IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:25-cv-04081-GPG-SBP

ADT, LLC,

Plaintiff,

v.

IMPULSE ALARM LLC, and
VERONICA GOLIN,

Defendants.

ADT'S RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Plaintiff/Counterclaim Defendant ADT, LLC ("ADT" of "Plaintiff"), by and through undersigned counsel, hereby files its response in opposition ("Opposition") to Defendants Impulse Alarm LLC's ("Impulse Alarm") and Veronica Golin's ("Golin") Motion for Summary Judgment ("Motion"), and in support, states as follows:

Notice of Defendants' Noncompliance with Uniform Civil Practice Standards[1]

Initially, Defendants' Motion disregards the requirements of this Court's Uniform Civil Practice Standards ("UCPS") for Rule 56 Motions. The Motion fails to include a

[1] Before filing this Opposition undersigned counsel conferred with counsel for Defendants about their failure to comply with this court's Uniform Practice Standards. As a courtesy, and for the benefit of both parties and this court, undersigned counsel offered to allow Defendants to withdraw their motion voluntarily and correct the deficiencies without objection before ADT filed its response. Defendants refused.

"Statement of Undisputed Material Facts" setting forth in "simple, declarative sentences, separately numbered, [with] each material fact the [Defendants] believe[] is not in dispute." UCPS 7.1D(b)(1). The Motion also ignores the requirement that ""[e]ach [numbered] material fact must be accompanied by a specific reference to material in the record establishing the fact." UCPS 7.1D(b)(2). And finally, the Motions' five-page narrative section that purports to identify "undisputed facts," *see* Motion pp. 3-7, is replete with improper legal arguments. UCPS 7.1D(b)(2)(7). On this basis alone, Defendants motion can and should be denied, particularly given that Plaintiff afforded Defendants the opportunity to voluntarily correct the deficiencies before the filing of this opposition. *See* UCPS 7.1D(d)

I. INTRODUCTION

As an ADT Authorized Dealer, Defendants solicited customers who wanted to have alarm systems installed in their homes. Defendants would install the alarm system, and the customers would enter into an alarm monitoring contract, which in most cases was then sold ADT for an up-front amount ("Base Alarm Account Fee") set forth in the parties' Authorized Dealer Agreement "(ADA") and its incorporated Dealer Guidelines ("Guidelines"). For any alarm monitoring contract that is cancelled by the customer, or which becomes a non-producing account within the 13 months after ADT's initial purchase, Defendants are obligated under the ADA to re-pay the Base Alarm Account Fee to ADT ("Attrition Chargeback"). For existing ADT Dealers, Attrition Chargebacks are simply subtracted from monthly funding amounts paid to the Dealer for newly

purchased accounts. For terminated Dealers, since the Dealer is no longer selling new alarm accounts to ADT, the Dealer is required to pay ADT back directly.

ADT has asserted claims against Defendants to collect the Attrition Chargebacks incurred during the 13 months since the termination of the ADA (the "Attrition Chargeback Period"), *i.e.,* through April 17, 2026. *See* Complaint, ECF Doc. 6, ¶¶ 13, 18, 19, 27. Defendants now seek summary judgment as to each of ADT's claims on the theory that the claims are "premature." According to Defendants, ADT "cannot establish a contractual obligation actually owed under the Dealer Agreement" due to ADT's supposed post-termination obligation to account for and reconcile certain Revenue Sharing/Continuing Equity payments. Motion at p. 8. Under the ADA, if certain criteria are met a Dealer may be entitled to payment of Revenue Sharing Fees (payable for up to 36 months after ADT's purchase of an account) and Continuing Equity (payable starting the 37th month after ADT's purchase). Defendants argue that until that standard 36 month period for Revenue Sharing is concluded in March 2028, ADT cannot pursue any affirmative claims for relief. Motion at 8. Notably, Defendants do not point to any evidence or sworn testimony establishing that they are now or will in the future be owed ***any*** amounts for Revenue Sharing or Continuing Equity. Rather, the entirety of their argument is based on their reading (or more accurately a misreading) of the ADA.

Defendants misstate and/or misunderstand their right to earn Revenue Sharing and Continuing Equity upon termination of the ADA. While the standard period for Revenue Sharing is 36 months, that time-period is simply the amount of time a Dealer ***may*** earn Revenue Sharing. To be entitled to such payments, Defendants must satisfy

the prerequisites for such payments under the ADA and the Dealer Guidelines. But under the express terms of the ADA and its incorporated Guidelines, terminated Dealers are not entitled to receive *any* Revenue Sharing or Continuing Equity payments. The ADA and incorporated Guidelines expressly provide that Revenue Sharing and Continuing Equity payments are only available to existing Authorized Dealers. Further, even if a terminated Dealer was entitled to earn post-termination Revenue Sharing or Continuing Equity (it is not), both the ADA and the Dealer Guidelines include minimum production requirements that cannot be met without continuing to sell accounts to ADT. As a terminated ADT Dealer that is now selling its generated alarm accounts to an ADT competitor, there is simply no scenario where Defendants can or will earn any amount for post-termination Revenue Sharing or Continuing Equity.

Defendants also misstate and/or misunderstand ADT's contractual right to off-set and/or holdback amounts after termination of the ADA. Defendants argue that ADT is obligated to reconcile amounts it owes for Revenue Sharing and Continuing Equity against any Attrition Chargebacks, and that any such reconciliation is not possible until the end of the 36 month Revenue Sharing time-period. First, as noted above, there is nothing to reconcile because Defendants cannot actually earn post-termination Revenue Sharing or Continuing Equity. But even if Defendants could conceivably earn Revenue Sharing or Continuing Equity after termination of the ADA, neither the Right to Set-Off provision (ADA, § 13.2) nor the Chargeback Holdback provision (ADA, § 15.4) requires ADT to wait until March 2028 before suing Impulse for unpaid Attrition Chargebacks. The Set-Off provision simply affords ADT the ***right*** to withhold payments at the time of

termination, it does not require ADT to do anything, nor does it even apply in situations where no amounts have been or could be withheld. The same is true with the Chargeback Holdback provision, which similarly gives ADT the ***right*** to hold money otherwise due to Impulse Alarm "until the expiration of the Chargeback period," *i.e.,* effectively 13 months after termination which in this case ended April 17, 2026. *See* ADA, § 15.4. Neither provision remotely supports Defendants contention that ADT is precluded as a matter of law from pursuing its claims until 36 months after termination.

Bottom line – the underlying premise of Defendants' summary judgment argument is demonstrably false. Under the express terms of the ADA, Defendants are not entitled to any post-termination Revenue Sharing or Continuing Equity, nor will they be in the future. Further, neither the Right to Set-Off provision nor the Chargeback Holdback provision (both of which simply afford ADT a right to set-off or hold funds if it so chooses) requires ADT to wait until March 2028 before pursuing its Attrition Chargeback claims.

Defendants' motion should be denied.

II. RESPONSE TO STATEMENT OF UNDISPUTED FACTS

As noted above, Defendants' Motion does not comply with this Court's Uniform Civil Practice Standard, which makes it exceedingly difficult to respond to Defendants' Motion in an organized manner that is also in compliance with ADT's obligations under those same standards. Nevertheless, in a good faith attempt to comply with its own obligations, ADT has attempted to parse the factual allegations from the legal arguments in the five pages of narrative "Undisputed Material Facts" section (pages 3 – 7 of the

Motion) and hereby numbers and responds to what it interprets to be Defendants' purported "undisputed material facts":

1. ADT and Impulse Alarm (under its original ownership) entered into the Dealer Agreement on or about June 10, 2015. (Motion, p. 3) **[ADMIT]**

2. On or about May 9, 2016, Impulse executed the Change in Ownership Amendment to the Agreement. (Motion p. 3) **[ADMIT]**

3. On or about March 17, 2025, the Dealer Agreement between ADT and Impulse was terminated. (Motion p. 3) **[ADMIT]**

4. The Agreement contemplates continuing contractual obligations by both parties, including ADT's obligation to pay Revenue Sharing Fees, Continuing Equity Payments, and other amounts to Impulse under Sections 9.1 through 9.7, as well as Impulse's potential liability for chargebacks and other contractual obligations. (Motion p. 3**) [ADMIT that the ADA contemplates some continuing obligations, but DENY that Impulse Alarm can earn Revenue Sharing Payments or Continuing Equity Payments after termination because (i) Continuing Equity payments are not available upon termination of the Agreement, *see* Comp. [ECF Doc. 6] Ex. 1, ADA § 9.6.1(iv)[2] (expressly providing that one prerequisite to entitlement to Continuing Equity is that the "Agreement is not terminated"); (ii) upon termination of the ADA, Impulse Alarm was no longer an "ADT Authorized Dealer" or an "Authorized Dealer**

[2] For ease of reference, the relevant text of all referenced ADA contract provisions is also included in Section III, Statement of Additional Disputed Facts.

in good standing" which is another prerequisite to earning Revenue Sharing and Continuing Equity Payments, *see* relevant portions of Dealer Guidelines attached to contemporaneously filed Declaration of Daniel E. Rohner as Exhibits A and B; (iii) both the ADA and the Guidelines require Dealers to meet minimum production levels to receive Revenue Sharing and which is not possible after termination, *see* Exh. A to Ex. 1, Dealer Guidelines, and (iv) upon termination Impulse Alarm began working for competitor Brinks Alarm, *see* Counterclaim, [EDF Doc. 16 at ¶ 127, and was therefore precluded from receiving Continuing Equity Payments. *See* Compl., Ex. 1, ADA § 9.6.2 (even for Dealers with expired contracts, a prerequisite to entitlement to Continuing Equity upon separation from ADT is that "Authorized Dealer has not competed with ADT, directly or indirectly, since separation from the ADT Authorized Dealer Program").

5. Section 13.2 ("Right to Set-Off") provides that ADT may set off any damages or amounts ADT contends are owed by Impulse under the Dealer Agreement against Revenue Sharing Fees, Continuing Equity Payments, and other amounts otherwise payable to Impulse. (Motion p.3) **[ADMIT]**

6. The cutoff time to calculate the total amounts ADT owes to Impulse has not come to pass and is not set to expire until March 2028. (Motion at p. 5) **[DENIED. Upon termination of the Agreement, Impulse Alarm is no longer contractually entitled to receive, or even capable of meeting the production requirements to earn Revenue Sharing or Continuing Equity Payments. *See* ADA §§ 9.5.1, 9.5.2, 9.6.1, 9.6.2; *see also* e.g., 2015 Dealer Guidelines at pp. 19-23, Ex. A to Rohner Declaration; 2024**

Dealer Guidelines pp. 14-15, Ex. B to Rohner Declaration. Thus, ADT has not withheld any amounts otherwise due to Impulse Alarm for Revenue Sharing or Continuing Equity Payments (because none are even potentially due), nor will that change between now and March 2028. *Id*.

7. [Impulse's] alleged chargeback exposure has matured and has been reduced to a specific amount that ADT now contends is owed by Impulse. (Motion at p. 6) **[Admit]**

8. By contrast, ADT's contractual obligation to pay Revenue Sharing Fees and other continuing compensation under Sections 9.1 through 9.7 of the Dealer Agreement has not reached a fixed amount. (Motion p. 6) **[DENIED. See response to #4 and 6 above. Upon termination ADT no longer has any obligation to pay Revenue Sharing or Continuing Equity Payments to Impulse Alarm. *See* citations to Response #'s 4 and 6. Even if such an obligation could exist under the ADA, as a terminated Dealer that is now selling accounts to a competitor instead of ADT, it is not possible for Defendants to meet the ADA's minimum production requirements for Revenue Sharing or Continuing Equity.]**

III. STATEMENT OF ADDITIONAL DISPUTED FACTS

ADT identifies the following additional disputed (or potentially disputed) facts relevant to the pending Motion.

9. The receipt of Revenue Sharing under the ADA is permissive, and the conditions precedent for entitlement to Revenue Sharing is governed by the ADA and the Guidelines. *See* Compl. Ex1, ADA Section 9.5.1, which provides in its entirety:

> Except as set forth in Section 9.5.2, for a period of up to thirty-six (36) months from the Closing Date with respect to a Purchased Alarm Account, Authorized Dealer ***may*** be entitled to receive, on a monthly basis, a Revenue Sharing Fee, ***the amount of which and conditions precedent to entitlement thereto, are set forth in the Guidelines***, and are subject to change by ADT.

See Compl., Ex. 1 at §9.5.1 (Emphasis added)

10. Among other conditions precedent, the ADA itself precludes receipt of Revenue Sharing when certain production goals are not met. *See* Compl. Ex1, ADA § 9.5.2.3 (precluding Revenue Sharing "during any month in which Authorized Dealer has failed to deliver or ADT fails to purchase at least 15 Qualified Alarm Accounts, determined on a six (6) months rolling basis . . ."); ADA § 9.5.4 (stating that ADT may, in its absolute discretion, not pay Authorized Dealer Revenue Sharing "[d]uring any month in which Authorized Dealers production drops by 35% or more, based on a rolling 6 month average.")

11. The Guidelines similarly include production and other requirements for entitlement to Revenue Sharing, including the express requirement of being an "ADT Authorized Dealer." *See e.g.*, Relevant Guidelines, Exs. A and B to Rohner Affidavit limiting Revenue Sharing to "ADT Authorized Dealers" and "Authorized Dealers who are in good standing."

12. Dealer Guidelines have also always precluded Revenue Sharing when the Dealer fails to offer for sale "at least fifteen (15) Qualified Alarm Accounts per month" on a rolling six month basis. *See e.g.,* Ex. A to Rohner Affidavit, pp. 19-20; Ex. B to Rohner Affidavit, p. 14.

13. Under the ADA, Continuing Equity Payments are not available if the ADA is terminated. ADA, § 9.6.1 states in its entirety:

> Upon the commencement of the thirty-seventh (37'") month from the Closing Date with respect to a Purchased Alarm Account, provided that Authorized Dealer is not in breach of any of the terms of this Agreement (including but not limited to Section 12.1), the Dealer Monitoring Agreement and/or the Guidelines, ***and continuing as long as*** (i) the Purchased Alarm Account does not become a Canceled Alarm Account or a Non-Producing Alarm Account (ii) the Purchased Alarm Account is not transferred, or sold by ADT to a third party; (iii) the Purchased Alarm Account produces the then applicable amount of MRR for the subject month; and ***(iv) the Agreement is not terminated***, Authorized Dealer shall be entitled to a Continuing Equity Payment in the amount, and in accordance with the procedures, set forth in the Guidelines.
>
> *See* Compl., Ex. 1 at §9.6.1 (Emphasis added)

14. Dealers that simply separate from ADT upon expiration of their Dealer Agreement can potentially earn Continuing Equity, but only if they do not compete with ADT. *See* Section 9.6.2 of the ADA, which states in its entirety:

> 9.6.2 Authorized Dealer shall be entitled to the Continuing Equity Payment even after Authorized Dealer ceases to participate in the Authorized Dealer Program ***so long as Authorized Dealer is not in breach of any of the terms of this Agreement*** (including, but not limited to, Section 12.1) at the time Authorized Dealer was separated from the ADT Authorized Dealer Program ***and continues not to be in breach of any provision thereafter***, and Authorized Dealer ***has not competed with ADT, directly or indirectly, since separation from the ADT Authorized Dealer Program.***
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> *See* Compl., Ex. 1 at §9.6.2 (Emphasis added)

15. Here, Defendants began competing with ADT less than two weeks after termination of the ADA, if not earlier. *See* Counterclaims, ECF Doc. 16, p. 33, ¶ 127 ("On or about April 2, 2025, Impulse became an authorized dealer with the Brinks Home ("Brinks") dealer program.")

16. Pursuant to ADA § 13.2, ADT has the right, not an obligation, to set off amounts it believes are owed by Defendants. ADA §13.2, states in its entirety:

> **Right to Set-Off**. ADT ***shall be entitled to*** set off against all unpaid Base Alarm Account Fees, Revenue Sharing Fees, Continuing Equity Payments or any other amounts owed by ADT to Authorized Dealer for any reason: (i) the aggregate amount of any damages that ADT believes that it has suffered or incurred as a result of Authorized Dealer's violation of any term of this Agreement; or (ii) any amounts owed by Owner or Authorized Dealer to ADT for any reason, as determined by ADT in its absolute discretion, including but not limited to Authorized Dealer's and Owner's duty to indemnity ADT.
>
> *See* Compl., Ex. 1 at §13.2 (Emphasis added)

17. Pursuant to ADA § 15.4, upon termination of the Agreement, ADT has the right, not an obligation, to hold monies otherwise due to the terminated Dealer until the expiration of the Chargeback period, which in Defendants' case was through April 16, 2026. If ADT actually withholds funds, § 15.4 requires ADT to use those withheld funds to offset Attrition Chargebacks through the Chargeback period and then return any remaining balance to the Deler. *ADA* §15.4 states in its entirety:

> **Chargeback Holdback.** Upon expiration of this Agreement or termination of this Agreement by either party for any reason hereunder, Authorized Dealer and Owner agree that ADT may hold any monies due to Authorized Dealer for the purchase of Qualified Alarm Accounts, or any other reason, ***until the expiration of the Chargeback period***, as set forth in the Guidelines. Such funds shall be used to offset any chargebacks or any other

> monies ADT believes are due to ADT by Authorized Dealer. At the end of the Chargeback period, ADT shall reconcile the Authorized Dealer's account and remit the balance of any monies due to Authorized Dealer, if any.

See Compl., Ex. 1 at §15.4 (Emphasis added)

IV. STANDARD OF REVIEW

Summary judgment is appropriate only if "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Defendants Impulse Alarm and Golin, as movants, bear the burden of demonstrating that they are entitled to summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256-57 (1986); *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 160-61 (1970). The moving party has both "the initial burden of production on a motion for summary judgment" and "the burden of establishing that summary judgment is appropriate as a matter of law." *Trainor v. Apollo Metal Specialties, Inc.*, 318 F.3d 976, 979 (10th Cir. 2002). The moving party must establish that it is entitled to summary judgment "beyond a reasonable doubt." *Id*.

If the moving party has not met its burden, summary judgment must be denied even if no opposing evidence is presented. *Adickes*, 398 U.S. at 160-61; *Reed v. Bennett*, 312 F.3d 1190, 1195-96 (10th Cir. 2002). If the moving party has met its initial burden, then the nonmoving party must establish that there is a triable issue of fact. *Continental Air Lines, Inc. v. Keenan*, 731 P.2d 708, 713 (1987). All facts and all reasonable inferences must be construed in the light most favorable to the nonmoving party. *Richardson v. Frank*, 975 F.2d 1433, 1435 (10th Cir. 1991).

V. ARGUMENT

A. Defendants Have Not and Cannot Meet Their Burden to Establish that ADT's Breach of Contract Claim for Attrition Chargebacks is Premature as a Matter of Law.

Defendants contend that ADT's claims are "premature" and that it is not possible under the ADA for ADT to calculate the amounts due for Attrition Chargebacks until at least 36 months after termination of the ADA, *i.e.,* March 2028. *See* Motion at 10. The referenced 36 month time period is based on Section 9.5.1, which states in its entirety:

> Except as set forth in Section 9.5.2, for a period of up to thirty-six (36) months from the Closing Date with respect to a Purchased Alarm Account, Authorized Dealer ***may*** be entitled to receive, on a monthly basis, a Revenue Sharing Fee, ***the amount of which and conditions precedent to entitlement thereto, are set forth in the Guidelines***, and are subject to change by ADT.

See Compl., Ex. 1 at §9.5.1 (Emphasis added).

Based solely on the referenced time-period that an Authorized Dealer ***may*** be entitled Revenue Sharing (which as noted below would require Defendants to actually remain an Authorized Dealer and meet minimum production requirements), Defendants argue that ADT must wait 36 months after termination before seeking reimbursement for Attrition Chargebacks. In their Motion, not only do Defendants repeatedly disregard the permissive "may" in Section 9.5.2, but they also cut the provision short, removing the language clarifying that their ***entitlement*** to Revenue Sharing is subject to various conditions precedent, including that Defendants actually remain an Authorized Dealer and meet minimum production requirements. *See* ADA, § 9.5.1, § 9.5.2.3, § 9.5.4, and Relevant Dealer Guidelines. Defendants also argue that because ADT has certain rights

to set-off and/or holdback amounts it may owe Defendants under the Authorized Dealer Agreement, it is somehow not possible for ADT to establish that it is owed any amount for Attrition Chargebacks until 36 months after termination of the ADA, *i.e.,* March 2028. *See* Motion pp. 2, 4-5, and 10. Defendants arguments make no sense and are contrary to the express language of the ADA.

In Colorado, "[t]he primary goal of contract interpretation is to determine and give effect to the intent of the parties." *Ad Two, Inc. v. City & Cnty. of Denver ex rel. Manager of Aviation*, 9 P.3d 373, 376 (Colo. 2000). The parties' intent is "determined from the contract language itself*." Union Rural Elec. Ass'n, Inc. v. Pub. Utilities Comm'n of State*, 661 P.2d 247, 251 (Colo. 1983). When construing a contract, courts must not "view clauses or phrases in isolation." *East Ridge of Fort Collins, LLC v. Larimer and Weld Irr. Co., 109 P.3d 969, 974-75 (Colo.2005)*. This principle guards against a reading of the contract that would "yield an absurd result"—and run inconsistent with the purpose of the contract. *Atmel Corp. v. Vitesse Semiconductor Corp*., 30 P.3d 789, 793 (Colo.App.2001). Courts must examine the contract as a whole and attempt to determine the intent by reference to all of the contract's terms and provisions. *East Ridge*., 109 P.3d at 973.

Here, Defendants contention that ADT's contractual obligations to pay Revenue Sharing Fees and other continuing contractual compensation remains ongoing through March 2028 is demonstrably false and entirely inconsistent with the purpose of the contract. Defendants cherry-pick one phrase in one provision of the ADA, *i.e.,* the 36 month time-period during which an Authorized Dealer can *potentially* earn Revenue Sharing, while completely ignoring the relevant provisions of the ADA and its Guidelines

that detail the actual requirements to earn those payments – requirements that a terminated Dealer simply cannot meet. *See* ADA, § 9.5.1, § 9.5.2.3, § 9.5.4, and Relevant Dealer Guidelines. Here, the record supports that the ADA was terminated effective March 17, 2025, *see* Motion p. 3, and Defendants almost immediately began working as a Dealer for Brinks, an ADT competitor. *See* Counterclaims, ECF Doc. 16, p. 33, ¶ 127. Based on the express language of the ADA, there is simply no scenario where Defendants would be entitled to continue earning Revenue Sharing or Continuing Equity even through September 2025, let alone March 2028.[3] Without evidence in the record that Defendants are actually meeting the production requirements set forth in the ADA and the Guidelines (which again would be impossible for a terminated Dealer), Defendants cannot meet their burden of production and the Motion for Summary Judgment must be denied.

Defendants argument that the ADA's Right to Set-Off provision (ADA, § 13.2) and Chargeback Holdback provision (ADA, § 15.4) also require ADT to wait until March 2028 to pursue its breach of contract claims is equally misplaced. Leaving aside that terminated Dealers cannot earn Revenue Sharing, neither provision requires ADT to do anything. Both provisions afford ADT a right, not an obligation, to set-off or hold funds that might otherwise be due to Defendants. Here, Defendants point to no evidence in the record that ADT has in fact withheld anything based on either provision. More importantly, even

[3] The ADA's calculations for minimum production, which are based on a rolling 6 month average, foreclose any argument that the parties must wait until March 2028 to reconcile any amounts due. Even if the ADA and the Guidelines allowed terminated Dealers to earn Revenue Sharing or Continuing Equity Payments, after 6 months without a single generated account the rolling production average would necessarily be zero.

if ADT has withheld funds based on one or both provisions, neither provision supports Defendants' argument that ADT must wait until March 2028 to "reconcile" the withheld funds with the past-due Attrition Chargebacks. To the contrary, ADA § 15.4 provides that ADT is only permitted to hold funds "until the expiration of the Chargeback period" and thereafter must "reconcile the Authorized Dealer's account." *See* ADA § 15.4. As applied here, the 13-month Chargeback period started when the ADA was terminated, March 17, 2025, and continued through April 17, 2026.

Ultimately, Defendant's argument that ADT cannot prevail on its claims because the ADA requires ADT to wait until March 2028 to calculate the amount Defendants owe has no basis in fact or law. Not only does the express language of the ADA foreclose Defendants from earning any post-termination Revenue Sharing and Continuing Equity, *see* ADA, §§ 9.5.1, 9.5.2.3, and 9.5.4, but Section 15.4 of the ADA expressly contemplates that any final reconciliation and calculation of amounts owed by Defendants for Attrition Chargebacks is to be made "at the end of the Chargeback period," which has now passed. *See* ADA, § 15.4. As such, there is no contractual impediment to ADT's continued pursuit of its Attrition Chargeback claim, and Defendants' Motion should be denied.

B. Defendants Have Not and Cannot Establish that ADT's Unjust Enrichment Claim for Payment Attrition Chargebacks is Premature as a Matter of Law.

Notwithstanding Defendants' acknowledgment that Colorado law permits a plaintiff to plead unjust enrichment in the alternative and that an unjust enrichment claim does not depend on any contract, Defendants inexplicably argue that ADT cannot establish that

Defendants unjustly retained a benefit because "ADT cannot establish that [Defendants] presently owe any contractual debt after application of the Dealer Agreement's payment and set off provisions." Motion at p. 11.

Initially, the provisions of the ADA are irrelevant to ADT's alternative claim for unjust enrichment, which requires ADT to prove at trial that "(1) at plaintiff's expense, (2) defendant received a benefit (3) under circumstances that would make it unjust for defendant to retain the benefit without paying." *Robinson v. Colo. State Lottery Div.*, 179 P.3d 998, 1007 (Colo. 2008). The cases cited by Defendants in their Motion do little more than re-state the three elements necessary to prevail on an unjust enrichment claim, and Defendants do not point to any undisputed evidence to meet their burden of establishing that ADT will not be able to make its requisite showing at trial.

Even if the provisions of the ADA did apply to ADT's unjust enrichment claim, Defendants are simply wrong that ADT's contractual ***right*** to set off or holdback funds creates an obligation for ADT to wait until March 2028 to calculate and pursue amounts wrongfully held by Defendants. First, converting ADT's set off and holdback rights into obligations turns the provisions on their head, and Defendants present no evidence here that ADT is even holding any amounts to set off. Second, the holdback provision at issue expressly provides that any withheld amounts are to be reconciled at the end of the Chargeback period, *i.e.,* after 13 months, not 36 months. Finally, Defendants present no evidence, let alone undisputed evidence, that they will ever be entitled to payment of any post-termination Revenue Sharing or Continuing Equity. To the contrary, the express language in the ADA and its incorporated Dealer Guidelines confirm the opposite.

C. As Evident from the Summary Judgment Briefing Itself, the Parties Disagree as to their Continuing Obligations Under the Parties' Terminated Authorized Dealer Agreement and Therefore Declaratory Relief is Both Available and Appropriate.

As with its breach of contract and unjust enrichment arguments, Defendants seek summary judgment on ADT's request for declaratory relief based on the demonstrably false premise that any controversy as to the parties' post-termination payment obligations will not be ripe until March 2028. As discussed in detail above, Defendants are no longer capable of qualifying for Revenue Sharing or Continuing Equity payments, which renders the 36 month Revenue Sharing period irrelevant. Similarly, the set-off and holdback provisions in the ADA do not require ADT to do anything, and expressly contemplate that even if ADT were to hold back funds, any reconciliation would occur at the end of the 13 month Chargeback period, not the 36 Month Revenue Sharing period. ADT's request for a declaration as to Defendants' present contractual obligation to reimburse ADT for unpaid Attrition Chargebacks is ripe for review, will settle a pending controversy and will clarify the legal relations at issue. As such, it is not an advisory opinion, and Defendants have not and cannot meet their burden of establishing that summary judgment is appropriate as a matter of law .

VI. CONCLUSION

Defendants' Motion for Summary Judgment should be denied.

DATED this 24th day of August, 2026.

Respectfully submitted,

SHOOK, HARDY & BACON L.L.P.

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CERTIFICATE OF SERVICE

I hereby certify that on August 24, 2026, the foregoing was filed via the Court's Electronic Filing System. Notice of this filing will be sent by operation of the Court's Electronic Filing System to all parties of record, including to:

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