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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Frederick B. Flores,)	No. CV 10-036-TUC-FRZ (GEE)
Plaintiff,)	ORDER
vs.)	
ADT Security Services, Inc.,)	
Defendant.)	

Pending before the Court for consideration is Defendant’s Motion for Judgment on the Pleadings and Plaintiff’s Motion for Partial Summary Judgment.

This action, originally filed in the Arizona Superior Court in and for the County of Pima and removed to this Court on the jurisdictional basis of diversity, was referred to Magistrate Judge Glenda E. Edmonds for all pretrial proceedings and report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) and LRCiv 72.1 and LRCiv 72.2 of the Rules of Practice of the United States District Court for the District of Arizona, Local Rules of Civil Procedure.

Plaintiff Frederick B. Flores filed this action alleging breach of contract, tortious breach of the implied covenant of good faith and fair dealing, negligence, and consumer fraud pursuant to A.R.S. § 44-1522 against Defendant ADT Security Services, Inc.

Magistrate Judge Edmonds issued separate Reports and Recommendations as to each of the pending motions. Each Report and Recommendation sets forth a factual and procedural background.

1 **I. Defendant's Motion for Judgment on the Pleadings**

2 On June 28, 2010, Magistrate Judge Edmonds issued her Report and
3 Recommendation, recommending that the District Court, after its independent review of the
4 record, enter an order granting in part Defendant's Motion for Judgment on the Pleadings,
5 filed pursuant to Rule 12(c), finding that Defendant is entitled to judgment on Plaintiff's
6 claim for tortious breach of the duty of good faith and fair dealing and on Plaintiff's claim
7 for negligence.

8 The Magistrate Judge also recommends that the Court deny both Defendant's Motion
9 to Stay, based on the fact that Defendant's Rule 12(c) motion does not resolve the entire
10 action, and Plaintiff's Rule 56(f) Motion for Continuance to Permit Additional Discovery,
11 on the basis Defendant's Rule 12(c) motion for judgment on the pleadings should not be
12 treated as a motion for summary judgment as Plaintiff suggests.

13 Magistrate Judge Edmonds, under the proper legal standard of review set forth in
14 *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009), provides a thorough analysis of each
15 of the claims, recommending that the Court grant Defendant's motion on Plaintiff's claims
16 for tortious breach of the duty of good faith and fair dealing and on Plaintiff's claim for
17 negligence, and deny Defendant's motion for judgment as a matter of law on Plaintiff's
18 breach of contract and state consumer fraud claims.

19 Defendant filed its limited objections, objecting only to Magistrate Judge Edmond's
20 findings that (1) the exculpatory provisions in the Residential Services Contract is void
21 under the reasonable expectations doctrine, and (2) the Complaint states a viable claim for
22 consumer fraud. Defendant argues that the Court should dismiss Plaintiff's claims in their
23 entirety, or in the alternative, limit any recovered damages under the provisions of the
24 agreement.

25 In response, Plaintiff asserts that the Report and Recommendation should be affirmed
26 in all respects and the objections of the Defendant be overruled and that the Court adopt the
27 findings that Plaintiff has properly pled claims for breach of contract and consumer fraud.
28 Plaintiff does not object to the Magistrate Judge's recommendation that the tortious breach

1 of duty of good faith and fair dealing and the negligence claims be denied.

2 The Court finds, after consideration of all matters presented, including the objections
3 of the Defendant, that the findings of the Magistrate Judge as set forth in the Report and
4 Recommendation on Defendant's Motion for Judgment on the Pleadings are proper findings
5 of fact and conclusions of law.

6 **II. Plaintiff's Motion for Partial Summary Judgment**

7 On January 31, 2011, Magistrate Judge Edmonds issued her Report and
8 Recommendation, recommending that the District Court, after its independent review of the
9 record, enter an order denying Plaintiff's Motion for Partial Judgment, based on the finding
10 that the liability limitation clause does not violate the doctrine of reasonable expectations,
11 is not unconscionable, and does not violate public policy, setting forth the proper legal
12 standard and analysis under Ruler 56(c)(2), Fed.R.Civ.P.

13 Plaintiff filed objections to the recommendation to deny his motion, relying mainly
14 on public policy argument, absent legal authority.

15 After consideration of the matters presented, including Plaintiff's objections and
16 Defendant's response thereto, the Court finds that the findings of Magistrate Judge Edmonds
17 and the recommendation to deny Plaintiff's Motion for Partial shall be accepted as set forth
18 in the Report and Recommendations.

19 Based on the foregoing, the Court finds, after consideration of all matters presented,
20 and after an independent review of the record herein, that the findings of the Magistrate
21 Judge as set forth in the Report and Recommendation on Defendant's Motion for Judgment
22 on the Pleadings and the Report and Recommendation on Plaintiff's Motion for Partial
23 Summary Judgment, shall be accepted and adopted as the findings of fact and conclusions
24 of law of the Court. Accordingly,

25 **IT IS HEREBY ORDERED** that Magistrate Judge Edmond's Report and
26 Recommendation (Doc. 43) addressing Defendant's Motion for Judgment on the Pleadings
27 is hereby **ACCEPTED** and **ADOPTED** as the findings of fact and conclusions of law by
28 this Court;

1 **IT IS FURTHER ORDERED** that Defendant's Motion for Judgment on the
2 Pleadings (Doc. 20) is **GRANTED in part and DENIED in part**;

3 **IT IS FURTHER ORDERED** that Defendant's Motion to Stay (Doc. 21) is
4 **DENIED**;

5 **IT IS FURTHER ORDERED** that Plaintiff's Rule 56(f) Motion for Continuance to
6 Permit Additional Discovery (Doc. 29) is **DENIED**;

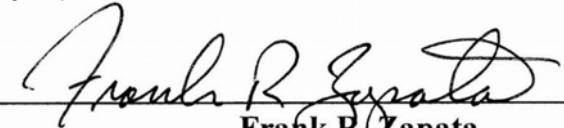
7 **IT IS FURTHER ORDERED** that Magistrate Judge Edmond's Report and
8 Recommendation (Doc. 56) on Plaintiff's Motion for Partial Summary Judgment is hereby
9 **ACCEPTED and ADOPTED** as the findings of fact and conclusions of law by this Court;

10 **IT IS FURTHER ORDERED** that Plaintiff's Motion for Partial Summary Judgment
11 (Doc. 27) is **DENIED**;

12 **IT IS FURTHER ORDERED** that this matter shall proceed on the remaining claims
13 of breach of contract and consumer fraud;

14 **IT IS FURTHER ORDERED** that this matter is referred back to Magistrate Judge
15 Edmonds for all pretrial proceedings and report and recommendation in accordance with the
16 provisions of 28 U.S.C. § 636(b)(1) and LRCiv 72.1 and LRCiv 72.2.

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18 DATED this 31st day of March, 2011.

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22 Frank R. Zapata
23 Senior United States District Judge
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