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SUPERIOR COURT OF ARIZONA

IN MARICOPA COUNTY

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 13 STATE OF ARIZONA, *ex rel.* MARK
 BRNOVICH, Attorney General,
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 Plaintiff,
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 v.
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 17 VIVINT, INC.,
 18
 Defendant.

Case No.: CV2022-003084

CONSENT JUDGMENT

(Assigned to the Hon. Jay Adleman)

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 20 The State of Arizona, *ex rel.* Mark Brnovich, the Attorney General (the “State”), filed a
 21 Complaint alleging violations of the Arizona Consumer Fraud Act, A.R.S. §§ 44-1521 to -1534
 22 (the “CFA”) and Vivint, Inc. (“Vivint”) has waived service of the Complaint, has been advised
 23 of the right to a trial in this matter, and has waived the same. Vivint admits the jurisdiction of
 24 this Court over the subject matter and parties, stipulates that this Court may enter the following
 25 Findings of Fact, Conclusions of Law and Judgment, and acknowledges that this Court will retain
 26 jurisdiction for the purpose of enforcing this Consent Judgment. Vivint consents and stipulates
 27 to entry of this Consent Judgment to compromise and settle claims in connection with an
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1 investigation under the Arizona Consumer Fraud Act and not out of any admission of guilt,
2 wrongdoing, violation, or sanction.

3 **PARTIES**

4 1. The State is authorized to bring this action under the CFA.

5 2. Vivint is a Delaware corporation originally incorporated February 2, 2006 with its
6 corporate headquarters at 4931 N. 300 W, Provo, Utah 84604.

7 3. The State commenced its inquiry from which this case arises years prior to entry of
8 this Judgment.

9 4. All events, acts and practices described in, and relevant to, this Consent Judgment
10 are alleged to have occurred in Arizona.

11 5. This Court has jurisdiction over the Complaint and the parties necessary for the
12 Court to enter this Consent Judgment and any orders hereafter appropriate pursuant to A.R.S.
13 § 44-1528 and this Consent Judgment.

14 6. Venue is proper in Maricopa County pursuant to A.R.S. § 12-401.

15 **FINDINGS OF FACT**

16 7. The State alleges that the following conduct of Vivint's employees has occurred
17 and constitutes deceptive and unfair acts and practices in violation of the CFA:

18 a. Vivint's salespeople or agents have made false representations to consumers
19 regarding the terms of the written contract, including telling a customer that they
20 have 30 days to cancel, when the contract states they only have three days to cancel.

21 b. Vivint's salespeople or agents have informed consumers that Vivint had taken over
22 the consumer's alarm monitoring contract from another company, when in fact that
23 was not true.

24 c. Vivint's salespeople or agents have extended some customer contracts over the
25 phone in such a way that the customer often was not aware that the contract has
26 been extended and without following up with written confirmation of the contract
27 extension.

1 d. Vivint’s salespeople or agents have executed contracts for alarm monitoring
2 services on behalf of consumers that were not present at the signing of the contract
3 and had not consented to entering into such contract.

4 8. Vivint disputes the state’s allegations and alleges that:

5 a. Vivint expects all employees to uphold the highest standards of integrity, service,
6 and operational excellence and to reflect these values in their interactions with the
7 public, including potential and current customers.

8 b. Vivint works diligently to ensure its employees comply with all Vivint’s policies
9 and procedures and that its employees’ conduct reflects Vivint’s values.

10 c. The allegations alleged by the State, if proven, would violate Vivint’s policies and
11 procedures and are contrary to its core values.

12 d. Since the time that the State initially inquired about the allegations set forth herein,
13 Vivint has taken numerous steps to further strengthen Vivint’s ability to deter and
14 prevent the type of conduct alleged by the State and to ensure that the manner in
15 which its employees interact with customers and the public reflects Vivint’s
16 values.

17 9. Although Vivint disputes the State’s allegations, it desires to resolve this matter by
18 entering into this Consent Judgement.

19 **CONCLUSIONS OF LAW**

20 10. The State alleges that Vivint violated the CFA by engaging in or directing others
21 to engage in the actions described in Paragraphs 6a through 6d above.

22 11. The State alleges that Vivint, or Vivint’s employees or agents, knew or should have
23 known that their conduct violated the CFA while engaging in the acts, practices and conduct
24 described in the preceding paragraphs of this Consent Judgment.

25 12. Pursuant to the CFA, Vivint’s, or Vivint’s employees’ or agents’ alleged violations,
26 if proven, would entitle the State to relief necessary to prevent the unlawful acts and practices
27 described in this Consent Judgment and to remedy the consequences of past unlawful practices.
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1 **ORDER**

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

3 **Injunctive Terms**

4 13. The injunctive relief set forth in this Consent Judgment is binding upon any of the
5 following that receive actual notice of this Consent Judgment through personal service or
6 otherwise: (a) Vivint; (b) its officers, agents, servants, employees, licensed dealers, and attorneys;
7 and (c) those persons in active concert or participation with Vivint or any of its officers, agents,
8 servants, employees or licensed dealers.

9 14. Within 30 days of this Consent Judgment's entry, Vivint shall provide a copy of it
10 to each of its officers and directors and to all sales representatives or dealers who sell on behalf
11 of Vivint within the State of Arizona, and any other employees with managerial responsibilities
12 over sales representatives who sell on behalf of Vivint within the State of Arizona or who
13 otherwise participate in Vivint's sales decisions within the State of Arizona. Vivint shall, within
14 45 days of the entry of this Consent Judgment, provide a certification under oath to the State that
15 affirms compliance with this paragraph.

16 15. Pursuant to A.R.S. § 44-1528, Vivint is enjoined, restrained and prohibited from:

- 17 a. Making verbal representations to consumers regarding the terms and conditions of
18 their contract with Vivint that differ from the written terms and conditions of such
19 contract including, but not limited to, the representation that consumers have more
20 time to cancel their contract than actually provided in their contracts.
- 21 b. Making any statements to consumers regarding the alarm monitoring company
22 with which a consumer already has contracted or any other alarm monitoring
23 company, which statements, taken as a whole in light of all surrounding
24 circumstances, are false or deceptive, including, but not limited to, any false and
25 misleading statement about Vivint's relationship with another alarm monitoring
26 company and any statement that falsely represents that the customer's existing
27 alarm monitoring company has gone out of business, is no longer providing alarm
28 monitoring services, or has merged with another entity.

- 1 c. For any consumer who extends their contracts via a recorded telephone call, failing
2 to advise orally and in writing of the consumers' right of cancellation with respect
3 to the extension.
- 4 d. Extending any consumers' contract via a recorded telephone call unless,
5 subsequent to the call, Vivint provides (electronically, via mail or otherwise) the
6 consumer a written contract extension containing identical terms as explained to
7 the consumer during the recorded telephone call, and the consumer signs or
8 electronically acknowledges the written contract extension and returns it to Vivint.
- 9 e. Executing any contract for alarm monitoring services on behalf of any consumer
10 that is not present at the signing of the contract or has not consented to entering
11 into such contract.

12 16. For the purposes of resolving disputes with respect to compliance with these
13 injunctive terms, should the State have a reasonable basis to believe that Vivint has engaged in a
14 practice that may have violated the terms of this Consent Judgment, the State shall notify Vivint
15 in writing of the specific objection, identify the provision of this Consent Judgment that the
16 practice appears to violate, and describe the State's basis for believing a violation has occurred.
17 The Parties agree to confer in good faith regarding the alleged violation and, absent exigent
18 circumstances necessitating expedited action in less time, Vivint shall have a reasonable period
19 of not less than thirty (30) days to provide a written response to the State and/or a proposed
20 resolution to cure the alleged violation. The State may then accept the explanation and/or
21 proposed resolution, or may take action to enforce the terms of the Consent Judgment (which,
22 for the avoidance of doubt, shall remain in full force and effect). The State shall not unreasonably
23 withhold a determination that Vivint has cured the alleged violation.

24 **Payment Provisions**

25 17. Pursuant to A.R.S. § 44-1528(A)(2), Vivint is liable and obligated to pay to the
26 Attorney General the amount of \$75,000.00 in consumer restitution due within 30 days of entry
27 of this Consent Judgment (the "Restitution Award"), to be deposited into the consumer restitution
28 subaccount of the Consumer Restitution and Remediation Revolving Fund, pursuant to A.R.S.

1 § 44-1531.02(B). The State will have sole discretion as to how and when restitution funds are
2 distributed to consumers and the eligibility of any consumer to receive restitution.

3 18. Pursuant to A.R.S. § 44-1531(A), Vivint is liable and obligated to pay to the
4 Attorney General the amount of \$285,000.00 in civil penalties due within 30 days of entry of this
5 Consent Judgment, to be deposited into the Consumer Protection-Consumer Fraud Revolving
6 Fund pursuant to A.R.S. § 44-1531.01, and used for the purposes set forth therein.

7 19. Pursuant to A.R.S. § 44-1534, Vivint is liable and obligated to pay to the Attorney
8 General the amount of \$40,000.00 in attorneys' fees and costs due within 30 days of entry of this
9 Consent Judgment, to be deposited into the Consumer Protection-Consumer Fraud Revolving
10 Fund pursuant to A.R.S. § 44-1531.01, and used for the purposes set forth therein.

11 20. The Attorney General and Vivint will coordinate communications to consumers
12 with respect to the administration of the restitution fund, however, in the event that a good-faith
13 agreement cannot be reached, all communications to consumers with respect to the administration
14 of the restitution fund are at the sole discretion of the State.

15 21. In the event the amount ordered as restitution herein is insufficient to provide full
16 restitution to all eligible consumers, the restitution collected will be distributed to eligible
17 consumers on a pro rata basis. In the event that any portion of the restitution ordered herein is
18 not distributed to eligible consumers, such portion will be deposited by the Attorney General's
19 Office into the Consumer Protection-Consumer Fraud Revolving Fund, pursuant to A.R.S. § 44-
20 1531.02(B), and used for the purposes specified in A.R.S. § 44-1531.01.

21 22. The payments required herein must be made payable to "The State of Arizona."
22 Payment must be delivered, or mailed and postmarked, within 30 days of entry of this Consent
23 Judgment to:

24 Consumer Protection and Advocacy Section
25 The Office of the Arizona Attorney General
26 2005 North Central Avenue
27 Phoenix, Arizona 85004-1592

28 23. In the event of a material breach of this Consent Judgment, in addition to all other
remedies available under Arizona law and the penalties specifically provided under A.R.S. § 44-

1 1532, the State may, in its sole discretion, reopen proceedings and continue with this case as
2 though this Consent Judgment had not been entered, provided that Vivint will be entitled to an
3 offset for any amount actually paid to the State.

4 **General Provisions**

5 24. Nothing in this Consent Judgment will be construed as an approval by the Attorney
6 General, the Court, the State of Arizona, or any agency thereof of Vivint's past, present, or future
7 conduct. Vivint must not represent or imply that the Attorney General, the Court, the State of
8 Arizona, or any agency thereof has approved or approves of any of Vivint's actions or any of
9 Vivint's past, present or future business practices.

10 25. Nothing in this Consent Judgment will be construed as an admission by Vivint that
11 the alleged conduct occurred, generally or specifically with respect to any individual consumer.

12 26. This Consent Judgment represents the entire agreement between the parties, and
13 there are no representations, agreements, arrangements, or understandings, oral or written,
14 between the parties relating to the subject matter of this Consent Judgment which are not fully
15 expressed herein or attached hereto.

16 27. If any portion of this Consent Judgment is held invalid by operation of law, the
17 remaining terms thereof will not be affected and will remain in full force and effect.

18 28. Jurisdiction is retained by this Court for a period of 10 years from the effective date
19 of this Consent Judgment for the purpose of entertaining an application by the State for the
20 enforcement of Paragraphs 15a through 15d of this Consent Judgment. Jurisdiction is retained
21 by this Court and is not limited in time for the purpose of entertaining an application by the State
22 for the enforcement of all other provisions of this Consent Judgment.

23 29. This Consent Judgment is the result of a compromise and settlement agreement
24 between the parties. Only the State may seek enforcement of this Consent Judgment against
25 Vivint. Nothing herein is intended to create a private right of action by other parties.

26 30. This Consent Judgment does not limit the rights of any private party to pursue any
27 remedies allowed by law.

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31. The effective date of this Consent Judgment is the date that it is entered by the Court.

32. This Consent Judgment may be executed by the parties in counterparts and be delivered by facsimile or electronic transmission, or a copy thereof, such constituting an original counterpart hereof, all of which together will constitute one and the same document.

33. This Consent Judgment resolves all outstanding claims expressly identified in the Complaint as to Vivint. As no further matters remain pending, this is a final judgment entered pursuant to Ariz. R. Civ. P. 54(c).

DATED this ____ day of _____, 2022.

JUDGE OF THE SUPERIOR COURT

1 **CONSENT TO JUDGMENT**

2 1. Vivint acknowledges that it waived service of the Summons and Complaint, has
3 read the Findings of Fact, Conclusions of Law and Order, and is aware of its right to a trial in
4 this matter and has waived the same.

5 2. Vivint admits the jurisdiction of this Court and consents to the entry of the
6 foregoing Findings of Fact and Conclusions of Law and Order.

7 3. Vivint states that no promise of any kind or nature whatsoever not contained in the
8 Consent Judgment was made to induce it to enter into this Consent Judgment and declares that it
9 has entered into this Consent Judgment voluntarily.

10 4. This Consent Judgment is entered as a result of a compromise and a settlement
11 agreement between the parties. Only the State may seek enforcement of this Consent Judgment
12 against Vivint. Nothing herein is intended to create a private right of action by other parties;
13 however, this Consent Judgment does not limit the rights of any private party to pursue any
14 remedies allowed by law.

15 5. Vivint acknowledges that its acceptance of this Consent Judgment is for the
16 purpose of settling a consumer fraud lawsuit filed by the State as described above, and further
17 acknowledges that this Consent Judgment does not preclude any agency or officer of this State
18 or subdivision thereof from instituting other civil or criminal proceedings as may be appropriate.

19 6. This Consent to Judgment may be executed in counterparts and be delivered by
20 facsimile or electronic transmission, or a copy thereof, such constituting an original counterpart
21 hereof, all of which together will constitute one and the same document.

1 7. Vivint represents and warrants that the person signing below on its behalf is duly
2 appointed and authorized to do so.

3 DATED this 27th day of January, 2022.


4 Vivint, Inc.


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6
7 By: 
8 Kent William Hansen, Vice President, Legal
9

10 **APPROVED AS TO FORM AND CONTENT:**

11 **MARK BRNOVICH**
12 **Attorney General**

Woods Law Offices, PLLC

13
14
15 By: 
16 Dylan Jones
17 Assistant Attorney General
18 Attorneys for the State of Arizona


19 James Austin Woods, Esq.
20 Attorney for Vivint

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eSignature Page 1 of 1

Filing ID: 14069735 Case Number: CV2022-003084
Original Filing ID: 14046933

Granted as Submitted



/S/ Jay Adleman Date: 3/19/2022
Judicial Officer of Superior Court

ENDORSEMENT PAGE

CASE NUMBER: CV2022-003084

SIGNATURE DATE: 3/19/2022

E-FILING ID #: 14069735

FILED DATE: 3/22/2022 8:00:00 AM

DYLAN KENT JONES

VIVINT INC
4931 N 300 W PROVO UT 84604