

STATE OF WISCONSIN
17 West Main Street
Post Office Box 7857
Madison, Wisconsin 53707,

and

PETER J. BILDSTEN, SECRETARY,
WISCONSIN DEPARTMENT OF
FINANCIAL INSTITUTIONS,
354 West Washington
Madison, Wisconsin 53703

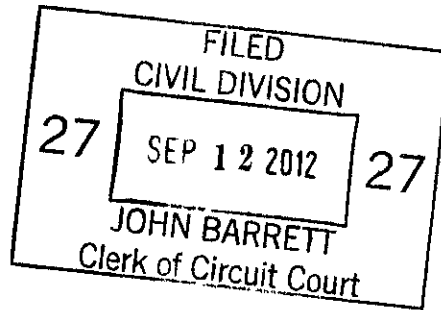
Case No. 12-CX-7
Complex Forfeiture: 30109

Plaintiffs,

v.

VIVINT, Inc.,
f/k/a APX ALARM SECURITY SOLUTIONS, INC.
a Utah company,
5312 North 300 West
Provo, Utah 84604,

Defendant.



CONSENT JUDGMENT

The State of Wisconsin and Peter J. Bildsten, Secretary, Wisconsin Department of Financial Institutions ("State of Wisconsin"), Plaintiffs, and Vivint, Inc., f/k/a APX Alarm Security Solutions, Inc. (hereinafter "Vivint"), Defendant, having executed the Stipulation for Consent Judgment attached hereto, and the Court having reviewed the file herein,

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

I. JURISDICTION

1. That said Stipulation for Consent Judgment attached hereto is approved and made part of this Consent Judgment.

2. That this Court has jurisdiction over Vivint and over the subject matter of this action. Vivint is a Utah company with its principal place of business at 5312 North 300 West, Provo, Utah 84604, and is engaged in the business of providing home automation solutions and fire and security alarm services and monitoring.

II. INJUNCTIVE RELIEF

3. Effective immediately upon entry by the Court of this Consent Judgment, Vivint agrees to adhere to each of the following requirements in the State of Wisconsin:

- a. Defendant's salespeople shall not make any false or misleading statement, including but not limited to the following:
 - i. That customers will get a discount on products or services if they agree to put a sign in their front yard, or otherwise advertise for Defendant;
 - ii. That there are special or limited-time offers, where none exist;
 - iii. That there is significant criminal activity in the prospective customer's neighborhood, when such statement has not been independently verified by Defendant; or
 - iv. That either the police or emergency personnel will respond in person to an alarm, or without some form of prior verification, when such statement is not true.
- b. Defendant's salespeople shall not enter the home of a person being solicited without first receiving permission from the person being solicited.
- c. Defendant's salespeople shall not make any oral modifications to contracts, oral promises, or other representations to the person being solicited that are not set forth in the written contract.

d. Defendant shall modify its surveys to require that potential customers verbally confirm the following:

- i. The total length of the contract in months or years;
- ii. The monthly cost of the contract;
- iii. The total cost of the contract; and
- iv. That the customer has been made aware of his or her 3-day right of rescission and has been provided with the forms required by the State of Wisconsin relating to such right of rescission.

e. Defendant shall provide the attached addendum to all Milwaukee customers ("Milwaukee Addendum"), explaining the City of Milwaukee Public Ordinance 105-75-11 ("Prohibited Systems") and the corresponding alarm system fees applicable to Milwaukee customers as a result.

f. Defendant shall not install the alarm system before receiving a signed contract. If Defendant installs a system prior to the expiration of a customer's 3-day right of rescission, Defendant shall remove the system at no cost to the customer if the customer cancels the sale pursuant to the 3-day right of rescission.

g. Defendant shall comply with Wisconsin law pertaining to telephone solicitations, including, but not limited to, the Wisconsin Do Not Call law, Wis. Stat. § 100.52 and Wis. Admin Code. ch. ATCP 127.

4. Vivint shall be deemed to be in compliance with the provisions of this Consent Judgment provided Vivint warrants and represents that it has established, implemented and maintains commercially reasonable procedures designed to ensure compliance with this Consent Judgment. Infrequent or inadvertent failures by Vivint to comply with the terms of the Consent Judgment shall not be deemed to constitute a breach of this Consent Judgment provided Vivint

warrants and represents that it has established and maintained commercially reasonable procedures designed to ensure compliance with the applicable provisions of this Consent Judgment and has properly instructed its agents and employees regarding compliance with the applicable provisions of this Consent Judgment.

5. The terms of injunctive relief contained in paragraphs 3 and 4, above, shall expire five (5) years from the effective date of this Consent Decree.

III. CONSUMER REFUNDS

6. Vivint agrees to provide a minimum of \$95,848.13 in refunds, and to offer and, where requested by the customer, provide an additional \$132,981.96 in refunds, to the Wisconsin consumers, past and current, who have been specifically identified to the State under the categories set forth below:

a. Wisconsin customers who paid Milwaukee guard dispatch fees through the date of this Consent Decree shall be refunded these fees, without regard to date.

b. Wisconsin customers who requested cancellation from January 1, 2006, through the date of this Consent Decree, and were cancelled, but who made payments on the balance owing under the terms of the contract, shall be refunded payments collected after the date of cancellation request (but for cancellations requested after May 3, 2012, no refund will be made where the cancellation was processed within 30 days of the request).

c. Wisconsin customers who requested cancellation from January 1, 2006, through the date of this Consent Decree, and were not cancelled, but who continued making payments to Defendant, shall be offered the right to cancel

without penalty, with a refund, if exercised, of all monies paid from the date of the cancellation request.

d. Wisconsin customers who filed complaints with the State of Wisconsin from January 1, 2006, through the date of this Consent Decree shall be offered the right to cancel without penalty (but without refund for sums paid through the date of cancellation).

7. With regard to those customers identified in paragraph 6, Vivint shall cease all collection efforts, remove such customers from collections, and take prompt steps to remove any negative information from such customers' credit reports.

8. Vivint shall seek approval from the State of Wisconsin with regard to the language of all customer communications relating to the refunds or offers of refund outlined in paragraph 6 above. The refund process shall proceed as follows:

a. Within thirty (30) days of the date of this Consent Judgment, Vivint shall notify the customers, by first class mail, that they are entitled to a refund and/or cancellation pursuant to the provisions outlined in paragraph 6 above.

b. The notice/claim form shall indicate the amount of refund, if any, and provide the customer with a claim form to return and accept the amount of refund. Refund may be made in the form of a check issued to the customer or, in the case of a current customer with the customer's approval, a credit issued to the customer's account. The notice shall indicate a deadline date of three weeks from the date the letter was mailed by which the claim must be returned. The notice shall include the toll-free number for the Wisconsin Department of Justice, Office of Consumer Protection. The mailing shall include a postage-paid return envelope.

- c. Within thirty (30) days of the first mailing, Vivint shall provide the State of Wisconsin the names of those customers whose correspondence was undeliverable and/or returned.
- d. Within thirty (30) days of receipt of those names, the State of Wisconsin will provide Vivint updated customer contact information.
- e. Within thirty (30) days of receipt of the updated customer contact information, Vivint shall attempt to contact those customers a second time.
- f. Within thirty (30) days of receipt of the customer's claim form, Vivint shall mail a refund check to each customer who returned a claim form and/or, where appropriate, post a credit to the customer's account.
- g. Vivint shall immediately notify the Wisconsin Department of Justice of any checks that are returned, providing the Department with an opportunity to obtain a current address for the customer.
- h. Within one hundred and twenty (120) days of the date of this Consent Judgment, Vivint will provide a full report to the Wisconsin Department of Justice, Consumer Protection and Antitrust Unit, 17 West Main Street, P.O. Box 7857, Madison, Wisconsin 53707 regarding refunds made and/or offered, and the amount of undelivered refunds (which does not include unrequested refunds in category 6c) shall be paid to the Wisconsin Department of Justice, which will undertake further efforts to provide restitution and/or utilize the funds to reimburse cost and attorneys fees. The report should also identify all consumers removed from collections, including amount forgiven and actions taken to rectify any negative credit reporting.

IV. CIVIL FORFEITURE

9. Vivint shall pay to the State of Wisconsin a total amount of \$50,000 for forfeitures, statutory surcharges and costs, as follows: \$32,758.55 in civil forfeitures for alleged violations of Wis. Stat. §§ 100.18, 100.20, and Wis. Admin. Code ch. ATCP 127; \$8,517.22 for the 26% penalty surcharge under Wis. Stat. §§ 757.05(1)(a) and 814.75(18); \$8,189.64 for the 25% consumer protection surcharge pursuant to Wis. Stat. §§ 100.261(1) and 814.75(1m); \$327.59 for the 1% jail surcharge pursuant to Wis. Stat. §§ 302.46(1)(a) and 814.75(14); \$39.00 consisting of \$13.00 times three counts for the crime laboratories and drug law enforcement surcharge pursuant to Wis. Stat. §§ 165.755(1)(a) and (2) and 814.75(3); \$75.00 consisting of \$25.00 times three counts for the fees in forfeiture actions pursuant to Wis. Stat. § 814.63(1)(b); \$21.50 for the justice information system surcharge pursuant to Wis. Stat. §§ 814.86(1) and 814.75(15), and \$3.50 for the special prosecution clerk's surcharge for Milwaukee County; and \$68.00 for the court support services fees pursuant to Wis. Stat. §§ 814.85(1) and 814.75(2).

10. Vivint shall pay \$15,000 to the Wisconsin Department of Justice to be used for attorneys fees and investigative and litigation costs pursuant to Wis. Stat. §§ 100.263 and 93.02.

11. Payment of the foregoing sums totaling \$65,000 shall be made by Vivint within thirty (30) days of the entry of this Consent Judgment. Of this amount, \$50,000 shall be paid by check to the Milwaukee County Clerk of Court and \$15,000 shall be paid by check to the Wisconsin Department of Justice and delivered to Assistant Attorney General Lara Sutherlin at the Wisconsin Department of Justice.

V. RELEASE

12. Neither Defendant nor anyone acting on its behalf shall state or imply, or cause to be stated or implied, that the State of Wisconsin has approved, sanctioned or authorized any practice, act, advertisement or conduct of Defendant. The State's decision to settle this matter or

to otherwise unilaterally limit current or future enforcement action, while releasing Vivint from liability as more specifically outlined in paragraphs 13 and 14 below, does not otherwise constitute approval or imply authorization for any past, present or future business practice.

13. Defendant and the State of Wisconsin dispute the applicability of the Wisconsin Consumer Act to Defendant's sale of its home automation and security services, specifically whether Defendant's contract, in its current, modified form constitutes a credit transaction within the meaning of Wis. Stat. § 421.301(10). To the parties' knowledge, no court has conclusively ruled on this issue. In the interest of avoiding extensive litigation, the parties agree to resolve this matter without a legal ruling on the applicability of the Wisconsin Consumer Act to Defendant's business model. This Consent Decree is fixed as to forfeitures and attorneys' fees through the date it is entered. However, if an appellate court issues a ruling that addresses this legal issue, either expressly or implicitly, either party may seek a declaratory ruling based upon the new appellate precedent and, if appropriate, seek a corresponding modification of the injunctive relief provided by this Judgment. Defendant reserves the right to challenge the applicability of the Wisconsin Consumer Act to the provision of security services as a defense to any private suit brought by a consumer, or to any future action brought by the State, and this stipulation shall not be deemed as a waiver of or have any preclusive effect regarding that right.

14. Subject to paragraphs 12 and 13 above, the State of Wisconsin, including, without limitation, the Wisconsin Department of Justice, the Department of Agriculture, Trade and Consumer Protection, and the Department of Financial Institutions, hereby releases and forever discharges Defendant, including its members, shareholders, officers, agents, employees, affiliates, parent corporations, successors, assigns, attorneys, and insurers, and all other persons, firms or corporations, from any and all claims set forth in the State's complaint, as well as any

other claims arising out of the facts set forth in the State's complaint, that could have been brought through the date this Consent Judgment is entered.

15. It is expressly understood by the parties that this Consent Decree and the actions taken pursuant to it are in compromise of a disputed matter, and do not constitute an admission of liability by Vivint or any other. The parties further acknowledge that Defendant's actions in Wisconsin have not been found by any court or other authoritative body to be in violation of Wisconsin law. This is a Settlement, which does not constitute a finding or admission that the Company has committed any violations of Wisconsin law, and it shall not be used in a manner inconsistent with this paragraph.

VI. MISCELLANEOUS

16. All terms of this Consent Decree and the exhibits hereto shall be governed by and interpreted according to the substantive laws of the State of Wisconsin without regard to its choice of law or conflict of laws principles.

17. Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this proceeding to apply to this Court for any other such further orders and directions as may be necessary and appropriate for the enforcement of, or compliance with, this Consent Judgment.

**THIS IS A FINAL ORDER/JUDGMENT FOR PURPOSES OF APPEAL UNDER
WIS. STAT. § 808.03(1).**

Dated this 12 day of ~~August~~ ^{September}, 2012.

FILED
SEP 17 2012
JOHN BARRETT
Clerk of Circuit Court

BY THE COURT
JOHN BARRETT
CLERK OF CIRCUIT COURT
BY *John Barrett*
JUDGMENT CLERK

SEP 17 2012

BY THE COURT:

Kevin E. Martens
The Honorable _____
Milwaukee County Circuit Court, Branch ____



JUDGE KEVIN E. MARTENS
BRANCH 27