

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

CASE NO. 07-80950-CIV-MIDDLEBROOKS/JOHNSON

SHARON FRIED, INTERNATIONAL
TELECOMMUNICATIONS GROUP, JOHN
ANDREW LAGATTUTA, and FREDDIE
DAVIS, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

ADT Security Services, Inc.,

Defendant.

CONSOLIDATED AMENDED COMPLAINT

Plaintiffs Sharon Fried, International Telecommunications Group, LLC, John Andrew LaGattuta, and Freddie Davis (hereinafter “Plaintiffs”), on behalf of themselves and all others similarly situated nationwide, bring this Class Action Complaint against ADT Security Services, Inc. (hereinafter “Defendant” or “ADT”), and allege as follows:

BACKGROUND AND SUMMARY OF CLAIMS

1. This is a class action against ADT Security Services, Inc. (hereinafter “ADT”), pursuant to Federal Rule of Civil Procedure 23, for violation of Florida’s Deceptive and Unfair Trade Practices Act, Fla. Stat. 501.201, et seq., and unjust enrichment.

2. ADT is a burglar and fire alarm system company. ADT sells, installs, and provides monitoring services for customers throughout the United States.

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3. ADT alarm systems operate by sending a signal to a central monitoring facility through the customer's telephone line in the event that a burglar or fire alarm is set off. In the event of a burglary or fire, staff at the central monitoring facility contact the local police or fire department which then respond to the customer's facility.

4. Historically, ADT's burglar and fire notifications to the monitoring center occurred by land-line telephone which suffered from the risk that burglars could simply cut the customer's telephone wires before breaking into the customer's premises, or fires destroying telephone lines thereby preventing the alarm signal from transmitting to the central monitoring facility. To address these flaws, upon information and belief, ADT rolled out a cellular service designed to signal the monitor center via cellular telephone signals so as to prevent a would-be burglar from dismantling the ADT alarm system simply by cutting the land-line telephone. Customers who purchase the cellular device from ADT are given the option of using the cellular signals either as the primary or secondary means for transmitting the alarm to the monitoring facility.

5. From 2000 until 2006, the cellular-based alarm system equipment that ADT sold customers relied exclusively on *analog*, as opposed to *digital*, cellular signals.¹ ADT maintains that its security systems provide life safety services including protection from intrusion, fire, critical environment conditions (carbon monoxide, flood and temperature extremes) and health monitoring.²

6. In August 2002, the Federal Communications Commission ("FCC") ruled that cellular telephone companies need not continue to carry analog cellular signals. The FCC

¹ Digital cellular service is a newer technology that allows for less distortion in transmission.

² See Petition for Rule Making, November 30, 2006 at 2-3.

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allowed for a “sunset” period to allow companies whose products were reliant on analog signals to transition to digital equipment. Thus, ADT’s analog-based equipment were certain to stop working on February 18, 2008.

7. ADT knew in August 2002 that its analog-based equipment would stop working on February 18 2008, as evidenced by the fact that in August 2002 ADT issued a request for a manufacturer proposal to provide digital replacement radios for ADT’s analog customers. Despite its knowledge that its equipment would stop working in 2008, ADT continued to sell analog equipment to customers without notifying those customers that its equipment would cease to function after February 18, 2008. ADT intentionally concealed from consumers the material fact that it knew that its equipment would stop working on February 18, 2008.

8. The FCC directly found that:

[m]embers of the alarm industry have long been aware of the approaching analog sunset date, yet continued to install analog radio equipment as recently as 2006. The alarm industry cannot now shift the responsibility and expense for its business decisions to the cellular industry and wireless consumers through regulatory arbitrage.³

9. After selling consumers equipment that it knew would stop working, in 2007 ADT belatedly began warning consumers that their cellular systems were going to cease to work in February 2008. It urged its customers to pay now to upgrade to working digital systems, at a cost of several hundred dollars. ADT warned customers that their systems would begin “beeping” due to lost contact with ADT’s monitoring centers in February 2008. ADT claimed that customers should not wait until their systems began “beeping” to purchase the upgrade, because ADT may not be able to quickly accommodate the sudden surge in demands for upgrades once the systems began beeping in February 2008.

³ FCC Memorandum Opinion and Order, RM No. 11355 (6/15/07), Par. 31.

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10. Because of ADT's intentional concealment of the material fact that the systems it sold to consumer would stop working in 2008, hundreds of thousands of consumers across the country either have paid to purchase new digital equipment or they are left with a cellular security systems that will not work, and will begin "beeping," in February 2008.

PARTIES

11. Plaintiff Sharon Fried is an adult resident of Boca Raton, Florida.

12. Plaintiff International Telecommunications Group is a Limited Liability Company and is a retailer of pre-paid telephone cards, with its principal place of business located at 279 Smith Street, Perth Amboy, New Jersey 08861.

13. Plaintiff John Andrew LaGattuta is an adult resident of Cleveland, Ohio.

14. Plaintiff Freddie Davis is an adult resident of Lenoir, North Carolina.

15. Defendant ADT Security ("ADT") is a Delaware corporation with its principal place of business located at 1 Town Center Road, Boca Raton, Florida.

JURISDICTION AND VENUE

16. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act, 28 U.S.C. Section 1332(d), because the Plaintiffs are, *inter alia*, citizens of New Jersey, Ohio and North Carolina and the Defendant is a citizen of Florida and because there are 100 or more class members and the aggregate amount in controversy exceeds \$5,000,000.

17. Venue is properly set in the United States District Court for the Southern District of Florida because Defendant's principal place of business is found within this District and a substantial part of the events giving rise to the claims at issue in this Complaint arose in this District. In addition, many of the acts and transactions giving rise to the violations of law alleged herein occurred within and emanated from ADT's offices in this district. For example,

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the affirmative decision to omit and conceal the fact that its cellular backup system would prematurely stop working in February 2008 was discussed, determined, and implemented in Florida, and payments were made to ADT in Florida.

CHOICE OF LAW

18. Florida law applies to the claims of Plaintiffs and all Class members because Florida has the most significant relationship to the occurrence and the parties. Defendant's principal place of business and its national headquarters is in Florida. As such, Defendant's U.S. business operations are controlled and carried out from Palm Beach County, Florida. For example, Defendant's senior management is located in Florida where they made the decision to omit and conceal the fact that its cellular backup system would prematurely stop working in February 2008. The revenue stream generated from this decision also flowed to Florida where Plaintiffs made their payments to ADT. Further, the content of any and all communications to consumers and marketing material was generated, formulated in, and disseminated from Florida. Finally, ADT received the benefit from its unfair and deceptive trade practice in Florida and was similarly unjustly enriched in Florida.

19. Florida is the place where the conduct causing the injury occurred, including Defendant's conduct in formulating its policies of concealing material facts from consumers, which on information and belief took place in Florida. The relationships between Plaintiffs and ADT are centered in Florida.

20. For the same reasons, Florida has significant contacts and/or a significant aggregation of contacts, creating state interests, with all parties and the occurrences or transactions alleged here. Florida has the greatest interest in ensuring that corporations based in this State and developing their policies in Florida comply with its laws. Florida has a substantial

interest in preventing the deceptive and unfair trade practices that were conceived, executed and profited from in Florida.

21. In the alternative, the Court may apply the consumer protection laws of the 50 states and the District of Columbia.

STATUTE OF LIMITATIONS

22. Florida's Deceptive and Unfair Trade Practices Act carries a four year statute of limitations. This cause of action accrued in 2007 when ADT informed the members of the Class that their analog-based ADT security systems would stop working. Because Defendant concealed the fact that the security systems would cease to work in 2008, Plaintiffs and members of the Class did not discover and could not have discovered this fact through reasonable and diligent investigation until 2007.

23. The statute of limitations has been tolled by Defendant's knowing and active concealment of the fact that its analog-based security systems would cease to work in 2008. Defendant kept Plaintiffs and members of the Class ignorant of vital information essential to the pursuit of their claim, without any fault or lack of diligence on the part of Plaintiffs or the Class. Plaintiffs and the Class could not reasonably have discovered the fact that their security systems were scheduled to stop working in 2008.

24. Plaintiffs' claims arise out of ADT's fraudulent concealment of the fact that its cellular backup system would stop working in February 2008. At all relevant times, including specifically at the time Plaintiffs purchased Plaintiffs' security system in 2004, ADT knew that the security backup system it was selling would stop working. ADT was under a duty to disclose this material fact based upon its actual knowledge of such fact. ADT never disclosed this fact to Plaintiffs or any other purchaser.

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25. ADT concealed the fact that its cellular security systems would stop working in February 2008. ADT concealed this fact from Plaintiffs, the Class, and everyone in the chain of distribution. Plaintiffs are unaware of, and therefore unable to identify, the true names and identities of those individuals at ADT responsible for such decisions.

26. ADT knew and concealed the facts that (a) its cellular equipment relied exclusively on analog cellular signals to function; (b) the FCC had ordered that analog cellular signals no longer were required to be available after an approximately five year sunset period; and (c) the cellular equipment it sold to Plaintiffs and the Class would therefore stop working after approximately five years.

27. ADT concealed this material information at all times, beginning on August 8, 2002, continuing through the time of sale of its equipment to Plaintiffs in 2004, through the time it ceased selling its analog-only equipment to Class members in approximately 2006. In 2007, Defendant announced to its customers with analog-based systems that those systems would no longer operate after February 2008. Defendant has advised consumers they must pay up to \$299 to upgrade their own systems to accept digital signals.

28. ADT concealed this material information from every communication it had with Plaintiff, the Class, and everyone in the chain of distribution. It failed to disclose this information in its brochures, its contracts with customers, and its certificates of installation.

29. ADT concealed this material information by not disclosing it to Plaintiffs, the Class, or anyone in the chain of distribution at any time or place or in any manner prior to discontinuing its sale of analog equipment, even though it knew this information and knew it would be important to a reasonable purchaser.

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30. ADT concealed this material information for the purpose of inducing Plaintiffs and the Class members to purchase the analog-only equipment at full price, and to gain the profit of charging Plaintiffs and the Class members to “upgrade” to working equipment in 2007 and 2008.

31. Defendant was and is under a continuous duty to disclose to the Plaintiffs and the Class the true character, quality, and nature of its security systems. Defendant knowingly, affirmatively, and actively concealed the true character, quality, and nature of its security systems until 2007. Plaintiffs reasonably relied upon Defendant’s knowing, affirmative, and/or active concealment. Based on the foregoing, Defendant is estopped from relying on any statutes of limitation in defense of this action.

CLASS ALLEGATIONS

32. The Plaintiff Class is defined and proposed as follows:

All individuals and entities who purchased or are a subsequent owner of an ADT analog security system that was originally purchased on or after August 8, 2002.

Collectively, all these persons will be referred to as “Plaintiffs” or “Plaintiff Class.” Excluded from the Plaintiff Class are:

- A. Defendant and any entities in which Defendant has a controlling interest;
- B. Any entities in which Defendant’s officers, directors, or employees are employed and any of the legal representatives, heirs, successors or assigns of Defendant;
- C. The Judge to whom this case is assigned and any member of the Judge’s immediate family;
- D. Claims for personal injury, wrongful death and/or emotional distress; and,

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E. All persons or entities that properly execute and timely file a request for exclusion from the Class.

33. Plaintiffs reserve the right to modify the Class definitions after discovery and at any time up to and including trial.

34. This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of the Federal Rules of Civil Procedure Rule 23(a)(1-4) and (b)(1).

35. The Class is so numerous that the individual joinder of all its members, in this or any action, is impracticable. The exact number or identification of Class members is presently unknown to Plaintiffs, but it is believed that Class members number at least in the thousands. The identity of Class members is ascertainable. Class members may be informed of the pendency of this Class action by a combination of direct mail and public notice, or other means. The Alarm Industry Communications Committee (hereinafter "AICC"), of which ADT is a member, has stated that as of January 2007, there were approximately one million analog-based security systems deployed in the United States, 151,700 of which are used as a primary link to alarm monitoring stations and the remaining 848,300 are used as a secondary (or backup) communications path to alarm monitoring stations.⁴

36. Common questions of fact and law exist as to all members of the Class, which predominate over questions affecting only individual members of the Class. These include, but are not limited to, the following:

A. Whether Defendant engaged in a practice that was likely to mislead consumers, which is prohibited by FDUTPA;

⁴ Id. at ¶33.

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- B. Whether Defendant engaged in a practice that offended established public policy, and that was immoral, unethical, oppressive, or unscrupulous, or substantially injurious to consumers, which is also prohibited by FDUTPA;
- C. Whether the ADT analog-based security equipment is a consumer product;
- D. Whether ADT's analog-based equipment will function after February 18, 2008;
- E. Whether ADT concealed and failed to disclose that its analog equipment will cease to function after February 18, 2008; and
- F. Whether ADT has been unjustly enriched by accepting payment for equipment that it knew would prematurely cease to function.

37. Plaintiffs' claims are typical of claims of the members of the Plaintiff Class, all of whom own ADT security systems relying in whole or in part on analog cellular signals. Plaintiffs are asserting the same rights, making the same claims, and seeking the same relief for themselves and for all other class members.

38. Plaintiffs are adequate representatives of the Plaintiff Class because Plaintiffs are members of the Plaintiff Class and Plaintiffs' interests do not conflict with the interests of the members of the Class Plaintiff seeks to represent. Plaintiffs are represented by experienced and able counsel who have litigated numerous class actions, and Plaintiffs' counsel intends to prosecute this action vigorously for the benefit of the entire Plaintiff Class. Plaintiffs and Plaintiffs' counsel can fairly and adequately protect the interests of the members of the Plaintiff Class.

39. The class action is the best available method for the efficient adjudication of this litigation because individual litigation of the Plaintiff Class claims would be impracticable and individual litigation would be unduly burdensome to the courts. Further, individual litigation has the potential to result in inconsistent or contradictory judgments. A class action in this case presents fewer management problems and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

FACTUAL ALLEGATIONS

ADT's Analog Based Security System and its Material Limitation

40. According to ADT, the essence of its business “is to help protect people from the unpredictable. ADT is trusted to help safeguard the things its customers value most – their families, employees, communities, homes, businesses and assets.”⁵

41. ADT admits that “[p]ublic safety is the cornerstone of the alarm industry. With customers across the residential, commercial and government spectrum, the industry offers life safety services including intrusion, fire, critical environment condition (carbon monoxide, flood, and temperature extremes) and health monitoring.”⁶

42. The analog-based cellular equipment sold to Plaintiffs and the Class allows the ADT security system to operate by way of wireless analog cellular service provided by wireless network companies when signaling the ADT central monitoring station of various dangers.

43. Defendant has recommended that the analog-based cellular equipment be utilized as either the primary or backup means of transmitting signals to the central monitoring station, so that intruders cannot defeat an alarm signal by simply cutting the telephone line.⁷

⁵Ex Parte Comments of ADT Security Services, Inc., Pg. 2, Oct. 4. 2006.

⁶Id. at ii.

⁷See id. at 3.

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44. The equipment is also intended to allow fire alarms to go through even if the telephone connection has been damaged by fire.⁸ Thus, in the very words of ADT, the analog-based cellular equipment plays “a key role in helping protect lives and property.”⁹

45. On May 17, 2001, the FCC proposed eliminating the requirement that wireless phone carriers operate analog-based networks, and allowing carriers to provide only digital-based networks.

46. Defendant was aware of the FCC’s proposed rule change and was aware that such a rule change would result in wireless carriers ceasing to provide analog networks.

47. On August 8, 2002, the FCC announced that it had decided to eliminate the requirement that carriers provide an analog network after a five-year transition period.

48. In August 2002, ADT issued a request for a manufacturer proposal to provide digital replacement radios for ADT’s analog customers, based on its knowledge that its current equipment would stop working in 2008. Thus, ADT was fully aware in August 2002 that its equipment would need to be replaced in less than six years.

49. ADT intentionally concealed from consumers the material fact that its equipment would stop working in 2008.

50. From 2002 through approximately 2006, Defendant sold security systems that relied in whole or in part on analog cellular signals in order to function. Reasonable consumers did not expect their security systems to cease functioning prematurely. Despite its knowledge that its security systems would not work properly after February 2008, Defendant failed to advise consumers at the time of purchase that the systems they were purchasing would stop working.

⁸ See id.

⁹ Id. at ii.

51. On October 4, 2006, ADT submitted Ex Parte Comments to the FCC whereby ADT admitted their recognition that if wireless analog cellular service were to cease on February 18, 2008, “the impact on public safety could be severe, because arson, accidental fires, carbon monoxide leaks and burglary can result in the death of innocent persons.”¹⁰

52. ADT has also admitted that it misled Plaintiffs and the Class as well as recognized that the failure of its equipment to operate as promised will result in “grave” danger to Plaintiffs and the Class:

[i]f the analog alarm radios stop working before they can be replaced, many fires and burglaries will simply go unreported in real time, thus increasing the odds that innocent persons will be seriously injured or killed, and reducing the odds that the malefactors will be captured quickly and prevented from engaging in other similar crimes at other locations. In the case of consumers using their alarm radios to relay medical alert signals, the threat to life and health from failed radio operations is grave.¹¹

53. Despite ADT’s knowledge of the severe impact on public safety that will occur when the analog-based cellular equipment becomes inoperable, knowledge which it had since 2002, ADT continued to market and sell security systems consisting of the analog-based cellular equipment without informing customers of this material fact, throughout the entire class period.

54. It was not until recently that ADT publicly acknowledged that “analog systems will be going out of service” and “must be replaced” by February 18 2008. See ADT Website. In fact, ADT warns that consumers may be “one of many thousands of people with a beeping system and without contact to ADT’s monitoring centers” if they do not contact ADT and pay to have their systems upgraded. Id.

¹⁰ See Ex Parte Comments of ADT Security Services, Inc., Pg. 12, Oct. 4. 2006.

¹¹ Id. at 13.

55. ADT committed this deceptive and fraudulent conduct knowing that its consumers trusted and depended on ADT to provide a security system that would protect their loved ones and assets from harm and damage.

56. The FCC has addressed ADT's Comments, as well as request for an extension of the February 18, 2008 analog sunset date by stating that:

the alarm industry had ample notice and opportunity to prepare for the eventual sunset of the analog service requirement, yet made insubstantial efforts to address subscribers' needs. The industry's claim that it does not have sufficient equipment or personnel to timely address the needs of its existing subscribers is unfounded.¹² (Emphasis added).

57. The FCC also stated that:

[m]embers of the alarm industry have long been aware of the approaching analog sunset date, yet continued to install analog radio equipment as recently as 2006. The alarm industry cannot now shift the responsibility and expense for its business decisions to the cellular industry and wireless consumers through regulatory arbitrage.¹³ (Emphasis added)

58. ADT is now requiring consumers to pay a fee ranging from \$179 to \$299 to upgrade their equipment from analog to digital.

FIRST CAUSE OF ACTION
(Violation of Florida's Deceptive and Unfair Trade Practices
Fla. Sta. Sections 501.201 *et seq.*)

59. Plaintiffs incorporates by reference Paragraphs 1 through 58 above.

60. This is a claim for violation of Florida's Deceptive and Unfair Trade Practices Act (hereinafter "FDUTPA"), Fla. Stat. §§ 501.201, *et. seq.*

¹² FCC Memorandum Opinion and Order, ¶9 dated May 25, 2007.

¹³ *Id.* at ¶35.

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61. FDUTPA provides that unfair methods of competition, unconscionable acts and practices, and unfair or deceptive acts or practices in the conduct “of any trade or commerce” are unlawful. Fla. Stat. § 501.204. Under FDUTPA, “trade or commerce” is defined to include any advertisement or solicitation relating to any “thing of value” Fla. Stat. § 501.203(8).

62. Plaintiffs and the Class Members are consumers as defined and construed under the FDUTPA, Fla. Stat. §§ 501.201-501.213.

63. ADT’s conduct as alleged herein occurred in the course of trade or commerce.

64. ADT’s marketing and sale of defective products, knowing they would fail years before its expected life span constitutes an unfair and/or deceptive trade practice.

65. ADT knew or should have known of the defect at all material times, but did not disclose the defect to consumers.

66. Even though ADT knew or should have known of the defective nature of the products, it continued to sell the products to consumers without properly disclosing or correcting the defect.

67. ADT’s sales practices were deceptive, misleading, and intended to increase its own profits to the detriment of consumers. ADT has profited from the uniform deceptive practices and marketing campaigns.

68. ADT knew that its decision to conceal the fact that ADT's analog based security systems would become obsolete in February 2008 was likely to mislead Plaintiffs and all consumers acting reasonably under the circumstances to the consumer's detriment.

69. Plaintiffs and the Class Members suffered actual damages as a result of ADT’s deceptive and unfair trade practices. Specifically, as a result of ADT’s deceptive and unfair

trade practices, Plaintiffs and the Class Members will suffer monetary losses, i.e. the loss of value of their security systems.

SECOND CAUSE OF ACTION
(Unjust Enrichment)

70. Plaintiffs incorporate by reference Paragraphs 1 through 58 above.

71. Plaintiffs conferred the benefits of payment on Defendant, who had knowledge of this payment.

72. Defendant voluntarily accepted and retained Plaintiffs' payments for equipment Defendant knew would prematurely cease to function.

73. Under the circumstances it would be inequitable for Defendant to retain the benefit of receiving payments from Plaintiffs.

PRAYER FOR RELIEF

74. Wherefore, Plaintiffs and the Class demand judgment against Defendant as follows:

(a) Actual and/or compensatory damages, and/or the recovery of civil penalties as provided by Fla. Stat. § 501.2075 and/or an award equal to the amount by which Defendant has been unjustly enriched.

(b) The costs of this proceeding and attorney's fees, as provided by Fla. Stat. § 501.2105;

(c) An order enjoining ADT from continuing its unfair and/or deceptive conduct;

(d) An order certifying this action to be a proper class action pursuant to Federal Rule of Civil Procedure 23, establishing an appropriate Class and any Subclasses the Court deems appropriate, and finding that Plaintiff is a proper representative of the Class;

(e) Any further compensatory, injunctive, equitable or declaratory relief including refunds as may be just and proper.

DEMAND FOR JURY TRIAL

75. Plaintiffs hereby demand a jury trial on all claims so triable in this action.

Dated: December 21, 2007

Respectfully Submitted,

s/ Lance A. Harke

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of December, 2007, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing documents is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic filing.

s/ Lance A. Harke

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