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United States District Court,
C.D. California.
Nikhil **JHAVERI** and Ela **Jhaveri**
v.
ADT SEC. SERV., INC. et al.

No. 2:11–cv–4426–JHN–MANx.
March 6, 2012.

Proceedings: ORDER GRANTING MOTION FOR JUDGMENT ON THE PLEADINGS (In Chambers) The Honorable JACQUELINE H. NGUYEN, District Judge.

***1** Alicia Mamer, Deputy Clerk.

The matter is before the Court on Defendant ADT Security Services' ("ADT" or "Defendant") Motion for Judgment on the Pleadings. (Docket no. 25.) The Court previously deemed the matter appropriate for decision without oral argument. *See* Fed.R.Civ.P. 78(b); Local Rule 7–15. The Court has considered the briefs filed in connection with this matter and, for the reasons herein, GRANTS the Motion.

I. BACKGROUND

The Complaint alleges the following facts:

On July 21, 2008, Plaintiffs Nikhil and Ela Jhaveri ("Plaintiffs") contracted with ADT Security Services, Inc. ("ADT") for security services for their home. (Compl.¶ 6.) The parties executed a Residential Services Contract ("alarm contract") and a Patrol Services Agreement ("PSA") (collectively, "the contract" or "the agreement"). Under the agreement, ADT promised to notify Plaintiffs of any alarm activation at their home, and if ADT could not reach Plaintiffs, they were to immediately dispatch the police and ADT Security Services patrol. (*Id.* ¶ 9.)

On December 20, 2010, at 1:53 p.m., ADT received notification that an alarm had been triggered in Plaintiffs' home. (*Id.* ¶ 12.) An hour later, ADT dispatched a patrol officer to investigate. (*Id.*) After a perimeter check, the patrol officer reported that there was no problem despite the presence of stacked furniture and broken windows. (*Id.* ¶ 13.) Also, even though the alarm notification indicated that the alarm was triggered inside Plaintiffs' master bedroom closet, ADT's patrol officer only conducted a perimeter check. (*Id.*) ADT did not contact the police and failed to notify Plaintiffs by cell phone of the alarm activation as protocol required. (*Id.* ¶ 15.) Plaintiffs did not learn of the break-in until they returned home at 9 p.m. that night. (*Id.* ¶ 10.) ADT's response was "grossly inadequate" and caused Plaintiffs to suffer millions of dollars in damages. (*Id.* ¶ 16.)

On October 11, 2011, Defendant filed the instant Motion for Judgment on the Pleadings ("Motion"). (Docket no. 25.) Plaintiffs filed an Opposition, (docket no. 29), and Defendants filed a Reply. (Docket no. 33.)

II. LEGAL STANDARD

"After the pleadings are closed ... a party may move for judgment on the pleadings." Fed.R.Civ.P. 12(c). A Rule 12(c) motion for judgment on the pleadings permits challenges directed at the legal sufficiency of the complaint and applies substantially the same standard as is applicable to Rule 12(b)(6) motions. *Johnson v. Rowley*, 569 F.3d 40, 44 (2d Cir.2009) (applying *Twombly /Iqbal* standard in a Rule 12(c) motion); *Corder v. Lewis Palmer Sch. Dist. No. 38*, 566 F.3d 1219, 1223 (10th Cir.2009); *Keum v. Virgin Am., Inc.*, 2011 U.S. Dist. LEXIS 28358, *3 (N.D.Cal. Mar. 4, 2011) (citing William W. Schwarzer et al., *California Practice Guide: Federal Civil Procedure*, § 9:319). In evaluating a motion to dismiss, the Court generally cannot consider material outside the complaint, such as facts presented in briefs, affidavits or discovery materials, unless such material is alleged in the complaint or judicially noticed. *McCalip v. De Legarret*, No. 08–2008, 2008 U.S. Dist. LEXIS 87870, at *4 (C.D.Cal. Aug. 18, 2008); *see also Jacobson v. AEG Capital Corp.*, 50 F.3d 1493, 1496 (9th Cir.1995). "For purposes of the motion, the allegations of the non-moving party must be accepted as true, while the allegations of the moving party which have been denied are assumed to be false." *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1550 (9th Cir.1989) (citations omitted). However, the Court need not accept as true "[t]hreadbare recitals of the elements of a cause of

action, supported by mere conclusory statements." *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009). "Where a complaint pleads facts that are "merely consistent with" a defendant's liability, it stops short of the line between possibility and plausibility of 'entitlement to relief.' " *Id.* at 1949 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)) (internal quotation marks omitted).

III. DISCUSSION

***2** Plaintiffs' Complaint alleges seven causes of action: (1) negligence; (2) willful misconduct; (3) fraud; (4) breach of fiduciary duty; (5) breach of contract; (6) unfair, unlawful, and fraudulent business practices in violation of Cal. Bus. & Prof.Code Section 17200, *et. seq.*; and (7) false advertising in violation of Cal. Bus. & Prof.Code Section 17500, *et. seq.* Defendants move for judgment on the pleadings as to all except Plaintiff's fifth cause of action for breach of contract. As to that claim, Defendants argue Plaintiff's recovery must be limited by the liquidated damages clause in the parties' contract.

A. **Negligence**

Under California law, "[a] person may not ordinarily recover in tort for the breach of duties that merely restate contractual obligations." *Aas v. Sup.Ct.*, 24 Cal.4th 627, 643, 101 Cal.Rptr.2d 718, 12 P.3d 1125 (2000). Rather, "conduct amounting to a breach of contract becomes tortious only when it also violates a duty independent of the contract arising from principles of tort law." *Erlich v. Menezes*, 21 Cal.4th 543, 551, 87 Cal.Rptr.2d 886, 981 P.2d 978 (1999). This rule applies equally to allegations of ordinary and gross negligence. *Britz Fertilizers, Inc. v. Bayer Corp.*, No. 07–00846, 2008 WL 341628, at *13 (E.D.Cal. Feb. 5, 2008) ("Like negligence, gross negligence still requires an independent duty not arising from contract."). However, a tortious breach of contract may occur where, "(1) the breach is accompanied by a traditional common law tort, such as fraud or conversion; (2) the means used to breach the contract are tortious, involving deceit or undue coercion or; (3) one party intentionally breaches the contract intending or knowing that such a breach will cause severe, unmitigable harm in the form of mental anguish, personal hardship, or substantial consequential damages." *Erlich*, 21 Cal.4th at 553–54, 87 Cal.Rptr.2d 886, 981 P.2d 978 (quoting *Freeman & Mills Inc. v. Belcher Oil Co.*, 11 Cal.4th 85, 105, 44 Cal.Rptr.2d 420, 900 P.2d 669 (1995) (internal quotation marks omitted)). "Whether a defendant owes a duty of care arising from a source outside of the parties' contract is a question of law." *Valenzuela v. ADT Sec. Serv., Inc.*, No. 09–2075, 2010 WL 7785571 at *8 (C.D.Cal. Apr.29, 2010).

Plaintiffs' first cause of action for negligence is predicated on allegations that Defendant failed to adequately respond to the alarm signal, failed to timely notify Plaintiffs and the police, and failed to conduct an adequate foot patrol. (Compl.¶ 22.) These allegations describe contractual duties only—they do not demonstrate that Defendant breached a duty not contemplated by the parties' agreement.[FN1] Moreover, "California courts have repeatedly held, in similar cases, that [an] alarm company's failure to notify the relevant parties of a received signal neither constitutes gross negligence nor evidences a duty arising outside of the contract." *Id.*, 2010 WL 7785571 at *7 (citing *Fireman's Fund Ins. Co. v. Morse Signal Devices*, 151 Cal.App.3d 681, 686, 690—91, 198 Cal.Rptr. 756 (1984) (finding allegations of alarm company's failure to respond to eleven separate alarm signals insufficient to state a cause of action for gross negligence); *Feary v. Aaron Burglar Alarm, Inc.*, 32 Cal.App.3d 553, 558, 108 Cal.Rptr. 242 (1973) (finding that, despite a stipulation that defendants negligently installed and maintained an alarm system, "[t]here [was] no allegation of property damage or the breach of any duty other than that contemplated by the contract," and limiting damages to those provided for in the parties' agreement); *Better Food Markets, Inc. v. Amer. Dist. Telegraph Co.*, 40 Cal.2d 179, 188, 253 P.2d 10 (1953) ("Although an action in tort may sometimes be brought for the negligent breach of a contractual duty, still the nature of the duty owed and the consequences of its breach must be determined by reference to the contract which created that duty" (internal citation omitted)).

> FN1. As discussed below, Plaintiffs fail to adequately allege fraud or willful misconduct on the part of Defendant. Therefore, none of the *Erlich* exceptions to the "independent duty" rule are applicable in this case.

***3** Plaintiffs also allege that Defendant failed to adequately train, supervise, and control employees. (Compl.¶ 22.) Under California law, "an employer can be liable to a third person for negligently hiring, su-

pervising, or retaining an unfit employee." *Doe v. Capital Cities*, 50 Cal.App.4th 1038, 1054, 58 Cal.Rptr.2d 122 (1996) (citing *Evan v. Hughson United Methodist Church*, 8 Cal.App.4th 828, 836, 10 Cal.Rptr.2d 748 (1992)). However, such liability requires a showing "that the employer knew or should have known that hiring the employee created a particular risk or hazard and that particular harm materializes." *Id.* (citing *Evan*, 8 Cal.App.4th at 836–37, 10 Cal.Rptr.2d 748). Here, Plaintiffs do not allege that Defendant knew or should have known of any particular risk in hiring or retaining any particular employee. Therefore, Plaintiffs fail to properly allege breach of any duty apart from those contemplated by the parties' contract, and cannot state a claim for negligence or gross negligence.

Plaintiffs' Opposition relies heavily on an assertion that a technician sent by Defendant to repair minor problems with the alarm system had been convicted of felony theft. (*See, e.g.*, Opp'n 6.) Plaintiffs imply that this technician was involved in the burglary because the technician was privy to the layout of Plaintiffs' home and had a criminal record. However, *no such allegations appear in the Complaint.* As such, these additional factual allegations may not be considered by the Court in ruling on the instant Motion.

Plaintiffs previously moved to amend the complaint, but the relief sought in that motion was to add the ADT patrol officer, Mark Bregand, as a defendant on the theory that he was complicit in the burglary. (*See* Docket No. 20.) The Court denied leave to amend because the asserted claims against Bregand lacked legal sufficiency, but the denial was *without prejudice.* The Court stated that "[i]f subsequent discovery changes the legal sufficiency of the claims against Bregand, Plaintiffs may renew their motion, but must do so in a timely manner. (Docket No. 24; 9/21/11 Order at 5, n. 3.) Plaintiffs could have renewed their motion. Instead, Plaintiffs now request that this Court convert the instant Motion into one for summary judgment and permit the parties to conduct further discovery. (Opp'n 4.) Given that Plaintiffs could have renewed their motion, the Court sees no reason to alter the nature of its review of Defendant's Motion.

B. Willful Misconduct

In California, a cause of action for willful misconduct "is not a separate tort but simply an aggravated form of negligence, differing in quality rather than degree from ordinary lack of care." *Berkley v. Dowds*, 152 Cal.App.4th 518, 526, 61 Cal.Rptr.3d 304 (2007). Unlike negligence or even gross negligence, "[w]ilful misconduct involves a more positive intent actually to harm another or to do an act with a positive, active and absolute disregard of its consequences." *Bigge Crane & Rigging Co. v. Workers' Comp.App. Bd.*, 188 Cal.App.4th 1330, 1349, 116 Cal.Rptr.3d 153 (2010) (quoting *Mercer–Fraser*, 40 Cal.2d 102, 118, 251 P.2d 955 (1953)). In addition to the requirements for negligence, Plaintiff must allege three elements: "(1) actual or constructive knowledge of the peril to be apprehended, (2) actual or constructive knowledge that injury is a probable, as opposed to a possible, result of the danger, and (3) conscious failure to act to avoid the peril." *Id.* at 528, 251 P.2d 955 (citations and internal quotation marks omitted). "A plaintiff must allege specific facts establishing the[se] three essential elements...." *Charpentier v. Von Geldern*, 191 Cal.App.3d 101, 114, 236 Cal.Rptr. 233 (1987) (emphasis added).

***4** Plaintiffs' willful misconduct claim is premised on the same acts and omissions described in Plaintiffs' negligence cause of action. (Compl.¶ 28.) Even assuming their truth, these allegations do not plausibly give rise to an inference that Defendant *consciously* failed to honor its contractual duties. [FN2] The mere fact that Defendant failed to timely respond and adequately investigate an alarm at Plaintiffs' home does not, in and of itself, reasonably suggest that the failure was intentional or reckless. Without more, Plaintiffs do not state a claim for willful misconduct that is plausible on the face of the Complaint.

> FN2. Plaintiffs' conclusory allegation that Defendant acted "willfully, wantonly, recklessly, and/or intentionally," (Compl.¶ 28), is insufficient. *See Iqbal*, 129 S.Ct. at 1949 (the Court need not accept as true "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements"); *Johns–Mansville Sales Corp. v. Worker's Comp.App. Bd.*, 96 Cal.App.3d 923, 931, 158 Cal.Rptr. 463 (1976) ("No amount of descriptive adjectives or epithets may turn a negligence action into an action for intentional or willful misconduct.").

C. Breach of Fiduciary Duty

In their fourth cause of action for breach of fidu-

ciary duty, Plaintiffs allege that "[b]ecause Defendant[ ] held themselves out ... as being knowledgeable and qualified ... [Plaintiffs] entrusted Defendant[ ] with their personal safety, residence and personal possessions ... [and Defendant] assumed the duty to use their reasonable efforts to protect [Plaintiffs'] lives and property...." (Compl.¶ 40.) However, California law rejects the idea that a contractual relationship gives rise to a fiduciary duty. *See* *Wolf v. Sup.Ct.*, 107 Cal.App.4th 25, 31, 130 Cal.Rptr.2d 860 (2003) ("Every contract requires one party to repose an element of trust and confidence in the other to perform," and "[f]or this reason, every contract contains an implied covenant of good faith and fair dealing ...," but "[the implied covenant] cannot create a fiduciary relationship; it affords basis for redress for breach of contract and that is all") (quoting *Nelson v. Abraham*, 29 Cal.2d 745, 751, 177 P.2d 931 (1947); *New v. New*, 148 Cal.App.2d 372, 382–83, 306 P.2d 987 (1957)) (internal quotation marks omitted). Plaintiffs have not alleged conduct or circumstances that could reasonably elevate Defendant's obligations beyond those existing by virtue of the parties' contractual relationship. Therefore, Plaintiffs' claim for breach of fiduciary duty fails.

D. Fraud

Federal Rule of Civil Procedure ("Rule") 9(b) requires that "[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake." Although "[m]alice, intent, knowledge, and other conditions of a person's mind may be alleged generally," fraud allegations must be accompanied by "the who, what, when, where, and how" of the misconduct charged. Fed.R.Civ.P. 9(b); *Vess v. Ciba–Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir.2003). Likewise, "[i]n California, fraud must be pled specifically; general and conclusory allegations do not suffice." *Lazar v. Sup.Ct.*, 12 Cal.4th 631, 645, 49 Cal.Rptr.2d 377, 909 P.2d 981 (1996).

Plaintiffs' claims are in the nature of "promissory fraud,"—"a subspecies of fraud which permits a plaintiff to state a cause of action in tort when a defendant fraudulently induces him to enter into a contract." *Richardson v. Reliance Nat'l Indem. Co., et al.*, No. 99–2952, 2000 WL 284211, at *4 (N.D.Cal. Mar.9, 2000) (citing *Lazar*, 12 Cal.4th at 638, 49 Cal.Rptr.2d 377, 909 P.2d 981)). "Although failure to perform a contract does not constitute fraud, a promise made without intention to perform can be actionable fraud." *Smith v. Allstate Ins. Co.*, 160 F.Supp.2d 1150, 1152 (S.D.Cal. Apr.3, 2001) (citing *Locke v. Warner Bros., Inc.*, 57 Cal.App.4th 354, 367, 66 Cal.Rptr.2d 921 (1997)). However, "fraudulent intent cannot be proven ... by simply pointing to the defendant's subsequent failure to perform as promised." *Smith*, 160 F.Supp.2d at 1152 (citing *Tenzer v. Superscope, Inc.*, 39 Cal.3d 18, 30–31, 216 Cal.Rptr. 130, 702 P.2d 212 (1985)). Moreover, "a statement is not necessarily fraudulent merely because it is contradicted by later-discovered facts," *Richardson*, 2000 WL 284211, at *4 (citing *In re GlenFed, Inc. Sec. Lit.*, 42 F.3d 1541, 1547 (9th Cir.1994). Consequently, "Rule 9(b) requires plaintiffs to plead facts establishing the falsity of a statement *at the time it is made.*" *Richardson*, 2000 WL 284211, at *4 (emphasis in original). "A plaintiff can satisfy this requirement ... by pointing to inconsistent contemporaneous statements or information which was made by or available to the defendant ... or later statements made by the defendant along the lines of 'I knew it all along.' " *Smith*, 160 F.Supp.2d at 1152–53 (quoting *In re GlenFed*, 42 F.3d at 1549 n. 9) (internal quotation marks omitted). However, a plaintiff is precluded from "simply pointing to a statement by a defendant, noting that the content of the statement conflicts with the current state of facts, and concluding that the charged statement must have been false." *Richardson*, 2000 WL 284211, at *4 (quoting *In re GlenFed*, 42 F.3d at 1548) (internal quotation marks omitted).

***5** Here, Plaintiffs fail to satisfy the pleading requirements of Rule 9(b). The complaint does not allege facts from which the Court can infer that Defendant's contractual assurances were false *when made* . That Defendant failed to perform on these promises does not plausibly give rise to an inference that Defendant never intended to honor the contract—"[s]uch an assumption is unwarranted because it contradicts the heightened pleading requirements [for fraud] and would allow 'every breach of contract [to] support a claim of fraud so long as the plaintiff adds to his complaint a general allegation that the defendant never intended to keep her promise." *Id.* at 1153–54 (quoting *Richardson*, 2000 WL 284211 at *5).

Moreover, Plaintiffs' bare assertion upon information and belief that such statements "were false, and were either intentionally made, or made without any reasonable ground for Defendants to believe them to be true" does not establish knowledge of falsity

under the heightened pleading requirements for fraud. *See* *Dowling v. Spring Val. Water Co.*, 174 Cal. 218, 221, 162 P. 894 (1917) ("[I]t is not sufficient to allege fraud or its elements upon information and belief, unless the facts upon which the belief is founded are stated in the pleading"); *Woodring v. Basso*, 195 Cal.App.2d 459, 464–65, 15 Cal.Rptr. 805 (1961) (fraud allegations based on "information and belief" must contain "a statement of the facts upon which the belief is founded."). Consequently, Plaintiffs fail to state a claim for fraud.

E. California Unfair Competition Law ("UCL") claims

Plaintiffs' sixth and seventh causes of action allege unfair business practices and false advertising pursuant to California's Business and Professions Code section 17200 *et seq.* ("UCL"). (Compl.¶¶ 51–54.) "The UCL prohibits 'any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising.' " *Stearns v. Select Comfort Retail Corp.*, 763 F.Supp.2d 1128, 1149 (N.D.Cal.2010) (quoting Cal. Bus. & Prof.Code § 17200). Claims for unfair business practices "are governed by the 'reasonable consumer' test." *Williams v. Gerber Prods. Co.*, 552 F.3d 934, 938 (9th Cir.2008).

1. False Advertising—Cal. Bus. & Prof.Code § 17500, *et seq.*

Plaintiffs allege that Defendant falsely advertises its services by engaging in: (1) public representations that ADT is the "# 1 security company in America," and would help Plaintiffs "protect [their] home and family, 24 hours a day, 7 days a week"; (2) public representations by ADT's President holding Defendant out as "the electronic security industry's undisputed leader and standard bearer"; and (3) statements that ADT's "well deserved reputation for excellence" is grounded upon their ability to provide "the very best in systems and services to all [their] valued customers." (Compl.¶ 8.)

The Court finds that these statements constitute non-actionable "puffery." Statements that "amount to mere puffery are not actionable because no reasonable consumer relies on puffery." *Stickrath v. Globalstar, Inc.*, 527 F.Supp.2d 992, 998 (N.D.Cal.2007) (quoting *Williams v. Gerber Prods. Co.*, 439 F.Supp.2d 1112, 1115 (S.D.Cal.2006)). Whether a statement constitutes "mere puffery" or a statement of fact "is a legal question that may be resolved on a Rule 12(b)(6) motion." *Newcal Indus., Inc. v. Ikon Office Solution*, 513 F.3d 1038, 1053 (9th Cir.2008) (citing *Cook, Perkiss, & Liehe v. N. Cal. Collection Serv., Inc.*, 911 F.2d 242, 245 (9th Cir.1990)). "Ultimately, the difference between a statement of fact and mere puffery rests in the specificity or generality of the claim." *Id.* (citing *Cook*, 911 F.2d at 246). Moreover, "[t]he alleged misrepresentation must ordinarily be an affirmation of past or existing facts to be an actionable fraud claim; predictions as to future events are deemed opinions, and not actionable by fraud." *Glen Holly Entm't, Inc., v. Tektronix, Inc.*, 100 F.Supp.2d 1086, 1093 (C.D.Cal.1999).

***6** Here, Defendant's statements advertising its "reputation for excellence" and ability to provide "the very best in systems and services" are not specific or quantifiable representations of fact, but generalized statements of superiority upon which no reasonable consumer would rely. Defendant's assertion that it would help customers "protect [their] home and family, 24 hours a day, 7 days a week," is a non-actionable future promise. For these reasons, Plaintiffs' seventh cause of action for false advertising fails as a matter of law.

2. Unfair Business Practices—Cal. Bus. & Prof.Code § 17200, *et seq.*

Plaintiffs' unfair business practices claim is predicated on California Business & Professions Code § 7599, prohibiting an alarm company from, *inter alia*, "willfully fail[ing] to provide any service described in the agreement...." Cal. Bus. & Prof.Code § 7599.58(d). Plaintiffs also base their sixth cause of action on the purported misrepresentations described in their false advertising claim. (Opp'n 23–24, n. 11) (quoting *Williams v. Gerber Prods. Co.*, 552 F.3d 934, 938 (9th Cir.2008) (holding that "any violation of the false advertising law necessarily violates Section 17200") (internal quotation marks omitted)).

The Court has determined that Plaintiffs' allegations do not give rise to an inference that Defendant breached the parties' agreement willfully. (*See, supra*, p. 6–7.) Furthermore, the Court has concluded that Defendant's advertising slogans do not constitute actionable false advertising under Cal. Bus. & Prof.Code § 17500. Because Plaintiffs have not adequately alleged violation of these underlying statutes, they fail to state a claim under § 17200.

3. Breach of contract

Defendant contends that, even if Plaintiffs state a claim for breach of contract, the limitation-of-damages provision in the parties' agreement works to limit Plaintiffs' potential recovery to the contractually agreed upon amount.[FN3] (Scott Decl. Exs. A & C at ¶ 6; Ex. B at ¶ A.)

> FN3. The Court may properly consider the contents of the alarm contract as it is referenced by the Complaint, it is central to the Plaintiffs' claim, and its authenticity is not in question. *See Flores*, 2010 WL 6389598 at *2 (although "[o]rdinarily, when ruling on a motion for judgment on the pleadings, the court must limit its analysis to the four corners of the complaint ..., [t]here is ... an exception to this rule for documents referenced by the complaint that are central to the plaintiffs claim and whose authenticity is not in dispute") (citing *Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir.2006)).

Plaintiffs argue that these provisions are inapplicable because California law clearly rejects contractual provisions disclaiming liability for gross negligence, willful misconduct, or other violations of law. (Opp'n 9) (citing Cal. Civ.Code § 1668). However, Plaintiffs fail to state a claim for negligence, willful misconduct, or for violation of California's unfair competition law. As such, Plaintiffs' only remaining cause of action describes Defendant's breach of contract, conduct that is specifically contemplated by the agreement's risk allocation provisions.

Furthermore, "courts throughout the country have concluded that permitting an alarm company to limit its liability is not contrary to public policy. *Flores v. ADT Sec. Serv., Inc.*, 2011 WL 1211769, at *6 (D.Ariz. Jan.31, 2011) (citing *Leon's Baker, Inc. v. Grinnell Corp.*, 990 F.2d 44, 48 (2d Cir.1993) (collecting cases)). Likewise, "California courts have, in other burglar alarm cases, overwhelming upheld and enforced risk allocation provisions" containing language similar to the provisions at issue in this case. *Valenzuela*, 2010 WL 7785571, at *11 (citing *Atkinson v. Pac. Fire Extinguisher Co.*, 40 Cal.2d 192, 195–98, 253 P.2d 18 (1953); *Better Food Markets, Inc.*, 40 Cal.2d at 184–88, 253 P.2d 10; *Guthrie v. Am. Protection Indus.*, 160 Cal.App.3d 951, 954, 206 Cal.Rptr. 834 (1984); *Fireman's Fund Ins. Co.*, 151 Cal.App.3d at 689–90, 198 Cal.Rptr. 756; *Feary*, 32 Cal.App.3d at 557–58, 108 Cal.Rptr. 242).

***7** In *Guthrie*, the California Court of Appeal explained its reasoning as follows:

> Most persons, especially operators of business establishments, carry insurance for loss due to various types of crime. Presumptively insurance companies who issue such policies base their premiums on their assessment of the value of the property and the vulnerability of the premises. No reasonable person could expect that the provider of an alarm service would, for a fee unrelated to the value of the property, undertake to provide an identical type coverage should the alarm fail to prevent a crime. *Guthrie*, 160 Cal.App.3d at 954, 206 Cal.Rptr. 834.

Accordingly, the Court finds the risk-allocation provisions of the parties' agreement do not contravene public policy and are valid and enforceable against Plaintiffs.

IV. CONCLUSION

For the foregoing reasons, Defendant's Motion for Judgment on the Pleadings is GRANTED as to all except Plaintiffs' fifth cause of action for breach of contract. Although Defendant's liability for breach of contract is still in dispute, Plaintiffs' potential recovery is limited by the risk allocation provisions set forth in the parties' agreement.

IT IS SO ORDERED.

C.D.Cal.,2012.
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