

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

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

Plaintiff,

v.

LIVELATCH 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.

Case No. 2:20-cv-002478-JS-AYS

**FIRST AMENDED CLASS
ACTION COMPLAINT**

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 consumers whose accounts were charged by Brinks Home Security for a text-based, messaging, or other similar alert service offered by Brinks Home Security, including Brinks’ Home Interactive Messaging powered by ASAPer (collectively “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. From 2018 through June 2020, Plaintiff was 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, the Brinks Messaging system routinely failed to transmit text messages to subscribers. For this or other reasons Brinks Home Security discontinued the service no later than September 2019.

7. Notwithstanding the fact that the service did not function properly and was discontinued, Brinks Home Security 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. Monotronics 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 was not functioning and had been discontinued/deactivated for some time due to technical problems.

25. Plaintiff thus discovered he had been charged monthly for Brinks Messaging despite the fact that the service did not function properly, and that he continued to be charged even after the service was discontinued.

26. Despite Mr. Silver's complaints to customer service, Defendants did not stop charging Mr. Silver for a non-functional Brinks Messaging service until after this lawsuit was filed.

ADDITIONAL FACTUAL ALLEGATIONS RELEVANT TO ALL CLAIMS

27. Upon information and belief, in 2018, Monitronics acquired a license to do business as “Brinks Home Security.”

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

29. For example, as of November 6, 2020, LiveWatch maintains a webpage with Brinks-branded URL <https://pages.brinkshome.com/livewatch-security>. All consumers seeking to purchase security systems and live alarm monitoring services from the LiveWatch webpage are sent to a Brinks Home Security-branded webpage located at <https://brinkshome.com/shop/systems?>

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

31. Upon information and belief, beginning in 2018, all of Monitronics’ and LiveWatch’s consumer alarm monitoring services were rebranded as “Brinks Home Security.”

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

33. 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.

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

35. Despite the fact that Brinks Messaging did not function properly and was ultimately discontinued, Defendants continued to charge customers fees for Brinks Messaging.

36. 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.

37. 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.

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

CLASS ACTION ALLEGATIONS

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

National Class

Each person in the United States who has paid one or more fees to Brinks Home Security for a text-based, messaging, or other similar alert service, including but not limited to Brinks Home Interactive Messaging powered by ASAPer.

New York Subclass

Each person who meets the National Class definition with regard to property in New York State.

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

41. The following persons are expressly excluded from the Classes: (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 Classes; (4) governmental entities; and (5) the Court to which this case is assigned and its staff.

42. Plaintiff reserves the right to revise these class definitions and to add additional subclasses as appropriate based on facts learned as the litigation progresses.

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

Numerosity

43. 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).

44. Given the size of Brinks’ overall customer base, Plaintiff approximates that the Classes number in the tens of thousands or more.

45. Joinder of all Class Members is therefore impracticable.

Common Questions Predominate

46. 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 Home Security’s false representations regarding the functionality of Brinks Messaging constitute false advertising in violation of New York General Business Law § 350;
- b. Whether Brinks Home Security’s continued billing and acceptance of payments from consumers despite the fact that Brinks Messaging did not function properly constitutes an unfair, deceptive, or unconscionable practice;
- c. Whether Brinks Home Security’s continued billing and acceptance of payments from consumers for Brinks Messaging after Brinks Home Security discontinued the service constitutes an unfair, deceptive, or unconscionable practice;
- d. Whether Brinks’ failure to deliver the services offered by Brinks Messaging to its customers constituted a breach of contract; and

- e. Whether Brinks has been unjustly enriched by soliciting and accepting consumers' payments for Brinks Messaging when the service did not function properly; and
- f. Whether Brinks has been unjustly enriched by soliciting and accepting consumers' payments for Brinks Messaging after discontinuing the service.

Typicality

47. 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.

48. Brinks began charging Plaintiff a fee for Brinks Messaging in 2018 and continued charging him the fee monthly until June 2020 despite the fact that the service did not function properly and was ultimately discontinued no later than September 2019.

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

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

51. The injuries of each member of the Classes were caused directly by Defendants' wrongful conduct.

Adequacy

52. Plaintiff will fairly and adequately protect the interests of the Classes.

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

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

Superiority

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

56. The prosecution of individual remedies by members of the Classes 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.

57. 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.

58. Further, as the damages suffered by individual members of the Classes may be relatively small, the expense and burden of individual litigation would make it difficult or impossible for individual members of the Classes to redress the wrongs done to them, while an important public interest will be served by addressing the matter as a class action.

59. 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.

60. 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

61. Defendants have acted or refused to act on grounds generally applicable to all members of the proposed Classes, 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
BREACH OF CONTRACT
(on behalf of the National Class)**

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

63. Plaintiff and Class Members entered into contractual agreements with Defendants.

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

65. Defendants charged Plaintiff and Class Members for Brinks Messaging even though it did not function properly and Defendants ultimately discontinued the services no later than September 2019.

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

**SECOND CAUSE OF ACTION
UNJUST ENRICHMENT
(on behalf of the New York Subclass)**

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

68. Plaintiff and Class Members were charged and paid for Brinks Messaging despite the fact that Brinks Messaging did not function properly and Defendants ultimately discontinued it.

69. Defendants have profited and benefited from charging Plaintiff and Class Members for Brinks Messaging services Defendants failed to provide.

70. By charging Plaintiff and Class Members for these non-functional services Defendants have been unjustly enriched at the expense of Plaintiff and the Class.

71. Equity and good conscience require that Defendants pay restitution to Plaintiff and Class Members for the amounts charged for Brinks Messaging and/or disgorge any profits Defendants received.

THIRD CAUSE OF ACTION
NEW YORK GENERAL BUSINESS LAW § 349
(UNLAWFUL DECEPTIVE ACTS AND PRACTICES)
(on behalf of the New York Subclass)

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

73. 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.

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

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

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

77. Rather, although the Brinks Messaging service did not function properly, Defendants regularly charged consumers for Brinks Messaging and continued to do so even after Defendants had discontinued the service.

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

79. Defendants' practice of charging Plaintiff and Class Members for a service Defendants knew was not functioning properly and which they ultimately discontinued, was materially misleading and demonstrates bad faith and willfulness.

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

81. For these reasons, Plaintiff and each Class Member is entitled to actual damages (or fifty dollars, whichever is greater), 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, statutory damages, punitive damages, costs, and reasonable attorneys' fees.

FOURTH CAUSE OF ACTION
NEW YORK GENERAL BUSINESS LAW § 350
(FALSE ADVERTISING)
(on behalf of the New York Subclass)

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

83. 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.

84. With regard to the false written representations, Defendants' contracts with Plaintiff and 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 a functioning Brinks Messaging service.

85. Alternatively, the failure to state on invoices and billing statement that the service was not functioning properly and had ultimately been discontinued constituted a material omission.

86. 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.

87. 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.

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

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

90. For these reasons, Plaintiff and each Class Member is entitled to actual damages (or five hundred dollars, whichever is greater), 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, statutory damages, punitive damages, costs, and reasonable attorneys' fees

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and 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 (or the statutory minimum, whichever is greater), 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.

February 26, 2021

Respectfully,

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