

D-1-GN-17-002306

Cause No. _____

IN THE MATTER OF:

| | | |
|-----------------------|---|------------------------|
| THE STATE OF TEXAS | § | IN THE DISTRICT COURT |
| | § | |
| | § | |
| and | § | TRAVIS COUNTY, TEXAS |
| | § | |
| VIVINT, INC. and | § | 353RD |
| SMART HOME PROS, INC. | § | ____ JUDICIAL DISTRICT |

ASSURANCE OF VOLUNTARY COMPLIANCE

This Assurance of Voluntary Compliance (“AVC”) is made and entered into by and between Texas Attorney General Ken Paxton acting in the name of the State of Texas (“State”), and Vivint, Inc. and Smart Home Pros, Inc. (collectively referred to herein as “Vivint”), pursuant to TEX. BUS. & COM. CODE § 17.58.

STIPULATIONS

1. Vivint, Inc. is located in Provo, Utah, and is registered as a Foreign For-Profit Corporation with the Texas Secretary of State.
2. Smart Home Pros, Inc., formerly Advanced Residential Marketing, Inc., is a wholly owned subsidiary of Vivint, Inc., located in Provo, Utah, and registered as a Foreign For-Profit Corporation with the Texas Secretary of State.
3. Vivint, Inc. and Smart Home Pros, Inc. have each done business in the State of Texas.
4. The Consumer Protection Division of the Office of the Attorney General of Texas is authorized to investigate alleged violations of the Texas Deceptive Trade Practices – Consumer Protection Act (“DTPA”), TEX. BUS. & COM. CODE §§ 17.41-.63 and to bring actions pursuant to DTPA § 17.47 for violations of DTPA § 17.46.

5. Venue in this cause is proper in Travis County, Texas, pursuant to TEX. BUS. & COM. CODE § 17.47(b).

6. The State and Vivint agree to and do not contest the entry of this AVC by this Court.

STATE'S ALLEGATIONS

7. Vivint is an alarm systems and home automation company in the business of selling, installing, servicing, and monitoring alarm systems and/or detection devices. A person acts as an “alarm systems company” for purposes of Chapter 1702 of the Occupations Code if the person sells, installs, services, monitors, or responds to an alarm system or detection device. A person must hold a license as a security services contractor to act as an “alarm systems company.”

8. To that end, Vivint employs individuals as “security salespersons” to sell its products and services “door-to-door” in Texas. An individual acts as a “security salesperson” for purposes of Chapter 1702 of the Occupations Code if the individual is employed by a security services contractor to sell services offered by the contractor. Thus, engaging in “door-to-door” solicitation and sales of home alarm system goods and services in Texas is an activity regulated by Chapter 1702 of the Occupations Code.

9. Pursuant to section 1702.3835 of the Occupations Code, if an individual performs any activity regulated by Chapter 1702 of the Occupations Code without being authorized to do so, that individual has committed a false, misleading, or deceptive act, within the meaning of section 17.46 of the DTPA and a public remedy under Chapter 17 of the DTPA may be used to enforce Chapter 1702 of the Code.

10. Since January 13, 2012, Vivint employees have engaged in “door-to-door” solicitations, resulting in consummated transactions, for home alarm system goods and services in Texas without being authorized to do so, as required by section 1702.221(a) of the Occupations Code, in violation of section 1702.3835(a) of the Occupations Code.

11. Some of the Vivint employees engaged in “door-to-door” solicitation and sales of home alarm system goods and services in Texas after being expressly denied registration by the Texas Department of Public Safety (“DPS”), in violation of section 1702.3835(a) of the Occupations Code.

VIVINT’S RESPONSE

12. Vivint expressly denies the State’s allegations as set forth in the “State’s Allegations” paragraphs above and expressly denies that it violated Chapter 1702 of the Occupations Code or the DTPA. Vivint further expressly denies that it engaged in the conduct described in Paragraphs 14 (J), (K), (L), (M), and (N).

13. Vivint agrees to enter into this AVC for the sole purpose of avoiding litigation. Vivint asserts that this AVC (i) is not a finding of any wrongdoing and (ii) shall not be considered to be an admission by Vivint of any violation of the DTPA or any other provision of Texas law.

ASSURANCES

14. Vivint agrees to the following assurances:

- A. Vivint shall ensure that all employees, or any other persons acting on its behalf, who perform, or offer to perform, on Vivint’s behalf, an activity regulated under Chapter 1702 of the Occupations Code, are licensed or otherwise authorized under Chapter 1702 to perform the activity.

- B. When an individual applies for registration as a security salesperson under Vivint's license, Vivint shall internally monitor the progress of that application and maintain records of any actions taken.
- C. Vivint shall not permit a security salesperson under its license to engage in door-to-door sales activities outside of any time period specifically permitted by DPS, statute, or regulation.
- D. If Vivint receives any communication from DPS regarding a security salesperson's application under Vivint's license, Vivint shall promptly address the issue with DPS and the applicant and shall suspend the applicant from door-to-door sales activities in Texas if the issue cannot be promptly resolved or resolved by any deadline that DPS specifically communicates to Vivint or the applicant. Vivint shall maintain records of all communications with DPS and the applicant and any action Vivint has taken to address the issues raised by those communications.
- E. If Vivint becomes aware, or should have become aware through the exercise of due diligence, that, within the last four (4) years, a security salesperson applicant under its license has previously been denied registration or has, within the last four (4) years, had a previous application terminated by DPS, then prior to employing that person as a security salesperson, Vivint shall contact DPS to determine the reason for the denial or termination. Vivint shall maintain records and communications with DPS related to the denial of an applicant.

- F. If Vivint becomes aware, or should have become aware through the exercise of due diligence, that a security salesperson applicant under its license was ineligible for registration at the time of application, Vivint shall not employ that person as a security salesperson.
- G. If Vivint becomes aware, or should have become aware through the exercise of due diligence, that a security salesperson applicant under its license has filed more than one application without a determination by DPS, Vivint shall contact DPS to ascertain the status of each application. Vivint shall maintain records of the status of each application, according to DPS.
- H. If Vivint becomes aware, or should have become aware through the exercise of due diligence, that a security salesperson applicant is no longer pursuing registration prior to a DPS determination, Vivint shall promptly notify DPS to withdraw consideration of that application.
- I. If DPS informs Vivint that a security salesperson applicant will not be approved for registration, subject to any rights of appeal, Vivint shall instruct that security salesperson to cease selling applicable products and/or services immediately.
- J. Vivint shall provide all notices of a consumer's right to cancel his or her contract as required by Chapter 601 of the Texas Business & Commerce Code.
- K. Vivint salespersons shall not represent to consumers that salespersons can modify the term of any alarm systems services agreements between consumers and Vivint, unless true.

- L. Vivint shall not represent that it is able to or may assist consumers in cancelling their current alarm systems services agreements with alarm systems companies other than Vivint, unless true.
- M. Vivint shall not represent or imply to a consumer that the consumer's current alarm systems company has gone out of business, is no longer providing services, or has merged with another entity, unless true.
- N. Vivint shall not represent that it is affiliated or has merged with, or acquired a consumer's current alarm systems company, unless true.
- O. Vivint will retain any documents pursuant to the document retention obligations under paragraphs 15A-N for four (4) years after the date of the applicable event or communication.

MONETARY RELIEF

15. Vivint shall make a payment of \$135,000.00 to the State of Texas to be allocated in accordance with TEX. GOVT. CODE § 402.007(b)(1) to the Supreme Court Judicial Fund or general revenue as appropriate, and a payment of \$75,000.00 for reasonable attorneys' fees and expenses related to this investigation, pursuant to TEX. GOV'T CODE § 402.006, which fees were incurred on behalf of the State and do not constitute an antecedent debt with respect to this litigation. Except as set forth herein, the State releases Vivint from any and all liability to the State under TEX. OCC. CODE § 1702.3835 or TEX. BUS. & COM. CODE § 17.46 for the acts and practices relating to the sale and offering for sale of alarms, set forth herein under the headings, "State's Allegations" and "Assurances," up to and including the effective date as defined below. Within thirty (30) days after the effective date of this AVC, Vivint shall make payment of

these amounts by wire transfer, payable to the State of Texas, bearing the reference #143480291, and if not by wire transfer, then by certified check delivered or mailed to the Office of the Attorney General, ATTN: Accounting Division, 300 W. 15th Street, MC-003, Austin, Texas 78701. Failure to make this payment within the specified time, or other period agreed to by the State and Vivint, is a material breach of this AVC.

COURT APPROVAL AND OTHER CONDITIONS

16. The parties agree that they will submit this AVC to a district court of competent jurisdiction in Travis County and request that the court approve this AVC, pursuant to the terms set forth herein and DTPA § 17.58.

18. The “effective date” of the AVC shall be the day it is approved by a Travis County District Court. The AVC is not effective or enforceable until it is approved by a Travis County District Court.

19. Nothing in the AVC shall be construed as a waiver of any private rights, causes of action, or remedies of any person against any Vivint with respect to the practices or conduct described herein. Vivint and the State agree that nothing in this AVC shall create any private rights, causes of action or remedies against any Vivint. Vivint and the State agree that this AVC is not a finding nor admission of any statutory violation by Vivint.

21. The parties represent and warrant, each to the other, that each has the authority to enter into and make this AVC, and to bind themselves to this AVC.

22. This AVC shall be governed by DTPA § 17.58. Court costs are taxed against Vivint.

MISCELLANEOUS PROVISIONS

23. This AVC may be executed in any number of counterparts and each of which when so executed shall be deemed an original and all of which taken together shall constitute one and the same AVC.

EXECUTED this 24 day of May, 2017.

AGREED AS TO SUBSTANCE AND FORM AND ENTRY REQUESTED:

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

BRANTLEY STARR
Deputy First Assistant Attorney General

JAMES E. DAVIS
Deputy Attorney General for Civil Litigation

DAVID TALBOT
Chief, Consumer Protection Division

/s/ Jacob Petry _____

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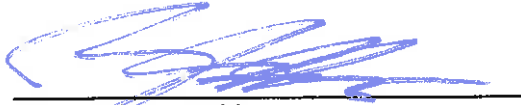
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ATTORNEYS FOR THE STATE OF TEXAS

APPROVED AND REQUESTED TO BE SIGNED:



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