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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Sandra Zinn,

10 Plaintiff,

11 v.

12 ADT LLC of Delaware (FN), et al.,

13 Defendants.  
14

No. CV-17-03037-PHX-DLR

**ORDER**

15  
16 At issue is Defendant ADT LLC of Delaware (FN)'s motion for judgment on the  
17 pleadings, which is fully briefed. (Docs. 10, 16, 19.) For the following reasons, the  
18 motion is granted.

19 **I. Background**

20 Plaintiff Sandra Zinn, an Arizona resident, claims several individuals intruded on  
21 her residence in Pinnacle Peak Country Club Estates on April 24, 2016. Plaintiff claims  
22 the intrusion resulted in damage to her personal property and emotional distress—totaling  
23 at least \$200,000 in damages. Prior to the intrusion, Plaintiff entered into a Residential  
24 Services Contract (“Contract”) with Defendant. The Contract stipulated that Defendant  
25 would provide security services, including an alarm system, to Plaintiff’s residence in  
26 exchange for a monthly fee of \$40.99. Defendant, however, did not detect or respond to  
27 an intrusion on April 24, 2016.

28 On June 13, 2017, Plaintiff filed this action in state court claiming that Defendant

1 acted negligently with respect to its duty to provide alarm services, and that Defendant's  
2 negligence proximately caused Plaintiff's injuries. Defendant removed the action  
3 pursuant to this Court's diversity jurisdiction. Defendant now seeks judgement in its  
4 favor pursuant to Federal Rule of Civil Procedure 12(c).

## 5 **II. Legal Standard**

6 A motion for judgment on the pleadings under Rule 12(c) "is properly granted  
7 when, taking all the allegations in the non-moving party's pleadings as true, the moving  
8 party is entitled to judgment as a matter of law." *Fajardo v. Cnty. of L.A.*, 179 F.3d 698,  
9 699 (9th Cir. 1999). "Rule 12(c) is 'functionally identical' to Rule 12(b)(6) and . . . 'the  
10 same standard of review' applies to motions brought under either rule." *Cafasso v. Gen.*  
11 *Dynamics C4 Sys.*, 637 F.3d 1047, 1054 n.4 (9th Cir. 2011) (quoting *Dworkin v. Hustler*  
12 *Magazine Inc.*, 867 F.2d 1188, 1192 (9th Cir. 1989)). Thus, a motion for judgment on  
13 the pleadings should not be granted if the complaint is based on a cognizable legal theory  
14 and contains "sufficient factual matter, accepted as true, to state a claim to relief that is  
15 plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation  
16 marks and citation omitted).

17 Ordinarily, when ruling on a motion for judgment on the pleadings, "the scope of  
18 review . . . is limited to the contents of the complaint." *Marder v. Lopez*, 450 F.3d 445,  
19 448 (9th Cir. 2006). Other evidence may be considered, however, "[i]f the documents'  
20 'authenticity . . . is not contested' and 'the plaintiff's complaint necessarily relies' on  
21 them." *Lee v. City of L.A.*, 250 F.3d 668, 688 (9th Cir. 2001) (quoting *Parrino v. FHP,*  
22 *Inc.*, 146 F.3d 699, 705-06 (9th Cir. 1988)). Accordingly, in ruling on Defendant's  
23 motion the Court will consider the Contract because its authenticity is not contested, and  
24 Plaintiff's complaint necessarily relies on its terms and conditions.

## 25 **III. Discussion**

26 Defendant argues that Plaintiff's negligence claim fails as a matter of law both  
27 because Arizona recognizes no common law duty under these circumstances and because  
28

1 Plaintiff's claim is untimely. The Court agrees.<sup>1</sup>

2 **A. Negligence**

3 Plaintiff claims that Defendant owed her a duty of care based on Defendant's  
4 relationship to her as her home security provider. Plaintiff further asserts that Defendant  
5 breached that duty by failing to detect or respond to the home intrusion. Defendant  
6 argues that Plaintiff's negligence claim fails as a matter of law because Defendant did not  
7 have a duty to provide alarm services independent of the Contract.

8 In Arizona, "a breach of contract is not a tort unless the law imposes a duty on the  
9 relationship created by the contract which exists apart from the contract." *See Flores v.*  
10 *ADT Sec. Servs., Inc.*, No. CIV 10-036-TUC-FRZ (GEE), 2010 WL 6389598, at \*5 (D.  
11 Ariz. June 28, 2010) (quoting *Aspell v. Am. Contract Bridge League*, 595 P.2d 191, 194  
12 (Ariz. Ct. App. 1979). Arizona law does not impose a duty on the relationship between a  
13 provider of security services and a contracting residence owner. *Id.*; *see also Valenzuela*  
14 *v. ADT Sec. Servs., Inc.*, 475 Fed. App'x 115, 117 (9th Cir. 2012) (affirming the district  
15 court's grant of summary judgment on the plaintiff's gross negligence claim because the  
16 alarm service provider's duty to provide security services "arose solely from its  
17 contractual relationship . . . not form any duty independent of the parties' contract.")).  
18 Accordingly, Defendant is entitled to judgment on Plaintiff's negligence claim because  
19 Arizona imposes no duty of care on Defendant independent of the Contract.

20 **B. Timeliness**

21 Defendant also argues that Plaintiff's negligence claim—as well as any potential  
22 breach of contract claim she might wish to bring in an amended pleading—is barred by  
23 the one-year limitations period in the Contract. Defendant directs the Court to the  
24 following paragraph of the Contract:

25 **TIME TO FILE LAWSUIT OR OTHER ACTION. YOU**

26 <sup>1</sup> Defendant also asserts that the Contract limits any recovery to \$500 and, therefore,  
27 the Court should dismiss those portions of Plaintiff's claim that seek damages exceeding  
28 this amount. Because the Court finds Defendant is entitled to judgment on the pleadings,  
it need not address Defendant's alternative argument.

1 AGREE TO FILE ANY LAWSUIT OR OTHER ACTION  
2 YOU MAY HAVE AGAINST US OR OUR AGENTS,  
3 EMPLOYEES, SUBSIDIARIES, AFFILIATES OR  
4 PARENT COMPANIES WITHIN ONE (1) YEAR FROM  
5 THE DATE OF THE EVENT THAT CAUSED THE LOSS,  
6 DAMAGE OR LIABILITY.

7 (Doc. 10-1 at 4.) It is undisputed that the alleged home intrusion occurred on April 24,  
8 2016, and that Plaintiff brought suit on June 13, 2017—over one year later. Plaintiff  
9 argues, however, that the contractual limitations period is invalid in light of “public  
10 policy imperatives, and questions of fact.” (Doc. 16 at 5.)

11 It is firmly established in Arizona that parties may contractually agree to shorten  
12 the statute of limitations period that normally applies to claims. *See Zuckerman v.*  
13 *Transamerica Ins. Co.*, 650 P.2d 441, 446 (Ariz. 1982); *Herstam v. Deloitte & Touche,*  
14 *LLP*, 919 P.2d 1381, 1386 (Ariz. Ct. App. 1996). Further, parties to a standardized  
15 contract generally are bound by its terms. *See Huff v. Bekins Moving & Storage Co.*, 702  
16 P.2d 1341, 1343 (Ariz. Ct. App. 1985). Contractual terms will not be enforced, however,  
17 if they are unconscionable, against public policy, or go beyond the range of the parties’  
18 reasonable expectations. *See Darner Motor Sales, Inc. v. Universal Underwriters Ins.*  
19 *Co.*, 682 P.2d 388, 396 (Ariz. 1984); *Zuckerman*, 650 P.2d at 445. When determining  
20 whether a contractual term undermines a party’s reasonable expectations, the Court  
21 considers “factors such as whether both parties had an opportunity to read the term,  
22 whether it was hidden from view, whether it is bizarre or oppressive, or whether it  
23 eliminates the dominant purpose of the transaction.” *Halley Equip. Leasing, LLC v.*  
24 *Honeywell Int’l*, No. CV09-01487-PHX-ROS, 2010 WL 11515659, at \*3 (D. Ariz. Mar.  
25 31, 2010) (citing *Darner*, 682 P.2d at 396).

26 Plaintiff points to nothing in the record that suggests the Contract’s statute of  
27 limitations provision is unconscionable or beyond her reasonable expectations. She does  
28 not assert that she was unable to read the Contract, or that the statute of limitations  
provision was hidden, oppressive, or eliminated the purpose of the transaction. Plaintiff  
also fails to identify any public policy concerns that suggest a one-year limitations period

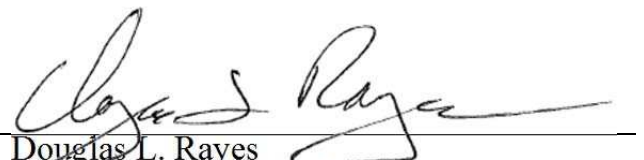
1 in an alarm services contract should not be enforced. Notably, other courts have found  
2 that “[a] one-year limitations period is not substantively unreasonable.” *Wine Styles, Inc.*  
3 *v. GoDaddy.com, LLC*, No. CV 12-583-PHX-SRB, 2012 WL 8254047, at \*3 (D. Ariz.  
4 Aug. 15, 2012) (citing *Han v. Mobil Oil Corp.*, 73 F.3d 872, 877 (9th Cir. 1995)). Under  
5 these circumstances, the Court finds that the Contract’s one-year limitations period is  
6 enforceable and Plaintiff’s complaint, therefore, is untimely.

7 **IV. Conclusion**

8 For these reasons, the Court concludes that Plaintiff’s complaint fails to state a  
9 cognizable negligence claim because Arizona does not does not impose a duty on the  
10 relationship between a provider of security services and a contracting residence owner  
11 independent of the parties’ contract. The Court also finds that Plaintiff’s complaint  
12 cannot be cured by a permissible amendment because she brought her lawsuit outside the  
13 one-year limitations period contained within the Contract.

14 **IT IS ORDERED** that Defendant’s Motion for Judgment on the Pleadings (Doc.  
15 10) is **GRANTED**. The Clerk of the Court shall enter judgment in favor of Defendant  
16 and terminate this case.

17 Dated this 23rd day of January, 2018.

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22 Douglas L. Rayes  
23 United States District Judge  
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