

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH

MILWAUKEE COUNTY

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

Plaintiff,

v.

Case No. 12-CX-

Complex Forfeiture: 30109

VIVINT, INC.
f/n/a APX ALARM SECURITY SOLUTIONS, INC.
5132 North 300 West
Provo, Utah 84604,

Defendant.

SUMMONS

THE STATE OF WISCONSIN

To each person named above as a Defendant:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within twenty (20) days of receiving this Summons, you must respond with a written answer, as that term is used in Wis. Stat. ch. 802, to the Complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the Court, whose address is Milwaukee County Courthouse, 901 N. Ninth Street, Room 104, Milwaukee, Wisconsin 53233-1425, and to Lara Sutherlin, Assistant Attorney

IF YOU REQUIRE THE ASSISTANCE OF AUXILIARY AIDS OR SERVICES BECAUSE OF A DISABILITY, CALL (414) 278-4120 (TTY -- (414) 276-1096) AND ASK FOR THE MILWAUKEE COUNTY CIRCUIT COURT ADA COORDINATOR.

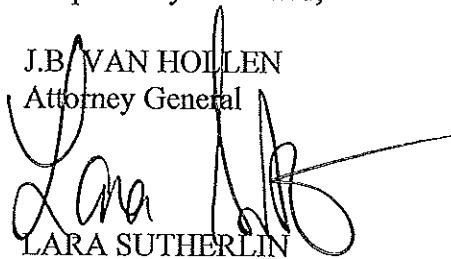
General, Plaintiff's attorney, whose address is Post Office Box 7857, Madison, Wisconsin 53707-7857. You may have an attorney help or represent you.

If you do not provide a proper answer within twenty (20) days, the court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 7 day of September, 2012.

Respectfully submitted,

J.B. VAN HOLLEN
Attorney General



LARA SUTHERLIN
Assistant Attorney General
State Bar #1057096

Attorneys for Plaintiff, State of Wisconsin

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STATE OF WISCONSIN

CIRCUIT COURT
BRANCH

MILWAUKEE COUNTY

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

and

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

Plaintiffs,

v.

Case No. 12-CX-

Complex Forfeiture: 30109

VIVINT, INC.
f/n/a APX ALARM SECURITY
SOLUTIONS, INC.
5132 North 300 West
Provo, Utah 84604,

Defendant.

COMPLAINT

The State of Wisconsin, by its attorneys, J.B. Van Hollen, Attorney General, and Assistant Attorney General Lara A. Sutherlin, on behalf of the Wisconsin Department of Justice, the Department of Agriculture, Trade and Consumer Protection ("DATCP"), and the Wisconsin Department of Financial Institutions ("DFI"), brings this action against defendant Vivint, Inc., previously named APX Alarm Security Solutions, Inc., and alleges as follows:

I. JURISDICTION AND VENUE

1. This action is brought pursuant to Wis. Stat. § 100.18(11)(d) to enforce and restrain violations of Wis. Stat. § 100.18(1), to recover pecuniary losses suffered by Wisconsin consumers, and to obtain civil penalties and forfeitures.

2. This action is brought pursuant to Wis. Stat. § 100.20 to enforce and restrain violations of Wis. Admin. Code ch. ATCP 127, to recover pecuniary losses suffered by Wisconsin consumers, and to obtain civil penalties and forfeitures.

3. This action is brought pursuant to Wis. Stat. §§ 426.109 and 426.301, to restrain and obtain the imposition of civil penalties for those violations of Wis. Stat. chs. 421, 422, 425, and 426.

4. This action is brought pursuant to Wis. Stat. § 100.52(9) to enforce and restrain violations of Wis. Admin. Code § ATCP 127.82(2).

5. This action is brought pursuant to Wis. Stat. § 100.195(5m)(c) to enforce and restrain violations of Wis. Stat. § 100.195(2).

6. Venue is proper in Milwaukee County, Wisconsin because at least one consumer affected by defendant's unlawful acts as described below is located in Milwaukee County.

II. PARTIES

7. Corporate defendant, Vivint, Inc. is a company incorporated in Utah with its headquarters located at 5312 North 300 West, Provo, Utah 84604.

8. Vivint, Inc. was formerly known as APX Alarm Security Solutions, Inc.

9. When in this complaint reference is made to any statement, representation, act or practice of Vivint, Inc., such allegation shall be assumed to mean the defendant, or its principals,

officers, employees, agents, representatives, or other persons acting under its supervision, direction, or control.

10. For the purposes of this complaint, Vivint/APX Alarm Security Solutions, Inc. will be referred to as “Vivint.”

11. Vivint is a residential and commercial alarm system service provider, and thus falls within the definition of “seller” in both Wis. Admin. Code § ATCP 127.01(21) and Wis. Stat. § 100.195(1)(f).

12. Vivint is engaged in the business of selling alarm security systems and monitoring services, which constitute “consumer goods or services” within the meaning of Wis. Admin. Code § ATCP 127.01(3).

13. At all times relevant hereto, Vivint is a creditor within the definition of Wis. Stat. § 421.301(16), as it regularly engages in consumer credit transactions.

14. Vivint is not registered in Wisconsin under the Wisconsin Consumer Act (“WCA”).

15. Vivint engages in substantial solicitation activities within Milwaukee County, Wisconsin.

III. FACTS

A. Vivint’s Business Model

16. Vivint provides alarm security systems and monitoring services to markets across the United States, including Wisconsin, and in Canada.

17. To solicit and market its business, products, and services, Vivint uses a variety of marketing techniques, including the internet, making most of its sales through unsolicited visits to Wisconsin consumers’ homes.

18. Once a consumer agrees to accept the alarm system products and services from Vivint, Vivint has the consumer sign a standardized contract for services.

19. Vivint then immediately installs the alarm system monitoring equipment in the consumer's residence.

20. Vivint's contracts require a monthly alarm monitoring fee ranging from \$39.00 to \$49.00, with an activation fee of \$99.00.

21. Vivint's contracts with consumers range from 36 to 60 months.

B. Vivint's Sales Promotions and Limited Offers

22. When initially approached at their homes, consumers are told by Vivint that they will receive "free" security equipment, and in most cases, free installation of the equipment in exchange for allowing Vivint to place an advertising sign outside their homes.

23. Based on oral representations made by Vivint during the course of the sale, many consumers understood the monitoring service was free as well, unaware that they would in fact be charged for the monitoring service.

24. To solicit business from consumers, Vivint represents, among other things, that the current offer is a "special offer" or "promotion." Vivint's representations include:

- The offer was only available for a limited time and an immediate purchase was necessary to receive the promotion.
- Vivint was only able to sell a "limited number" of systems at the offered price.
- The consumer's home was selected for a "promotional deal" because they lived in a certain neighborhood or on a certain street.
- The offer of a "free" alarm system was a "one-time offer."
- Failure to sign up for services that day would result in a \$1,000.00 higher price to contract for the system later.

- The offer was a “special offer” or “promotion.”
- The consumer’s neighbor paid \$2,000.00 for installation and the equipment, but if the consumer paid that day, it would be free; when in fact the neighbor did not pay \$2,000.00 for the installation and equipment.

25. Despite the aforementioned claims of a limited number of special offers or promotional deals, in 2008, all 2,016 contracts for Vivint services in Wisconsin included free installation and free equipment.

26. Likewise, in 2009, all 1,044 Wisconsin customers received free equipment, and all but four of those customers received free installation.

C. Vivint’s Misrepresentations About Neighborhood Crime

27. During its sales presentations, consumers report that Vivint encouraged consumers to purchase a Vivint security system claiming there had been significant criminal activity in the prospective customer’s neighborhood.

28. However, Vivint’s reports of criminal activity in the prospective consumer’s neighborhood were greatly exaggerated or simply false.

D. Vivint’s Misrepresentations Regarding Private Emergency Response Personnel

29. As a part of its services, Vivint offered consumers “panic alarms” for their homes, which consumers report Vivint represented would provide the capability of transmitting an automatic alarm notification to emergency personnel.

30. Consumers report Vivint sales agents represented expressly, or by implication, that either police or emergency personnel will respond in person to an alarm.

31. In reality, Vivint does not employ any emergency personnel to respond to alarms in person. Vivint does not have security professionals on site or in the geographical area of consumers’ homes.

32. Also, Vivint cannot guarantee the response time of a local police department, as factors such as emergencies and other calls for police service impact any response time.

33. In municipalities, such as the City of Milwaukee, there is a requirement that alarm agencies must send security agents to respond to the alarm site prior to local law enforcement dispatching a response. The City of Milwaukee Public Safety Ordinance 105-75-11, "Prohibited Systems," states:

No person may use or operate, attempt to use or operate, or cause to be used or operated, or arrange, adjust, program or otherwise provide or install any alarm system that will upon activation either mechanically, electronically or by any other automatic means initiate a call and deliver a recorded message to any telephone number of any city of Milwaukee agency.

34. Thus, neither Milwaukee police nor Emergency Medical Services will respond to alarms without a security personnel initially responding to the alarm scene and verifying the existence of an actual emergency, as opposed to a false alarm. These circumstances render representations made by Vivint regarding alarm responses false and untrue.

35. However, Vivint failed to disclose verbally or in writing that Milwaukee emergency personnel would not directly respond to alarm activations.

36. The reverse side of Vivint's contract does state that in a "no response policy to alarm system activations" jurisdiction, "[y]ou may subscribe to private guard response pursuant to a separate contract with us to provide alternative response to alarm signals received by the Center (herein referred to as "private response")."

37. However, Vivint did not have customers enter into separate contracts with a private guard response. Rather, Vivint secured the private guard response for consumers by entering into a contract with a company named Securitas National, Inc.

38. Vivint failed to disclose verbally or in writing that alarm activations would be routed to a private first responder service, Securitas; and that there was a charge of \$60.00 per alarm activation to which Securitas responded. This charge per alarm activation was in addition to the monthly service charge.

E. Misrepresentations Regarding Cancellations

39. The Vivint contract provides a "Notice of Cancellation" section disclosing the consumer's three-day right to cancel "without penalty or obligation."

40. Vivint's contracts also contain a provision which states:

THIS AGREEMENT WILL NOT BE BINDING UPON VIVINT (APX) UNTIL EITHER (1) SIGNED BY A VIVINT (APX) SUPERVISOR OR (2) WE START THE INSTALLATION OR MONITORING SERVICE.

41. During sales presentations, Vivint represented to some consumers that contracts could be cancelled at *any time* and without penalty.

42. However, Vivint made it a practice to install the alarm equipment immediately, upon consummating the sale, to deter consumers from exercising their three-day right to cancel without penalty.

43. Vivint's *Sales Training Manual Summer 2007* stresses the importance of same day installation to deter contract cancellations, stating: "Installing the security system within hours of when it is sold has proven to be a huge deterrent to customer cancellations."

44. Consumers reported that Vivint misrepresented to consumers they could simply call Vivint to remove the service. They did not verbally indicate that the consumer would still be obligated to pay for the unused portion of the long-term service contract. To the contrary, at the time of sale, Vivint verbally told some consumers that there would be no long term obligation.

45. Upon attempting to cancel Vivint's services, consumers report that they were told they were obligated to pay the monthly monitoring service for the entire contract length regardless of whether the service was cancelled and no longer received.

46. When attempting to cancel Vivint's services, consumers reported that they were told that they would have to pay the entire contract amount in order to get out of the contract.

47. Consumers were unaware that the contract being entered into was a long-term contract, and in some cases, for as long as 60 months.

48. In the section of Vivint's *Sales Training Manual Summer 2007*, entitled, "Closing the Sale," suggestions for completing a deal include:

- "Invitational close," which states: "just invite the customer to try the service, which is less threatening than inviting him to buy the service."
- Asking if the customer understands something previously stated and following up their answer with "[w]ell then, let's give it a try." It then directs: "[a]s you are saying this, pull out your cell phone for a credit check or immediately begin filling out the paperwork. The manual describes the close as "simple and non-confrontational. It adds a feeling of choice to the close, which helps the customer feel in control of the decision. *In reality, the customer has just bought your service.*" (Emphasis added).
- "Assumptive or authoritative close," which states: "After you have given the customer a picture of the system and explained briefly the benefits of the system, simply pull out the paperwork and begin filling it out." The manual instructs the representative to inquire about information such as an emergency contact and desired password and states that "The customer will give you a name and password, *not realizing that he is agreeing to purchase the service.*" (Emphasis added).

F. Vivint Telemarketing

49. On information and belief, Vivint contracted with third party lead generators to obtain potential customer lists for its alarm services.

50. In the course of marketing to consumers, Vivint used these leads to make telephone solicitations to residential telephone customers whose telephone numbers were on the State's no-call list.

51. Vivint failed to register with DATCP as a telephone solicitor, as that term is defined by Wis. Stat. § 100.52(1)(j), prior to making the telephone solicitations.

G. Vivint's Monitoring Service Agreement Failure to Comply with the WCA

52. Vivint's System Purchase and Services Agreement ("Service Agreement") is a standard form contract.

53. Vivint's Service Agreement does not make credit disclosures or included other information in accordance with Wis. Stat. §§ 422.301 and 422.303, of the Wisconsin Consumer Act, which incorporates the disclosures required by the Federal Consumer Credit Protection Act, 15 U.S.C. § 1604, to wit:

- a. Amount Financed;
- b. Finance Charge;
- c. Annual Percentage Rate;
- d. Payment Schedule;
- e. Total of Payments;
- f. Total Sale Price;
- g. Prepayment;
- h. Late Payment;
- i. Security Interest;
- j. Contract Reference; and
- k. Itemization of Amount Financed.

54. Vivint's Service Agreement's definition of default violates Wis. Stat. § 425.103, as the actions described therein do not constitute default under the WCA.

55. Vivint's Service Agreement does not allow a customer the right to cure default in compliance with Wis. Stat. § 425.105.

56. Vivint's Service Agreement improperly states that the entire agreement is contained in the written agreement and does not include any oral statements by the company's representatives, in violation of Wis. Stat. § 421.301(3).

IV. VIOLATIONS

COUNT I Fraudulent Misrepresentations Wis. Stat. § 100.18

57. Plaintiff re-alleges all preceding paragraphs of the complaint and incorporates them herein. Wisconsin Stat. § 100.18(1) states:

(1) No person, firm, corporation or association, or agent or employee thereof, with intent to sell, distribute, increase the consumption of or in any wise dispose of any real estate, merchandise, securities, employment, service, or anything offered by such person, firm, corporation or association, or agent or employee thereof, directly or indirectly, to the public for sale, hire, use or other distribution, or with intent to induce the public in any manner to enter into any contract or obligation relating to the purchase, sale, hire, use or lease of any real estate, merchandise, securities, employment or service, shall make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in this state, in a newspaper, magazine or other publication, or in the form of a book, notice, handbill, poster, bill, circular, pamphlet, letter, sign, placard, card, label, or over any radio or television station, or in any other way similar or dissimilar to the foregoing, an advertisement, announcement, statement or representation of any kind to the public relating to such purchase, sale, hire, use or lease of such real estate, merchandise, securities, service or employment or to the terms or conditions thereof, which advertisement, announcement, statement or representation contains any assertion, representation or statement of fact which is untrue, deceptive or misleading.

58. In the course of marketing Vivint security alarm systems and monitoring services to Wisconsin consumers, Vivint circulated advertisements and made other representations that were untrue, deceptive or misleading, in violation of Wis. Stat. § 100.18(1), to wit:

a. Misrepresented that the offer for free installation of alarm equipment was a limited time offer that needed to be taken advantage of immediately;

- b. Misrepresented that there were increased incidents of crime in the areas where Vivint attempted to solicit business;
- c. Misrepresented fees regarding private emergency response personnel; and
- d. Misrepresented consumers could cancel at any time without penalty when in fact they were obligated to pay for the unused portion of the service contract.

COUNT II
Disclosure Prior to Sale – Door-to-Door Sales
Wis. Stat. § 100.20 and Wis. Admin. Code § ATCP 127.64

59. Plaintiff re-alleges all preceding paragraphs of the complaint and incorporates them herein.

60. Wisconsin Admin. Code § ATCP 127.64 requires:

(1) **DISCLOSURES REQUIRED.** In a face-to-face transaction, a seller shall disclose all of the following to a consumer, in writing, before the consumer enters into any purchase contract and before the seller takes the consumer's credit card number or accepts any payment from the consumer:

(a) The nature and quantity of consumer goods or services included in the sale.

(b) The total cost to purchase and receive the consumer goods or services.

(c) All material terms and conditions affecting the sale, receipt or use of the consumer goods or services, including credit terms if any.

(d) The name, mailing address and telephone number of the principal seller.

(e) The seller's policy related to refunds, cancellations, exchanges or repurchases if any of the following apply:

1. The seller has a policy that prevents or substantially limits refunds, cancellations, exchanges or repurchases.

2. The seller makes any claim or representation regarding refunds, cancellations, exchanges or repurchases.

61. In the course of marketing Vivint security alarm systems and monitoring services to Wisconsin consumers through door-to-door solicitations, Vivint failed on numerous occasions to accurately disclose all material terms and conditions affecting the sale of goods and services prior to entry into purchase contracts, in violation of Wis. Admin. Code § ATCP 127.64, to wit:

- a. Failed to disclose the fact that Vivint entered into a separate contract with a private emergency response personnel to respond to alarm notifications;
- b. Failed to disclose the fact consumer would be charged \$60.00 each time the private emergency response personnel responded to an alarm notification; and
- c. Failed to disclose material terms with respect to cancellation.

COUNT III

Misrepresentation – Door-to-Door Sales Wis. Stat. § 100.20 and Wis. Admin. Code § ATCP 127.72(4)

62. Plaintiff re-alleges all preceding paragraphs of the complaint and incorporates them herein.

63. Wisconsin Admin. Code § ATCP 127.72(4) requires that:

No seller may do any of the following, directly or by implication, in a face-to-face transaction:

...

(4) Misrepresent the cost of goods or services offered or promoted by a seller, or fail to disclose material costs payable by the consumer.

64. In the course of marketing Vivint security alarm systems and monitoring services to Wisconsin consumers through door-to-door solicitations, Vivint failed on numerous occasions to accurately disclose all material terms and conditions affecting the sale of goods and services prior to entry into purchase contracts, in violation of Wis. Admin. Code § ATCP 127.72(4), to wit:

- a. Misrepresented that the offer for free installation of alarm equipment was a limited time offer that needed to be taken advantage of immediately;
- b. Misrepresented the fees regarding private emergency response personnel;
- c. Misrepresented the retail value of the security equipment; and
- d. Misrepresented consumers could cancel at any time without penalty when in fact they were obligated to pay for the unused portion of the service contract.

Violations of the Wisconsin Consumer Act

65. Plaintiff re-alleges all preceding paragraphs of the complaint, and incorporates them herein.

66. The conduct of Vivint is governed by the Wisconsin Consumer Act.

COUNT IV Failure to Disclose Credit Terms Wis. Stat. § 422.301 and 422.303

67. Plaintiff re-alleges all preceding paragraphs of the complaint and incorporates them herein.

68. Vivint's Service Agreement does not and has not made credit disclosures or included other information in accordance with Wis. Stat. §§ 422.301 and 422.303, of the Wisconsin Consumer Act, which incorporates the disclosures required by the Federal Consumer Credit Protection Act, 15 U.S.C. § 1604. Specifically, Vivint has not and does not make the following disclosures clearly and conspicuously before the transaction is consummated, in a single instrument with the signatures of both the consumer and/or Vivint:

- a. Amount Financed;
- b. Finance Charge;
- c. Annual Percentage Rate;
- d. Payment Schedule;
- e. Total of Payments;
- f. Total Sale Price;

- g. Prepayment;
- h. Late Payment;
- i. Security Interest;
- j. Contract Reference;
- k. Itemization of Amount Financed, and
- l. Notice to Customer.

COUNT V
Unlawful Default Policy
Wis. Stat. § 425.103, 425.104 and 425.105

69. Plaintiff re-alleges all preceding paragraphs of the complaint and incorporates them herein.

70. Vivint's Service Agreement's definition of default violates Wis. Stat. § 425.103, as the actions described therein do not constitute default under the WCA.

71. Vivint's Service Agreement does not allow a customer the right to cure default in compliance with Wis. Stat. §§ 425.103, 425.104 and 425.105.

COUNT VI
Unlawful Exclusion of Oral Representations From Agreement
Wis. Stat. § 421.301

72. Plaintiff re-alleges all preceding paragraphs of the complaint and incorporates them herein.

73. Vivint's Service Agreement improperly states that the entire agreement is contained in the written agreement and does not include any oral statements by the company's representatives, contrary to Wis. Stat. § 421.301.

COUNT VII
Failure to Register
Wis. Stat. § 426.201

74. Plaintiff re-alleges all preceding paragraphs of the complaint and incorporates them herein.

75. Vivint is not registered with the State of Wisconsin pursuant to the WCA, in violation of Wis. Stat. § 426.201.

COUNT VIII

Misrepresentations – Door-to-Door Sales

Wis. Stat. § 100.20 and Wis. Admin. Code § ATCP 127.72(6)

76. Plaintiff re-alleges all preceding paragraphs of the complaint and incorporates them herein.

77. Wisconsin Administrative Code § ATCP 127.72(6) requires that:

No seller may do any of the following, directly or by implication, in a face-to-face transaction:

...

(6) Misrepresent or fail to disclose material restrictions, limitations or conditions on the purchase, receipt, use or return of goods or services offered or promoted by a seller.

78. In the course of marketing Vivint security alarm systems and monitoring services to Wisconsin consumers through door-to-door solicitations, Vivint failed on numerous occasions to accurately disclose all material terms and conditions affecting the sale of goods and services prior to entry into purchase contracts, in violation of Wis. Admin. Code § ATCP 127.72(6), namely Vivint misrepresented that consumers could cancel at any time without penalty when in fact they were obligated to pay for the unused portion of the service contract.

COUNT IX

Misrepresentations – Door-to-Door Sales

Wis. Stat. § 100.20 and Wis. Admin. Code § ATCP 127.72(11)

79. Plaintiff re-alleges all preceding paragraphs of the complaint and incorporates them herein.

80. Wisconsin Administrative Code § ATCP 127.72(11) requires that:

No seller may do any of the following, directly or by implication, in a face-to-face transaction:

...

(11) Represent that the seller is conducting a special sales promotion, is making a special offer limited to a few persons, is making a special offer for a limited period of time, or is authorized to place the offered goods or services in a limited number of homes, unless the representation is true and the seller concurrently discloses to the consumer the specific basis on which the representation is made. The seller may not misrepresent that basis.

81. In the course of marketing Vivint security alarm systems and monitoring services to Wisconsin consumers through door-to-door solicitations, Vivint failed on numerous occasions to accurately disclose all material terms and conditions affecting the sale of goods and services prior to entry into purchase contracts, in violation of Wis. Admin. Code § ATCP 127.72(11), namely Vivint misrepresented that participation in the offer was limited to a few persons, or for a limited time, or did not disclose the specific basis of such claims.

COUNT X

Misrepresentations – Door-to-Door Sales

Wis. Stat. § 100.20 and Wis. Admin. Code § ATCP 127.72(15)

82. Plaintiff re-alleges all preceding paragraphs of the complaint and incorporates them herein.

83. Wisconsin Administrative Code ATCP § 127.72(15) requires that:

No seller may do any of the following, directly or by implication, in a face-to-face transaction:

...

(15) Make any false, deceptive or misleading representation to a consumer.

84. In the course of marketing Vivint security alarm systems and monitoring services to Wisconsin consumers through door-to-door solicitations, Vivint failed on numerous occasions to accurately disclose all material terms and conditions affecting the sale of goods and services

prior to entry into purchase contracts, in violation of Wis. Admin. Code § ATCP 127.72(15), to wit:

- a. Misrepresented that the offer for free installation of alarm equipment was a limited time offer that needed to be taken advantage of immediately;
- b. Misrepresented that there were increased incidents of crime in the areas where Vivint attempted to solicit business;
- c. Misrepresented fees regarding private emergency response personnel;
- d. Misrepresented the retail value of the security equipment; and
- e. Misrepresented consumers could cancel at any time without penalty when in fact they were obligated to pay for the unused portion of the service contract.

COUNT XI

Telephone Solicitations

Wis. Stat. § 100.20 and Wis. Admin. Code § ATCP 127.81

85. Plaintiff re-alleges all preceding paragraphs of the complaint and incorporates them herein.

86. Under Wis. Admin. Code § ATCP 127.80(10), the term “telephone solicitation” means:

(10) “Telephone solicitation” means an unsolicited telephone call for the purpose of encouraging the call recipient to buy property, goods or services, or that is part of a plan or scheme to encourage the call recipient to buy property, goods or services.

87. Wisconsin Administrative Code § ATCP 127.81(1)(a) requires that:

(1) REGISTRATION REQUIRED. (a) No person may employ or contract with any individual to make *telephone solicitations* to residential telephone customers unless one of the following applies:

1. That person is *currently registered with the department* under this section. This registration covers telephone solicitations made by individuals acting as employees or agents of the registrant.

2. The telephone solicitations are covered by a registration under par. (b).

(Emphasis added.)

88. Vivint committed multiple, separate violations of Wis. Stat. § 100.20 and Wis. Admin. Code § ATCP 127.81(1)(a) by making telephone solicitations to Wisconsin consumers when it is not registered with the department.

COUNT XII
No-Call Violations
Wis. Admin. Code § ATCP 127.82 and Wis. Stat. § 100.52

89. Plaintiff re-alleges all preceding paragraphs of the complaint and incorporates them herein.

90. In the course of marketing to consumers, Vivint made telephone solicitations, either directly or through employees or agents, to residential telephone customers whose telephone numbers were on the State's no-call list, in violation of Wis. Admin. Code § ATCP 127.82(2) and Wis. Stat. § 100.52(4)(a)2. and (b)2.

91. Vivint further violated Wis. Admin. Code § ATCP 127.83(2)(a) by violating Wis. Admin. Code § ATCP 127.81 and Wis. Admin. Code § ATCP 127.82.

92. Vivint violated Wis. Admin. Code § ATCP 127.83(2)(d) by instructing its employees to make telephone solicitations in violation of subchapter V of Wis. Admin. Code ch. ATCP 127.

COUNT XIII
Unfair Billing
Wis. Stat. § 100.195

93. Plaintiff re-alleges all preceding paragraphs of the complaint and incorporates them herein.

94. Wis. Stat. § 100.195(2)(a) provides that:

(2) PROHIBITIONS. No seller may:

(a) *Bill a consumer for consumer goods or services that the consumer has not agreed to purchase or lease.* (Emphasis added.)

95. Vivint committed multiple, separate violations of Wis. Stat. § 100.195(2)(a) by continuously billing consumers for service agreements that it obtained through false representation and for products and services that consumers have not agreed to purchase, including failing to disclose verbally or in writing that alarm activations would be routed to a private first responder service, Securitas, and that there was a charge of \$60.00 per alarm activation to which Securitas responded.

PRAYER FOR RELIEF

WHEREFORE, plaintiff, the State of Wisconsin, demands relief against the defendant as follows:

1. Finding that defendant has violated Wis. Stat. §§ 100.18, 100.195(2), and 100.20 and Wis. Admin. Code. § ATCP 127, subchs. III, IV, and V.
2. Finding that defendant violated Wis. Stat. chs. 421, 422, 423, 425, and 426, *et seq.*
3. Enjoining defendant, its successors, assigns, officers, directors, agents, dealers, servants, employees, representatives, solicitors, and all persons acting or claiming to be acting in its behalf, pursuant to Wis. Stat. §§ 100.18(11)(d), 100.195(5m)(c), and 100.20(6) from conducting business operations in violation of Wis. Stat. § 100.18(1), 100.195(2), and Wis. Admin. Code §§ ATCP 127.34, 127.44, 127.50, 127.64, 127.72, and 127.78.
4. Ordering defendant to restore any pecuniary losses suffered by any person because of the defendant's acts or practices in violation of Wis. Stat. § 100.18(1), 100.152(4)

100.195(2), and Wis. Admin. Code §§ ATCP 127.64, 127.72, 127.81 and 127.82, under authority of Wis. Stat. §§ 100.18(11)(d), 100.195(5m)(c), 100.20(6) and 100.52(9).

5. Imposing civil forfeitures against defendant in the amount of not less than \$50.00 nor more than \$200.00 for each violation of Wis. Stat. §100.18(1), and not less than \$100.00 nor more than \$10,000.00 for each violation of Wis. Admin. Code ch. ATCP 127, pursuant to Wis. Stat. §§ 100.20(6) and 100.26(6), plus all applicable assessments.

6. Imposing civil forfeitures against defendant in the amount of not more than \$100.00 for each violation of Wis. Stat. § 100.52(4) pursuant to Wis. Stat. § 100.52(9), plus all applicable assessments.

7. Imposing civil forfeitures against defendant in the amount of not less than \$100.00 nor more than \$10,000.00 for each violation of Wis. Stat. § 100.195(2) pursuant to Wis. Stat. § 100.95(5m)(d), plus all applicable assessments.

8. Penalties and forfeitures pursuant to Wis. Stat. § 426.301(1), in the amount of not less than \$100.00 nor more than \$1,000.00 for each violation of Wis. Stat. ch. 421, 422, 423, and 425.

9. Penalties and forfeitures pursuant to Wis. Stat. § 426.203, in the amount of not more than \$50.00 each day, for each violation of Wis. Stat. § 426.201.

10. An order awarding the State, pursuant to Wis. Stat. § 426.110(15) and (16), attorneys fees and costs.

11. Awarding the State, pursuant to Wis. Stat. §§ 93.20 and 100.263, the expenses of investigation by Department of Agriculture Trade and Consumer Protection and the Department of Justice, the expenses of prosecution, including attorneys fees, relating to enforcement of

defendant's violations of Wis. Stat. §§ 100.18(1), 100.152 100.195, and Wis. Admin. Code ch. ATCP 127.

12. Providing such other and further equitable relief as justice and equity may require.

Dated this 7 day of September, 2012.

Respectfully submitted,

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