointment of a receiver; and

**WHEREAS**, without any admission of wrongdoing, the parties in the Bank of America Litigation consented to the appointment of Ronald J. Friedman, Esq. as receiver (the "Receiver") [Docket No. 12 in the Bank of America Litigation] (the "Receiver Appointment Order"); and

**WHEREAS**, on or about February 18, 2011, the Receiver commenced the within action (the "Receiver Action") and simultaneously filed an *ex parte* motion by order to show cause seeking injunctive relief against the within defendants (the "Ex Parte TRO"), that provided, *inter alia*, "pending the hearing and determination of this motion, Defendants, and their attorneys, employees, representatives, affiliates, subsidiaries, successors, assigns, and all those acting in concert with them are temporarily and hereby restrained and enjoined from taking any affirmative actions (including, but not limited to using NYMP's confidential customer lists to poach or solicit existing customers of NYMP, shredding documents, or wiping computer hard drives) or from refraining to take such necessary actions (such as providing routine and customary maintenance and servicing of customer accounts), that would in any manner harm or injure the going concern value and the business operations of Central Station Monitoring Co. or NYMP," and which scheduled a hearing on the requested relief for February 28, 2011; and

**WHEREAS**, defendants Aaron Wahrsager ("Aaron"), Eric R. Wahrsager ("Eric"), Nationwide Central Station Monitoring Corp. ("Central Station"), and United States Merchants Protective Co., Inc., ("USMP") (collectively, the "Settling Defendants"), appeared, through counsel, at the February 28, 2011 hearing on the Ex Parte TRO at which time the parties entered into a stipulation with respect to the request for injunctive relief; and

**WHEREAS**, on March 4, 2011, the Receiver filed an amended complaint (the "Amended Complaint") [Docket No. 22 in the Receiver Action]; and

**WHEREAS**, on March 4, 2011, the Receiver filed a second motion seeking to expand the Receiver's powers and requesting additional injunctive relief (the "Receiver's Expansion Motion") [Docket No. 28 in the Receiver Action]; and

**WHEREAS**, on March 4, 2011, the Court signed the Order to Show Cause to Expand that contained the terms and conditions that were agreed to by the parties to the Receiver Action [Docket No. 35 in the Receiver Action]; and

**WHEREAS**, the parties submitted a proposed stipulation to resolve certain issues raised in the Receiver's Expansion Motion, to be so ordered [Docket Nos. 41, 50 and 53 in the Receiver Action] that contained the agreed language with respect to the extent communications were to be allowed with the customers of NYMP, and that contained the agreed language with respect to the conduct and actions of TRG Associates ("TRG"), the Receiver's retained professional; and

**WHEREAS**, the parties stipulated to the terms of a confidentiality agreement (the "Confidentiality Agreement") entered into among the Receiver, TRG, and the Settling Defendants. A copy of the Confidentiality Agreement is annexed hereto as Exhibit A; and

**WHEREAS**, the Settling Defendants filed opposition to the Ex Parte TRO and the Receiver's Expansion Motion [Docket Nos. 58, 59 and 60 in the Receiver Action]; and

**WHEREAS**, prior to the Bank of America Litigation and on or about November 5, 2010, NYMP and Central Station purportedly entered into an alleged contract (the "Monitoring Contract") which provided that Central Station would provide monitoring services for NYMP's customers; and

**WHEREAS**, the Settling Defendants continue to have outstanding obligations to Peter Deck and Meryle Deck; and

**WHEREAS**, as a result of the ongoing negotiations and subject to the Court's approval, the Receiver and the Settling Defendants have reached a settlement (the "Stipulation") of their

respective claims without the necessity of having to litigate the issues and without having to incur the additional costs and expenses associated with the litigation; and

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned parties to this Stipulation and their respective attorneys hereby agree as follows:

#### ARTICLE I

#### **PAYMENT OF THE SETTLEMENT SUMS TO THE RECEIVER BY THE SETTLING DEFENDANTS**

**Section 1.1 Payment of the Settlement.** In full and final satisfaction of all claims in the Receiver Action and the Related Action, and all claims which could be asserted against the Settling Defendants by Bank of America, Ironwood Capital, Ltd., and any creditor of NYMP, or on behalf of NYMP, the Settling Defendants shall pay to the Receiver, on behalf of NYMP, the sum of \$800,000.00 (the "Monetary Settlement Sum"). All payments to the Receiver hereunder shall be made by check or wire transfer to "Ronald J. Friedman, Esq. as Receiver of New York Merchants Protective Co., Inc."

**Section 1.2 Monetary Settlement Sum Payment Terms.** The Settling Defendants shall pay the Monetary Settlement Sum to the Receiver as follows:

a. Upon execution of this Stipulation, the Settling Defendants shall deposit the Monetary Settlement Sum with LaMonica Herbst & Maniscalco, LLP (the "Escrow Agent"), as attorneys, to be held in escrow pending approval of this Stipulation by the Court (the "Deposit");

b. The Monetary Settlement Sum shall be paid to the Receiver ten (10) days after the entry of an order approving this Stipulation (the "Effective Date"). In the event that this Stipulation is not approved by the Court, the Monetary Settlement Sum shall be released from escrow by the Escrow Agent to the Settling Defendants.

## ARTICLE II

### ADDITIONAL SETTLEMENT CONSIDERATION

**Section 2.1 Dismissal Of Eric Wahrsager's Litigation.** Upon approval of this Stipulation and payment of the Deposit and in further consideration thereof, Eric Wahrsager will dismiss, with prejudice, the action entitled *Eric Wahrsager v. NMP Holdings Corp. a/k/a New York Merchants Protective Co., Inc.*, pending in the United States District Court for the Eastern District of New York and bearing Index No. 2:11-cv-00637 (the "Wages Action").

**Section 2.2 Assignment Of the Tim Watson Covenant.** To the extent permitted by law, upon execution of this Stipulation, the Receiver shall assign to USMP the restrictive covenant of Tim Watson only as it relates to USMP customer accounts. USMP is hereby granted a third party beneficiary right to the restrictive covenant *only* and specifically as it relates to customer accounts of USMP.

## ARTICLE III

### OBLIGATIONS, REPRESENTATIONS, AND ACKNOWLEDGMENTS OF THE RECEIVER

**Section 3.1 The Receiver's Acknowledgements.** Upon full performance of all of the terms and conditions of this Stipulation by the Settling Defendants, the Receiver shall acknowledge, on behalf of NYMP, that all computer equipment, servers, receivers, certain specified telephone systems, and IP addresses, furniture, and fixtures that are located at the Central Station are property of the Central Station and shall remain property of Central Station. A list of the equipment is annexed hereto as **Exhibit B**.

**Section 3.2 The Receiver's Obligations.** Within a reasonable time after this Stipulation has been approved by an order of the Court, the Receiver shall:

a. waive and release any and all claims in and to the customer accounts and telephone lines, communication circuits and IP addresses in the Cablevision Lightpath account number 1125. The Receiver shall provide a written letter to Cablevision Lightpath stating that

the accounts and telephone lines, communication circuits and IP addresses are owned by Central Station;

b. waive and release any and all claims in and to the customer accounts and telephone lines, communication circuits and IP addresses in Sprint account number 926960483. The Receiver shall provide a written letter to Sprint stating that the accounts and telephone lines, communication circuits and IP addresses are owned by Central Station;

c. waive and release any and all claims to the Underwriters Laboratories ("UL") listings that relate to the Central Station; and

d. file such documents as are necessary to dismiss without prejudice the objection filed with the Patent and Trademark Office under Application Serial No. 85281738 for Nationwide Digital Monitoring Co. (and Design).

**Section 3.3 The Receiver's Representation.** Within five (5) days after this Stipulation has been approved by an order of the Court, the Receiver shall represent that no customers of USMP or Central Station owe any money to NYMP for any period after February 1, 2011.

**Section 3.4 No Third Party Beneficiaries.** Based upon the Receiver's investigation and the documents and information provided to the Receiver and his retained professionals to date, it does not appear that the Settling Defendants have any liability for the outstanding obligations of NYMP, Wayne Wahrsager, or Mark Fischer. Further, neither Wayne Wahrsager nor Mark Fischer are intended or unintended third party beneficiaries of this Stipulation and nothing contained herein is intended to or should be construed to prevent or otherwise limit the rights, remedies or claims by any of the Receiver, Bank of America or Ironwood Capital, Ltd. a/k/a Ironwood Mezzanine or any other persons or entities against Wayne Wahrsager or Mark Fischer.

#### ARTICLE IV

##### NON-SOLICITATION

**Section 4.1 Confidentiality Agreement.** The parties to this Stipulation agree that the Confidentiality Agreement (Exhibit A) is still in effect and shall survive approval of this Stipulation and action, dismissal of the receivership, if any, and the underlying claims against the Settling Defendants. In addition, and as an integral part of this Stipulation, John Brady and Christopher Brady, on behalf of TRG Associates, each acknowledges they are receiving this Stipulation and Motion to Approve, and understand the terms and conditions of this Stipulation, the Confidentiality Agreement, the restrictive covenant, and the consequences of a violation thereof.

**Section 4.2 Safeguard Of Data.** Upon completion of the Settling Defendants obligations hereunder, the Receiver and Central Station shall work cooperatively to safeguard and preserve all Central Station historical data (the "Information") for the period prior to the Receiver's appointment from the NYMP Sedona server at each other's sole cost. The Receiver asserts that the Information has not been shared with anyone, including NYMP Acquisition, LLC.

#### ARTICLE V

##### RELEASES AND DEFAULT PROVISIONS

**Section 5.1 Releases.** Upon execution of this Stipulation, each of the parties hereto shall simultaneously sign the attached general releases in favor of each party set forth therein. A copy of the release in favor of NYMP, the Receiver, his agents and representatives, SilvermanAcampora LLP, and Bank of America is annexed hereto as Exhibit C. Copies of the Receiver's release and the release of Bank of America in favor of the Settling Defendants are annexed hereto collectively as Exhibit D. The general releases shall be effective upon the

entry of an order approving this Stipulation by the District Court and full payment of all amounts due pursuant to Article I.

**Section 5.2 Default.** Other than as set forth herein, in the event that either party breaches a term, covenant, or condition of this Stipulation, and in the further event that, after ten (10) days written notice via e-mail only to counsel for that party the breach is not cured, the party aggrieved shall be able to seek relief from the Court as appropriate, including proceeding by way of injunctive relief, and shall be entitled to seek attorneys' fees and costs in connection therewith. In the event the Settling Defendants fail to make any payment set forth herein or in the event that any payment made is dishonored for any reason whatsoever, then the Receiver shall be entitled, but not required, to enter a judgment against the Settling Defendants, jointly and severally, in the amount of \$1 Million, less credit for any payments previously made by the Settling Defendants, without further notice, and upon the Affidavit by the Receiver attesting to the default.

**Section 5.3 Release of Stipulated Injunction** Upon full payment by the Settling Defendants of the Monetary Settlement Sum, the Stipulated Injunction dated March 30, 2011 and entered by the Court Order dated April 22, 2011, and any prior orders that relate thereto shall be deemed resolved and vacated and of no further force and effect..

#### ARTICLE VI

#### MISCELLANEOUS

**Section 6.1 Counterparts.** This Stipulation may be executed in one or more counterparts, all of which shall be considered one and the same Stipulation, and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party. This Stipulation may be executed and delivered by facsimile transmission or PDF's via email as if a manually signed original were personally delivered.

**Section 6.2 Joint Representations.** The Parties warrant and represent that with the exception of the pending action, they have not commenced, maintained, prosecuted or participated in any action, suit, charge, grievance, complaint or proceeding of any kind against one another in any court or before any administrative or investigative body and/or agency.

The Parties agree that they have complied with the prior nondisclosure agreements executed in this case (collectively "Confidential Information"). The Parties further warrant and represent that they shall not, following execution of this Agreement, disclose to any third-party, without prior written consent of the non-disclosing Party, any Confidential Information.

**Section 6.3 Entire Agreement.** This Stipulation contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior oral or written agreements, understandings, representations and warranties between the parties.

**Section 6.4 Notices.** All notices hereunder shall be sufficiently given for purposes hereunder if in writing and delivered personally, sent by overnight delivery service or, to the extent receipt is confirmed, by facsimile or other electronic service to the appropriate address as set forth below. Notices to the Receiver shall be addressed to:

Ronald J. Friedman, Esq.  
SilvermanAcampora LLP  
100 Jericho Quadrangle - Suite 300  
Jericho, New York 11753  
Facsimile: 516-479-6301

With a copy to:

SilvermanAcampora LLP  
100 Jericho Quadrangle - Suite 300  
Jericho, New York 11753  
Attn: Robert J. Ansell  
Facsimile: 516-479-6301

or at such other address and to the attention of such other person as the Receiver may designate by written notice to the Settling Defendants. Notices to the Settling Defendants shall be addressed:

Eric Wahrsager  
403 East Broadway, Unit 302  
Long Beach, NY 11561

Aaron Wahrsager  
1911 Allison Drive  
Bellmore, NY 11710

United States Merchants Protective Co., Inc.  
75 Merrick Road  
Freeport, New York 11520

National Central Station Monitoring Corp.  
75 Merrick Road  
Freeport, New York 11520

Joseph S. Maniscalco, Esq.  
LaMonica Herbst & Maniscalco, LLP  
3305 Jerusalem Avenue – Suite 201  
Wantagh, New York 11793  
(516) 826-6500  
[ism@lhmlawfirm.com](mailto:ism@lhmlawfirm.com)

or at such other address and to the attention of such other person as Settling Parties may designate by written notice to the Receiver.

**Section 6.5 Successors and Assigns.** This Stipulation shall be binding upon the successors and assigns of the Settling Defendants and inure to the benefit of the Receiver and heirs, successors, endorsees, and assigns. This Stipulation shall *not* be assignable by the Settling Defendants without the express written consent of the Receiver in his sole discretion. This Stipulation shall not be assignable by the Receiver, except to Bank of America or its designee, which may only be another financial institution, without the express written consent of the Settling Defendants.

**Section 6.6 Headings; Definitions.** The Section and Article headings contained in this Stipulation are inserted for convenience of reference only and shall not affect the meaning or interpretation of this Stipulation.

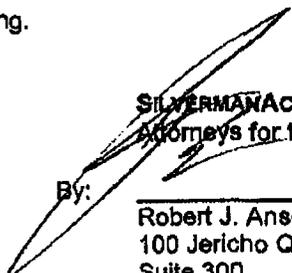
**Section 6.7 Amendments and Waivers.** No failure or delay by either party in exercising any right, power or privilege under this Stipulation shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege under this Stipulation. This Stipulation may be modified only in a writing signed by all parties hereto. The waiver by any party hereto of a breach of any term or provision of this Stipulation shall not be construed as a waiver of any subsequent breach.

**Section 6.8 Submission to Jurisdiction.** The District Court shall retain exclusive jurisdiction over the terms, conditions, interpretations, implementations and any and all disputes relating to this Stipulation which may arise among and between the parties.

**Section 6.9 Applicable Law.** This Stipulation shall be governed by and construed in accordance with the laws of the State of New York without regard to conflicts of laws principles.

**Section 6.10 Drafting.** By signing this Stipulation, each of the parties hereto acknowledges that it has read all of the terms of this Stipulation and enters into those terms voluntarily and without duress and that it has the authority to bind itself to this agreement. The parties hereto agree and consent to provide reasonable cooperation and assistance to each other in order to implement and consummate the terms and conditions of this Stipulation. This Stipulation shall be deemed to have been jointly drafted by the parties in construing and interpreting this Stipulation. No provision shall be construed and interpreted for or against any of the parties because such provision or any other provision of this Stipulation or the Stipulation as whole was prepared or requested by such party. The parties hereto consent of the entry of this Stipulation as an Order in this proceeding.

Dated: Jericho, New York  
November 26, 2013

  
**SILVERMAN CAMPORA LLP**  
Attorneys for the Receiver

By:

Robert J. Ansell  
100 Jericho Quadrangle  
Suite 300  
Jericho, New York 11753  
(516) 479-6300

Dated: Wantagh, New York  
November 26, 2013

**LaMONICA HERBST & MANISCALCO, LLP**  
Attorneys for Eric R. Wahrsager, Aaron  
Wahrsager, United States Merchants  
Protective Co., Inc. and Central Station

By:

  
Joseph S. Maniscalco  
3305 Jerusalem Avenue  
Wantagh, New York 11793  
(516) 826-6500



# **EXHIBIT A**

### CONFIDENTIALITY AGREEMENT

This is a Confidentiality Agreement (the "Agreement") entered into on March 7, 2011 pursuant to an order of United States District Judge Denis R. Hurley dated March 4, 2011, the action pending in the United States District Court, Eastern District of New York, CV 11-0815 (the "Order"). The parties herein, Ronald J. Friedman, Esq. as Court appointed receiver (the "Receiver") and TRG Associates, the Receiver's retained professional (collectively, the "Recipient") as plaintiff, and Aaron Wahrsager, Eric R. Wahrsager, Nationwide Central Station Monitoring Corp., and United States Merchants Protective Co. Inc. (the "Originators"), set forth the terms of the Agreement as follows:

1. The Originators will produce all of the material required by the Order (the "information") immediately. The information will be kept confidential and will not be disclosed by the Recipient in any manner whatsoever, in whole or in part, and will not be used by the Recipient, directly or indirectly, for any purpose other than as set forth in the Order.
2. The Recipient will only reproduce or make such copies of any information as is reasonably necessary in compliance with the Order.
3. In the event that a Recipient becomes legally compelled or is required by regulatory authorities having appropriate jurisdiction (including a request of a securities commission or stock exchange) to disclose any of the information, the Recipient shall, promptly provide the Originators with Ten (10) days written notice prior to producing or providing documents or information so that the Originators may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. In the event that such protective order or other remedy is not obtained or the Originators waive compliance with the provisions of this Agreement, the Recipient will furnish only that portion of the information which is required and will exercise all reasonable efforts to obtain reliable assurance that confidential treatment will be accorded the information so furnished.
4. This Agreement shall be governed by and construed in accordance with the laws of the State of New York. The venue for any dispute shall be before Judge Denis R. Hurley, United States District Court Judge.
5. No failure or delay by any party hereto in exercising any right, power or privilege under this Agreement will operate as a waiver thereof, nor will any single or partial exercise preclude any other or further exercise of any right, power or privilege under this Agreement.
6. Any Notice, consent or approval required or permitted to be given in connection with this Agreement ("Notice") shall be in writing and shall be sufficiently given, if delivered (whether in person, by courier service or other personal method of delivery), or if transmitted by facsimile or e-mail:

(a) to the Receiver or TRG at:

Address: SilvermanAcampora LLP  
100 Jericho Quadrangle - Suite 300  
Jericho, New York 11753  
Attention: Robert J. Ansell, Esq.  
Phone No.: (516) 479-6300  
E-mail: [RAnsell@SilvermanAcampora.com](mailto:RAnsell@SilvermanAcampora.com)

(b) to the Originators at:

Address: LaMonica Herbst & Maniscalco, LLP  
3305 Jerusalem Avenue - Ste 201  
Wantagh, NY 11793  
Attention: Joseph S. Maniscalco, Esq.  
Phone No.: (516) 826-6500  
E-mail: [jsm@lhmlawfirm.com](mailto:jsm@lhmlawfirm.com)

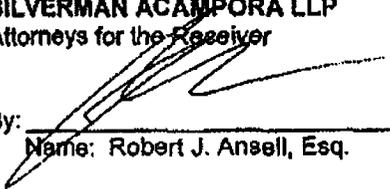
Any Notice, delivered or transmitted to a party as provided above, shall be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a business day prior to 5:00 p.m. EST in the place of delivery or receipt. However, if the Notice is delivered or transmitted after 5:00 p.m. EST or if such day is not a business day, then the Notice shall be deemed to have been given and received on the next business day. Any party may, from time to time, change its address by giving Notice to the other parties in accordance with the provisions of this section.

7. No amendment, supplement, modification, waiver or termination of this Agreement and, unless otherwise specified, no consent or approval by any party hereto shall be binding unless executed in writing by the party to be bound thereby, or by order of the Honorable Denis R. Hurley.

***[Signature page to follow]***

The undersigned hereby agrees to the foregoing as of the date set forth below.

**SILVERMAN ACAMPORA LLP**  
Attorneys for the Receiver

By:   
Name: Robert J. Ansell, Esq.

Date: March 7, 2011

**LAMONICA HERBST & MANISCALCO, LLP**  
Attorneys for the Originators

By: \_\_\_\_\_  
Name: Joseph S. Maniscalco, Esq.

Date: March 7, 2011

**TRG ASSOCIATES, INC**

By:   
John Brady  
President

The undersigned hereby agrees to the foregoing as of the date set forth below.

**SILVERMAN ACAMPORA LLP**  
Attorneys for the Receiver

By: \_\_\_\_\_  
Name: Robert J. Ansell, Esq.

Date: March 7, 2011

**LAMONICA HERBST & MANISCALCO, LLP**  
Attorneys for the Originators

By: \_\_\_\_\_  
Name: Joseph S. Maniscalco, Esq.

Date: March 7, 2011

**TRG ASSOCIATES, INC**

By: \_\_\_\_\_  
John Brady  
President

# **EXHIBIT B**

**Operator Stations**

20 - Central Station Operator Terminal Computers (Various Brands)  
44 - Central Station Operator Terminal Monitors (Various Brands)  
2 - Cannon Laser 710 Fax / Printers  
All UPS & Power Supplies to Power Above  
All Desks, Chairs, fixtures, etc contained in the Central Station room

**Receiving Equipment**

2 - UHS IP Receivers  
1 - BDR Backup Server  
4 - DMP SCS-1R (3 Belong to NCSMC Dealers)  
2 - Honeywell 7810IR  
1 - Sur-Gard 2E Receiver (1-SG-CPM2 6-SG-DRL2E)  
2 - INC CM-756 CSU  
2 - Versus ATU-6000 (with WYSE Terminals)  
1 - Napco Netlink IP Receiver  
2 - HP DL-360GS CPUs  
2 - Sur-Gard System III Receivers (with Redundant Systems)  
2 - Adtran Atlas 550 & Access 750  
1 - TrendNet TK-801R  
1 - Xincom XC-DPG502  
All UPS & Power Supplies to Power Above

**Automation Equipment**

4 - Rack Mount CPUs (NCSMC-Web02, NCSMC-Reports SVR, NCSMC-MLR-2000, NCSMC-Keri SVR)  
2 - IBM xSeries x330 Servers (OZ & RSI)  
1 - HP DL320 (VD)  
1 - Video Cells Server  
1 - Evertide VR725  
1 - IBM xSeries x300 Web Server - SC911  
1 - IBM xSeries x305 Email Server (NYMPC's email was already removed by Receiver)  
All UPS & Power Supplies to Power Above

**Mastermind Servers**

2 - HP DL320  
6 - Compaq DL320  
2 - HP DL380  
3 - Nport 5610 RS232  
All UPS & Power Supplies to Power Above

**Network**

1 - Cisco 2600  
1 - Cisco PIX 515E  
1 - Netgear JGS524  
2 - Netgear GS748TS  
1 - Netgear GS748T  
1 - Netgear JFS524  
2 - Xincom XC-DPG502

1 - Cisco 5505  
1 - Cisco Catalyst 2900  
All UPS & Power Supplies to Power Above

**Panasonic Phone System**

1 - KX-TDA200 w/Expansion Cage  
1 - TVS325  
All Desk Panasonic Phones (KX-T7633 & similar)  
All UPS & Power Supplies to Power Above

**General Office Equipment / Computers**

1 - PowerSpec CPU that contains Time Clock Software with Monitor (Occasionally used by Fran Ditomas)  
Computers, Printers, Scanners, Monitors, Desks, Chairs, etc of all NCSMC Officers and Employees

Aaron Wahrsager  
Yuriy Bas  
Olga Bas  
Alan Ankeles  
Ray Kerr  
Ujamma Davis  
Eric Wahrsager - Currently being occupied by TRG

1 - Destroy-It 4004 Shredder  
All UPS & Power Supplies to Power Above  
All permanently affixed desks, counters, cabinets, and file racks  
Kohler Generator and Transfer Switch

**All Software & Software Licenses for the above**

**Domain Names**

www.nationwidedigital.com  
www.nwdm.info  
www.nationwidedigitalmonitoring.com

**Trade names**

Nationwide Central Station Monitoring  
Nationwide Digital Monitoring  
Any variation of the trade name containing "Nationwide"

**Nationwide Lines Designated for the use of New York Merchants and "Way-Mar" Dealers**

Telephone #		
(800) 221-0826		
(800) 248-7111		
(516) 561-7100		
(888) 356-7211		
(516) 396-0674		
(516) 396-0678		
(800) 227-1699		
(516) 294-3794		
(516) 294-3972		
(516) 294-6486		
(516) 294-6511		
(516) 294-8713		
(516) 295-1123		
(516) 561-7147		
(516) 561-7191		
(516) 561-7194		
(516) 561-7196		
(516) 561-7576		
(516) 561-7597		
(516) 561-7694		
(516) 561-7846		
(516) 561-7847		
(516) 561-7971		
(516) 561-7977		
(516) 568-1297		
(516) 632-7860		
(516) 632-7915		
(516) 741-7103		
(516) 872-2330		
(516) 872-2374		
(516) 872-2564		
(516) 872-2756		
(516) 872-3205		
(516) 872-3206		
(516) 872-3207		
(516) 872-3208		
(516) 872-3424		
(516) 872-3658		
(516) 872-3685		
(516) 872-4201		
(516) 872-6582		
(516) 872-6737		
(516) 872-6775		

**Nationwide Lines Designated for the use of New York Merchants and "Way-Mar" Dealers**

(516) 872-8420		
(516) 872-8529		
(516) 872-8815		
(516) 873-2129		
(718) 471-0207		
(718) 518-7775		
(718) 823-5851		
(718) 823-7602		
(718) 823-9033		
(718) 861-0456		
(914) 667-1465		
(914) 667-1570		
(914) 840-4000		
(516) 632-7853		
(516) 632-7855		
(516) 823-9479		
(516) 823-9483		
(718) 253-7429		
(718) 332-4603		
(718) 332-5587		
(718) 332-5589		
(718) 975-9123		
(718) 975-9124		
DMP Radio	IP	Goes to Nationwide DMP Receiver - Used by Hundreds of Dealers besides NYMP
DMP Internet	IP	Goes to Nationwide DMP Receiver - Used by Hundreds of Dealers besides NYMP
DSC Radio	IP	Goes to Nationwide System III Receiver - Used by Hundreds of Dealers besides NYMP
DSC Internet	IP	Goes to Nationwide System III Receiver - Used by Hundreds of Dealers besides NYMP
01-2D	AlarmNet Radio Circuit	
01-1D	AlarmNet Radio Circuit	
01-4E	AlarmNet Radio Circuit	
<b>All Other lines &amp; circuits owned by Nationwide for the use of other dealers not related to NYMP</b>		
<b>line designation prefixes beginning with "N" and "S"</b>		

# **EXHIBIT C**

**RELEASE**

**TO ALL WHOM THESE PRESENTS SHALL COME OR MAY CONCERN, KNOW THAT NATIONWIDE CENTRAL STATION MONITORING CORP.**, with an address at 75 West Merrick Road, Freeport, New York,

as **RELEASOR**

in consideration of the sum of Ten (\$10.00) Dollars and other good and valuable consideration

received from Ronald J. Friedman, Esq., in his capacity as Receiver of New York Merchants Protective Co., Inc., New York Merchants Alarm Response, Inc., and NY Merch Prot Co, Inc., with an address at 100 Jericho Quadrangle, Suite 300, Jericho, New York, and SilvermanAcampora LLP with an address at 100 Jericho Quadrangle, Suite 300, Jericho, New York, and Bank of America with an office at 231 South LaSalle Street, Chicago, Illinois,

collectively as **RELEASEE**

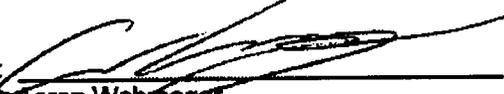
receipt whereof is hereby acknowledged, releases and discharges **RELEASEE**, its past, present and future affiliates, representatives, agents, attorneys, officers, directors, shareholders, managers, partners, members, employees, predecessors, consultants, successors, assigns, heirs, executors and administrators, from all of the claims, losses, liabilities, actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law, admiralty or equity, which against **RELEASEE**, its past, present and future affiliates, representatives, agents, attorneys, officers, directors, shareholders, managers, partners, members, employees, predecessors, consultants, successors, assigns, heirs, executors and administrators, **RELEASOR** ever had, now have or hereafter can, shall or may have, for, upon, or by reason of those matters, causes or things from the beginning of the world to the day of the date of this **RELEASE**, except for those obligations arising under the Stipulation of Settlement dated October 25, 2013 signed in connection with the civil action commenced by **RELEASEE** against, among others **RELEASOR** in the United States District Court, Eastern District of New York under Case No. 11-CV-0815.

The words "**RELEASOR**" and "**RELEASEE**" include all releasors and all releasees under this **RELEASE**.

This **RELEASE** may not be changed orally.

**IN WITNESS WHEREOF**, the **RELEASOR** has hereunto set **RELEASOR'S** hand and seal on the 25 day of October, 2013.

**Nationwide Central Station Monitoring Corp.**

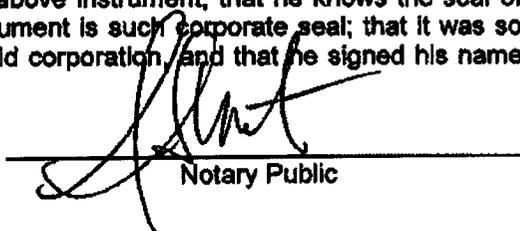
By: 

Aaron Wehrsager  
President

STATE OF NEW YORK     )  
  ) ss.:  
COUNTY OF *NASSAU*     )

On the 25<sup>th</sup> day of October in the year 2013, before me personally came Aaron Wahrsager to me known, who, being by me duly sworn, did depose and say that he resides in New York; that he is the president of Nationwide Central Station Monitoring Corp., the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the board of directors of said corporation, and that he signed his name thereto by like authority.

**JOSEPH S. MANISCALCO**  
Notary Public-State of New York  
No. 02MA5063826  
Qualified in Nassau County  
My Commission Expires 7/29/14

  
\_\_\_\_\_  
Notary Public

**RELEASE**

**TO ALL WHOM THESE PRESENTS SHALL COME OR MAY CONCERN, KNOW THAT AARON WAHRSAGER, with an address at 1911 Allison Drive, Bellmore, New York,**

**as RELEASOR**

in consideration of the sum of Ten (\$10.00) Dollars and other good and valuable consideration

received from Ronald J. Friedman, Esq., in his capacity as Receiver of New York Merchants Protective Co., Inc., New York Merchants Alarm Response, Inc., and NY Merch Prot Co, Inc., with an address at 100 Jericho Quadrangle, Suite 300, Jericho, New York, and SilvermanAcampora LLP with an address at 100 Jericho Quadrangle, Suite 300, Jericho, New York, and Bank of America with an office at 231 South LaSalle Street, Chicago, Illinois,

collectively as RELEASEE

receipt whereof is hereby acknowledged, releases and discharges RELEASEE, its past, present and future affiliates, representatives, agents, attorneys, officers, directors, shareholders, managers, partners, members, employees, predecessors, consultants, successors, assigns, heirs, executors and administrators, from all of the claims, losses, liabilities, actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law, admiralty or equity, which against RELEASEE, its past, present and future affiliates, representatives, agents, attorneys, officers, directors, shareholders, managers, partners, members, employees, predecessors, consultants, successors, assigns, heirs, executors and administrators, RELEASOR ever had, now have or hereafter can, shall or may have, for, upon, or by reason of those matters, causes or things from the beginning of the world to the day of the date of this RELEASE, except for those obligations arising under the Stipulation of Settlement dated October 25, 2013 signed in connection with the civil action commenced by RELEASEE against, among others RELEASOR in the United States District Court, Eastern District of New York under Case No. 11-CV-0815.

The words "RELEASOR" and "RELEASEE" include all releasors and all releasees under this RELEASE.

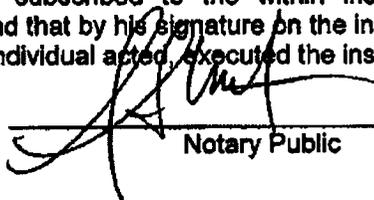
This RELEASE may not be changed orally.

IN WITNESS WHEREOF, the RELEASOR has hereunto set RELEASOR'S hand and seal on the 21 day of October, 2013.

  
\_\_\_\_\_  
Aaron Wahrsager

STATE OF NEW YORK        )  
                                  ) ss.:  
COUNTY OF *NASSAU*     )

On the 25 day of October in the year 2013, before me, the undersigned, personally appeared Aaron Wahrsager personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

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**JOSEPH S. MANISCALCO**  
Notary Public-State of New York  
No. 02MA5063826  
Qualified in Nassau County  
My Commission Expires 7/29/14

**RELEASE**

**TO ALL WHOM THESE PRESENTS SHALL COME OR MAY CONCERN, KNOW THAT UNITED STATES MERCHANTS PROTECTIVE CO., INC.,** with an address at P.O. Box 1189, Bellmore, New York,

as **RELEASOR**

in consideration of the sum of Ten (\$10.00) Dollars and other good and valuable consideration

received from Ronald J. Friedman, Esq., in his capacity as Receiver of New York Merchants Protective Co., Inc., New York Merchants Alarm Response, Inc., and NY Merch Prot Co, Inc., with an address at 100 Jericho Quadrangle, Suite 300, Jericho, New York, and SilvermanAcampora LLP with an address at 100 Jericho Quadrangle, Suite 300, Jericho, New York, and Bank of America with an office at 231 South LaSalle Street, Chicago, Illinois,

collectively as **RELEASEE**

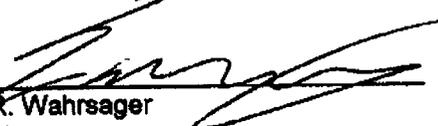
receipt whereof is hereby acknowledged, releases and discharges **RELEASEE**, its past, present and future affiliates, representatives, agents, attorneys, officers, directors, shareholders, managers, partners, members, employees, predecessors, consultants, successors, assigns, heirs, executors and administrators, from all of the claims, losses, liabilities, actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law, admiralty or equity, which against **RELEASEE**, its past, present and future affiliates, representatives, agents, attorneys, officers, directors, shareholders, managers, partners, members, employees, predecessors, consultants, successors, assigns, heirs, executors and administrators, **RELEASOR** ever had, now have or hereafter can, shall or may have, for, upon, or by reason of those matters, causes or things from the beginning of the world to the day of the date of this **RELEASE**, except for those obligations arising under the Stipulation of Settlement dated October 25, 2013 signed in connection with the civil action commenced by **RELEASEE** against, among others **RELEASOR** in the United States District Court, Eastern District of New York under Case No. 11-CV-0815.

The words "**RELEASOR**" and "**RELEASEE**" include all releasors and all releasees under this **RELEASE**.

This **RELEASE** may not be changed orally.

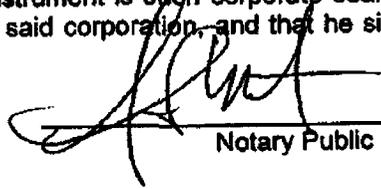
**IN WITNESS WHEREOF**, the **RELEASOR** has hereunto set **RELEASOR'S** hand and seal on the 22 day of October, 2013.

**United States Merchants Protective Co., Inc.**

By:   
Eric R. Wahrsager  
President

STATE OF NEW YORK     )  
                                  ) ss.:  
COUNTY OF *Nassau*     )

On the 25 day of October in the year 2013, before me personally came Eric R. Wahrsager to me known, who, being by me duly sworn, did depose and say that he resides in New York; that he is the president of United States Merchants Protective Co., Inc., the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the board of directors of said corporation, and that he signed his name thereto by like authority.



Notary Public

*M:\Documents\Company\Cases\Watsonville\Slip Receiver Global\Release USMP to Receiver.doc*

**JOSEPH S. MANISCALCO**  
Notary Public-State of New York  
No. 02MA5063826  
Qualified in Nassau County  
My Commission Expires 7/29/14

**RELEASE**

**TO ALL WHOM THESE PRESENTS SHALL COME OR MAY CONCERN, KNOW THAT ERIC R. WAHRSAGER, with an address at 403 East Boardwalk, Unit 302, Long Beach, New York,**

**as RELEASOR**

in consideration of the sum of Ten (\$10.00) Dollars and other good and valuable consideration

received from Ronald J. Friedman, Esq., in his capacity as Receiver of New York Merchants Protective Co., Inc., New York Merchants Alarm Response, Inc., and NY Merch Prot Co, Inc., with an address at 100 Jericho Quadrangle, Suite 300, Jericho, New York, and SilvermanAcampora LLP with an address at 100 Jericho Quadrangle, Suite 300, Jericho, New York, and Bank of America with an office at 231 South LaSalle Street, Chicago, Illinois,

collectively as RELEASEE

receipt whereof is hereby acknowledged, releases and discharges RELEASEE, its past, present and future affiliates, representatives, agents, attorneys, officers, directors, shareholders, managers, partners, members, employees, predecessors, consultants, successors, assigns, heirs, executors and administrators, from all of the claims, losses, liabilities, actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law, admiralty or equity, which against RELEASEE, its past, present and future affiliates, representatives, agents, attorneys, officers, directors, shareholders, managers, partners, members, employees, predecessors, consultants, successors, assigns, heirs, executors and administrators, RELEASOR ever had, now have or hereafter can, shall or may have, for, upon, or by reason of those matters, causes or things from the beginning of the world to the day of the date of this RELEASE, except for those obligations arising under the Stipulation of Settlement dated October 25, 2013 signed in connection with the civil action commenced by RELEASEE against, among others RELEASOR in the United States District Court, Eastern District of New York under Case No. 11-CV-0815.

The words "RELEASOR" and "RELEASEE" include all releasors and all releasees under this RELEASE.

This RELEASE may not be changed orally.

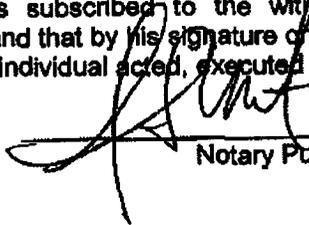
IN WITNESS WHEREOF, the RELEASOR has hereunto set RELEASOR'S hand and seal on the 25 day of May, 2013.

*Eric R. Wahrsager*  
Eric R. Wahrsager

  
Eric R. Wahrsager

STATE OF NEW YORK )  
 )  
COUNTY OF NAUSSAU ) ss.:

On the 25 day of October ~~25~~, 2013, before me, the undersigned, personally appeared Eric R. Wahrsager personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

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**JOSEPH S. MANISCALCO**  
Notary Public-State of New York  
No. 02MA5063826  
Qualified in Nassau County  
My Commission Expires 7/29/14

# **EXHIBIT D**

**RELEASE**

**TO ALL WHOM THESE PRESENTS SHALL COME OR MAY CONCERN, KNOW THAT** Ronald J. Friedman, Esq., in his capacity as Receiver of New York Merchants Protective Co., Inc., New York Merchants Alarm Response, Inc., and NY Merch Prot Co, Inc., with an address at 100 Jericho Quadrangle, Suite 300, Jericho, New York, and SilvermanAcampora LLP with an address at 100 Jericho Quadrangle, Suite 300, Jericho, New York,

as **RELEASOR**

in consideration of the sum of Ten (\$10.00) Dollars and other good and valuable consideration

received from **AARON WAHRSAGER**, with an address at 1911 Allison Drive, Bellmore, New York, **ERIC R. WAHRSAGER**, with an address at 403 East Boardwalk, Unit 302, Long Beach, **NATIONWIDE CENTRAL STATION MONITORING CORP.**, with an address at 75 West Merrick Road, Freeport, New York, and **UNITED STATES MERCHANTS PROTECTIVE CO., INC.**, with an address at P.O. Box 1189, Bellmore, New York

collectively as **RELEASEE**

receipt whereof is hereby acknowledged, releases and discharges **RELEASEE**, its past, present and future affiliates, representatives, agents, attorneys, officers, directors, shareholders, managers, partners, members, employees, predecessors, consultants, successors, assigns, heirs, executors and administrators, from all of the claims, losses, liabilities, actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law, admiralty or equity, which against **RELEASEE**, its past, present and future affiliates, representatives, agents, attorneys, officers, directors, shareholders, managers, partners, members, employees, predecessors, consultants, successors, assigns, heirs, executors and administrators, **RELEASOR** ever had, now have or hereafter can, shall or may have, for, upon, or by reason of those matters, causes or things from the beginning of the world to the day of the date of this **RELEASE**, except for those obligations arising under the Stipulation of Settlement dated ~~October~~ *November* 25, 2013 signed in connection with the civil action commenced by **RELEASEE** against, among others **RELEASEE** in the United States District Court, Eastern District of New York under Case No. 11-CV-0815.

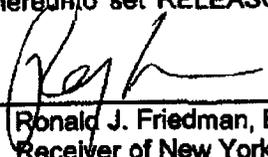
*EG*

*OR*

The words "RELEASOR" and "RELEASEE" include all releasors and all releasees under this RELEASE.

This RELEASE may not be changed orally.

IN WITNESS WHEREOF, the RELEASOR has hereunto set RELEASOR'S hand and seal on the 25 day of ~~October~~ November, 2013.



Ronald J. Friedman, Esq.  
Receiver of New York Merchants Protective Co., Inc., New York Merchants Alarm Response, Inc., and NY Merch Prot Co, Inc.

STATE OF NEW YORK )  
COUNTY OF Nassau ) ss.:

On the 25 day of ~~October~~ November in the year 2013, before me, the undersigned, personally appeared Ronald J. Friedman, Esq. personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

CAROL ANN GALLO-RUSSO  
Notary Public, State of New York  
No. 01GA4832721  
Qualified in Suffolk County  
Commission Expires April 30, 2014

**CONFIDENTIAL**  
**FOR DISCUSSION PURPOSES ONLY**



RELEASE

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This Release (the "Release"), dated as of November 1, 2013, is made by Bank of America, N.A., as successor by merger to LaSalle Bank National Association (the "Bank") in favor of Aaron Wahrsager, Eric Wahrsager, individually and jointly, United States Merchants Protective Co., Inc. ("USMP") and Nationwide Central Station Monitoring Corp., doing business as Nationwide Digital Monitoring Co. ("Central Station"), (collectively, the "Released Parties").

**RECITALS**

WHEREAS, Aaron Wahrsager and Eric Wahrsager either worked for or had a business relationship with, and are believed by the Bank to have been former officers of, New York Merchants Protective Co., Inc. ("NYMP"), a security alarm monitoring company based in New York, and certain of its affiliates and subsidiaries;

WHEREAS, the Released Parties dispute that either Aaron Wahrsager or Eric Wahrsager was ever an officer of NYMP;

WHEREAS, Aaron Wahrsager and Eric Wahrsager are presently officers, employees and principal shareholders of Central Station and USMP;

WHEREAS, pursuant to that certain loan and security agreement dated January 31, 2006 (the "Loan Agreement"), the Bank made loans and extended other financial accommodations to NYMP guaranteed by two of its affiliates, New York Merchants Alarm Response Co., Inc. and NY Merch Prot Co., Inc. (the "Affiliate Guarantors"), and its two shareholders, Wayne Wahrsager, and Mark Fischer (the "Individual Guarantors");

WHEREAS, as a result of the occurrence of various events of default under the Loan Agreement, Bank (a) accelerated the obligations of NYMP under the Loan Agreement, (b) commenced civil actions against NYMP, the Affiliate Guarantors, and the Individual Guarantors to collect amounts outstanding under the Loan Agreement, and (c) obtained the appointment of Ronald J. Friedman as receiver (the "Receiver") for NYMP and the Affiliate Guarantors in a civil action entitled *Bank of America, N.A. v. New York Merchants Protective Co., et al.* bearing index number 2:11-cv-00038, pending in the United States District Court for the Eastern District of New York (the "Federal District Court");

WHEREAS, following his appointment, the Receiver investigated the affairs of NYMP and, on February 18, 2011, commenced a civil action entitled *Ronald J. Friedman, as Receiver for New York Merchants Protective Co., Inc., et al. v. Wayne Wahrsager, et al.*, bearing index

number 2:11-cv-0815, in the Federal District Court, asserting various causes of action against, among others, the Released Parties, including, but not limited to, breaches of the Released Parties' fiduciary duties to NYMP, tortious interference with contracts of NYMP, misappropriation of trade secrets, and receipt of fraudulent conveyances by Central Station (the "Central Station Litigation");

WHEREAS, the Released Parties have opposed all of the Receiver's claims and theories in the Central Station Litigation and have filed a motion to dismiss all of the claims, which motion is *sub judice* with the court.

WHEREAS, the Receiver has reached an agreement with the Released Parties to settle the Central Station Litigation pursuant to that certain settlement agreement of even date herewith (the "Settlement Agreement");

WHEREAS, the execution and delivery by the Bank of this Release is a condition precedent to the effectiveness of the Settlement Agreement;

NOW, THEREFORE, in consideration of the promises and of the mutual agreements herein contained, the parties hereto agree as follows:

1. Adoption and Incorporation of Recitals; Definitions.

1.1 The above recitals are confirmed and adopted by the parties hereto as if set forth herein.

1.2 This Release shall be interpreted in accordance with Section 13 hereof. The following terms when used herein shall have the following meanings:

"Affiliate Guarantors" has the meaning given that term in the preamble.

"Bank" has the meaning given that term in the preamble.

"Central Station" has the meaning given that term in the preamble.

"Central Station Litigation" has the meaning given that term in the preamble.

"Claims" shall mean any and all claims, counterclaims, action or actions, cause or causes of action (including any relating in any manner to any existing litigation or investigation), suits, obligations, controversies, defenses, debts, liens, contracts, agreements, covenants, promises, liabilities, damages, penalties, demands, threats, compensation, losses, costs, judgments, orders, interest, fee, or expense (including attorneys' fees and expenses) or similar items of any kind, type, nature, character or description, including whether in law, equity, or otherwise, whether in contract or in tort, whether choate or inchoate, whether contingent or vested, whether liquidated or unliquidated, whether fixed or

unfixed, whether matured or unmatured, of the Bank or which may be asserted by the Bank, through the Bank, or otherwise on the Bank's behalf (including those which may be asserted on any derivative basis).

"Effective Date" has the meaning given that term in Section 3 hereof.

"Federal District Court" has the meaning given that term in the recitals.

"Identified Property Transfers" has the meaning given that term in Section 2 hereof.

"Loan Agreement" has the meaning given that term in the recitals.

"NYMP" has the meaning given that term in the preamble.

"Receiver" has the meaning given that term in the preamble.

"Release" has the meaning given that term in the preamble.

"Released NYMP-Related Claim" has the meaning given that term in Section 2 hereof.

"Released Parties" has the meaning given that term in the preamble.

"Settlement Agreement" has the meaning given that term in the recitals.

2. Release. In consideration of the agreements and undertakings of the Settlement Agreement, and effective upon the Effective Date, the Bank, knowingly and voluntarily, unconditionally and irrevocably, absolutely, finally and forever releases, acquits and discharges the Released Parties jointly from any Claim that is asserted against the Released Parties in the Central Station Litigation for, including but not limited to, the return of the transfer of the property of NYMP and/or the Affiliate Guarantors specifically identified in the Receiver's court papers filed in the Central Station Litigation (the "Identified Property Transfers") or for the imposition and recovery of the money damages under any theory (be it breach of fiduciary duty, tortious interference with contract, misappropriation of trade secrets, or receipt of fraudulent conveyances, or any other claim asserted or which could be asserted in the Central Station Litigation) relating to the Identified Property Transfers (each a "Released NYMP-Related Claim"). This release of liability shall be strictly limited to its terms.

3. Effectiveness. This Release shall become effective pursuant to its terms upon the delivery by the Bank to the Released Parties of an executed copy of this Release (the date of such delivery, the "Effective Date").

4. Release Construction. This Release is intended to be and shall be deemed to be strictly limited to its express terms. Without limiting the generality of the foregoing, the scope of this release (i) shall in every respect be limited to Released NYMP-Related Claims as of the date hereof, (ii) shall not extend to any claims (including any claim asserted under any fraud theory)

that is based on facts that, as of the date hereof, are unknown by the Bank for whatever reason, including, without limitation, as a result of being concealed, sealed, hidden, or not otherwise specifically disclosed in writing, and (iii) shall in no manner include any claim relating to any Released Party's liability in connection with any transfer of any property (other than the Identified Property Transfers) in which either Mark Fischer or Wayne Wahrsager has or had an ownership or beneficial interest, including any Released Party's liability as an immediate or mediate transferee of property in which either Mark Fischer or Wayne Wahrsager has any type of ownership or beneficial interest, including any liability under any applicable fraudulent conveyance or fraudulent transfer statute or the U.S. Bankruptcy Code. Again, without limiting the generality of the foregoing, any Claims of the Bank relating in any manner whatsoever to any banking, loan, or other credit arrangement or relationship (whether consumer, individual, or business) between the Bank and any of the Released Parties, including, without limitation, any business line of credit, any personal line of credit, any residential or commercial mortgage, or any credit card shall not be released, altered, or affected in any manner by this Release, but instead shall be unaffected by this Release.

5. Representations. The Bank hereby represents and warrants to the Released Parties that each of the following statements is true, accurate, and complete as of the date hereof: (a) the execution and delivery of this Release and the Bank's performance of its obligations hereunder (i) are within the Bank's powers, (ii) have been duly authorized by all necessary action, and (iii) do not and will not contravene or conflict with any provision of law or of the Bank's organizational documents, and (b) this Release constitutes the Bank's legal, valid, and binding obligation and is enforceable in accordance with its terms except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect relating to creditors' rights generally or as such enforcement may be limited in equity.

6. Successors and Assigns. This Release shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of the Released Parties pursuant to its express terms.

7. Counterparts. This Release may be executed in any number of counterparts, each of which will be deemed to be an original, but all of which together shall constitute one and the same instrument. Effective delivery of any such executed counterpart may be by facsimile or email (in a .pdf or similar file) transmission.

8. GOVERNING LAW. THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED THEREIN WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAW.

9. Notice. Any notice provided for hereunder shall be in writing, personally

delivered, and directed to

Bank of America, N.A.  
Attn: Thomas E. Czerwinski, Vice President  
IL4-135-11-43  
135 S. LaSalle Street  
Chicago IL 60603  
Telephone: (312) 828-3584  
Facsimile: (312) 828-3550

with a copy to

Mayer Brown LLP  
71 S. Wacker Drive  
Chicago, IL 60606  
Telephone: (312) 701-7275  
Facsimile: (312) 706-8232  
Attn: Thomas Kiriakos

and in each instance may be given by facsimile transmission or electronic transmission.

10. Entire Agreement. This Release contains the entire understanding of the Bank with respect to the subject matter hereof and supersedes all prior agreements and understandings relating to the subject matter hereof, and no alteration, amendment or other modification of or to this Release shall be effective for any purpose whatsoever, except by a written instrument signed by (a) the Bank and (b) the Released Parties.

11. Headings. The headings and captions used herein are provided for convenience of reference only and shall not be employed in the construction of this Release.

12. No Third Party Beneficiaries. This Release is solely for the benefit of the Released Parties, and, no provision of this Release shall be deemed to confer upon any third parties (including any other creditors or other parties in interest) any Claim, remedy, liability, reimbursement, cause of action or other right.

13. Interpretation. The use of the masculine, feminine or neuter gender or the singular or plural form of words herein shall not limit any provision of this Release. The use of the terms "including" or "include" shall in all cases herein mean "including, without limitation" or "include, without limitation," respectively. Reference to any Person or entity includes such Person's or entity's successors and assigns to the extent such successors and assigns are permitted by the terms of this Release. Reference to any agreement, document or instrument (including this Release), means such agreement, document or instrument as amended or modified (including in this Release) and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof. Reference to any law means such law as amended, modified, codified, replaced or re-enacted, in whole or in part, and in effect on the date hereof, including rules, regulations, enforcement procedures and any interpretations promulgated thereunder. References to Sections or clauses in boldface type, shall refer to those portions of

this Release, and any underscored references to a clause in boldface type, shall, unless otherwise identified, refer to the appropriate clause within the same Section in which such reference occurs. The use of the terms "hereunder", "hereof", "hereto" and words of similar import shall refer to this Release as a whole and not to any particular Section or clause to this Release. In the computation of periods of time in this Release from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each means "to, but not through". This Release and the other documents relating to this Release are the result of negotiations among and have been reviewed by counsel to each of the undersigned and the Released Parties and are the products of all such Persons. Accordingly, they shall not be construed against (or in favor of) any Person merely because of the extent of such Person's involvement (or non-involvement, as the case may be) in their preparation.

14. WAIVER OF JURY TRIAL. TO THE FULLEST EXTENT LEGALLY PERMISSIBLE, THIS RELEASE IS GRANTED SUBJECT TO ANY CLAIM, DISPUTE OR ACTION ARISING OUT OF, RELATED OR PERTAINING HERETO, BEING HEARD BY A JUDGE AND NOT A JURY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE BANK TO ENTER INTO THIS AGREEMENT AND THE BANK WOULD NOT HAVE EXECUTED AND DELIVERED THIS RELEASE UNLESS IT WERE SUBJECT IN ALL RESPECTS TO THE REQUIREMENT THAT ANY DISPUTES RELATING TO IT BE HEARD BY A JUDGE AND NOT A JURY.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound thereby, has caused this Release to be executed as of the date first written above.

BANK OF AMERICA, N.A.

By: Thomas E. Czerwinski

Name: Thomas E. Czerwinski  
Title: Vice President  
Address: IL4-135-11-43  
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