IN THE UNITED STATES
COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-14829-GG

JEAN COULTER, Plaintiff - Appellant,

versus

ADT SECURITY SERVICES,
APOLLO GLOBAL MANAGEMENT,

Defendants - Appellees.

Appeal from the United States District Court
for the Southern District of Florida

ON PETITIONS FOR REHEARING AND
PETITIONIS FOR REHEARING EN BANC

BEFORE: EDMONDSON, HULL, and JULIE CARNES, Circuit Judges.

PERCURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:
UNITED STATES CIRCUIT JUDGE

ORD-1

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 17-14829
Non-Argument Calendar

D.C. Docket No. 9:17-cv-80355-JIC

JEAN COULTER,

Plaintiff-Appellant,

versus

ADT SECURITY SERVICES,
APOLLO GLOBAL MANAGEMENT,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida

(July 31, 2018)

Before EDMONDSON, HULL, and JULIE CARNES, Circuit Judges.

PER CURIAM:

Plaintiff Jean Coulter, proceeding pro se, appeals the district court's dismissal of her amended complaint against ADT Security Services, Inc. ("ADT"), in which Plaintiff alleged state law contract and tort claims. The district court, pursuant to Fed. R. Civ. P. 12(b)(6), dismissed Plaintiff's complaint for failure to state a claim. No reversible error has been shown; we affirm.

In 2007, Plaintiff entered into a contract with ADT for the installation and monitoring of an alarm system at Plaintiff's Pennsylvania home ("ADT

Contract"). Plaintiff alleged ADT told her that its central monitoring system would perform daily checks to ensure Plaintiff's alarm system was functioning properly. The ADT Contract provided for an initial three-year term after which the contact would renew automatically each month. After the expiration of the initial three-year term, Plaintiff says she "agreed to accept the renewal of the initial contract."

Plaintiff moved to New Jersey in January 2013 but kept her home and alarm system in Pennsylvania. In March 2013, Plaintiff was unable to communicate with her alarm system by phone. When Plaintiff reported the issue to ADT, she learned that ADT's central monitoring system was in fact performing only monthly – not daily -- checks of her alarm system. Plaintiff later found that a wire connecting the alarm system to her home's phone line had become loose, rendering the alarm system unable to communicate with ADT's central monitoring system. Despite this issue, Plaintiff received no reports from ADT that her alarm system was not functioning.

Plaintiff filed this civil action in March 2017: the timing is important. In her amended complaint, Plaintiff purported to assert claims against ADT for breach of express and implied contract, fraud, negligence, unjust enrichment, breach of fiduciary duty, and for damages.[1]

The district court construed Plaintiff's fraud claim as two separate claims: (1) a fraudulent inducement claim based on ADT's alleged representations in 2007 that Plaintiff's alarm system would be checked daily ("2007 fraud claim"); and (2) a claim based on ADT's alleged representations in

2013 that Plaintiff's system was functioning properly when it was in fact unable to communicate with ADT's central monitoring system due to a loose wire ("2013 fraud claim").

The district court granted ADT's motion to dismiss and dismissed with prejudice Plaintiff's complaint. Applying Florida's conflict-of-law rules, the district court determined that Plaintiff's contract claims, non-fraud tort claims, and 2007 fraud claim were governed by Pennsylvania law and that Plaintiff's 2013 fraud claim was governed by New Jersey law. The district court then determined, in pertinent part, that (1) Plaintiff's contract claims were barred by the ADT Contract's one-year period-of-limitations clause; (2) Plaintiff's non-fraud tort claims and 2007 fraud claim were barred by Pennsylvania's two-year statute of limitations; and (3) Plaintiff's 2013 fraud claim was barred by New Jersey's economic-loss rule.

[1] Plaintiff also alleged a violation of the New Jersey Consumer Fraud Act. Because Plaintiff raises no challenge to the district court's dismissal of that claim on appeal, we do not address it.

We review de novo a district court's grant of a motion to dismiss, accepting the allegations in the complaint as true and construing them in the light most favorable to the plaintiff. Allen v. USAA Cas. Ins. Co., 790 F.3d 1274, 1277-78 (11th Cir. 2015). When a document -- such as the contract in this appeal -- "is central to the plaintiff's claim, its contents are not in dispute, and the defendant attaches the document to its motion to dismiss, this Court may consider that document as well." See id. at 1278. We construe liberally pro se pleadings.

Tannenbaum v. United States, 148 F.3d 1262, 1263 (11th Cir. 1998).

The district court's resolution of a conflict-of-law issue is a legal question we review de novo. Grupo Televisa, S.A. v. Telemundo Commc's Grp., Inc., 485 F.3d 1233, 1239 (11th Cir. 2007). Here, the district court applied properly the conflict-of-law rules of the forum state -- Florida -- to determine what state's substantive law to apply to Plaintiff's claims. See Fioretti v. Mass. Gen. Life Ins. Co., 53 F.3d 1228, 1235 (11th Cir. 1995).

I. Contract Claims

The district court determined properly that Plaintiff's contract claims were governed by Pennsylvania law. Under Florida law, "matters bearing on the validity and substantive obligations of contracts are determined by the law of the place where the contract is made (lex loci contractus)." Jemco, Inc. v. UPS, 400 So. 2d 499, 501 (Fla. Dist. Ct. App. 1981). Here, the ADT Contract provided expressly that it was entered into between two Pennsylvania parties and involved an alarm system to be installed and monitored at a home in Pennsylvania.[2] Because the contract was thus made in Pennsylvania, it is governed by the laws of that state.

Under Pennsylvania law, a contractual limitation period is enforceable so long as it is not "manifestly unreasonable." Hahnemann Univ. Hosp. v. All Shore, Inc., 514 F.3d 300, 306 (3rd Cir. 2008);

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[2] We reject Plaintiff's argument that her monthly renewals of the initial ADT Contract while Plaintiff was later living in New Jersey created a new contract formed in New Jersey. In any event, even if we were to accept Plaintiff's position that the

contract claims should be governed by New Jersey law, the claims would still be time-barred by the ADT Contract's one-year period-of-limitations clause. See Eagle Fire Prot. Corp. v. First Indem. of Am. Ins. Co., 678 A.2d 699, 704 (N.J. 1996) (New Jersey courts have enforced contract provisions limiting the time parties have to bring suit, including one-year limitation periods).

see 42 Pa.C.S. § 5501(a). Pennsylvania courts have enforced one-year periods of limitations. See Hosp. Support Servs., Ltd. v. Kemper Grp., Inc., 889 F.2d 1311, 1315, 1317 (3rd Cir. 1989) (citing Petraglia v. Am . Motorists Ins. Co., 424 A.2d 1360, 1364 (Pa. Super. Ct. 1981)).

That the ADT Contract included a one-year period-of-limitations clause is undisputed. Based on Plaintiff's allegations, Plaintiff knew of ADT's alleged contractual breaches when she cancelled the ADT Contract in 2013. Because Plaintiff filed her complaint almost four years later, the district court dismissed properly Plaintiff's contract claims as time-barred by the one-year limitations clause: a clause enforceable under Pennsylvania law.

II. Tort Claims

Florida courts apply the "significant relationship test" to choice-of-law issues arising from tort claims. Crowell v. Clay Hyder Trucking Lines, Inc., 700 So. 2d 120, 122-23 (Fla. Dist. Ct. App. 1997) (citing Bishop v. Fla. Specialty Paint Co., 389 So. 2d 999 (Fla. 1980)). Under this test, the court determines which state has the most significant relationship to the parties and to the alleged tort by considering (1) where the injury occurred, (2) where the conduct causing the injury occurred, (3) the

residence of the parties, and (4) where the relationship between the parties is centered. Id.

The district court determined properly that Pennsylvania law applied to Plaintiff's 2007 fraud claim and to her non-fraud tort claims. Plaintiff both received the alleged fraudulent communication about daily system checks and acted in reliance on that fraudulent statement by signing the ADT Contract while in Pennsylvania. Plaintiff also resided in Pennsylvania when the ADT Contract was entered into, the alarm system was installed in a home in Pennsylvania, and the parties performed under the contract in Pennsylvania between 2007 and January 2013.

Plaintiff alleges she knew of ADT's alleged tortious conduct from the summer of 2013. As a result, Plaintiff's 2007 fraud claim and non-fraud tort claims raised in her 2017 complaint were subject to dismissal under Pennsylvania's two-year statute of limitations. See 42 Pa. Const. Stat. § 5524(7) (imposing a two year statute of limitation on "any . . . action or proceeding to recover damages for injury to person or property which is founded on negligent, intentional, or otherwise tortious conduct or any other action or proceeding sounding in trespass, including deceit or fraud . . . .").

About Plaintiff's 2013 fraud claim, we agree with the district court's determination that -- under the "significant relationship test" -- New Jersey law governs. Plaintiff received the 2013 alleged fraudulent communications – and thus sustained injury -- while in New Jersey and as a resident of New Jersey.

Under New Jersey's economic-loss rule, plaintiffs are barred from recovering purely economic losses in tort. Travelers Indem. Co. v. Dammann & Co., Inc., 594 F.3d 238, 244 (3rd Cir. 2010). In other words, a plaintiff is barred from asserting a tort claim arising from a contractual relationship unless the breaching party owed a duty independent of the duties that arose under the contract. Saltiel v. GSI Consultants, Inc., 788 A.2d 268, 315-16 (N.J. 2002). Because Plaintiff's 2013 fraud claim is based on ADT's alleged failure to provide the contracted-for monitoring services, her claim is barred under New Jersey's economic-loss rule.

We reject Plaintiff's contention that the ADT Contract is voidable on grounds that Plaintiff was fraudulently induced to enter the ADT Contract. Because the ADT Contract contained both (1) an integration clause and (2) an unambiguous description of the services provided by ADT under the contract (the subject matter of the alleged fraudulent misrepresentation), Pennsylvania's parol evidence rule prohibits Plaintiff from offering evidence of fraudulent inducement. See Yocca v. Pittsburgh Steelers Sports, Inc., 854 A.2d 425, 437 n.26, 438 (Pa. 2004).

AFFIRMED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 17-80355-CIV-COHN/SELTZER

JEAN COULTER, Plaintiff,

v.

ADT SECURITY SERVICES, Defendant.

ORDER DENYING MOTION TO AMEND THE FINDINGS PURSUANT TO RULE 52

THIS CAUSE is before the Court upon Plaintiff Jean Coulter's Motion to Amend the Findings Pursuant to Rule 52 [DE 41] ("Motion"). The Court has considered the Motion, Defendant ADT Security Services' Response [DE 42], and Plaintiff's Reply [DE 43], and is otherwise advised in the premises.

I. Background

In this action, Plaintiff, proceeding *pro se*, asserted several claims – breach of express and implied contract, fraud, violation of the New Jersey Consumer Fraud Act ("NJCFA"), negligence, unjust enrichment, breach of fiduciary duty, and damages for "Defective or Unsafe Conditions" – based on her allegations that ADT failed to monitor her home security system as promised and concealed her security system's inability to communicate with ADT's computer system. See DE 22 at 2. ADT moved to dismiss, arguing that the Court lacked subject matter jurisdiction and that Plaintiff failed to state a claim. See DE 24. In an August 3, 2017 Order (the "Order"), the Court declined to dismiss the case for lack of subject matter jurisdiction but held that Plaintiff's claims were nevertheless subject to dismissal for a variety of reasons, including because the majority of Plaintiff's claims were time-barred. See DE 38. Now, Plaintiff moves under Rule 52 to "amend the findings" in the Order because she claims that the Court erred by failing to agree with her that (1) the monthly renewals of her contract with ADT created new contracts and (2) that the renewals were voidable because they were fraudulently induced

(and thus the contractual limitation period did not apply to her claim). DE 41.

II. Legal Standard

Federal Rule of Civil Procedure 52 clearly does not apply here. See Beepot v. JP Morgan Chase Nat. Corp. Services, Inc., 626 Fed. Appx. 935, 938 (11th Cir. 2015) ("Rule 52 applies only to actions 'tried on the facts' or rulings otherwise expressly included, and the dismissal of their case and denial of their motion for reconsideration do not fall into these categories. In fact, the Rules clearly provide that the requirements of Rule 52 do not apply to motions to dismiss under Rule 12."). The Court will therefore construe the Motion as a motion to amend the judgment under Rule 59.[1] See Stanberry v. Allen, No. 11-CV-124-CG-B, 2012 WL 5469190, at *1 (S.D. Ala. Nov. 8, 2012) (construing a Rule 52 motion by a pro se plaintiff following a judgment entered on the defendants' summary judgment motion as a motion to alter judgment pursuant to Fed. R. Civ. P. 59(e)).

As the Court of Appeals for the Eleventh Circuit explains, "[t]he decision to alter or amend judgment is committed to the sound discretion of the district judge and will not be overturned on appeal absent an abuse of discretion." Am. Home Assurance Co. v. Glenn Estess & Assoc., 763 F.2d 1237, 1238-1239 (11th Cir. 1985). A motion to alter or amend a judgment "must demonstrate why the court should reconsider its prior

1 In Plaintiff's Reply, she relies on authority interpreting Fed. R. Civ. P. 59(e). DE 43 at 2.

decision and set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision." Socialist Workers Party v. Leahy, 957 F. Supp. 1262, 1263 (S.D. Fla. 1997). Generally courts have recognized three grounds for justifying reconsideration of an order: "(1) an intervening change in controlling law; (2) the availability of new evidence; and (3) the need to correct clear error or manifest injustice." Williams v. Cruise Ships Catering & Serv. Int'l, N.V., 320 F. Supp. 2d 1347, 1357-58 (S.D. Fla. 2004); see also Reyher v. Equitable Life Assur. Soc., 900 F. Supp. 428, 430 (M.D. Fla. 1995). Reconsideration of a previous order "is an extraordinary remedy to be employed sparingly" in the interests of finality and conservation of scarce judicial resources. Sussman v. Salem, Saxon & Nielsen, P.A., 153 F.R.D. 689, 694 (M.D. Fla. 1994). Litigants "cannot use a Rule 59(e) motion to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment." Michael Linet, Inc. v. Vill. of Wellington, Fla., 408 F.3d 757, 763 (11th Cir. 2005). See also Mobley v. Bradshaw, 11-CV-81357, 2013 WL 11318868, at *1 (S.D. Fla. Nov. 12, 2013) ("A Rule 59(e) motion does not provide Plaintiff with another bite at the apple— another chance to rehash arguments made and issues decided.").

III. Analysis

Plaintiff does not present any grounds justifying reconsideration of the Order dismissing her Amended Complaint. She does not present any new evidence or intervening changes in controlling law. Rather, she seeks to rehash the issues that the Court decided in the Order because, according to

Plaintiff, the Court misunderstood the arguments she made in opposition to ADT's motion to dismiss and was "deceived" by defense counsel's counter-arguments. DE 43 at 3. Rest assured, the Court's Order was the product of neither misunderstanding nor deception. More importantly for purposes of resolving the Motion, Plaintiff has plainly failed to show any clear error in the Order or manifest injustice.

First, with respect to Plaintiff's argument that the Court erred in finding that the automatic renewals of her contract with ADT did not create new contracts subject to New Jersey law, the Court specifically noted in the Order that even if it accepted Plaintiff's argument, "New Jersey law would also enforce the contract's one-year period of limitations." DE 38 at 13 n.6. Second, in rehashing her argument that the "renewals" were voidable because they were fraudulently induced, Plaintiff fails to address the contract's integration clause, which the Court held barred her initial attempt to avoid application of the limitations period by claiming fraudulent inducement. Id. at 13 n. 7.

In sum, Plaintiff's fails to demonstrate that the Court should reconsider the Order and instead improperly seeks to "rehash arguments made and issues decided." Mobley, 2013 WL 11318868. See also Crown Auto Dealership v. Nissan N. Am., Inc., No. 8:12-CV-1367-T-17TGW, 2014 WL 412757, at *1 (M.D. Fla. Feb. 3, 2014) ("Court opinions are 'not intended as mere first drafts, subject to revision and reconsideration at a litigant's pleasure.'").

IV. CONCLUSION

For the foregoing reasons, Plaintiff's Motion to Amend the Findings Pursuant to Rule 52 [DE 41] is DENIED.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County,
Florida, this 27th day of September, 2017.

JAMES I. COHN
UNITED STATES DISTRICT JUDGE

Copies provided to counsel of record via CM/ECF
And pro se parties via U.S. mail to address on file

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 17-80355-CIV-COHN/SELTZER

JEAN COULTER, Plaintiff,
v.
ADT SECURITY SERVICES, Defendant.

ORDER GRANTING IN PART MOTION TO DISMISS AMENDED COMPLAINT

THIS CAUSE is before the Court upon Defendant ADT Security Services' Motion to Dismiss the Amended Complaint [DE 24] ("Motion"). The Court has considered the Motion and related attachments, Plaintiff Jean Coulter's Response [DE 25], Defendant's Reply [DE 26], and Plaintiff's Sur-Reply [DE 27],[1] and is otherwise advised in the premises.

I. Background

This action stems from Plaintiff's dissatisfaction with the residential alarm monitoring services she purchased from Defendant ADT Security Services ("ADT"). Specifically, Plaintiff – proceeding pro se – alleges that ADT failed to monitor her home security system as promised and concealed her security system's inability to communicate with ADT's computer system. [See DE 22 at 2.] Based on these allegations, Plaintiff asserts claims for

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[1] Although Plaintiff failed to seek leave of Court prior to filing her Sur-Reply in violation of Local Rule 7.1(c), the Court will grant her belated motion for leave [DE 31] and consider her Sur-Reply to ensure that her position is fully heard by the Court.

breach of express and implied contract, fraud,[2] violation of the New Jersey Consumer Fraud Act ("NJCFA"), negligence, unjust enrichment, breach of fiduciary duty, and damages for "Defective or Unsafe Conditions." [Id.]

Plaintiff seeks $8,000,000 in compensatory and punitive damages. [Id. at 10-11.] However, from the time that Plaintiff began subscribing to ADT's alarm services in 2007 to the time she canceled her contract in 2013, she only remitted $2,749.43 in payments to ADT – plus $99.00 to install the alarm equipment. [See DE 15-1.][3] Thus, ADT argues that Plaintiff has failed to meet her burden of establishing the existence of diversity jurisdiction under 28 U.S.C. § 1332(a), which requires that the amount in controversy exceed $75,000.[4] Alternatively, ADT argues that, for a number of reasons, Plaintiff fails to state a claim.

II. Legal Standard

A. 12(b)(1) Motion to Dismiss for Lack of Subject Matter Jurisdiction

Federal courts are courts of limited jurisdiction. See 13 Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice & Procedure § 3522 (2d ed.1984 & Supp. 2008). A plaintiff may not bring a claim in federal court if the court does not have either federal

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[2] Plaintiff claims that the Court must analyze her fraud claim as two separate claims: a fraudulent inducement claim based on representations allegedly made to her when she entered into the contract with ADT in 2007 (the "2007 fraud claim") and a separate claim based on ADT's alleged 2013 representations regarding the functioning of her alarm system and concealment of her system's inability to communicate with ADT's computer systems (the "2013 fraud claim"). [DE 25 at 3, 5-11.]

[3] At this stage, the Court properly considers matters outside the pleadings, such as the Declaration of Marcia Gold [DE 15-1], administrative manager in ADT's Legal Department, and the exhibits thereto insofar as ADT's Motion constitutes a factual attack on subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1). Additionally, the Court properly considers Plaintiff's contract with ADT even in connection with ADT's arguments under Fed. R. Civ. P. 12(b)(6) because, although the contract is not attached to the Amended Complaint, it is central to Plaintiff's claims and undisputed. See Day v. Taylor, 400 F.3d 1272, 1276 (11th Cir. 1996).

[4] ADT does not challenge Plaintiff's assertion that she is a citizen of New Jersey and that § 1332(a)'s requirement that the parties be citizens of different states is therefore met (Plaintiff alleges that ADT is a Florida corporation). [See DE 24 at 2.]

question jurisdiction or diversity jurisdiction over the claim. Id. A motion to dismiss for lack of subject matter jurisdiction falls under Federal Rule of Civil Procedure 12(b)(1). Attacks on subject matter

jurisdiction under Rule 12(b)(1) may be either facial or factual. See Lawrence v. Dunbar, 919 F.2d 1525, 1528–29 (11th Cir. 1990) (per curiam). Facial attacks "require[ ] the court merely to look and see if [the] plaintiff has sufficiently alleged a basis of subject matter jurisdiction, and the allegations in his complaint are taken as true for the purposes of the motion." Id. at 1529 (quoting Menchaca v. Chrysler Credit Corp., 613 F.2d 507, 511 (5th Cir. 1980)). But when an attack on subject matter jurisdiction is factual, "matters outside the pleadings, such as testimony and affidavits, are considered" and the trial court may proceed as it never could under 12(b)(6) or [Rule] 56. Because at issue in a factual 12(b)(1) motion is the trial court's jurisdiction—its very power to hear the case—there is substantial authority that the trial court is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case. In short, no presumptive truthfulness attaches to plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims. Id. (citations omitted). In this case, ADT's attack on subject matter jurisdiction is factual.

"In order to invoke a federal court's diversity jurisdiction, a plaintiff must claim, among other things, that the amount in controversy exceeds $75,000." Federated Mut. Ins. Co. v. McKinnon Motors, LLC, 329 F.3d 805, 807 (11th Cir. 2003) (citing 28 U.S.C. § 1332). However, a "plaintiff's good faith belief that its claim meets the amount-in controversy is insufficient when faced with objections based on evidence submitted by the parties, and the court is therefore left to speculate as to how the

amount-in-controversy could be met." Dibble v. Avrich, No. 14-CIV-61264, 2014 WL 5305468, at *5 (S.D. Fla. Oct. 15, 2014). Typically, dismissal for failure to meet the amount in controversy requirement is appropriate only "where the pleadings make it clear to a legal certainty that the claim is really for less than the jurisdictional amount." Leonard v. Enter. Rent a Car, 279 F.3d 967, 972 (11th Cir.2002) (citations omitted); see also Burlington Ins. Co. v. Brown, 2013 WL 3470724, at *2 (M.D. Fla. July 10, 2013) ("Generally, the Court accepts that the amount in controversy has been satisfied when the plaintiff claims a sufficient sum in good faith, absent facts demonstrating to a legal certainty that the claim is really for less than the jurisdictional amount.").

Ultimately, "the burden is upon the plaintiff, as the party invoking jurisdiction, to prove 'by a preponderance of the evidence that it does not appear to a legal certainty that [his] claim is really for less than the jurisdictional amount.' In other words, a plaintiff would satisfy his burden by proving, by a preponderance of the evidence, that he has the possibility of recovering more than the jurisdictional amount." Fitzgerald v. Besam Automated Entrance Sys., 282 F. Supp. 2d 1309, 1313 (S.D. Ala. 2003) (quotations omitted).

B. 12(b)(6) Motion to Dismiss for Failure to State a Claim

Under Federal Rule of Civil Procedure 12(b)(6), a court shall grant a motion to dismiss where, based upon a dispositive issue of law, the factual allegations of the complaint cannot support the asserted cause of action. Glover v. Liggett Grp.,

Inc., 459 F.3d 1304, 1308 (11th Cir. 2006). Indeed, "[f]actual allegations must be enough to raise a right to relief above the speculative level." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). Thus, a complaint must contain "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 570).

Nonetheless, a complaint must be liberally construed, assuming the facts alleged therein as true and drawing all reasonable inferences from those facts in the plaintiff's favor. Twombly, 550 U.S. at 555. A complaint should not be dismissed simply because the court is doubtful that the plaintiff will be able to prove all of the necessary factual allegations. Id. Accordingly, a well-pleaded complaint will survive a motion to dismiss "even if it appears that a recovery is very remote and unlikely." Id. at 556.

III. Analysis

Plaintiff has satisfied her burden of proving that she has the possibility of recovering more than $75,000 in this action. As such, the Court will not dismiss this action for lack of subject matter jurisdiction. Plaintiff's claims, however, are subject to dismissal on a number of other grounds, including the applicable statutes of limitation.

A. It is Not Clear to a Legal Certainty That Plaintiff's Claim is for Less Than the Jurisdictional Amount

ADT argues that the Court lacks subject matter jurisdiction over this action because Plaintiff's claim is a "$2,848.43 small claim that cannot likely meet the jurisdictional minimum even

of the Palm Beach County Circuit Court," much less the $75,000 amount in controversy requirement. [DE 24 at 1.] Recognizing that punitive damages represent Plaintiff's only apparent hope of meeting the amount in controversy requirement, ADT argues that there are two reasons why Plaintiff's punitive damages claim does not get her beyond the $75,000 threshold. First, ADT argues that Plaintiff is not entitled to any punitive damages because Pennsylvania law governs Plaintiff's claims, Pennsylvania's economic loss doctrine and "gist of the action" doctrine limit Plaintiff to her contract claims, and Pennsylvania law does not permit punitive damages awards on contract claims. [DE 24 at 5.] Second, ADT argues that – given the minimal compensatory damages at issue – even if Plaintiff had the possibility of recovering some punitive damages, a punitive damages award sufficient to meet the amount in controversy requirement would violate the Due Process Clause. ADT is wrong on both counts. Pennsylvania law does not limit Plaintiff solely to her contract claim, nor would an award of punitive damages sufficient to meet the amount in controversy necessarily violate due process.

Assuming solely for this section that Pennsylvania law governs all of Plaintiff's claims,[5] neither Pennsylvania's economic loss doctrine nor its gist of the action doctrine bar Plaintiff's tort claims. Pennsylvania's economic loss doctrine provides that "no cause of action exists for negligence that results solely in economic damages unaccompanied by physical injury or property damage." Excavation Technologies, Inc. v. Columbia Gas Company of Pennsylvania, 604 Pa. 50, 985 A.2d 840, 841 n. 3

(2009) (citing Adams v. Copper Beach Townhome Communities, L.P., 816 A.2d 301, 305 (Pa. Super. 2003)) (emphasis added). "The doctrine prevents a plaintiff from recovering under a tort theory when the plaintiff's only loss is purely economic." Kantor v. Hiko Energy, LLC, 100 F. Supp. 3d 421, 426 (E.D. Pa. 2015) (citing Bohler– Uddeholm Am., Inc. v. Ellwood Grp., Inc., 247 F.3d 79, 104 (3d Cir. 2001)).

ADT relies on Werwinski v. Ford Motor Co., 286 F.3d 661, 671 (3d Cir. 2002) to argue that the economic loss doctrine bars Plaintiff's tort claims, including her fraud and NJCFA claims. The Court, however, "cannot ignore what the Pennsylvania courts have decided and how the law in

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5 As explained below, New Jersey law governs Plaintiff's 2013 fraud claim. Plaintiff claims that the Court must analyze her fraud claim as two separate claims: a fraudulent inducement claim based on representations made to her when the contract was made in 2007 and a separate claim based on ADT's alleged false representations regarding the functioning of her alarm system in 2013 and its alleged concealment of her system's inability to communicate with ADT's computer system as New Jersey law applies to Plaintiff's fraud claim.

Pennsylvania has evolved since Werwinski was decided." Kantor, 100 F. Supp. 3d at 429. Specifically, since Werwinski was decided, Pennsylvania courts have held that the economic loss doctrine does not bar statutory claims under unfair trade practices statutes and recognized that the doctrine is limited to negligence actions. See id. Thus, while Pennsylvania's economic loss doctrine bars Plaintiff's negligence claim, it does not bar Plaintiff's fraud or NJCFA claims. Nor does the gist of the action doctrine.

In Pennsylvania, the "gist of the action doctrine[ ].. operates to preclude a plaintiff from re-casting ordinary breach of contract claims into tort claims." Greenspan v. ADT Sec. Services Inc., 444 Fed. Appx. 566, 570 (3d Cir. 2011) (citing Hart v. Arnold, 884 A.2d 316, 339 (Pa. Super. Ct. 2005)). "The important difference between contract and tort claims is that the latter lie from the breach of duties imposed as a matter of social policy while the former lie from the breach of duties imposed by mutual consensus." Id. See also Bruno v. Erie Ins. Co., 630 Pa. 79, 112 (Pa. 2014) ("If the facts of a particular claim establish that the duty breached is one created by the parties by the terms of their contract—i.e., a specific promise to do something that a party would not ordinarily have been obligated to do but for the existence of the contract—then the claim is to be viewed as one for breach of contract. If, however, the facts establish that the claim involves the defendant's violation of a broader social duty owed to all individuals, which is imposed by the law of torts and, hence, exists regardless of the contract, then it must be regarded as a tort.") (internal citations omitted). "[C]aution should be exercised in determining the gist of an action at the motion to dismiss stage." Caudill Seed & Warehouse Co., Inc. v. Prophet 21, Inc., 123 F. Supp. 2d 826, 834 (E.D. Pa. 2000).

ADT argues that the Court should reach the same conclusion as the Greenspan court did when it "applied the gist-of-the-action doctrine to bar tort claims against ADT for claims that ADT had violated a tort duty by failures (sic) to provide monitoring services to a customer, because the duty ADT allegedly violated arose from the party's contractual

relationship." [DE 24 at 14.] Greenspan, however, is factually distinguishable. There, the plaintiffs' tort claims were premised on ADT's failure to replace a defective smoke detector. Because the parties' contract – and not a separate tort duty – imposed the obligation to monitor, maintain, and repair the alarm system, the court correctly held that the gist of the action doctrine barred the plaintiffs' tort claims. Here, Plaintiff does not merely allege that ADT failed to monitor or maintain her alarm system. She alleges, inter alia, that ADT fraudulently misrepresented the functioning of her alarm system and concealed its inability to communicate with ADT's computer system. [See DE 22 at 9.] If true, this involves more than a breach of a duty imposed by the parties' contract, but a breach of "a broader social duty . . . imposed by the law of torts." Bruno, 630 Pa. 79 at 112. See also Mendelsohn, Drucker & Assocs. v. Titan Atlas Mfg., Inc., 885 F. Supp. 2d 767, 790 (E.D. Pa. 2012) (collecting cases and concluding that plaintiff's fraud claim was not barred by the gist of the action doctrine). As such, ADT's argument that Pennsylvania's economic loss doctrine and gist of the action doctrine bar all of Plaintiff's tort claims, including both of her fraud claims, fails.

Thus, because punitive damages can be recovered for fraud claims under Pennsylvania law, Roth v. US LEC of Pennsylvania, Inc., Case No. 05-CV-4452, 2005 WL 2340468, at *3 (E.D. Pa. Sept. 23, 2005), the Court must determine whether Plaintiff has shown by a preponderance of the evidence that she has the possibility of recovering sufficient punitive damages to meet the jurisdictional amount. See Holley Equip. Co. v. Credit All. Corp., 821 F.2d 1531, 1535 (11th Cir. 1987) ("When determining the

jurisdictional amount in controversy in diversity cases, punitive damages must be considered, unless it is apparent to a legal certainty that such cannot be recovered.") (citations omitted). ADT argues that Plaintiff has failed to make such a showing because, as Plaintiff may only conceivably recover two or three thousand dollars in compensatory damages, the Court would be required to apply in excess of a 20x multiplier to these damages to arrive at a punitive damages award large enough to meet the jurisdictional amount, and a punitive damages award of this size would not comport with due process. [DE 24 at 6-7.]

ADT is correct to look to the constitutionally-permissible limits of punitive damages in analyzing whether the amount in controversy requirement has been satisfied. See Blackwell v. Great Am. Fin. Res., Inc., 620 F. Supp. 2d 1289, 1291 (N.D. Ala. 2009) ("it is the constitutionally-permissible limits of punitive damages in a particular case that are used to compute the jurisdictional amount-in-controversy requirement."). However, ADT misstates the law regarding these constitutionally-permissible limits. ADT asserts that "while punitive damages are not subject to rigid limits, only single-digit multipliers for smaller claims will comport with due process." [DE 24 at 6] (citing State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408, 425 (2003). Of course, a bright-line rule establishing that only single-digit multipliers are constitutional would mean that punitive damages are in fact subject to rigid limits. This is not the case.

Indeed, the Supreme Court specifically held in Campbell that "because there are no rigid benchmarks that a punitive damages award may not

surpass, ratios greater than those we have previously upheld may comport with due process where 'a particularly egregious act has resulted in only a small amount of economic damages.'" State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408, 425 (2003). Moreover, the Eleventh Circuit has held that double-digit multipliers may be necessary to effectively punish large companies – such as ADT – that would not be deterred by smaller awards. See Kemp v. Am. Tel. & Tel. Co., 393 F.3d 1354, 1364 (11th Cir. 2004) (awarding $250,000 in punitive damages when compensatory damages amounted to $115.05 and noting that a punitive damage award representing a single-digit multiplier to a small claim "levied against a company as large as AT&T, would utterly fail to serve the traditional purposes underlying an award of punitive damages, which are to punish and deter."). See also Johansen v. Combustion Eng'g, Inc., 170 F.3d 1320 (11th Cir. 1999) (noting that "[a] bigger award is needed to 'attract the . . . attention' of a large corporation'" and approving a punitive damages award where ratio of punitive to compensatory damages was 100:1).

Based on the foregoing, it is clear that the Court cannot do as ADT asks and mechanically apply a single-digit multiplier to Plaintiff's potential compensatory damages and dismiss this action if such an award fails to put Plaintiff beyond the $75,000 threshold. Rather, the Court must consider the three "guideposts" that the Supreme Court has instructed courts to look to in determining whether a given punitive damages award would be excessive: (1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the

punitive damages award; and (3) the difference between the punitive damages award and the civil penalties authorized or imposed in comparable cases. BMW of N. Am., Inc. v. Gore, 517 U.S. 559, 574-575 (1996).

Neither party addresses any of these guideposts, and the futility of the Court attempting to do so at this stage becomes immediately apparent upon considering the first guidepost, the reprehensibility of a defendant's conduct, which is "[p]erhaps the most important indicium of the reasonableness of a punitive damages award." Id. At 575. In analyzing the reprehensibility of a defendant's conduct, the Supreme Court has articulated several factors for courts to consider, including: (1) whether the injury caused physical harm; (2) whether the tortious conduct demonstrated an indifference to, or a reckless disregard of, the health or safety of others; (3) whether the target was financially vulnerable; (4) whether the conduct involved repeated actions; and (5) whether the harm was the result of intentional malice, trickery, or deceit. Campbell, 538 U.S. at 419. Here, it is unclear whether Plaintiff is "financially vulnerable," but she has alleged that ADT's conduct involved repeated fraudulent actions. Moreover, if Plaintiffs allegations are true, ADT's conduct could conceivably demonstrate an indifference to the safety of others; specifically, those that relied on ADT's alarm services to secure their home. Suffice it to say, based upon the record before it, the Court cannot draw reasoned conclusions about the reprehensibility of ADT's alleged conduct, much less conclude that it is a legal certainty that Plaintiff will be unable to ultimately recover more than $75,000 in punitive

damages. The Court therefore will not dismiss this case for lack of subject matter jurisdiction. However, for the reasons discussed below, Plaintiffs claims are nevertheless subject to dismissal.

B. Plaintiff's Contract Claims Are Time-Barred Under Pennsylvania Law

Since this is a diversity action, the Court is required to apply Florida's conflict-of-laws rules. See Klaxon Co. v. Stentor Elec. Mfg. Co., 313 U.S. 487, 496 (1941). At the outset, however, "the court must characterize the legal issue and determine whether it sounds in torts, contracts, property law, etc. Once it has characterized the legal issue, it determines the choice of law rule that the forum state applies to that particular type of issue." Grupo Televisa, S.A. v. Telemundo Communications Group, Inc., 485 F.3d 1233, 1240 (11th Cir. 2007) (citations omitted). Plaintiff pleads claims that sound in contract and tort.

With respect to Plaintiff's contract claims, Florida adheres to the traditional rule of *lex loci contractus,* which directs that a contract is governed by the law of the state in which the contract is made. Fioretti v. Massachusetts Gen. Life Ins. Co., 53 F.3d 1228, 1235 (11th Cir. 1995) (citations omitted). Here, it is undisputed that the parties' contract was made in Pennsylvania. [See DE 15-1 at 4.] Plaintiff contends, however, that after the parties entered into the contract in Pennsylvania, she moved to New Jersey and renewed the contract at the expiration of its initial three year term, thereby creating a new contract governed under New Jersey law. [DE 25 at 5, 15-16.] In support, Plaintiff relies on Sisco v. Rotenberg, 104 So. 2d 365 (Fla. 1958). As ADT

correctly argues in its Reply, however, Sisco does not support Plaintiff's argument, and in fact the Sisco court rejected a similar argument. 104 So. 2d at 368 ("Defendant says that . . . the plaintiff's exercise of his option to renew brought about a new contract . . . This argument of course must fail . . ."). The parties' contract here clearly provided that, upon the expiration of its initial three year term, it would automatically renew for successive thirty day terms. [DE 15-1 at 4.] These automatic renewals did not create new contracts. See, e.g., Yoder v. Am. Travellers Life Ins. Co., 814 A.2d 229, 233 (Pa. Super. Ct. 2002) (the renewal of an insurance policy cannot be viewed as the formation of a new contract upon each renewal period because the parties have not made a new offer or acceptance).

Thus, the Court will analyze Plaintiff's contract claims under Pennsylvania law. Importantly, the parties' contract specifies a one-year period of limitations. [DE 15-1 at 5, ¶ 10] ("YOU AGREE TO FILE ANY LAWSUIT OR OTHER ACTION YOU MAY HAVE AGAINST US OR OUR ASSIGNEES, AGENTS, EMPLOYEES, SUBSIDIARIES, AFFILIATES OR PARENT COMPANIES WITHIN ONE (1) YEAR FROM THE DATE OF THE EVENT THAT CAUSED THE LOSS, DAMAGE OR LIABILITY."). This provision is enforceable under Pennsylvania law. See Grosso v. Fed. Exp. Corp., 467 F. Supp. 2d 449, 456–57 (E.D. Pa. 2006) ("under Pennsylvania law, parties may agree to a limitations period shorter than the applicable statute of limitations, provided that the period is 'not manifestly unreasonable.' 42 Pa.C.S. § 5501(a). It is well-established that a one-year statute of limitations is 'not manifestly unreasonable' under

§ 5501(a).") (citations omitted).[6] By her own allegations, Plaintiff knew of ADT's alleged breaches of contract when she cancelled her contract with ADT in the summer of 2013. [See DE 22.] As Plaintiff then waited until March of 2017 to file this action, her contract claims are clearly barred by the one-year limitations period in the contract.[7] Additionally,

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6 Even if the Court accepted Plaintiff's argument that the automatic renewals created new contracts, some of which are governed by New Jersey law, as discussed below, New Jersey law would also enforce the contract's one-year period of limitations.

7 Plaintiff attempts to avoid the application of this contractual provision by arguing that ADT's alleged fraudulent inducement voids the entire contract, including the one-year limitations period. [DE 25 at 13.] ADT correctly counters, however, that because the contract contains an integration clause, Pennsylvania's parol evidence rule bars Plaintiff's attempt to avoid application of the one-year limitations

Plaintiff's unjust enrichment and implied contract claims fails because of the existence of the parties' express contract. See, e.g., In re Penn Cent. Transp. Co., 831 F.2d 1221, 1229 (3d Cir. 1987); McGrenaghan v. St. Denis School, 979 F. Supp. 323, 327-28 (E.D. Pa. 1997) ("no implied-in-fact contract can be found where the parties have an express contract concerning the same subject").

C. Plaintiff's Tort Claims Fail Under Pennsylvania and New Jersey Law

"Florida applies the 'significant relationship test' as set forth in the Restatement (Second) of Conflict of Laws to choice of law issues arising from tort claims." Crowell v. Clay Hyder Trucking Lines,

Inc., 700 So. 2d 120, 122–23 (Fla. 2d DCA 1997) (citing Bishop v. Florida Specialty Paint Co., 389 So. 2d 999 (Fla.1980)). This test requires that the Court determine which state has the most significant relationship to the parties and the alleged tort by considering the following contacts:

> (a) the place where the injury occurred,
> (b) the place where the conduct causing the injury occurred,
> (c) the domicile, residence, nationality, place of incorporation and place of business of the parties, and
> (d) the place where the relationship, if any, between the parties is centered.

Id. (quoting Restatement (Second) Conflict of Laws § 145(2) (1971)).

The Restatement (Second) Conflict of Laws also contains specific sections for certain torts, including fraud and misrepresentation. With respect to these torts, Section 148 provides in relevant part:

> (2) When the plaintiff's action in reliance took place in whole or in part in a state other than that where the false representations were made, the forum will consider such of the following contacts, among others, as may be present in the particular case in determining the state which, with respect to the particular issue, has the most significant relationship to the occurrence and the parties:

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period by claiming fraudulent inducement. [DE 24 at 11] (citing Partners Coffee Co., LLC v. Oceana Services & Products Co., 700 F. Supp. 2d 720, 730-31 (W.D. Pa. 2010)).

> (a) the place, or places, where the plaintiff acted in reliance upon the defendant's representations,
> (b) the place where the plaintiff received the representations,
> (c) the place where the defendant made the representations,
> (d) the domicil, residence, nationality, place of incorporation and place of business of the parties,
> (e) the place where a tangible thing which is the subject of the transaction between the parties was situated at the time, and
> (f) the place where the plaintiff is to render performance under a contract which he has been induced to enter by the false representations of the defendant.

Restatement (Second) Conflict of Laws § 148 (1971).

As noted above, Plaintiff claims that the Court must analyze her fraud claim as two separate claims: a fraudulent inducement claim based on representations allegedly made to her when the contract was made in 2007 and a separate claim based on ADT's alleged 2013 representations regarding the functioning of her alarm system and concealment of her system's inability to communicate with ADT's computer systems. [DE 25 at 3, 5-11.] Plaintiff contends that Florida law applies to her 2007 fraud claim because "it is likely that the Fraud actually commenced in Florida rather than the State where the fraudulent statements were made by [ADT's] Authorized Dealers." [Id. at 7.] Plaintiff contends that the Authorized Dealers "were likely unknowingly repeating the falsities which they had been deceived into believing by those training

them."[8] [Id. at 7- 8.] Even accepting Plaintiff's allegations that ADT indirectly deceived her through the Authorized Dealers as true, the factors in Section 148 of the Restatement still clearly weigh in favor of the application of Pennsylvania law to her 2007 fraud claim. Plaintiff received and acted on the alleged misrepresentation in Pennsylvania by signing the contract there, she was a Pennsylvania resident at the time, the "tangible thing" that was subject of the transaction was installed in Plaintiff's home in Pennsylvania, and the contract was performed in Pennsylvania for over five years. For these same reasons, Pennsylvania law also clearly applies to Plaintiff's other tort claims (with the exception of her 2013 fraud claim, discussed below). Under Pennsylvania law, these claims are time barred both by the one-year limitations period in the contract discussed above and Pennsylvania's two-year statutes of limitations because again, Plaintiff alleges that she knew of the facts that form the basis of these claims no later than the summer of 2013, yet she did not file this suit until March 2017. See 42 Pa. C.S.A. § 5524(7) (imposing a two year limitation period on "any . . . action or proceeding to recover damages for injury to person or property which is founded on negligent, intentional, or otherwise tortious conduct or any other action or proceeding sounding in trespass, including deceit or fraud . . .").[9]

Turning to Plaintiff's 2013 fraud claim, Plaintiff's move to New Jersey prior to the alleged

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8 Plaintiff further alleges that ADT's employees were responsible for training the Authorized Dealers and that even these trainers may have "unaware of the decision by ADT's

management to conceal Alarm System failures from their Customers." [Id. at 6.]

9 Plaintiff's breach of fiduciary duty claim is governed by the two-year statute of limitations for fraud. See Genesis Underwriting Mgmt. Co. v. Ins. Mgmt. & Services Inc., 22 Pa. D. & C.4th 119, 121 (Com. Pl. 1994). Additionally, to the extent that Plaintiff attempts to allege a products liability claim by seeking damages based on "defective or unsafe conditions," products liability claims are controlled by the two year statute of limitations contained in 42 Pa. C.S.A. § 5524(2). See Flanagan v. Martfive, LLC, No. 16- 1237, 2017 WL 661607, at *3 (W.D. Pa. Feb. 17, 2017) ("Products liability cases in Pennsylvania are controlled by the personal injury statute of limitations."). Thus, this claim is also time-barred.

fraud sufficiently alters the above analysis of the factors in Section 148 of the Restatement to lead the Court to conclude that New Jersey law applies to this claim. However, New Jersey law is not any more favorable to Plaintiff's 2013 fraud claim than Pennsylvania law. First, New Jersey, like Pennsylvania, enforces reasonable contract provisions limiting the period of time in which parties may bring suit. See Biegalski v. Am. Bankers Ins. Co. of Florida, No. 14-6197, 2016 WL 1718101, at *4 (D.N.J. Apr. 29, 2016); Martinez-Santiago v. Public Storage, 38 F. Supp. 3d 500, 506–07 (D.N.J. 2014) (collecting cases and remarking that "New Jersey courts, including courts in this District, have upheld reasonable contractual limitations provisions of one year or less when the applicable statutes of limitations exceeded those time frames . . ."). As Plaintiff's 2013 fraud claim directly relates to the parties' contract containing the one year limitations period, it is time-barred. See Ryan v. Liberty Mut. Fire Ins. Co., 234 F. Supp. 3d 612 (D.N.J. 2017).

Even if Plaintiff's 2013 fraud claim were not time-barred, it would be barred by New Jersey's economic loss rule because it relates to ADT's alleged fraud in the performance of the parties' contract rather than ADT's alleged fraudulent inducement of the contract in 2007. See Bracco Diagnostics, Inc. v. Bergen Brunswig Drug Co., 226 F. Supp. 2d 557, 563-65 (D.N.J. 2002) ("The pattern that has emerged in New Jersey decisional law is that claims for fraud in the performance of a contract, as opposed to fraud in the inducement of a contract, are not cognizable under New Jersey law" by application of the New Jersey economic loss rule); Rainbow Apparel, Inc. v. KCC Trading, Inc., No. 9–cv–05319, 2010 WL 2179146, at *10 (D.N.J. May 26, 2010) ("When analyzing the permissibility of fraud claims under the economic loss doctrine, New Jersey state and federal courts have drawn a distinction between allowable claims 'extrinsic to the contract,' such as those alleging 'fraud in the inducement' of a contract, and impermissible claims based upon a fraud in the performance of the contract.") (citations and quotations omitted).

D. Plaintiff's New Jersey Consumer Fraud Act Claim Fails as Well

Finally, Plaintiff's Amended Complaint added a claim for violation of the NJCFA. This claim fails for two reasons. First, although as discussed above, New Jersey law applies to Plaintiff's 2013 fraud claim, Plaintiff's NJCFA claim is not limited to ADT's actions after she moved to New Jersey. Because Plaintiff did not move to New Jersey until shortly before cancelling her contract, Plaintiff's NJCFA claim bears the most significant relationship with Pennsylvania, the state where she contracted

with ADT and the center of the parties' relationship for the vast majority of the time at issue. Thus, Plaintiff is not entitled to sue under the NJCFA. See Cooper v. Samsung Elecs. America, Inc., 374 Fed. Appx. 250, 254-55 (3d Cir. 2010) (application of forum's choice-of-law rules required finding that NJCFA did not apply to a claim for purchase of a television in Arizona). Even if the NJCFA applied to this action under Florida's choice-of-law rules, Plaintiff's NJCFA claim would be time-barred pursuant to the one-year limitations period in the parties' contract because it is directly related to the contract. See Ryan, 234 F. Supp. 3d 612 (the NJCFA's six-year "statute of limitations may . . . be contractually limited to one year where the NJCFA claims are directly related to the contract containing the one-year limitation.") (citations omitted).

IV. CONCLUSION

For the foregoing reasons, Defendant's Motion to Dismiss will be granted in part and denied in part. The Court will not dismiss this action for lack of subject matter jurisdiction. However, Plaintiff's Amended Complaint is due to be dismissed for the reasons articulated above. Because any amendment appears futile, dismissal will be with prejudice. See Fed. R. Civ. P. 15(a). Accordingly, it is hereby **ORDERED AND ADJUDGED** as follows:

1. Plaintiff's Motion for Permission to File Response to Defendants' Reply [DE 31] is **GRANTED.**

2. Defendant ADT Security's Motion to Dismiss for Lack of Subject Matter Jurisdiction [DE 24] is **GRANTED in part and DENIED in part** consistent with this Order.

3. Plaintiff's Amended Complaint [DE 22] is **DISMISSED with prejudice.**

4. The Clerk of Court is **DIRECTED** to **CLOSE** this case and **DENY** all other pending motions as moot.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 3rd day of August, 2017.

JAMES I. COHN
United States District Judge

Copies provided to counsel of record via CM/ECF and pro se parties via U.S. mail to address on file

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. : 9:17-cv-80355

JEAN COULTER, Plaintiff,
v.
ADT SECURITY SERVICES and APOLLO GLOBAL MANAGEMENT, Defendants.

RESPONSE TO DEFENDANTS' MOTION TO DISMISS

NOW COMES, Plaintiff, Jean Coulter, and files Response to Defendants' Motion to Dismiss, which was filed pursuant to Rule 12(b)(1) and (6). Defendants' Motion asks This Honorable Court to Dismiss this matter, with prejudice, based on their assertion that Coulter's Claims amount to a "small claim" seeking only $2,848.43 (along with significant punitive damages).

Introduction

Early in 2013, shortly after moving permanently to New Jersey, Plaintiff Coulter began experiencing (overt) problems with an Alarm System / Monitoring, which were provided by Defendant ADT. At first Coulter believed that she was merely having difficulties contacting the Alarm System remotely - a belief which was "encouraged" by Defendant ADT's Customer Service agents which Coulter initially spoke with. When the problems continued, Coulter again contacted Defendant's Customer Service agents, and after several conversations, Coulter eventually learned that she had been misled statements made by the Authorized Dealer who had both installed Coulter's Alarm System and signed-up Coulter for Monitoring Services.

Eventually, Coulter discovered that Defendant ADT had, apparently, made a conscious "business decision" to conceal telephone equipment failures - and continue to bill for "Monitoring Services" which ADT was completely aware that it was not able to provide. It is equally obvious that, when a Customer would call in with questions related to this issue, ADT's Customer Service agents were trained to immediately end any discussion as to the source of the problems, and instead insist that the problems absolutely must lie within the Customer's Alarm System components - and require that the Customer schedule (and pay for) a Service Call, in order to diagnose and repair the problem.

As the result of the fraudulent assurances of Monitoring in both the contract as well as statements by ADT's Authorized Dealer (who sold Coulter the Alarm System and Monitoring), **both of which are**

believed to result from Defendant ADT's "business decision" to not provide the Monitoring Services which constitute an integral part of the Monitoring Contract, Coulter was deceived into purchasing an Alarm System with monitoring (along with multiple devices beyond those included in the original "package"). Coulter has suffered additional damages for costs associated with operating/maintaining that "unmonitored" System (including a phone line required exclusively because of the Alarm System), as well as expenses associated with discovery of the source of the problem which initiated Coulter's contact with ADT in 2013. It is patently obvious that significant Punitive Damages are warranted, as ADT's "business decision" not only permitted ADT to become **Unjustly Enriched** from the monthly fees paid by Coulter as well as significant numbers of ADT's customers - but Defendants' failure to inform their Customers of the failures of their Alarm Systems **put both Life and Property in danger**, as both Coulter and numerous other Customers relied on the protections afforded by a truly "monitored" alarm system.

Argument

Choice of Law

Overview

The Instant Matter must be considered as two separate but related cases, as the Choice of Law must be selected in order to address two entirely different sets of circumstances - one where Coulter was subjected to acts of the Fraud which was likely committed second-hand (between July 2007 and January 2013) - and later, after Coulter uncovered

the truth, in March and April 2013, where the Fraud was likely first-hand.

Defendants have chosen to declare (without any form of support) that Pennsylvania is the appropriate Choice of Law for every Claim, based exclusively upon the fact that the home where the Alarm System was installed is located in Pennsylvania. Defendants' selection of Law was obviously made for the apparent purpose of relying on a Pennsylvania Statute which requires that that the Statute of Limitations for Breach of Contract Claims cannot be tolled - regardless of Fraud of any form. Defendants neglect to mention though, that the cited Pennsylvania Statute only applies to Contract for **sale of goods** which is obviously inapplicable in the Instant Matter, as this Case involves a Contract for performance of a Service (specifically, Alarm System Monitoring).

1. Choice of Law for Contract Claims

The Choice of Law with respect to Contract Claims, is explained by **Restatement (Second) of Conflict of Laws § 181 (1971) :**

> § 188. Law Governing in Absence of Effective Choice by the Parties
> (1) The rights and duties of the parties with respect to an issue in contract are determined by the local law of the state which, with respect to that issue, has the most significant relationship to the transaction and the parties under the principles stated in § 6.
> (2) In the absence of an effective choice of law by the parties (see § 187), the contacts to be taken into account in applying the principles

> of § 6 to determine the law applicable to an issue include:
>
> (a) the place of contracting,
> (b) the place of negotiation of the contract,
> (c) the place of performance,
> (d) the location of the subject matter of the contract, and
> (e) the domicile, residence, nationality, place of incorporation and place of business of the parties.
>
> These contacts are to be evaluated according to their relative importance with respect to the particular issue.[7]
>
> Thus, under the Restatement view, and seemingly the trend of courts around the nation, the place the contract is executed is only one of five factors used in determining which jurisdiction's law should control."

While the initial contract was contracted and negotiated in Pennsylvania and Coulter's residence was also in Pennsylvania as was the location of performance of the contract, this is not the situation for the renewals in 2013 - where the location of these four elements became New Jersey. The subject matter of the Contract remained in either Pennsylvania or wherever ADT's Monitoring computer and personnel are located. And, Defendant ADT's location did not change during this time, and was in Florida. Thus, the Choice of Law would properly be in Pennsylvania, New Jersey or Florida.

Because the relevant elements of Contract Law in these three states are not in conflict, no

further analysis of this issue is required, and the Law of Florida is applicable.

2. Choice of Law for Tort Claims - Claims for actions prior to February 2013

The issue of Choice of Law must first be decided as issues in this case involves Parties from different States - with the identity of the States changing in 2013. The earliest overt instance of Fraud occurred in 2007, and directly involved Coulter (who resided in Pennsylvania at that time) and an ADT Authorized Dealer (whose place of business was in Pennsylvania. However, even determination of Choice of Law in this situation, is complicated by the fact that Claims of Fraud require actual knowledge of the Speaker that his statements are untrue. As explained in **Lance v. Wade**, 457 So. 2d 1008 - Fla: Supreme Court 1984 :

> "(1) a false statement concerning a material fact; (2) knowledge by the person making the statement that the representation is false; (3) the intent by the person making the statement that the representation will induce another to act on it; and (4) reliance on the representation to the injury of the other party."

Under the circumstances involved in July 2007, Coulter cannot say with absolute certainty that ADT's Authorized Dealer was personally aware of the falsity of his Statements made concerning the "appropriate" Monitoring as described by both the Contract as well as the Dealer. Instead, it is quite possible that the Authorized Dealer had been deceived, just as he deceived Coulter. And, he in

turn, had been deceived by ADT's employees (who are responsible for training their Dealers). And, it is these "trainers" who were (perhaps unknowingly) responsible for the dissemination of the untruthful declarations about ADT's Monitoring Services. Indeed, it is believed that even ADT's trainers were likely unaware of the decision by ADT's management to conceal Alarm System failures from their Customers (including Coulter).

When determining the appropriate Choice of Law, for Fraud, the location of the "last step" is important. But other conditions must also be considered - including :

> " (1) The rights and liabilities of the parties with respect to an issue in tort are determined by the local law of the state which, with respect to that issue, has the most significant relationship to the occurrence and the parties under the principles stated in s 6.
> (2) Contacts to be taken into account in applying the principles of s 6 to determine the law applicable to an issue include:
> (a) the place where the injury occurred,
> (b) the place where the conduct causing the injury occurred,
> (c) the domicil, residence, nationality, place of incorporation and place of business of the parties, and
> (d) the place where the relationship, if any, between the parties is centered. These contacts are to be evaluated according to their relative importance with respect to the particular issue."

This case presents a unique situation, where the Fraudulent Statements were disseminated through possibly "innocent" Parties. So, the elements in sections 1 and 2 must be considered along with other factors :

> Situations do arise, however, where the place of injury will not play an important role in the selection of the state of the applicable law. This will be so, for example, when the place of injury can be said to be fortuitous or when for other reasons it bears little relation to the occurrence and the parties with respect to the particular issue (see s 146, Comments). This will also be so when, such as in the case of fraud and misrepresentation (see s 148), there may be little reason in logic or persuasiveness to say that one state rather than another is the place of injury, or when, such as in the case of multistate defamation (see s 150), injury has occurred in two or more states. ... Choice of the applicable law becomes more difficult in situations where the defendant's conduct and the resulting injury occurred in different states. **When the injury occurred in two or more states, or when the place of injury cannot be ascertained or is fortuitous and, with respect to the particular issue, bears little relation to the occurrence and the parties, the place where the defendant's conduct occurred will usually be given particular weight in determining the state of the applicable law.**

Thus, the appropriate Choice of Law for the Claims of Fraud (and other Tort Claims) during the period from July 2007 to February 2013 is, necessarily Florida Law, as it is likely that the Fraud actually commenced in Florida rather than the State where the fraudulent statements were made by Authorized Dealers (who were likely unknowingly repeating the falsities which they had been deceived into believing by those training them.

3. Choice of Law for Tort Claims - Claims based on actions committed in 2013

In 2013, Coulter discovered that the Alarm System which had been installed in a home in Pennsylvania, was not responding to her attempts to contact the System (to change alarm settings, etc.). Unlike the situation in 2007 (when the System was first installed), Coulter did not speak with one of Defendant ADT's Authorized Dealers, and instead, Coulter telephone ADT's Customer Service Agents. The Customer Service Agents accept calls without regard to the topic of the call, and thus, unlike the situation in 2007, it is believed that the Customer Service Agents would have been aware of the Fraudulent Statements which they were trained to make, when presented with a situation similar to Coulter's - as they would be expected to have personally addressed a similar issue with another Customer, or at least heard of a similar situation from another Agent who took a call about an Alarm System which would not accept incoming calls. And, even if they did not actually have knowledge of this situation, it is inconceivable that they would not have wondered how, with 8 million Customers, no

one would ever experience a time when their telephone line had "failed".

Because the Customer Service Agents were most likely aware that they were providing less than truthful "advice" that the problem absolutely must be in the Customer's equipment, etc. - the Customer Service agents which Coulter spoke with, while she was residing in Absecon, New Jersey, Fraudulently deceived Coulter into believing that there was no problem with the Monitoring which Defendant ADT was providing. And, the Choice of Law Analysis must consider situations of Fraud where those involved are acting in different States, and the Alarm System itself is located in yet another.

As explained in this court's decision for **Trumpet Vine Inv. v. Union Capital Partners I**, 92 F. 3d 1110 - Court of Appeals, 11th Circuit 1996 :

> The Restatement (Second) of Conflict of Laws provides specific sections for particularized torts. Section 148 provides the choice of law principles for fraud and misrepresentation, ...
>
> (2) When the plaintiff's action in reliance took place in whole or in part in a state other than that where the false representations were made, the forum will consider such of the following contacts, among others, ...:
>
> (a) the place, or places, where the plaintiff acted in reliance upon the defendant's representations,
>
> (b) the place where the plaintiff received the representations,
>
> (c) the place where the defendant made the representations,

(d) the domicil, residence, nationality, place of incorporation and place of business of the parties,
(e) the place where a tangible thing which is the subject of the transaction between the parties was situated at the time, and
(f) the place where the plaintiff is to render performance under a contract which he has been induced to enter by the false representations of the defendant.

The state of New Jersey is the only state to be considered under sections A (state where Plaintiff acted in reliance on fraudulent information), B (state where Plaintiff received the representations) and F (place where Plaintiff rendered payment) of Section 2. The location is Unknown in Section C (state where Defendant's made the representations) and possibly E (the location of the actual Monitoring Computer) or perhaps Pennsylvania, for E (although the location of the Alarm System itself is not really the "subject of the transaction"). For section D, New Jersey and Florida are the relevant states.

Therefore, it is necessary to consider circumstances beyond just these locations. A decision from the Third Circuit, **Maniscalco v. Brother Intern.(USA) Corp.**, 709 F. 3d 202 - Court of Appeals, 3rd Circuit 2013, lists these relevant factors include "(2) the interests of the parties", "(3) the interests underlying the field of tort law" and "(5) the competing interests of the states." :

"The factors enumerated in [the Restatement] should be evaluated on a qualitative rather

than a quantitative basis." *David B. Lilly Co. v. Fisher, 18 F.3d 1112, 1119 (3d Cir.1994)* (discussing sections 145 and 146 of the Restatement). The relative importance to each of the factors in a given case "should be determined in light of the choice-of-law principles stated in § 6 [of the Restatement]." Restatement (Second) of Conflict of Laws § 148 cmt. e. Those principles are: "(1) the interests of interstate comity; (2) the interests of the parties; (3) the interests underlying the field of tort law; (4) the interests of judicial administration; and (5) the competing interests of the states." *Camp Jaycee, 962 A.2d at 463* (internal quotation omitted).

First, reviewing the situation with respect to "(2) the interests of the parties" Plaintiff's interests lie in the state of New Jersey (as Pennsylvania is no longer her "home state"). While Defendant's interests would be considered to be most significant in Florida.

Next, considering "(3) the interests underlying the field of tort law", neither Florida nor Pennsylvania has ever expressed an interest in assuring that a non-resident is not subject to financial losses due to Fraud, etc. - while both recovery of losses for Coulter (as a resident of New Jersey) and assuring that the deception is not repeated are clearly interests of the state of New Jersey.

And finally, considering "the competing interests of the states", it should be considered that neither Florida's nor Pennsylvania's Legislature have expressed an interest in assuring that home

alarm systems are operable - indeed, in Pennsylvania, many municipalities impose fees on home owners who install these systems in their community (and it is believed that this is the situation in many communities in Florida as well) and New Jersey's Legislature has clearly expressed an interest in assuring that its citizens are not the victims of Fraud (although it is likely that New Jersey's Legislature has no feelings at all about the status of Coulter's Alarm System).

Therefore, it is evident that the location of the most significant contacts for Tort Claims, is New Jersey and therefore Choice of Law for these Claims is the Law of New Jersey.

Argument in Opposition to Defendant's Argument

I. Defendants have argued that this court lacks Subject-Matter Jurisdiction Defendants argue that "Coulter has not pled facts sufficient to permit an inference that the amount in controversy exceeds $75,000." However, this argument is premised on all of the Claims (including Breach of Contract being time-barred), on the basis of Pennsylvania Law. As discussed previously, Pennsylvania Law does not apply to the tort claims (instead Florida or New Jersey Law should be applied), and thus Coulter's Claims, with even small sums included for Punitive damages, are significantly beyond the minimum amount of damages required to be claimed under **28 U.S.C. § 1332**: The basis for the appropriate Statute of Limitations for the Tort Claims is based upon either Florida (for Claims prior to 2013) or New Jersey (for 2013 Claims) - thus Coulter's Complaint

was timely filed. *See also* **Bates v. Cook, Inc.**, 509 So. 2d 1112 - Fla: Supreme Court 1987 :

> "An action will be maintained if it is not barred by the statute of limitations of the forum unless the action would be barred in some other state which, with respect to the issue of limitations, has a more significant relationship to the parties and the occurrence."

II. Defendants argue that "Pennsylvania Law Bars Ms. Coulter's Contract Claims.

Defendants have argued both that all Breach of Contract Claims are barred by either Pennsylvania's Statutes of Limitations, or the agreement for reducing the time for filing suit as contained in their original Contract, and that Choice of Law requires that Pennsylvania Law be the basis for this case. These assertions are simply untrue, and thus Defendants' argument must fail.

A. Defendants' allegation that Coulter's Breach of Contract Claims are barred as untimely.

1. Defendants erroneously argue that the Contract between Coulter and Defendants specifies that the time for filing Civil Actions is limited to one-year, and thus Coulter's Civil Action is time barred.

Defendants argue that "The Pennsylvania courts uniformly permit parties to vary the limitations period by contract,... and have approved one-year contractual limitations provisions." However, because of Defendants actions constitute Fraud in Inducement (promising Monitoring of Coulter's Alarm System, but knowingly and intentionally concealing that the System had failed

to communicate with Defendants' Monitoring Computers), this provision, as well as the entire Contract is voidable, including this limitation on time to file Civil Action, as explained in **Burger King Corp. v. Austin**, 805 F. Supp. 1007 - Dist. Court, SD Florida 1992 :

> "('The issues of fraud and duress, however relate to the validity of the contract as a result of alleged pre-contract misrepresentations, and are matters outside the contract.'). Again, the Court is not obligated to determine whether Florida or Georgia has the most significant relationship to the parties at this time, as it appears that the law of fraudulent concealment is similar in both states.

And, from JIFFY LUBE INTERN. v. Jiffy Lube of Pennsylvania, 848 F. Supp. 569 - Dist. Court, ED Pennsylvania :

> "a party alleging fraud in connection with the formation of a contract has a choice: the party may either disaffirm the contract and tender back the consideration received, or affirm the voidable contract and waive the fraud. Elph urges that"

Coulter decided to accept the new (renewed) Contract for Monitoring Services of Defendant ADT, if any only if ADT could be convinced that they must promptly notify Coulter (and other Customers) when their Alarm Systems failed to check-in each month. And, evidence that the Defendants had decided to end their fraudulent concealment of information, came within approximately one week after Coulter was able to assure ADT's employees that her System could not possibly have checked-in and their Monitoring Systems must be changed - when ADT

began the series of calls to Coulter and other Customers affected by ADT's earlier fraudulent actions (acts which constitute the circumstances which were involved in the fraudulent inducement to sign the contract).

2. Defendants erroneously argue that Pennsylvania Statutes require that the date for filing is not extended in cases of Fraud in Inducement, and thus Coulter's Civil Action is time barred.

The tolling of the usual Statute of Limitations is explained in **Sargent v. Genesco, Inc.**, 492 F. 2d 750 - Court of Appeals, 5th Circuit 1974 :

> "However, the date when a claim accrues so as to trigger the state law limitation period is a matter of federal law, and our court-fashioned rule is that a 10b-5 claim accrues when the plaintiff actually discovers the alleged fraud. See, e. g., *Hooper v. Mountain States Securities Corp., 282 F.2d 195, 200 (5th Cir.)* cert. denied, *365 U.S. 814, 81 S.Ct. 695, 5 L.Ed.2d 693 (1960)*; and *Azalea Meats v. Muscat, supra, 386 F.2d at 8.*"

Defendants have cited Case Law, which at first blush might support an assertion that Breach of Contract Claims are time barred. Defendants have cited 13 Pa. C.S.A. § 2725(b)., stating :

> "The statute further states: 'A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach.' 13 Pa. C.S.A. § 2725(b)."

However, Defendants have chosen to elude the true intention of this Statute, by failing to cite 13 Pa.

C.S.A. 2725, which specifically applies only to "contracts for sale of goods" (specifically natural gas, etc.). Title 13 is PA's "Commercial Code", and Section 2725 is "Statute of Limitations in **contracts for sale" :**

> **"Section 2725 Statute of Limitations in Contracts for Sale.**
>
> **(a) General rule** - - An action for breach of any **contract for sale** must be commenced ..."
>
> **(b) Accrual of cause of action** - - A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach ..." (as cited in Defendants' Motion)

However, Pa Title 13, **Section 2106** defines the term "contract for sale" as : "'Contract for sale' includes both a present sale of goods and a contract to sell goods at a future time. A 'sale' consists in the passing of title from the seller to the buyer for a price (section 2401)." As the Contract under consideration at this time clearly involves ADT's provision of Monitoring **Services**, rather than the sale of goods, clearly no title to any goods are involved, and this Statute is entirely inapplicable! Further, despite the fact that Defendants argue that the initial Contract places Choice of Law in Pennsylvania :" The parties formed their contract in 2007. Events occurring in 2013 have no bearing on the application of the *lex loci contractus* rule to the facts of this case.[x]", Case Law clearly requires that at the time of Renewal of a Contract (as was the case every month for nearly 2 1/2 years), the location of the "acceptance" of the renewal term becomes the location of the Contract at that time - as explained in **Sisco v. Rotenberg**, 104

So. 2d 365 - Fla: Supreme Court 1958 : " the plaintiff's exercise of his option to renew brought about a new contract".

B. Choice of Law Principals do not require Pennsylvania Law to be applied to Claims of Breach of Contract or Unjust Enrichment.

As this court has previously determined, **In re Managed Care Litigation**, 185 F. Supp. 2d 1310 - Dist. Court, SD Florida 2002, Choice of Law analysis is unnecessary when considering claims of Breach of Contract and Unjust Enrichment :

> ""Nevertheless, the parties have not brought to the Court's attention any conflicts 1337*1337 among the different states involved that would require a choice of law analysis. See generally *Singer v. AT & T Corp., 185 F.R.D. 681, 692 (S.D.Fla.1998)* (observing that "breach of contract and unjust enrichment ... are universally recognized causes of action that are materially the same throughout the United States."); *American Airlines v. Wolens, 513 U.S. 219, 233, 115 S.Ct. 817, 130 L.Ed.2d 715 (1995)* (noting that "contract law is not at its core diverse, nonuniform and confusing"). The key issues appear to be answered by universal principles of contract law, and therefore the Court need not conduct an elaborate choice of law analysis. See *Jean v. Dugan, 20 F.3d 255, 260 (7th Cir.1994)* (citation omitted) ("This court has held that before `entangling itself in messy issues of conflict of laws a court ought to satisfy itself that there actually is a difference between the relevant laws of the different states.'")."

Thus, Florida law in respect to these two Claims, should be utilized, and Defendants reliance on Pennsylvania Statutes must fail

C. Defendants argue that "the contract claims also fail because the contract contradicts them".

Defendants cite a phrase from the Contract, which Defendants assert relieves Defendants from responsibility for notifying Coulter of the complete failure of her System to communicate with ADT's Monitoring Computers for the monthly "check-in". That phrase states "It is your responsibility to test the Equipment weekly.". And, later Defendants assert that "Ms. Coulter's ADT contract places the responsibility to ensure the alarm system's performance on Ms. Coulter, not ADT.", to support their claim that ADT's Contract to Monitor Coulter's Alarm System, places the entire burden for testing upon Coulter instead of ADT. However, the Contract merely refers to Coulter's obligation to "test the Equipment weekly.". In this situation, however, it is not the "Equipment" which failed. Instead, it is the connection to the telephone line which "broke". As Black's Law Dictionary defines "equipment", the definition specifically excludes the telephone lines (and other elements of the "building") from Black's Law Dictionary Free online Legal Dictionary, 2nd Ed.:

> "What is EQUIPMENT?
> Tools, be they devices, machines, or vehicles. Assist a person in achieving an action beyond the normal capabilities of a human. Tangible property that is not land or buildings, but facilitates business operations."

And, similarly, the telephone connection would not be considered "equipment" by Merriam Webster :

> Equipment
> ... (2) all the fixed assets other than land and buildings of a business enterprise"

As clearly stated in Florida Case Law **Institutional Supermarket Equipment, Inc. v. C & S Refrigeration, Inc**, 609 So. 2d 66 (1992) :

> " ***Where contracts are clear and unambiguous, they should be construed as written, and the court can give it no other meaning***. *Hamilton Const. Co. v. Board of Public Instruction of Dadae County, 65 So. 2d 729 (Fla. 1953)*. .... Where words of a contract are clear and definite, they must be understood according to their ordinary meaning. *Shaw v. Bankers Life Co., 213 So. 2d 514 (Fla 3d DCA 1958)* ... " (emphasis added)

III. Defendants argue that "Pennsylvania Law Bars Ms. Coulter's Tort Claims." and that " Florida choice-of-law rules" " require the application of Pennsylvania law".

This Issue has previously been argued, and Pennsylvania Law is not appropriate Choice of Law.

A. Defendants argue that "New Jersey Consumer Fraud Act Claim Fails As Well", as do other Claims - on the basis that Coulter has insufficiently pled these Claims.

Coulter's property in Pennsylvania was burglarized in the summer of 2013. Coulter's files were stored in a closet in the attic where jewelry owned by Coulter's mother was also stored. The burglary was committed by Coulter's sister-in-law,

who was aware of the location of the jewelry - and at the same time as the jewelry was stolen, Coulter's files were rifled-through, and many files are missing. Thus Coulter must rely on Discovery to obtain specific details from Defendants to provide additional specifics to meet the pleading requirements - information which Defendants would certainly keep as part of their standard record-keeping practices. Coulter must be permitted to Amend the Complaint to address any legitimate arguments in this respect which are raised by Defendants.

Conclusion

After Choice of Law is determined, it is readily apparent that Coulter's Complaint successfully claims sufficient damages to assure that the Statutory Minimum for Diversity cases is met. While Coulter will need permission to Amend, in order to provide further specific details about the identities of the Customer Service Agents whom she was in contact with, and other small details, it is believed that This Honorable Court will grant permission to amend, and this case can continue with preparation for trial.

Respectfully Submitted,
Jean Coulter
P.O. Box 8094
Philadelphia, PA 19101
412-616-9505

THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

Civil Division

JEAN COULTER, Pro Se Plaintiff

v. Case No. : 17-80355

ADT Security Services, Defendant

JURY TRIAL DEMANDED

AMENDED COMPLAINT FOR CIVIL ACTION

Parties

The Parties to this Civil Action are :

Plaintiff, Jean Coulter, is a resident of New Jersey, with mailing address :

P.O. Box 809
Philadelphia (Philadelphia County)
Pennsylvania 19101
412-616-9505
jeanecoulter@yahoo.com

and Defendant, ADT Security Services, a corporation headquartered in Florida :

1501 Yamato Rd
Boca Raton (Palm Beach County)
Florida 33431
561-988-3600

Basis for Jurisdiction in the Federal Court

This Court has Jurisdiction pursuant to 28 U.S.C. Section 1332, Diversity of Citizenship.

Claims

The most egregious of ADT's actions, were committed without regard to the potential injuries to their customers, as ADT fraudulently promised to monitor customers' Security Systems & checking those systems monthly. But if/when the customer's system failed the monthly check, **ADT willfully concealed the system's failure from their customer, thus assuring the continued payment of monitoring fees despite the obvious**

dangers to life and property from the failure of the fire and burglary alarms! Claims in this Civil Action include **:**

a.) Breach of Contract
b.) Breach of Implied Contract
c.) Fraud
d.) Fraud Claims under the New Jersey Consumer Fraud Act
e.) Negligence - concealed, gross and willful
f.) Unjust Enrichment
g.) Breach of Fiduciary Duty
and h.) Recovery of Damages for Defective or Unsafe Conditions

Facts Upon Which the Claims Are Made

1.) Plaintiff Coulter was planning a move from the immediate area, and wanted a home in Western Pennsylvania to be protected from both fire and intrusion during her absence.

2.) Coulter looked for an alarm system to buy which would provide the protection which she was looking for. Coulter spoke with a representative of ADT and learned that she could purchase components from ADT, and receive a significant discount on the basic components, if she would sign a contract for "monitoring" of the alarm system. Coulter was told that the components sold by ADT would notify ADT of any problems - and then ADT would assume responsibility for assessing the situation when an alarm is "sounded", and then inform Coulter, and appropriate other parties and first responders, about issues at Coulter's property.

3.) Coulter was satisfied with what she was told about ADT's components for the alarm system and chose to purchase an alarm system and

monitoring from ADT - paying both for purchase and installation of approximately $1,000.00 of additional sensors for the system (beyond those provided in the basic package (advertised as being worth another $1,000.00)) as well as committing to a lengthy contract for monitoring of the system (which Coulter was told was going to be checked by contact with the central monitoring system daily). Other than in the case of some emergency, the contact between Coulter's system and the central site was to occur through a phone call in the middle of the night.

4.) From July 2007 until the events which constitute this Civil Action (approximately 2 1/2 years beyond the initial 3-year term of the contract), Coulter believed that the system was doing everything that was expected of it - as no damages to the home were noted during Coulter's occasional "visits" to the home, and no "alarms" had been reported either. So, even after the initial commitment for monitoring services was satisfied, every month, Coulter agreed to accept the renewal of the initial contract - as it became a contract which became renewable month-to-month after the initial 3 year term was completed.

5.) Before the time of the events which constitute the basis for this Civil Action, Coulter had moved from her apartment in Philadelphia (in late January 2013) to Southern New Jersey.[1] And, as Coulter had moved even further from the home than had initially been planned, Coulter was still rarely in the area of the house which was being protected by the system which was installed and monitored by Defendant ADT - although Coulter or a friend occasionally dropped by the home.

6.) In March 2013, Coulter unsuccessfully attempted to "communicate" with the home alarm system by telephone, so Coulter eventually contacted ADT. At the time of the initial call to ADT in March 2013, Coulter was only told that ADT was not aware of any problems. No mention was even made by ADT's employee, of the fact that there easily could be problems which had arisen between check-ins. So, Coulter continued to believe that she was just improperly properly ringing the home's phone in a manner which did not assure that the alarm system would "answer".

7.) Because the first ADT employee that

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[1] In times pertinent to this civil action, Coulter lived in Absecon, New Jersey, although she eventually settled in Cherry Hill, New Jersey.

Coulter had spoken with could find no report of problems with Coulter's system, Coulter did not immediately seek a resolution of problems with the alarm system. But, when Coulter called back, later in mid-March 2013, Coulter questioned how she could still be having problems, when there was still no report of problems with the "check-ins" (which Coulter had been lead to believe would occur daily). Coulter called on numerous occasions in that same period, and each time, each and every employee that Coulter spoke with, simply repeated ADT's "company line" which consistently and exclusively claimed that there must be some other problem with Coulter's system as there was no issue with their system, And since the problem must lie exclusively inside Coulter's house, each and every ADT employee insisted that Coulter must arrange for, and agree to pay for, a service call.

8.) After discussions with many ADT employees, Coulter learned that the system was instead "checked" only once a month - and Coulter was eventually informed that the last scheduled check-in had been on February 22, and the next scheduled check-in by her system was not scheduled to occur until March 24, 2013.

9.) The only thing that any ADT employee would do about the situation was to offer to send out a repair person (at Coulter's expense), to see if the system could be repaired or if it instead needed to be replaced. So, Coulter decided to wait until she could travel from New Jersey to Western Pennsylvania to see for herself if there was a problem in her alarm system, or at least be there for the service call to make repairs. And, Coulter hoped that the problem would be noticed and identified during the check-in on March 24, and perhaps her trip would not be necessary.

10.) Because Coulter continued to be unable to communicate with her system, Coulter decided that she must make a trip to the home to see what needed to be done. When Coulter arrived at the house, she looked around the location where the alarm panel was mounted. Before long, Coulter saw the problem – a loose wire sticking out of the phone jack. It was clear that where the alarm installers had tapped into the home's phone line, a wire was now completely loose - and therefore, the alarm system had no way to either "accept" Coulter's attempts at communication, or "call-out" to check-in with ADT's Monitoring Center's computers.

10.) Coulter noted that March 24 had come and gone without Coulter receiving a call from ADT about the alarm system, and Coulter considered this

to be evidence of the blatant failure by ADT to even attempt to "monitor" the system on March 24! So Coulter became intent on learning why, when her system was so clearly unable to have completed the monthly check-in, yet there was still no notification made by ADT - and indeed, ADT employees were still denying that their system had actually "failed".

11.) After March 24's missed check-in, Coulter spoke with **many** more employees of ADT, yet none of them would admit that ADT must have known about Coulter's system failing the test - and instead each and every one of those employees of ADT were only interested in selling a repair visit (and likely a new system and a new obligation for three (3) years of monitoring) to Coulter.

Indeed, it was not until :

a. Coulter was able to assure the ADT employees that she was personally absolutely certain that her system had not been able to check-in with ADT's computers (after personally seeing the "broken" phone jack connection),

and

b. Coulter repeatedly threatening to take the issue to the Attorney General's Office (and perhaps that Attorney General's Consumer Protection Division contacting ADT),

that one ADT finally began "research" why Coulter (and ostensibly ADT) had not been told that Coulter's system was not reporting in every month.

Thus the fraud continued even after ADT's "failures" had been uncovered, and Coulter even a spoke with one employee who claimed that there had been a notation not to inform the customer of this failure on the record for Coulter's system - but that employee was asked to provide proof of that supposed

marking, but never provided such proof as it clearly never existed (and it was ridiculous to even propose its existence).

12.) It took even more irate calls (possibly including calls from the State's Consumer Protections employees) before ADT finally agreed find out why Coulter and ADT's other customer, were not being informed that their alarm systems were essentially worthless as they simply **could not be monitored!**

13.) It is patently obvious that ADT had knowledge of the fact that Coulter's (and other customer's alarm systems) were not working, as it is **inconceivable that no one in ADT could possibly believe that none of their seven (7) million customers ever had a telephone connection which was not working on their scheduled date for check-in**. Yet Defendant ADT continued to bill for "monitoring" of the alarm systems that were incapable of sounding an "alarm" which ADT could monitor - **completely disregarding the danger to both persons and property that a non-working alarm system would subject their customers to!**

14.) Coulter decided that once ADT corrected the current situation, and therefore Coulter's alarm system would finally be actually "monitored", she would continue to pay for monitoring while she arranged for a different system – which would be monitored by a truly honest and reliable company.

15.) Coulter awaited the call about her alarm system's failure to pass the monthly monitoring check, after she was told that ADT had

decided to **finally** contact customers whose systems had been failing tests. Coulter waited and did not get a call. Indeed, Coulter waited until several days in April had passed, before Coulter again called ADT at which time Coulter learned that there were so many customers to be notified that Coulter would have to wait for her notification until all of the earlier "failures" had been reported. That call took three (3) days to arrive after Coulter's highly delayed call - there were **that** many other customers that had been being defrauded for **that long**!

Conclusion

It is unknown how long Defendant ADT had been concealing the failure of Coulter's (and many other customers') alarm system(s) to communicate with ADT's computer system, while continuing to collect the fees for monitoring. And during the entire time that ADT was fraudulently concealing ADT's failure to actually "monitor" Coulter's alarm system, the components which were part of Coulter's Alarm System were made worthless while also creating additional expenses (requiring replacement batteries (and power to the panel)) and yet concurrently subjecting Coulter's house and belongings to potential damage from fire/theft as well as placing in jeopardy the well-being of anyone who entered the property believing it to be protected by a monitored alarm system.

It is particularly disturbing that ADT had made this their "Policy" – ignoring their responsibility to protect the lives and property of their customers from injuries which could have been avoided by simply providing the services that ADT

had been hired and paid to provide. It is believed that ADT made a conscious decision to conceal failures to "check-in" in order to assure that monthly payments continue to arrive, and utilize any opportunity that a failure results in contact from the defrauded upon customer, to be turned into an opportunity for a sale of a new system at the time of the supposed repair service. **The fact remains that there can be no possible explanation for ADT to fail to inform their customers (including Coulter) that the alarm systems were no longer working (and therefore, the monitoring" was worthless and the customers were unprotected) except to conclude that this was a profit based decision by ADT, to fraudulently bill for worthless "monitoring" of "dead" systems!**

Prayer for Relief

Plaintiff seeks recovery in the amount of $ 8,000,000.00 (Eight Million Dollars and No Cents). This amount includes Compensatory Damages for injuries suffered by Plaintiff Coulter - as well as Punitive Damages. Coulter's injuries were inflicted both due to acts committed by the "employee" of ADT who sold the system to Coulter (and his "untruthful" description as to the extent of services provided) - as well as by ADT's direct corporate actions and ADT's policy to intentionally conceal the complete system failure, and continuing billing for "monitoring" of non-functioning systems (including Coulter's). In addition ADT should be held responsible for Unjust Enrichment and Breach of Fiduciary Duty as well as for recovery due to Defective or Unsafe Conditions

created by installation of a Defectively "installed" and/or "serviced" product.

Under New Jersey Statute, Coulter is entitled to receive triple damages for each act constituting Consumer Fraud - or approximately $15,000.00 for each act (triple the cost of monitoring fees ($2,800.00) and equipment costs ($1,000.00 + $1,000.00), including installation).

The Claims of Breach of Contract and Breach of Implied Contract, allow for recovery of the total of all of the fees paid for monitoring of the alarm system installed in Coulter's property as well as for recovery for the equipment which was made worthless by ADT's defective monitoring of the alarms presented by that system.

The Claims of Fraud, Negligence, Unjust Enrichment and Breach of Fiduciary Duty, result in responsibility by Defendant for not only the actual damages in terms of monies paid to ADT (for equipment, installation and monitoring) along with transportation and housing costs incurred when Coulter traveled from New Jersey to Western Pennsylvania (in order to provide evidence which would convince ADT that Coulter could **prove** the existence of this serious "problem" with ADT's "monitoring" services) - and also require imposition of Punitive Damages for each individual event (or occurrence) and each Claim - particularly given the extremely egregious nature of ADT's actions and Corporate Policy.

In addition to monetary relief, Coulter seeks an Order from this Honorable Court directing ADT to provide notification of the results of this action to each customer who was finally notified of the failure

of their system to "check-in" at the time when massive notifications were being made in March/ April 2013 - as well as provide appropriate notification of the true extent of the monitoring services to each of ADT's current and future customers.

I hereby certify that to the best of my knowledge, information and belief, this Complaint is not presented for an improper purpose, is supported by existing law, the factual contentions have evidentiary support, and the Complaint otherwise complies with the requirements of Rule 11. Signed this, the 8th day of June, 2017.

/s/ Jean Coulter
Jean Coulter

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

JEAN COULTER, Appellant
v. Case Number: 17 – 14829 .
ADT SECURITY SYSTEMS,
APOLLO GLOBAL MANAGEMENT,
Appellees

MOTION FOR PANEL RECONSIDERATION/REHEARING
and
EN BANC RECONSIDERATION/REHEARING

En Banc Rehearing is required as the Panel's decision has likely permitted Appellees to continue to conceal breakdowns within

customers' Fire Alarm and Security Systems, placing the lives and property of each and every one of ADT's Eight Million (8,000,000) Customers in jeopardy each day! As Coulter's experience shows, ADT displayed no interest in correcting this dangerous situation, until after Coulter was forced to contact Pennsylvania's Attorney General (Amended Complaint, page 8) – thus **without the collateral effects of this lawsuit, it is likely that ADT will continue to place their customers' lives in jeopardy until the Attorneys General from each and every one of the fifty (50) states individually force ADT to comply with notification requirements for the Citizens of each of the states.**

Contractual Period of Limitations
Is Not Applicable

A. Fraud in Inducement

1.) The Appellate Panel erroneously concluded that Coulter's Claims of Fraud in Inducement in 2013 are barred, following the Panel erroneously determining that Coulter's 2007 and 2013 Fraud in Inducement Claims are based on the utterances by ADT's employees either at the time that Coulter signed the Written Contract or later when Coulter discovered that her system would not respond to Coulter's attempts at remote contact – rather than the promises made by ADT in the Parties' Written Contract :

> "The district court construed Plaintiff's fraud claim as two separate claims : (1) a fraudulent inducement claim based on *ADT's alleged representations in 2007 that plaintiff's alarm system would be checked daily* ('2007 fraud claim'); and (2) a claim based on ADT's *alleged*

> *representations in 2013 that Plaintiff's system was functioning properly* when it in fact was unable to communicate with ADT's central monitoring system due to a loose wire ('2013 fraud claim').
>
> ...
>
> We reject [Coulter's] contention that the ADT Contract is voidable on grounds that [Coulter] was fraudulently induced to enter the ADT Contract. Because the ADT Contract contained both (1) an integration clause and (2) an unambiguous description of services provided by ADT under the contract ... " (emphasis added) (decision of July 31, 2018, pages 3 and 8)

2.) However, as Coulter's Motion to Amend the Findings pointed out, the Amended Complaint when read along with the Contract, cite allegations and facts which prove that this is not a reasonable conclusion by either the District Court or the Panel.

a.) As explained in both the allegations in Coulter's Amended Complaint, and the Motion to Amend the Findings, **Coulter's Claims of Fraud in Inducement are based exclusively upon ADT's intentional omissions which were obviously in violation of the terms of the Parties' Written Contract which required ADT to "monitor" the health of the entire System at least once a month :**

> "Basic ***Monthly Service***, Burglary with Extended Limited Warranty (residential Customers Only) Service Includes : ***Customer Monitoring Center Signal Receiving and Notification Service*** for Burglary, Manual

Fire and Manual Police Emergency along with ***Extended Limited Warranty ...***" (emphasis added) (Doc, 41, page one of the contract)

" 5.) Because it is completely inconceivable that no one within ADT ever noticed that **none** of their customers, which number more than 8 million, **ever** failed the 30- day "test", it seems readily apparent that the promised testing and subsequent notification was never intended to occur, at least not in any meaningful manner!" (Motion to Amend the Findings, page 4)

The Contract clearly states that the fees for Monitoring, when purchased in conjunction with the Extended Limited Warranty, cover "Customer Monitoring Center Receiving and Notification Service for ... Extended Limited Warranty". Although it appears patently obvious that the monitoring is intended to be extended to monitoring the "health" of each and every one of the components of the system as well as "alarm events", evidence of the Parties behaviors during the Initial Term of the Contract form the basis for any court's determination for the Parties obligations under their subsequent Implied Contract (which was in effect for the final 3 years of the Parties' (6 year) business relationship). Indeed, evidence from the actions by ADT (which form the basis of the Implied Contract) proves that ADT had indeed, on a regular "monthly" basis, ascertained the "health" of not merely the individual components of the System, but also "investigated" the ability of the System to communicate with ADT's Customer Monitoring Center.

It is helpful to discuss how the monitoring of the "health" of the System occurs – in order to

consider how ADT's planned and intentional violation of the terms of the Written Contract occurred. The remote components of the System, are "monitored" by the notifications sent by Coulter's base unit to ADT. Clearly though, it would be unreasonable for anyone to rely on the Base Unit to report all of its own "issues" – so the Base Unit is programmed to "check-in", monthly, on a set schedule, in order to assure that the Security System as a whole is "healthy". At the time of each of these pre-scheduled check-ins, ADT was responsible, as part of its Monthly Services "for ... Extended Limited Warranty", to act on this information (notifying Coulter and taking corrective actions when necessary). Exhibit B to Coulter's Motion to Amend the Findings shows ADT's pattern of notifications with respect to the "health" of the remote components of the System (i.e. low battery, which Coulter frequently informed ADT would not be immediately corrected and the system notifications should be silenced for a period of time) as well as ADT's log of the monthly "check-ins" (page 51 of 56) :

> "ADT MMM Archive History Report 3/29/2017 10:54 am
>
> COULTER, JEAN
>
> ...
>
> Event History Request (1/1/2008 – 3/29/2017) .
>
> Event Date Zone ID ... Description ...
>
> ...
>
> 8/26/2012 11:35:11PM E602 ... IN-TIMER TEST
>
> 9/25/2012 11:34:57PM E602 ... IN-TIMER TEST
>
> 10/25/2012 11:35:07PM E602 ... IN-TIMER TEST

11/24/2012 11:35:04PM E602 ... IN-TIMER TEST
12/24/2012 10:34:59PM E602 ... IN-TIMER TEST
1/23/2013 10:35:00PM E602 ... IN-TIMER TEST
2/22/2013 10:34:59PM E602 ... IN-TIMER TEST
5/1/2013 1:46:50PM 49537 ... OA-Reset Timer Test
5/1/2013 2:00:28PM 49537 ... OA-Reset Timer Test
5/1/2013 2:01:29PM 49537 ... OA-Reset Timer Test
5/1/2013 2:30:01PM 49537 ... FT-TMR TST NOT REC'D

It is noteworthy that ADT's monitoring system was "aware" of the facts (as there is no log entry between February 22 and May 1) which <u>should</u> have resulted in notification to Coulter – but nothing was done to address these problems until after numerous calls from Coulter – *and possibly even calls to ADT from Pennsylvania Attorney General's Office* (after Coulter's contact with the Consumer Affairs Division of the PA Atty. General's office) as well!

b.) Coulter's Complaint, rather than attempting to explain a separate "basis" for the Claims of Fraud in Inducement, merely describes the set of facts which support Coulter's conclusion (as required by Case Law) showing that ADT had chosen (likely before Coulter first contacted ADT) to ignore the responsibilities imposed by the Contract - and instead ADT had apparently, previously, decided

to conceal this necessary information from all of its Customers :

> "... Coulter was eventually informed that the last scheduled check-in had been on February 22, and the next scheduled check-in by her system was not scheduled to occur until March 24, 2013. ..." (Amended Complaint page 5)
> " ... Coulter hoped that the problem would be noticed and identified during the check-in on March 24, and perhaps her trip would not be necessary. ...
> ... 10.) Coulter noted that March 24 had come and gone without Coulter receiving a call from ADT about the alarm system, and ***Coulter considered this to be evidence of the blatant failure by ADT to even attempt to "monitor" the system on March 24 ...***" (emphasis added) (Amended Complaint page 6)

3.) Coulter even described the lengths she was required to go to in her attempt at convincing ADT to comply with the terms of their Written Contract, and ADT's consistent refusal to do so, (for Coulter along with information concerning other likely victims) – "allegations" which would prove that ADT had decided long ago (likely before Coulter ever even considered purchasing an Alarm System) to conceal information of total failures of communication by any of their Alarm Systems :

> " ... (b.) Coulter repeatedly threatened to take the issue to the Attorney General's Office (and perhaps the Attorney General's Consumer Protection Division contacting ADT), that one ADT [employee] finally began

"research" why Coulter (and ostensibly ADT) had not been told that Coulter's system was not reporting in every month. ...

Thus the fraud continued ...

13.) It is patently obvious that ADT had knowledge of the fact that Coulter's (and other customer's alarm systems) were not working, as it is **inconceivable that no one in ADT could possibly believe that <u>none of their seven (7) million customers ever had a telephone connection which was not working on their scheduled date for check-in</u>.**

...

It is believed that ADT made a conscious decision to conceal failure to "check-in" in order to assure that monthly payments continue to arrive, and utilize any opportunity that a failure results in contact from the defrauded upon customer, to be turned into an opportunity for a sale of a new system ... " (emphasis in original) (Amended Complaint beginning on page 7)

So, the set of facts related to utterances by ADT employees, is only intended to provide information which supports the Complaint's allegations that ADT had consciously chosen to promise monthly monitoring, when this was never ADT's intention – and ADT's employees had no qualms about making additional statements which they knew to be false – so long as they believed that their statements would be beneficial to ADT's "bottom line". Thus, the facts related to Coulter's conversations with ADT's employees is not intended

to provide a "basis" for the Claim of Fraud of Inducement – as **the "basis" for the Claim of Fraud in Inducement is instead based exclusively upon ADT's promises, as stated in the Written Contract, to monitor the "health" of Coulter's System, at least once every month ("Basic Monthly Service") – along with ADT's clear decision to conceal such information** any time that the information about a System's failure might serve as a Marketing Tool instead :

> "Basic ***Monthly Service***, Burglary with Extended Limited Warranty (residential Customers Only)
> Service Includes : ***Customer Monitoring Center Signal Receiving and Notification Service for*** Burglary, Manual Fire and Manual Police Emergency along with ***Extended Limited Warranty ...***" (emphasis added) (Doc, 41, page one of the contract)

Conclusion

Because of ADT's obvious Fraud of Inducement, the Contractual Period of Limitations, is voidable. And Coulter would have elected to void the entire contract, had it not already have expired and an Implied Contract replaced it.

B. Implied Contract

Despite the fact that the Contract "claims" to be automatically renewed each month (beginning with month 37), the Implied Contract concerned only the portions of the Parties' Written Contract which are directly related to the Monitoring Services and Payments for those services :

> "TERM OF CONTRACT : The initial term of this contract is for three (3) years. Our alarm

> monitoring and notification services will begin when the equipment is installed and is operational, and when the necessary communications connection is completed. This contract will automatically renew for successive thirty (30) day terms unless terminated by either parties' written notice at least thirty days before the end of the then-current term. If terminated, this contract ends on the last day of the then-current term."
>
> ...
>
> "11. INSTALLATION. We will install the equipment listed on the schedule of protection attached ...
>
> 32. ENTIRE CONTRACT. THIS CONTRACT AND THE ACCOMPANYING SCHEDULE OF PROTECTION AND EMERGENCY INFORMATION SCHEDULE CONSTITUTE OUR ENTIRE CONTRACT ..." (emphasis added)

The signature page of the contract also mentions the "schedule of protection", however, Coulter is unable to attach a copy of that schedule as her copy was stolen at the time of the break-in which occurred in July 2013 – and ADT has refused to provide any further information. However, the signature page (which is attached) shows that a list of components selling for $740, as well as the basic package (marked down to $99 from $104.94) was included as part of the contract. No offer to install new components (monthly) was ever made by ADT, nor requested by Coulter – even though the Installation is also, supposedly, going to occur each month after month 36, pursuant to paragraph 11. This

is simply because each Party wished to act in compliance of their Implied Contract related exclusively to the monitoring portion of the Written Contract. It is clearly unfair to attribute to the Implied Contract elements of the Written Contract which are beyond the scope of both Parties' actions – and conflicts with Case Law in all of the states for whom Choice of Law would be even possible.

This issue is more thoroughly argued in Coulter's Brief :

> "significantly less than the entire Contract was even capable of being "renewed" – so instead a new Implied Contract was agreed to by the Parties each month." (pages 22-33)

and Motion to Amend the Findings (page 4 and 5).

Conclusion

It is patently obvious from ADT's actions, that ADT never intended to actually "renew" the entire contract each month after the initial contract expired – any more than ADT intended to comply with the notification requirements when it learned of complete system failures such as those experienced by Coulter.

Conclusion

The decision by the District Court must be overturned, both in the name of Justice, as well as for the purpose of Public Safety for the millions of Americans who pay literally billions of dollars to ADT each year. It is readily apparent that ADT's actions in this case (refusing to fully comply with Discovery), as well as the facts presented in the Complaints, confirm that ADT's only concern is profit – even when the safety of millions of Americans are placed in jeopardy by ADT's

marketing decision to conceal the complete failure of any of their Security Systems!

Coulter should not be required to comply with a minor element of the Initial Contract (Limitations Period), when so many major portions of the Contract were never renewed – especially as Case Law from Pennsylvania (where the Contract would have "renewed") requires that the Implied Contract be limited to those obligations evidenced by the Parties actions.

Thus, when so many of the sections of the original contract have been consistently disregarded by both of the Parties (and those Parties were acting instead on their reliance on the portions of the Written Contract which concerned only the monthly monitoring and Extended Limited Warranty) – it is patently unfair to hold Coulter to compliance with all elements of the Written Contract, while ADT has been required to only comply with the terms of an Implied Contract with a much smaller scope of obligations.

Respectfully Submitted,
Jean Coulter, Appellant

AUTHORIZED DEALER ADT	The ADT Authorized Dealer Program is an approved Program of ADT Security Services, Inc. ...
	_ Commercial X Residential

ALARM SERVICES CONTRACT

N029042579
Monitoring Account Number

...

Defender Security
1739 E. Carson, #349
Pittsburgh, PA 15203

THIS CONTRACT is made and entered into this date, *07/25/2007*, by and between
Customer Name *COULTER JEAN*
Located at *604 N McKean St*
Butler PA 160014430
Monitored Location Telephone *7242871305*
(the "Monitored Location"), and we, the Dealer set forth above, whose corporate offices are located at the Address set forth above. We agree to sell and install the security alarm system (the "Equipment") at the Monitored Location and to provide Monitoring Services and Limited and Extended Limited Warranty Service, if applicable (collectively, the "Services"), as indicated below and as more fully described herein, to you, and you agree to pay us the amounts summarized below, upon and subject to the terms and conditions of this Contract.

...

"Basic Monthly Service, Burglary with Extended Limited Warranty (Residential Customer Only) Service Includes : Customer Monitoring Center Signal Receiving and Notification Service for Burglary, Manual Fire, and Manual Police Emergency along with Extended Limited Warranty ..."

Optional Electronic Monitoring Services :

		Monthly Rate
X	Remote Access Keyfob	$ *2.00*
_	Fire Alarm/Smoke Detection	$
_	Carbon Monoxide	$

...

Total Monthly Service Charge $ *34.99*

BILLING FREQUENCY FOR ALL CHARGES :		AUTO PAYMENT INFO:	
X	Monthly	X	Checking Account
_	Quarterly	_	Savings Account
_	Semi-Annually	_	Debit/Credit Card
_	Annually	_	Other
	x *JC*		x *JC*

Affinity Name *DM*

See Attached Schedule of Protection, If Applicable, for Terms and Conditions of Purchase

$ 99
740 $ *104.94*
Purchase Amount Total
(Proof of payment required)

TERM OF CONTRACT: The initial term of this Contract is for three (3) years. Our alarm monitoring and notification services will begin when the equipment is installed and operational, and when the necessary communications connection is completed. This contract will automatically renew for successive thirty (30) day terms unless terminated by either party's written notice at least thirty (30) days before the end of the then-current term. If terminated, this contract ends on the last day of the then-current term.

Notice to Consumers – This is to advise you that Authorized Dealer is an Independent Authorized Dealer of ADT Security Services, Inc. The company with which you are now contracting for the installation and/or monitoring of your electronic security system is not an employee or agent of ADT Services, Inc. Upon finalization of your contract, it will be submitted to ADT Security Services, Inc. for approval and purchase of the monitoring of your system. You are hereby advised that ADT Security Services, Inc. reserves the right to reject or otherwise not purchase this contract. If this contract is tendered and rejected or otherwise not purchased, ADT Security Services, Inc. will promptly notify you of that decision so that you may make other arrangements if you so chose.

THE ENTIRE CONTRACT BETWEEN THE PARTIES CONSISTS OF THIS CONTRACT AND ALL APPLICABLE ATTACHMENTS WHICH TOGETHER SUPERCEDE ANY AND ALL OTHER AGREEMENTS, UNDERSTANDINGS, ADVERTISEMENTS, OR REPRESENTATIONS IN CONNECTION WITH THE SERVICES TO BE PROVIDED HEREIN.

YOU ADMIT THAT YOU HAVE READ THIS PAGE IN ADDITION TO THE ATTACHMENT WHICH CONTAINS IMPORTANT TERMS AND CONDITIONS FOR THIS CONTRACT BEFORE SIGNING. YOU STATE THAT YOU UNDERSTAND ALL THE TERMS AND CONDITIONS OF THIS CONTRACT, INCLUDING BUT NOT LIMITED TO, PARAGRAPHS 5, 6, 7, 8, 9, and 10 YOU ARE AWARE OF THE FOLLOWING :

NO ALARM SYSTEM CAN GUARANTEE PREVENTION OF LOSS; HUMAN ERROR IS ALWAYS POSSIBLE; ALARM SIGNALS MAY NOT BE RECEIVED IF THE TELEPHONE LINE OR OTHER ALARM TRANSMISSION SYSTEM IS CUT, INTERFERED WITH, OR OTHERWISE DAMAGED. A SECOND SHEET ACCOMPANIES THIS SHEET WITH ADDITIONAL TERMS AND CONDITIONS.

This Contract shall not be binding upon Dealer until signed by an Authorized Representative of Dealer. Dealer has no responsibility for services until all permits required by law are received.

CANCELLATION RIGHT
(Residential Customer only)

YOU, THE CUSTOMER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT. Customer acknowledges being verbally informed of Customer's right to cancel at the time of this Contract and receipt of this Notice. INITIAL *JC*

Accepted By :	Accepted By :
K. Garland	*Stephanie Taylor*
Sales Representative	Authorized Representative
Signature	of Dealer

Accepted and Copy Received by :

COULTER	*JEAN*
x Jean Coulter	*07252007*

3. INCREASES IN CHARGES. We have the right to increase the annual service charge at any time after the first year. If you give us written objection to the increase within thirty (30) days of your receipt of the increase, and if we do not waive ...

11. INSTALLATION. We will install the equipment listed on the Schedule of Protection attached to this Contract in a workmanlike manner under the following conditions ...

12. LIMITED WARRANTY. During the first three (3) months after installation, we will repair, or at our option, replace any defective parts of the system, including wiring and batteries, and will make any needed mechanical adjustments, all at no charge to you. We will use new or functionally ...

13. EXTENDED LIMITED WARRANTY (Quality Service Plan). If you purchased our Extended Limited Warranty, we will repair or, at our option, replace any part of the System requiring such repair or replacement due to ordinary wear and tear or malfunction of the System not due to external causes. We will use new or functionally operable parts for replacements. The Extended Limited Warranty and the billing for it will commence as of the date the System is installed, operational, and the necessary communications connection is completed and will continue for the term of this contract, except you will after the three (3) month Limited Warranty Period, be charged a $25 trip charge for each service call during the Extended Limited Warranty period. The Extended Limited Warranty will automatically renew for successive thirty (30) day terms at our then-current Extended Limited Warranty rate unless terminated by either parties written notice at least 30 days before the end of the then-current term. If

you purchase the Extended Limited Warranty after the initial system installation, your system must be in good working condition at the time of the Extended Limited Warranty purchase. ...
18. FAMILIARIZATION PERIOD. UNLESS ... YOU AGREE THAT DURING A SEVEN (7) DAY FAMILIARIZATION PERIOD FOLLOWING COMPLETION OF THE INSTALLATION (AND DURING ANY APPLICABLE EXTENSIONS) WE HAVE NO OBLIGATION TO, AND WILL NOT, RESPOND TO ANY ALARM SIGNAL FROM YOUR PREMISES THAT IS RECEIVED AT OUR ALARM MONITORING CENTER.