UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ADT SECURITY SERVICES, INC.,

Plaintiff(s),

v.

SECURITY ONE INT'L, INC. *et al.*,

Defendant(s).

Case No.: 11-CV-05149 YGR

NOTICE OF *PARTIAL* PRELIMINARY RULING AND REQUEST FOR SUPPLEMENTAL AUTHORITY IN ADVANCE OF THE HEARING

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD, PLEASE TAKE NOTICE OF THE FOLLOWING PRELIMINARY RULING AND REQUEST FOR SUPPLEMENTAL AUTHORITY FOR THE HEARING SCHEDULED ON JULY 24, 2012 AT 2:00 P.M.

I. PRELIMINARY RULING ON THE MOTION TO DISMISS AS TO COUNT I OF THE SECOND AMENDED COMPLAINT

The Court has reviewed the parties' papers and arguments, and is inclined to **DENY** that part of the Motion to Dismiss that seeks dismissal of Count I of the Second Amended Complaint on the basis that it is a successive Rule 12 motion. Having failed to raise his objection to Count I in his first motion to dismiss, Claudio Hand is now precluded under Rule 12(g) from raising the objection in a second motion to dismiss. Thus, the Court will not entertain argument addressing Count I of the Second Amended Complaint.

Based on the foregoing, the Court will **DENY IN PART** that part of the Motion to Dismiss that seeks to dismiss Count I of the Second Amended Complaint on the basis that the motion is a successive Rule 12 motion.

II. REQUEST FOR SUPPLEMENTAL AUTHORITY

The parties shall file a statement of supplemental authority regarding the following:

1) Under the Lanham Act "a corporate officer or director is, in general, personally liable for all torts which he authorizes or directs or in which he participates, notwithstanding that he acted as

an agent of the corporation and not on his own behalf." *Coastal Abstract Serv., Inc. v. First Am. Title Ins. Co.*, 173 F.3d 725, 734 (9th Cir. 1999).

a) With pinpoint citations, and without argument, what legal authority supports ADT's position that under the Lanham Act a corporate officer or director is personally liable for torts which he does not authorize, does not direct, and does not participate in, but to which he is willfully blind?

b) With pinpoint citations, and without argument, what legal authority supports Defendant's position that under the Lanham Act a corporate officer or director is *not* personally liable for torts which he does not authorize, does not direct, and does not participate in, but to which he is willfully blind?

c) With pinpoint citations, and without argument, what legal authority supports Defendant's position that under the Lanham Act, alleging that the sole officer, director, and shareholder of a corporation "directs, authorizes, approves, participates in, [and] supervises" fraudulent acts, does not plead the circumstances of the fraud with particularity?

2) Count II alleges Vicarious Unfair Competition and False Advertising under the Lanham Act, 15 U.S.C. § 1125.

a) With pinpoint citations to legal authority, and without argument, what are the elements for a cause of action for Vicarious Unfair Competition under the Lanham Act, 15 U.S.C. § 1125?

b) With pinpoint citations to legal authority, and without argument, what are the elements for a cause of action for Vicarious False Advertising under the Lanham Act, 15 U.S.C. § 1125?

3) Count III alleges Contributory Unfair Competition and False Advertising under the Lanham Act, 15 U.S.C. § 1125. The parties dispute whether such a cause of action exists.

a) With pinpoint citations, and without argument, what legal authority supports Defendant's position that no cause of action exists for Contributory Unfair Competition or Contributory False Advertising under the Lanham Act?

b) For sake of argument, assuming that there are causes of action for Contributory Unfair Competition and Contributory False Advertising under the Lanham Act:

i. With pinpoint citations to legal authority, and without argument, what are the elements for a cause of action for Contributory Unfair Competition under the Lanham Act, 15 U.S.C. § 1125?

ii. With pinpoint citations to legal authority, and without argument, what are the elements for a cause of action for Contributory False Advertising under the Lanham Act, 15 U.S.C. § 1125?

No later than **12:00 p.m.** on **Monday, July 23, 2012**, the parties shall file either jointly or separately a statement of supplemental authorities, with pinpoint citations, and without argument or additional briefing. *Cf.* Civil L. R. 7-3(d). Copies of the cases should not be filed in the docket, but rather, Counsel should provide copies at the hearing. The parties will be given the opportunity at the hearing to explain their reliance on such authority.

IT IS SO ORDERED.

Dated: July 19, 2012

YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

United States District Court
Northern District of California