

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3 **ADT SECURITY SERVICES, INC.,**

4 Plaintiff,

5 v.

6 **SECURITY ONE INTERNATIONAL, INC., ET**
7 **AL.,**

8 Defendants.

Case No. 11-cv-05149-YGR

**FURTHER ORDER DENYING CONTEMPT
SANCTIONS ON CROSS-MOTIONS FOR
ORDERS TO SHOW CAUSE RE: CONTEMPT
OF INJUNCTION AND PROTECTIVE ORDER**

Re: Dkt. Nos. 377, 391

9 Plaintiff ADT Security Services, Inc. request (Dkt. No. 377) that the Court find by
10 Defendant Security One International Inc. (“Security One”) in contempt of the injunction in place
11 in this matter is **DENIED**. The parties initially stipulated to the terms of an injunction. Based on
12 subsequent contempt proceedings, in its January 3, 2013 Order, the Court modified the injunction
13 to provide, in pertinent part:

14 Defendants, their agents, independent contractors, servants, employees, officers, directors,
15 and telemarketers are prohibited from making any false representation to any ADT
16 customer while soliciting the customer’s business, including *without limitation*, as it relates
17 to their relationship and/or affiliation with the manufacturer of the customer’s alarm
system equipment (*i.e.* General Electric or Honeywell).

(Dkt. No. 185, January 3, 2013 Order, at 10, emphasis in original.)

18 On April 3, 2016, ADT filed the instant Motion for Order to Show Cause regarding alleged
19 new acts of contempt by Security One. (Dkt. No. 377.) The Court heard argument on the motion
20 on June 7, 2016, and directed the parties to submit an outline of any additional discovery needed
21 with respect to the alleged contempt. Subsequent to the hearing, the parties submitted requests for
22 additional discovery. (Dkt. No. 399, 401.) The Court then ordered discovery¹ and further briefing
23 concerning, the alleged contempt by Security One, which the parties submitted. (Dkt. Nos. 403,
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26 _____
27 ¹ In its request, ADT sought discovery related to false statements other than Security
28 One’s “GE Security dealer” affiliation. (Dkt. No. 399:9-21.) The Court denied such additional
discovery unless the evidence supported a finding of contempt on the central issue in ADT’s
motion, whether Security One falsely represented it was an authorized GE Security dealer. (Dkt.
No. 403 at 1:21-22, 2:20-22.)

1 405, 406, 408, 411.)

2 On October 19, 2016, the Court issued its order making preliminary findings regarding the
3 asserted contempt motions, and ordering a scheduling conference concerning an evidentiary
4 hearing. (Dkt. No. 412.) Based upon the evidence in the record to that point, the Court did not
5 find the telemarketing scripts to establish clear and convincing evidence of contempt of the
6 injunction, or that the agreement with UTC clearly precluded Security One from using its
7 “authorized GE Security dealer” status in connection with selling monitoring services. The Court
8 found some evidence to indicate that: (1) a Security One employee may have misrepresented
9 himself as being employed by ADT; and (2) some Security One’s telemarketers made statements
10 misrepresenting their affiliation as being with “GE” rather than “GE Security” in certain calls.
11 The Court ordered the parties to appear for a scheduling conference to discuss the scope of an
12 evidentiary hearing, indicating that the inquiry would be focused on how often Security One’s
13 agents departed from the telemarketing scripts on this issue; and how material those deviations
14 were in terms of damage to ADT.

15 In response to the Court’s October 19, 2016 Order, ADT indicated that it wished to expand
16 the inquiry and to seek discovery regarding other kinds of false representations Security One may
17 have made in order to support a contempt finding. (Dkt. No. 415.) ADT renews its contention
18 that it should not be limited to the issue of whether Security One was permitted to state an
19 affiliation with GE Security in establishing contempt here.

20 Certainly, ADT’s motion and reply listed a number of ways in which ADT believed
21 Security One’s telemarketing efforts were aimed at winning the confidence of ADT customers by
22 suggesting that the customers were talking to a company with which they already had a
23 relationship, such as by indicating that the telemarketer knew how much the customer was paying,
24 who they were “placed” with for monitoring, or who made their security alarm equipment.
25 However, the majority of the evidence and argument offered by ADT was focused on the GE
26 Security-affiliation issue. (*See generally* Dkt. Nos. 377, 392; *see e.g.*, Dkt. No. 377 at 11:14-16
27 (arguing that Security One is falsely stating it is a GE representative and “wraps this core
28 violation” with other misrepresentations).

1 More importantly, the Court’s review of the evidence offered by ADT, and its
2 understanding of the entire record in this matter, leads it to conclude that these other, non-“core”
3 “misrepresentations”—suggesting that Security One knows what customers are paying, that they
4 were “placed” for monitoring, or their equipment manufacturer, and the like—are not material to
5 the unfair competition claims here, much less clear and convincing evidence of contempt of the
6 terms of the injunction. ADT reads the injunction too broadly when it argues that the injunction’s
7 “making any false representation” term prohibits any statement by Security One that implies
8 knowledge of the consumer’s current security monitoring system, no matter how immaterial or
9 indirect the implication is.

10 In the absence of evidence that Security One was making unauthorized statement with
11 respect to its affiliation with General Electric, a finding of contempt is unwarranted. To the extent
12 that ADT believes these non-“core” misrepresentations are separately actionable as unfair
13 competition, the appropriate court is to file a new action. The Court will not expand this action
14 and stretch the limits of the existing injunction to include these alleged statutory violations.


15 Thus, the Court concludes that ADT has not established by clear and convincing evidence
16 that Security One failed to substantially comply with the Injunction. The request for relief based
17 upon the alleged contempt is **DENIED**.

18 As to Security One’s request for an award of attorneys’ fees and an admonishment of ADT
19 for its conduct in violating the protective order in this matter (*See* Dkt. No. 401 at n.2), the Court
20 finds these remedies unwarranted and the request is also **DENIED**.

21 **IT IS SO ORDERED.**

22 This terminates Docket Nos. 377 and 391.

23 Dated: January 9, 2017

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25 **YVONNE GONZALEZ ROGERS**
26 **UNITED STATES DISTRICT COURT JUDGE**

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