

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

JACOB SILVER on behalf of himself and
all others similarly situated,

Plaintiff,

v.

LIVWATCH SECURITY, LLC d/b/a
BRINKS HOME SECURITY f/k/a
BOLSTER LLC d/b/a SAFEMART;
MONITRONICS INTERNATIONAL, INC.
d/b/a BRINKS HOME SECURITY,

Defendants.

CLASS ACTION COMPLAINT

2:20-cv-2478

Plaintiff Jacob Silver, on behalf of himself and all others similarly situated, brings this class action complaint against Defendants LiveWatch Security, LLC d/b/a Brinks Home Security f/k/a Bolster LLC d/b/a Safemart and Monitronics International, Inc. d/b/a Brinks Home Security, alleging as follows:

NATURE OF THE ACTION

1. This is a class action against Defendants LiveWatch Security, LLC d/b/a Brinks Home Security f/k/a Bolster LLC d/b/a Safemart (“LiveWatch”) and Monitronics International, Inc. d/b/a Brinks Home Security (“Monitronics”) (the two Defendants collectively, “Brinks Home Security” or “Defendants”) for violations of the New York General Business Law §§ 349 and 350, breach of contract, and unjust enrichment.

2. Plaintiff and the members of the Class he seeks to represent are all New York consumers whose accounts were charged by Brinks Home Security for a text messaging alert service known as Brinks Home Interactive Messaging powered by ASAPer (“Brinks Messaging”),

but who failed to receive the benefits of the service because of the intentional, deceptive and unconscionable conduct of Brinks Home Security.

3. Since 2018, Plaintiff has been and continues to be charged a monthly fee for Brinks Messaging by Brinks Home Security.

4. Brinks Home Security operates as a security company that provides alarm systems and alarm-monitoring services to customers throughout the United States.

5. Brinks Home Security represents to its customers, including Plaintiff, that if their alarm systems are activated, Brinks Messaging will transmit text messages to their mobile telephones providing customers with a link to a portal that would allow them to deactivate the alarm.

6. However, after adoption, the Brinks Messaging system routinely failed to transmit text messages to subscribers and for this or other reasons was internally discontinued/deactivated by Brinks Home Security no later than March 2019.

7. Notwithstanding the fact that the service has been discontinued, Brinks Home Security has continued to collect fees for Brinks Messaging from its customers.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this civil action pursuant to 28 U.S.C. § 1332(d) because it is brought as a class action, on behalf of a Class of over 100 Class Members, whose claims aggregate in excess of \$5 million, and which includes members whose state citizenship is diverse from that of Defendants.

9. This Court has personal jurisdiction over Defendants LiveWatch and Monitronics because they transact business within the state of New York.

10. Venue is proper because it was in this District that a substantial part of the events or omissions giving rise to Plaintiff's claims occurred. *See* 28 U.S.C. § 1391(a)(1)-(2).

PARTIES

11. Plaintiff Jacob Silver is an individual residing in Woodmere, New York.

12. Defendant LiveWatch Security, LLC is a Delaware limited liability company with a principal place of business located in Farmers Branch, Texas.

13. LiveWatch is duly registered to do business as a foreign limited liability company in New York State.

14. Upon information and belief, in 2015, LiveWatch was acquired by Defendant Monitronics International, Inc.

15. Defendant Monitronics International, Inc. is a Delaware corporation with a principal place of business located in Farmers Branch, Texas.

16. Monitronics is duly registered to do business as a foreign limited liability company in New York State.

PLAINTIFF'S EXPERIENCE

17. On November 17, 2011, Plaintiff entered into a LiveWatch Monitoring Agreement with Bolster LLC doing business as "Safemart" (the company that is now known as LiveWatch Security, LLC) for monitoring of his alarm security system.

18. Since 2011, Plaintiff has continuously paid monthly for alarm monitoring services.

19. In or about 2018, Plaintiff began receiving his monthly invoice for alarm monitoring services under the Brinks Home Security brand.

20. Beginning in or about 2018, Plaintiff's monthly invoice included a new \$2.95 charge for Brinks Messaging plus applicable sales taxes (on the \$2.95 charge). Plaintiff was not

aware that Brinks Messaging was added to his monthly invoice until after he was charged for the service.

21. Plaintiff has paid for Brinks Messaging during all months since the Brinks Messaging charge first appeared on his monthly invoices.

22. On at least three occasions since Mr. Silver was enrolled in Brinks Messaging, his alarm system was activated, but he did not receive a text from Brinks Messaging with a link to the portal that would allow him to cancel the alarm.

23. Most recently, in or about or about February 2020, Mr. Silver's alarm system was activated, but he did not receive a text from Brinks Messaging.

24. After the failure of Brinks Messaging in February 2020, Mr. Silver contacted Brinks' customer service to complain about the Brinks Messaging failures. After speaking with several representatives by telephone, a representative of Brinks Home Security explained to Mr. Silver that the Brinks Messaging system had been discontinued/deactivated for some time due to technical problems.

25. Plaintiff thus discovered he had been charged monthly (and continues to be charged) for Brinks Messaging despite the fact that Defendants no longer provide the service.

ADDITIONAL FACTUAL ALLEGATIONS RELEVANT TO ALL CLAIMS

23. Upon information and belief, in 2018, Monitronics acquired a license to do business as "Brinks Home Security."

24. Upon information and belief, since at least 2018, Monitronics and LiveWatch have done business and present themselves to consumers collectively as Brinks Home Security.

25. For example, as of May 28, 2020, LiveWatch maintains a webpage with Brinks-branded URL <https://pages.brinkshome.com/livewatch-campaign> and all consumers seeking to

purchase security systems and live alarm monitoring services are sent to a Brinks Home Security-branded webpage located at <https://brinkshome.com/shop/systems?>

26. Moreover, customers of the Defendants received invoices and/or payment receipts for Brinks Messaging that identified the service provider as Brinks Home Security.

27. Upon information and belief, beginning in 2018, all of Monitronics' and LiveWatch's consumer alarm monitoring services were rebranded as "Brinks Home Security."

28. Upon information and belief, beginning in 2018, Defendants began charging a fee to consumers for Brinks Messaging.

29. Upon information and belief, since at least 2018, Monitronics and LiveWatch centralized their billing, payment and alarm monitoring systems, including their billing and payment systems for Brinks Messaging.

30. Upon information and belief, Defendants discontinued the use of and/or deactivated Brinks Messaging in March 2019 at the latest.

31. Despite discontinuing/deactivating Brinks Messaging, Defendants continued to charge customers fees for Brinks Messaging.

32. Upon information and belief, at all times material herein, Monitronics and LiveWatch have operated as a common enterprise that shares common ownership, management, address, office space, and employees, and commingles funds.

33. Upon information and belief, at all times material herein, Monitronics and LiveWatch have operated as a common enterprise while engaging in unlawful conduct, including the violations of law described herein.

34. In light of the foregoing, Defendants are jointly and severally liable for the acts or practices alleged herein.

CLASS ACTION ALLEGATIONS

26. Plaintiff brings this action as a class action, on behalf of the following class, pursuant to Rule 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure:

Each person who, with regard to a property in New York State, has paid one or more fees to Brinks Home Security for Brinks Home Interactive Messaging powered by ASAPer after Brinks Home Security discontinued/deactivated the service

27. The Class Period is defined as the limitations time period applicable under the claims to be certified.

28. The following persons are expressly excluded from the Class: (1) Defendants and their parent companies, subsidiaries, affiliates, and controlled persons; (2) officers, directors, agents, servants, or employees of Defendants, and the immediate family members of any such person; (3) all persons who make a timely election to be excluded from the proposed Class; (4) governmental entities; and (5) the Court to which this case is assigned and its staff.

29. Plaintiff reserves the right to revise this class definition and to add subclasses as appropriate based on facts learned as the litigation progresses.

30. This action may be maintained as a class action because there is a well-defined community of interests in the litigation and the proposed Class is easily ascertainable.

Numerosity

31. Brinks describes itself “one of the largest and most trusted home security companies in the U.S.” that “provide[s] cutting-edge products and alarm-monitoring services to more than 1 million customers throughout North America.” The Brinks Home Security Difference, <https://brinkshome.com/about-us> (last visited May 28, 2020).

32. Given the size of Brinks' overall customer base and the fact that New York is, by any measure, a major market, Plaintiff approximates that the Class numbers in the tens of thousands or more.

33. Joinder of all Class Members is therefore impracticable.

Common Questions Predominate

34. This action involved common questions of law and fact applicable to each Class Member that predominate over questions that affect only individual Class Members. Questions of law and fact common to each Class Member include:

- a. Whether Brinks continued billing and accepting payments from consumers for Brinks Messaging after Brinks discontinued use of the text messaging service constituted unfair, deceptive, or unconscionable practices;
- b. Whether Brinks' failure to deliver the services offered by Brinks Messaging to its customers constituted a breach of contract; and
- c. Whether Brinks has been unjustly enriched by soliciting and accepting consumers' payments for Brinks Messaging after discontinuing the service.

Typicality

35. Plaintiff's claims arise from the same practices and course of conduct that give rise to the claims of each member of the Class and are based on the same legal theories.

36. Brinks began charging Plaintiff a fee for Brinks Messaging in 2018 and has continued charging him the fee monthly to date despite the service being discontinued by Brinks no later than March 2019.

37. This same unfair and deceptive conduct was experienced by all Class Members. Defendants' unlawful, unfair, and/or fraudulent actions toward all Class Members involve the same business practices described in this Complaint, irrespective of where they occurred or were experienced.

38. Plaintiff and each Class Member sustained similar injuries arising out of Defendants' conduct.

39. The injuries of each member of the Class were caused directly by Defendants' wrongful conduct.

Adequacy

40. Plaintiff will fairly and adequately protect the interests of the Class.

41. Neither Plaintiff nor Plaintiff's counsel have any interests that conflict with or are antagonistic to the interests of the Class.

42. Plaintiff has retained competent and experienced class action attorneys to represent his interests and those of the members of the Class.

Superiority

43. There is no plain, speedy, or adequate remedy other than by maintenance of this class action.

44. The prosecution of individual remedies by members of the Class will tend to establish inconsistent standards of conduct for Defendants and result in the impairment of other Class Members' rights and the disposition of other Class Members' interests through actions to which they were not parties.

45. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender.

46. Further, as the damages suffered by individual members of the Class may be relatively small, the expense and burden of individual litigation would make it difficult or

impossible for individual members of the Class to redress the wrongs done to them, while an important public interest will be served by addressing the matter as a class action.

47. Class treatment of common questions of law and fact would also be superior to multiple individual actions or piecemeal litigation in that class treatment will conserve the resources of the Court and the litigants, and will promote consistency and efficiency of adjudication.

48. The preceding paragraphs establish that this matter satisfies the prerequisites of Rule 23(a) of the Federal Rules of Civil Procedure, and the case may proceed as a class action under Rule 23(b)(3) because questions of law or fact common to each Class Member predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

Declaratory and Injunctive Relief

49. Defendants have acted or refused to act on grounds generally applicable to all Class Members, thereby making appropriate final declaratory and injunctive relief with respect to the Rule 23(b)(2) Class as a whole. Such relief will provide a remedy for Defendants' uniform acts and omissions toward the Rule 23(b)(2) Class.

**FIRST CAUSE OF ACTION
NEW YORK GENERAL BUSINESS LAW § 349
(UNLAWFUL DECEPTIVE ACTS AND PRACTICES)**

50. Plaintiff repeats and realleges each and every allegation contained above as though set forth here in full.

51. Each of the deceptive acts and practices set forth above, constitute violations of New York General Business Law § 349 independent of whether these acts and practices constitute violations of any other law, including common law.

52. These deceptive acts and practices were committed in the conduct of business, trade, or commerce or the furnishing of a service in this state.

53. Defendants' deceptive acts and practices were consumer oriented.

54. Defendants' conduct was not a unique, one-time occurrence without possibility of replication, or recurrence and without implication for the broader consuming public.

55. Rather, Defendants regularly charged consumers for Brinks Messaging after they had discontinued/deactivated the service and continue to do so.

56. The deceptive conduct of which Plaintiff and the Class Members are victims is highly capable of repetition, occurred on a repetitive basis, and may occur in the future on a repetitive basis.

57. Defendants' practice of charging Plaintiff and the Class Members for a service which the Defendants' had previously discontinued/deactivated, was materially misleading and demonstrates bad faith and willfulness.

58. As a result of these violations of New York General Business Law § 349, Plaintiff and the Class Members have suffered actual damages.

59. For these reasons, Plaintiff and the Class Members are entitled to actual damages, declaratory judgment, declaratory relief that Defendants have violated New York General Business Law § 349, an injunction against the deceptive practices set forth herein, three times actual damages up to \$1,000, punitive damages, costs, and reasonable attorneys' fees.

SECOND CAUSE OF ACTION
NEW YORK GENERAL BUSINESS LAW § 350
(FALSE ADVERTISING)

60. Plaintiff repeats and realleges each and every allegation contained above as though set forth here in full.

61. Defendants' false representations regarding Brinks Messaging constitute violations of New York General Business Law § 350 independent on whether these representations violate any other state or federal law or give rise to any other common law violation.

62. With regard to the false written representations, Defendants' contracts with Plaintiff and the Class Members, as well as the invoices and billing statements, represent and/or are plausibly understood by a reasonable consumer to mean that Defendants were providing the Brinks Messaging service.

63. Alternatively, the failure to state on invoices and billing statement that the service had been discontinued constituted a material omission.

64. Defendants' false advertising for Brinks Messaging was committed in the conduct of business, trade, or commerce or the furnishing of a service in this state.

65. Defendants knew these misrepresentations and/or material omissions to be false and inaccurate, and engaged in this misconduct to, *inter alia*, encourage consumers to agree to and pay for a service that didn't exist.

66. Defendants' false advertising was done knowingly and willfully and committed in bad faith.

67. As a result of these violations of New York General Business Law § 350, Plaintiff and the Class Members have suffered actual damages.

68. For these reasons, Plaintiff and the Class Members are entitled to actual damages, declaratory judgment, declaratory relief that Defendants have violated New York General Business Law § 350, an injunction against the deceptive practices set forth herein, three times actual damages up to \$10,000, punitive damages, costs, and reasonable attorneys' fees

THIRD CAUSE OF ACTION
BREACH OF CONTRACT

69. Plaintiff repeats and realleges each and every allegation contained above as though set forth here in full.

70. Plaintiff and the Class Members entered into contractual agreements with Defendants.

71. Pursuant to their contractual agreements with Plaintiff and the Class Members, Defendants agreed to provide Brinks Messaging.

72. Defendants discontinued/deactivated Brinks Messaging no later than March 2019 and subsequently failed to provide Brinks Messaging to Plaintiff and the Class Members, despite charging them for the service.

73. As a direct and proximate result of Defendants' breaches of contract, Plaintiff and the Class suffered damages.

FOURTH CAUSE OF ACTION
UNJUST ENRICHMENT

74. Plaintiff repeats and realleges each and every allegation contained above as though set forth here in full.

75. Upon information and belief, beginning no later than March 2019, Defendants discontinued/deactivated Brinks Messaging and failed to provide the service Plaintiff and the Class Members paid for.

76. Defendants have profited and benefited from charging Plaintiff and the Class Members for Brinks Messaging.

77. By charging Plaintiff and the Class Members for services that had been deactivated/discontinued, Defendants have been unjustly enriched at the expense of Plaintiff and the Class.

78. Equity and good conscience require that Defendants pay restitution to Plaintiff and the Class Members for the amounts charged for Brinks Messaging.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the Class Members respectfully request that this Court provide the following relief:

- A. An order certifying this case as a class action under Fed. R. Civ. P. 23, naming Plaintiff as Class Representative, and appointing his attorneys as Class Counsel;
- B. A judgment declaring that Defendants have committed the violations of law alleged in this Class Action Complaint and an injunction forbidding any future violations;
- C. An award of actual damages, statutory damages, punitive damages, treble damages, attorney's fees and costs, as well as pre- and post- judgment interest as provided by law;
- D. Such other and further relief that may be just and proper.

[signatures on next page]

June 2, 2020

Respectfully,

SCHLANGER LAW GROUP LLP

/s/Daniel A. Schlanger

Daniel A. Schlanger
Evan S. Rothfarb
9 East 40th Street
Suite 1300
New York, NY 10016
T. (212) 500-6114
F. (646) 612-7996
dschlanger@consumerprotection.net
erothfarb@consumerprotection.net

/s/Beth Terrell

Beth Ellen Terrell (to apply *pro hac vice*)
Ben Drachler (to apply *pro hac vice*)
Terrell Marshall Law Group PLLC
936 N 34th St., Suite 300
Seattle, WA 98103
T. (206) 816-6603
F. (206) 319-5450
bterrell@terrellmarshall.com
bdrachler@terrellmarshall.com

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

JACOB SILVER, on behalf of himself and all others similarly situated

(b) County of Residence of First Listed Plaintiff Nassau, New York
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Schlanger Law Group, LLP
9 East 40th Street, Suite 1300, New York, NY 10016
212-500-6114

DEFENDANTS

LIVEWATCH SECURITY, LLC d/b/a BRINKS HOME SECURITY f/k/a BOLSTER LLC d/b/a SAFEMART; MONITRONICS INTERNATIONAL, INC. d/b/a BRINKS HOME SECURITY

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutional of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
CAFA 28 U.S.C. § 1332(d), NYGBL §§ 349 and 350, Breach of Contract, Fraud

Brief description of cause:
Class action regarding charging for services that were not provided

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: 06/03/2020 SIGNATURE OF ATTORNEY OF RECORD: /s/Daniel A. Schlanger

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG JUDGE _____

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, Daniel A. Schlanger, counsel for Plaintiff and the putative class, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- the complaint seeks injunctive relief,
- the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? Yes No
- 2.) If you answered "no" above:
 - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? Yes No
 - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes No
 - c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received: NA

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? Yes No

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

Yes No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

Yes (If yes, please explain) No

I certify the accuracy of all information provided above.

Signature: 

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: