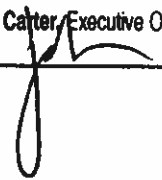


FILED
Superior Court of California
County of Los Angeles

FEB 18 2021

Sherri R. Carter, Executive Officer/Clerk of Court
By _____ Deputy



SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

Case No.: BC510665

ANTONIO VILLEGAS, an individual, on
behalf of himself and all other similarly
situated,

Plaintiff,

v.

ADT SECURITY SERVICES, INC., a
California corporation, IMI INTEGRITY
SERVICES, INC., a corporation, and DOES
1 through 500, inclusive,

Defendants.

~~TENTATIVE~~ ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT

Date: February 18, 2021
Dept.: SSC-7
Time: 11:00 a.m.

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1 **I. BACKGROUND**

2 In this certified class action, Plaintiffs and the class allege that Defendant ADT
3 LLC, f/k/a ADT Security Services, Inc. (“ADT”) violated California law by failing to
4 disclose to its customers in the City of Los Angeles (“City”) that the City requires an
5 alarm permit and the cost of same. The operative Fourth Amended Complaint pleads all
6 three prongs under the UCL and a claim under the CLRA. These claims are predicated
7 on California Bus. & Prof. Code § 7599.54(i)(7) (the “Alarm Act”). Plaintiffs allege that
8 as a consequence of ADT’s failure to advise of the alarm permit requirement in initial
9 contracts, the failure of ADT to ensure a permit existed or obtain a permit prior to
10 installation, and by monitoring unpermitted systems, Plaintiffs and the class were
11 damaged when the City fined them \$251 for false alarms.

12 This case was filed on May 31, 2013. On September 23, 2014, the Court sustained
13 Defendant’s demurrer without leave to amend. Plaintiff appealed. On September 26,
14 2016, the Court of Appeal partially reversed and partially affirmed, reversing the granting
15 of the demurrer with respect to the causes of action under the UCL and the CLRA. On
16 remand, the Third Amended Class Action Complaint was filed.

17 On July 14, 2017, counsel filed a Motion for Order Compelling Production of
18 Putative Class Member Contact Information to replace Villegas as class representative.
19 Counsel sought to replace him because, during the appeal, Villegas, a licensed California
20 attorney and Plaintiffs’ counsel had entered into a business relationship which, while
21 unrelated to the instant matter, could have conceivably posed a conflict regarding his
22 status as class representative. Ultimately, the motion was successful, and, following
23 production of the putative class members’ contact information, Villegas was replaced
24 with class representatives Oscar Gardner and Christine Smith.

1 On February 9, 2018 Plaintiffs filed their operative Fourth Amended Class Action
2 Complaint (“FAC”). On November 27, 2018, the court certified the following subclasses:

3 The Pre-3/2009 Class — Installation by ADT: All consumers located within the
4 City of Los Angeles who: (1) had an alarm system installed, operated or monitored by
5 ADT, LLC d/b/a/ ADT Security Services and such system was installed directly by ADT,
6 LLC, prior to March 7, 2009; (2) whose initial contract exceeds the sum of \$250; (3) who
7 were not informed in writing in that initial contract of the cost of the Alarm System
8 Permit; and (4) who received penalties from the City of Los Angeles for a false alarm
9 and not having a permit for their alarm system on or after May 31, 2010.

10 The Pre-3/2009 Class — Installation by Authorized Dealer: All consumers located
11 within the City of Los Angeles who: (1) had an alarm system installed, operated or
12 monitored by ADT, LLC d/b/a/ ADT Security Services and such system was installed by
13 an ADT Authorized Dealer prior to March 7, 2009; (2) whose initial contract exceeds the
14 sum of \$250; (3) who were not informed in writing in that initial contract of the cost of
15 the Alarm System Permit; and (4) who received penalties from the City of Los Angeles
16 for a false alarm and not having a permit for their alarm system on or after May 31, 2010.

17 The Post-3/2009 Class — Installation by ADT: All consumers located within the
18 City of Los Angeles who: (1) had an alarm system installed, operated or monitored by
19 ADT, LLC d/b/a/ ADT Security Services and such system was installed directly by ADT,
20 LLC, on or after March 7, 2009; (2) who did not have a permit at the time of installation
21 and ADT did not obtain one on the individual’s behalf; and (3) who received penalties
22 from the City of Los Angeles for a false alarm and not having a permit for their alarm
23 system on or after May 31, 2010.

24 The Post-3/2009 Class — Installation by Authorized Dealer: All consumers
25 located within the City of Los Angeles who: (1) had an alarm system installed, operated

1 or monitored by ADT, LLC d/b/a/ ADT Security Services and such system was installed
2 by an ADT Authorized Dealer on or after March 7, 2009; (2) who did not have a permit
3 at the time of installation and neither the Authorized Dealer nor ADT obtained one on
4 the individual's behalf; and (3) who received penalties from the City of Los Angeles for
5 a false alarm and not having a permit for their alarm system on or after May 31, 2010.

6 Class Counsel subpoenaed Los Angeles' records regarding all alarm system
7 customers who had received false alarm penalties for unpermitted alarm systems." The
8 City produced those records for all penalties beginning May 31, 2009 and assessed up to
9 December 7, 2018. On October 22, 2019, the Parties stipulated to the sending of class
10 notice to the class members identified by Los Angeles, and, on the following day, the
11 Court Ordered notice to be sent to the Class. Beginning on November 11, 2019, Phoenix
12 Class Action Administration Solutions sent notice to the 16,420 class members per the
13 Court's Order.

14 On March 11, 2019, ADT filed its Motion for a Summary Adjudication ("MSA"),
15 arguing that it is not legally liable for its Authorized Dealers' (i.e., non-ADT-employees
16 who sold and installed ADT security systems) alleged failure to advise customers in
17 writing of the need for a permit. On March 29, 2019, while ADT's Motion was pending,
18 the parties participated in mediation before the Hon. Rosalyn M. Chapman (Ret). The
19 case did not settle. On June 6, 2019, the Court denied ADT's MSA.

20 On September 3, 2019, Plaintiffs filed a MSA, arguing that ADT had a duty under
21 LAMC section 103.206(b) not to monitor unpermitted alarm systems, and that ADT had
22 breached that duty by, in fact, monitoring such systems. At the January 9, 2020 hearing,
23 the Court continued the matter to February 3, 2020, asking that the parties submit
24 supplemental briefing on the issue of whether an issue of "duty" was raised by the motion
25

1 with respect to Plaintiffs' UCL and/or CLRA claims. Shortly before the continued
2 hearing date, the parties settled.

3 Counsel represents that Plaintiffs have served written discovery on ADT which
4 included, inter alia, multiple rounds of Requests for Production of Documents, Requests
5 for Admissions, Special Interrogatories, and Form Interrogatories. ADT produced and
6 Plaintiffs reviewed thousands of pages of documents, including installation guidelines,
7 Authorized Dealer materials, customer contracts, and corporate governance documents.
8 ADT also produced documents showing that either concurrent with or post-installation,
9 ADT claimed to have sent information regarding alarm permit requirements. Class
10 Counsel also conferred with City employees to obtain lists of those Los Angeles residents
11 who received false alarm penalties without alarm permits, and ultimately subpoenaed
12 records and received data relating to over 80,000 unique false alarm incidents. These data
13 were not "sampled" because the damage theory was uniform for all class members. The
14 City provided a declaration with the data stating that all identified individuals had never
15 had an alarm system permit.

16 On March 28, 2019, the parties mediated before the Hon. Rosalyn M. Chapman
17 (Ret). At the mediation, the parties failed to settle the case. Through Judge Chapman, the
18 parties continued to negotiate over the following weeks, until settlement negotiations
19 broke down. The parties re-engaged with Judge Chapman in late 2019/early 2020 and,
20 through her, managed to achieve the Settlement Agreement. A fully executed copy of the
21 Settlement Agreement is attached to the Declaration of Thomas A. Kearney ("Kearney
22 Decl.") as Exhibit A. In response, on January 28, 2021, counsel filed supplemental
23 briefing ("Supp. Brief") and an Amended Settlement Agreement attached to the
24 Supplemental Declaration of Thomas A. Kearney ("Kearney Supp. Decl.") as Exhibit 2.
25 On February 16, 2021, the parties submitted a fully executed Second Amended

1 Settlement Agreement as Exhibit A to the Declaration of Andrew J. Kearney addressing
2 further concerns raised by the Court in its tentative ruling.

3 Now before the Court is Plaintiff's motion for preliminary approval of the
4 settlement. The Court previously issued a tentative ruling proposing to grant
5 preliminary approval for the settlement on condition(s) that counsel: 1) extend the check
6 cashing deadline from 120 to 180 days and 2) either extend the Deadline to submit claims
7 to 90 days or provide extensions for re-mailed notices. Because the parties have satisfied
8 these conditions, the Court now grants preliminary approval.

9
10 **II. THE TERMS OF THE SETTLEMENT**

11 **A. SETTLEMENT CLASS AND RELATED DEFINITIONS**

12 "Class" or "Settlement Class" means, collectively: All persons or entities located
13 within the City of Los Angeles who: (1) had an alarm system installed, operated or
14 monitored by ADT, LLC d/b/a/ ADT Security Services, (2) received penalties from the
15 City of Los Angeles for a false alarm and not having a permit for their alarm system on
16 or after May 31, 2009 through December 7, 2018, and (3) did not opt-out of the class
17 notice previously sent in this matter. (Settlement Agreement, ¶5.)

18 The "Class Period" is from May 31, 2009 through December 7, 2018. (*Ibid.*)

19 There are 16,418 Class Members. (Kearney Decl., ¶26.)

20 The Parties stipulate and agree to the conditional certification of this Action for
21 purposes of this Settlement only. (¶¶48-52.)

22 **B. THE MONETARY TERMS OF SETTLEMENT**

23 The essential monetary terms are as follows:

24 The Maximum Settlement Fund ("MSF") is **\$635,000** (¶I.P.).

25 The Net Settlement Amount ("Net") (**\$318,333.33**) is the MSF less:

- 1 ○ Up to \$211,666.67 (33%) for attorney fees (¶96)
 - 2 ▪ Fee Split: 85% to Kearney Littlefield, LLP and 15% to Catherine
 - 3 Burke Schmidt Attorney at Law. (Kearney Decl., ¶30, fn. 3, Exh.
 - 4 C.)
- 5 ○ Up to \$40,000 for attorney costs (¶96);
- 6 ○ Up to \$15,000 for a service award to the proposed class representative
- 7 [\$7,500 each] (¶91); and
- 8 ○ Estimated \$50,000 for settlement administration costs (¶67).
- 9 • Assuming the Court approves all maximum requested deductions, approximately
- 10 \$318,333.33 will be available for automatic distribution to participating class
- 11 members. Assuming full participation, the average settlement share will be
- 12 approximately \$19.39. ($\$318,333.33 \text{ Net} \div 16,418 \text{ class members} = \19.39).
- 13 • There is a Claim Requirement. (¶9.)
 - 14 ○ “Claim Form” shall mean the Claim Form, which is to be mailed to the
 - 15 Settlement Class Members along with the Class Notice. A Class Member
 - 16 must submit a Claim Form in order to receive a settlement share. An
 - 17 electronic version of the Claim Form shall be available on the Settlement
 - 18 Website. (¶9.)
 - 19 ○ “Claim Deadline” shall be the same period of time as the Objection
 - 20 Deadline, which is the date that falls on the day that is 45 calendar days
 - 21 after the Notice Date. (¶¶10, 28.)
 - 22 ○ The submission of a claim form will help ensure that only eligible
 - 23 individuals receive the settlement benefit, and it will help ease the
 - 24 administrative burden of issuing the benefit. (Motion, 13:19-20.) Given
 - 25 that there will be no reversion to ADT whatsoever, no one has an

1 incentive to reduce class member participation by having a claims
2 process. (Motion, 13:27-28.)

3 ○ The only information required from Class Members is their name, current
4 mailing address, email address and phone number. Class members must
5 check a box declaring that they were in fact an ADT customer and that they
6 received the penalty from the City. (Motion, 14:2-4.)

7 ● The settlement is not reversionary. (¶55.)

8 ● Individual Settlement Share Calculation: The Settlement Benefit to be paid to each
9 Class Member shall be the quotient of the Net Settlement Fund divided by the total
10 number of valid, timely claims received, but in no event shall an individual Class
11 Member receive more than \$251 as a Settlement Benefit. Should there remain
12 funds in the Net Settlement Fund unpaid due to so capping the Settlement Benefit
13 at \$251 per Class Member, the remaining balance shall be paid from the Net
14 Settlement Fund to the Cy Pres. (¶55.)

15 ● Uncashed Settlement Payment Checks: Settlement Checks shall remain
16 negotiable for 180 days from issuance. Upon the expiration of this time, any
17 funds remaining in the Net Settlement Fund resulting from expiration of the
18 Settlement Check shall be paid to the Cy Pres. (¶55).

19 ○ “Cy Pres” or “Cy Pres Designee” shall mean the National Volunteer Fire
20 Council, which entity meets the requirements of California Code of Civil
21 Procedure section 384’s requirement, and which shall receive those funds
22 remaining of the Net Settlement Fund after payment of the Settlement
23 Benefit to all Class Members submitting Claim Forms. (¶14.)

24 ○ The Final Order and Final Judgment shall set a date when the parties shall
25 report to the Court the total amount that was actually paid to the class

1 members. After the report is received, the parties shall present to the
2 Court a proposed amended judgment and the Court shall amend the
3 judgment to direct payment to pay the sum of any amounts remaining in
4 the Net Settlement Fund plus any interest that has accrued thereon, to the
5 Cy Pres. (§88.n)

- 6 ▪ The parties and counsel represent that they do not have any
7 current nor former interest or involvement in the governance or
8 work of the National Volunteer Fire Council (NVFC). (Declaration
9 of Oscar Gardner (“Gardner Decl.”), ¶2; Declaration of Christine
10 Smith (“Smith Decl.”), ¶2; Supplemental Declaration of Catherine
11 Burke Schmidt (“Schmidt Decl.”), ¶2; Kearney Decl., ¶36.)

- 12 • Funding and Payment of the Settlement: Within 10 days after the Effective Date,
13 Defendant shall deposit the Maximum Settlement Fund into the Escrow
14 Account. (§54.)

15 **C. TERMS OF RELEASES**

- 16 • Any potential Class Member who does not file a timely written request for
17 exclusion shall be bound by all subsequent proceedings, orders and judgments,
18 including, but not limited to, the Release, Final Order and Final Judgment in the
19 Action. (§71.)
- 20 • In consideration for the Agreement, Plaintiffs, Class Representatives, and each
21 Settlement Class Member, on behalf of themselves and any other legal or natural
22 persons who may claim by, through or under them, (each a “Releasing Party” and
23 collectively all “Releasing Parties”) agree to fully, finally and forever release,
24 relinquish, acquit, discharge and hold harmless the Released Parties from all
25

1 Released Claims. (¶78.) Plaintiffs, Class Representatives, and the Settlement Class
2 Members expressly acknowledge and agree that this Release, and the Final Order
3 and Final Judgment, may and will be raised as a complete defense to, and will
4 preclude any action or proceeding encompassed by, this Release. (¶79.)

5 • Plaintiffs, Class Representatives, and each Settlement Class Members shall not,
6 now or hereafter, institute, maintain, prosecute, and/or assert, any suit, action,
7 and/or proceeding, against the Released Parties, either directly or indirectly, on
8 their own behalf, on behalf of a class or on behalf of any other person or entity
9 with respect to the Released Claims and/or any other matters released through this
10 Agreement. (¶82.)

11 • “Released Claims” means all claims, demands, actions, and/or causes of action of
12 whatever kind or nature, in law or in equity, including damages, costs, expenses,
13 penalties, restitution, punitive damages, expert fees, and attorneys’ fees that were
14 asserted in the Action or are based on the facts alleged the Action by the Releasing
15 Parties against the Released Parties, including without limitation any allegations,
16 events, transactions, acts, omissions, matters, or occurrences related to the Alarm
17 Permit Fee or payments of the Alarm Permit Fee or Reduced Alarm Permit Fee
18 during the Class Period, i.e., from May 31, 2009 to December 7, 2018. (¶34.)

19 • “Released Parties” or “Released Party” means Defendant and all of its boards,
20 bureaus, divisions, departments, administrators, officers, agents, elected officials,
21 employees, parents, subsidiaries, affiliates, insurers, predecessors, successors,
22 assigns, and all persons that acted on behalf of Defendant, including Defendant’s
23 authorized dealers. The Parties expressly acknowledge that each of the foregoing
24 is included as a Released Party even though not identified by name herein. (¶35.)
25

- 1 • “Releasing Parties” or “Releasing Party” means Plaintiffs, Class Representatives,
2 and each Settlement Class Members on behalf of themselves and any other legal
3 or natural persons who may assert claims by, through or under them. (¶36.)
- 4 • The named Plaintiffs will also provide a general release and a waiver of the
5 protections of Cal. Civ. Code §1542. (¶80.)
- 6 • The releases are effective 10 days after the Effective Date. (which is the deadline
7 for payment per ¶54.) (¶77.)

8 **D. SETTLEMENT ADMINISTRATION**

- 9
- 10 • The proposed Settlement Administrator is Phoenix Settlement Administrators
11 which has provided evidence that no counsel are affiliated with it and that it has
12 adequate procedure in place to safeguard the data and funds to be entrusted to it.
13 (¶56; See *passim*. Declaration of Michael E. Moore (“Moore Decl.”).)
- 14
- 15 • Settlement administration costs are estimated to be \$50,000. (¶67.)
- 16 • Notice: The manner of giving notice is described below.
- 17 • “Exclusion Deadline” or “Opt-Out Deadline” means the first non-holiday
18 weekday that falls on a day that is 90 calendar days after the Notice Date. (¶19.)
- 19
- 20 • “Objection Deadline” means the date that falls on the day that is 90 calendar
21 days after the Notice Date. (¶28.)
- 22 • “Claim Deadline” shall be the same period of time as the Objection Deadline,
23 which is the date that falls on the day that is 45 calendar days after the Notice
24 Date. (¶¶10, 28.)
- 25

- The deadlines for submitting claims, exclusion, and objections shall not be extended due to re-mailing. (¶60.)
- Notice of the final judgment will be posted on the Settlement website. (¶59.)

D. ATTORNEYS' FEES

Counsel for the proposed class seek \$211,666.67 (33%) in attorney's fees and \$40,000 in costs. (¶96.)

E. SERVICE AWARD

The named plaintiff seeks an enhancement awards of \$15,000 (\$7,500 x 2). (¶91.)

III. SETTLEMENT STANDARDS AND PROCEDURE

California Rules of Court, rule 3.769(a) provides: "A settlement or compromise of an entire class action, or of a cause of action in a class action, or as to a party, requires the approval of the court after hearing." "Any party to a settlement agreement may serve and file a written notice of motion for preliminary approval of the settlement. The settlement agreement and proposed notice to class members must be filed with the motion, and the proposed order must be lodged with the motion." See Cal. Rules of Court, rule 3.769(c).

"In a class action lawsuit, the court undertakes the responsibility to assess fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action. The purpose of the requirement [of court review] is the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties." *Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal quotation marks omitted]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,

1 245, disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018)
2 4 Cal. 5th 260 (“*Wershba*”), [Court needs to “scrutinize the proposed settlement
3 agreement to the extent necessary to reach a reasoned judgment that the agreement is
4 not the product of fraud or overreaching by, or collusion between, the negotiating
5 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
6 concerned.”] [internal quotation marks omitted].

7 “The burden is on the proponent of the settlement to show that it is fair and
8 reasonable. However, “a presumption of fairness exists where: (1) the settlement is
9 reached through arm's-length bargaining; (2) investigation and discovery are sufficient
10 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
11 litigation; and (4) the percentage of objectors is small.” *Wershba*, 91 Cal. App. 4th at
12 245 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802].

13 Notwithstanding an initial presumption of fairness, “the court should not give
14 rubber-stamp approval.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
15 116, 130 (“*Kullar*”). “[W]hen class certification is deferred to the settlement stage, a
16 more careful scrutiny of the fairness of the settlement is required.” *Carter v. City of*
17 *Los Angeles* (2014) 224 Cal.App.4th 808, 819. “To protect the interests of absent class
18 members, the court must independently and objectively analyze the evidence and
19 circumstances before it in order to determine whether the settlement is in the best
20 interests of those whose claims will be extinguished.” *Kullar*, 168 Cal. App. 4th at 130.
21 In that determination, the court should consider factors such as “the strength of
22 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation,
23 the risk of maintaining class action status through trial, the amount offered in
24 settlement, the extent of discovery completed and stage of the proceedings, the
25 experience and views of counsel, the presence of a governmental participant, and the

1 reaction of the class members to the proposed settlement.” *Id.* at 128. “Th[is] list of
2 factors is not exclusive and the court is free to engage in a balancing and weighing of
3 factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at
4 245.

5 At the same time, “[a] settlement need not obtain 100 percent of the damages
6 sought in order to be fair and reasonable. Compromise is inherent and necessary in the
7 settlement process. Thus, even if ‘the relief afforded by the proposed settlement is
8 substantially narrower than it would be if the suits were to be successfully litigated,’ this
9 is no bar to a class settlement because ‘the public interest may indeed be served by a
10 voluntary settlement in which each side gives ground in the interest of avoiding
11 litigation.’” *Id.* at 250.

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16 17 **IV. ANALYSIS OF SETTLEMENT AGREEMENT**

18 19 **A. THERE IS A PRESUMPTION OF FAIRNESS**

20 The settlement is entitled to a presumption of fairness for the following reasons:

21 22 **1. The settlement was reached through arm’s-length bargaining**

23 On March 28, 2019, the parties mediated before the Hon. Rosalyn M. Chapman
24 (Ret). At the mediation, the parties failed to settle the case. Through Judge Chapman, the
25 parties continued to negotiate over the following weeks, until settlement negotiations

1 broke down. The parties re-engaged with Judge Chapman in late 2019/early 2020 and,
2 through her, managed to achieve the Settlement Agreement. (Kearney Decl., ¶14.)

3 4 **2. The investigation and discovery were sufficient**

5 Counsel represents that Plaintiffs have served substantial written discovery on
6 ADT which included, inter alia, multiple rounds of Requests for Production of
7 Documents, Requests for Admissions, Special Interrogatories, and Form Interrogatories.
8 ADT produced and Plaintiffs reviewed thousands of pages of documents, including
9 installation guidelines, Authorized Dealer materials, customer contracts, and corporate
10 governance documents. ADT also produced documents showing that either concurrent
11 with or post-installation, ADT claimed to have sent information regarding alarm permit
12 requirements. Class Counsel also conferred with City employees to obtain lists of those
13 Los Angeles residents who received false alarm penalties without alarm permits, and
14 ultimately subpoenaed records and received data relating to over 80,000 unique false
15 alarm incidents. These data were not “sampled” because the damage theory was uniform
16 for all class members. The City provided a declaration with the data stating that all
17 identified individuals had never had an alarm system permit. However, within the data
18 there was a variance of users who received penalties within the same year as having
19 installed their alarm systems, others whose false alarm had occurred as many as seven
20 years after installation, and all ranges in between. Under Los Angeles Municipal Law,
21 alarm permits expire and must be renewed every year. Renewals are effectuated by the
22 City mailing renewal information to all currently-permitted customers; and it was
23 counsel’s understanding that Los Angeles does not independently try to locate un-
24 permitted alarm system users. Also, thousands of Class Members actually had multiple
25 fines for false alarms with unpermitted alarm systems. Further, Plaintiffs noticed, and

1 ADT produced, ADT's Person Most Qualified to testify on a number of topics, including
2 installation and monitoring protocols and authorized dealer policies. ADT deposed both
3 Gardner and Smith as well as the City's Person Most Qualified regarding the City's
4 interpretation of its ordinances and false alarm procedures, among other things. (*Id.* at
5 ¶¶10-13.)

6 This is sufficient to value the case for settlement purposes.

7 8 **3. Counsel is experienced in similar litigation**

9 Class Counsel represent that are experienced in class action litigation. (*Id.* at ¶17;
10 Declaration of Catherine Burke Schmidt ("Schmidt Decl., ¶¶1-2, Exh. A.))

11 12 **4. Percentage of the class objecting**

13 This cannot be determined until the final fairness hearing. Weil & Brown et al.,
14 Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2019) ¶ 14:139.18 ["Should
15 the court receive objections to the proposed settlement, it will consider and either sustain
16 or overrule them at the fairness hearing."].

17 18 19 **B. THE SETTLEMENT MAY PRELIMINARILY BE CONSIDERED FAIR, 20 ADEQUATE, AND REASONABLE**

21 Notwithstanding a presumption of fairness, the settlement must be evaluated in its
22 entirety. The evaluation of any settlement requires factoring unknowns. "As the court
23 does when it approves a settlement as in good faith under Code of Civil Procedure
24 section 877.6, the court must at least satisfy itself that the class settlement is within the
25 'ballpark' of reasonableness. See *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985)

1 38 Cal.3d 488, 499–500. While the court is not to try the case, it is ‘called upon to
2 consider and weigh the nature of the claim, the possible defenses, the situation of the
3 parties, and *the exercise of business judgment* in determining whether the proposed
4 settlement is reasonable.’ (*City of Detroit v. Grinnell Corporation, supra*, 495 F.2d at p.
5 462, italics added.)” *Kullar*, 168 Cal.App.4th at 133 (emphasis in original).

6 7 **1. Amount Offered in Settlement**

8 The most important factor is the strength of the case for plaintiffs on the merits,
9 balanced against the amount offered in settlement.” *Id.* at 130.

10 Class Counsel estimated Defendant’s maximum exposure at **\$4,104,500**. Class
11 Counsel represents that the maximum potential damage claim for any class member is
12 \$250, consisting of the \$100 for not having an alarm permit and \$151 for the false alarm
13 penalty. If Plaintiffs had the required alarm permits, they could have availed themselves
14 of the City’s alarm school option, thereby causing the \$151 false alarm permit to be
15 waived. If the full \$250 had been awarded per Class Member, this would have been a
16 total liability of \$4,104,500 (\$250 x 16,418). However, it is more realistic to estimate that
17 the damages would have been just the base \$100 penalty for a nonpermitted system,
18 which would reduce the total damage award to \$1,641,800 (\$100 x 16,418). (Kearney
19 Decl., ¶¶24-26.)

20 Class Counsel obtained a gross settlement valued at \$635,000. This is 15.5% of
21 Defendant’s maximum exposure.

22 23 **2. The Risks of Future Litigation**

24 The case is likely to be expensive and lengthy to try. Procedural hurdles (e.g.,
25 motion practice and appeals) are also likely to prolong the litigation as well as any

1 recovery by the class members. Even if a class is certified, there is always a risk of
2 decertification. *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226
3 [“Our Supreme Court has recognized that trial courts should retain some flexibility in
4 conducting class actions, which means, under suitable circumstances, entertaining
5 successive motions on certification if the court subsequently discovers that the propriety
6 of a class action is not appropriate.”].) Further, the settlement was negotiated and
7 endorsed by Class Counsel who, as indicated above, are experienced in class action
8 litigation. Based upon their investigation and analysis, the attorneys representing
9 Plaintiff and the class are of the opinion that this settlement is fair, reasonable, and
10 adequate. (Kearney Decl., ¶26.)

11 **3. The Releases Are Limited**

12
13 The Court has reviewed the Releases to be given by the absent class members and
14 the named plaintiffs. The releases, described above, are tailored to the pleadings and
15 release only those claims in the pleadings. There is no general release by the absent
16 class. The named plaintiff’s general releases are appropriate given that he was
17 represented by counsel in its negotiation.

18 **4. Conclusion**

19 Class Counsel estimated Defendant’s maximum exposure at Class Counsel estimated
20 Defendant’s maximum exposure at **\$4,104,500.**

21 Class Counsel obtained a gross settlement valued at \$635,000. This is 15.5% of
22 Defendant’s maximum exposure, which, given the uncertain outcomes, including the
23 potential that the class might not be certified, that liability is a contested issue, and that
24 the full amount of penalties would not necessarily be assessed even if the class is certified
25 and liability found, the settlement is within the “ballpark of reasonableness.”

1 **C. CONDITIONAL CLASS CERTIFICATION MAY BE GRANTED**

2
3 A detailed analysis of the elements required for class certification is not required,
4 but it is advisable to review each element when a class is being conditionally certified.
5 *Amchem Products, Inc. v. Winsor* (1997) 521 U.S. 591, 620, 622-627. The party
6 advocating class treatment must demonstrate the existence of an ascertainable and
7 sufficiently numerous class, a well-defined community of interest, and substantial
8 benefits from certification that render proceeding as a class superior to the alternatives.”
9 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.

10 Here, on November 27, 2018, the Court found class certification to be
11 appropriate, therefore counsel represents that the main purpose of conditionally
12 certifying the Settlement Class is to clear up any ambiguities in the timescale of the
13 class and to match the class definition to those provided notice of the class action. The
14 Settlement Class neither enlarges nor narrows the previously certified class, save
15 excluding the two previous opt-outs. (Motion, 11:4-8.)

16 ///

17
18 **1. The Proposed Class is Numerous**

19 There are 16,418 Class Members. (Kearney Decl., ¶26.) Numerosity is
20 established. *Franchise Tax Bd. Limited Liability Corp. Tax Refund Cases* (2018) 25
21 Cal.App.5th 369, 393: stating that the “*requirement that there be many parties to a*
22 *class action is liberally construed,*” and citing examples wherein classes of as little as
23 10, *Bowles v. Superior Court* (1955) 44 Cal.2d 574, and 28, *Hebbard v. Colgrove*
24 (1972) 28 Cal.App.3d 1017, were upheld).

25 **2. The Proposed Class Is Ascertainable**

1 “A class is ascertainable, as would support certification under statute
2 governing class actions generally, when it is defined in terms of objective
3 characteristics and common transactional facts that make the ultimate identification
4 of class members possible when that identification becomes necessary.” *Noel v. Thrifty*
5 *Payless, Inc.* (2019) 7 Cal.5th 955, 961 (*Noel*).

6 The class is defined above. Class Members are ascertainable through
7 Defendant’s records. (Motion, 11:20-22.)

8 **3. There Is A Community of Interest**

9 “The community of interest requirement involves three factors: ‘(1) predominant
10 common questions of law or fact; (2) class representatives with claims or defenses typical
11 of the class; and (3) class representatives who can adequately represent the class.’”
12 *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

13 Counsel contends that common issues of law and fact clearly predominate, and
14 that the Court has already found this element to have been met in this case. (Motion, 12:
15 11-12.)

16 As to typicality, counsel contends that it is undisputed that Plaintiffs Gardener and
17 Smith purchased an alarm system from ADT, were not definitively informed by ADT of
18 the permit requirement and cost thereof, and ADT thereafter monitored their unpermitted
19 systems. Because the claims of the Plaintiffs and the facts relating to their claims are
20 identical amongst absent members of the Class, typicality is met. (Motion, 12:18-21.)

21 Counsel represents that Plaintiffs are adequate representatives because they have
22 no conflicts with the class and represented by adequate counsel. (Motion, 12:27-28, 13:1-
23 4.) Further, counsel represents that as part of the Court’s November 27, 2028 order
24 granting class certification, the court found that “the named Plaintiffs have participated in
25

1 the litigation and they are adequate representatives with typical claims.” (Kearney Supp.
2 Decl., ¶3 and Exhibit 3 thereto.)

3 **4. Substantial Benefits Exist**

4 Given the relatively small size of the individual claims, a class action is superior to
5 separate actions by the class members.
6

7 **D. THE PROPOSED NOTICE PLAN MEETS THE REQUIREMENTS** 8 **OF DUE PROCESS**

9 The purpose of notice is to provide due process to absent class members. A practical
10 approach is required, in which the circumstances of the case determine what forms of
11 notice will adequately address due process concerns. *Noel*, 7 Cal.5th at 982. California
12 Rules of Court, rule 3.766 (e) provides that in determining the manner of the notice, the
13 court must consider: (1) the interests of the class; (2) the type of relief requested; (3) the
14 stake of the individual class members; (4) the cost of notifying class members; (5) the
15 resources of the parties; (6) the possible prejudice to class members who do not receive
16 notice; and (7) the res judicata effect on class members.
17

18 ///

19 **1. Method of class notice**

20
21 Defendant has already provided to the Settlement Administrator the name, any
22 available email, and mailing address, (collectively, “Class Member Information”) of
23 each Class Member. The Notice Date shall be no later than 30 days after notice of entry
24 of the Preliminary Approval Order has been provided to the Settlement Administrator.
25 (¶58.) Prior to the transmission of the Summary Notice, the Settlement Administrator

1 shall cause the address of each Class Member, as provided in the Class Member
2 Information, to be updated using the United States Postal Service's National Change of
3 Address System. Summary Notice will be mailed to the updated addresses. After the
4 mailing, for each Class Member's Summary Notice that is returned by the United States
5 Postal Service without a forwarding address, the Settlement Administrator shall conduct
6 a one-time address search for that Class Member for the purpose of obtaining an
7 updated address. In the event an updated address is found, the Summary Notice will be
8 mailed to the updated address. _ If a Class Member's Summary Notice is returned by the
9 United States Postal Service with a forwarding address, the Settlement Administrator
10 shall mail the Summary Notice to the forwarding address. All re-mailings shall be
11 performed within 3 business days of the receipt of returned Summary Notices. (§60.)
12
13

14 **2. Content of class notice.**

15 A copy of the proposed class notice is attached to the Amended Settlement
16 Agreement as Exhibits B and D. The notice includes information such as: a summary of
17 the litigation; the nature of the settlement; the terms of the settlement agreement; the
18 maximum deductions to be made from the gross settlement amount (i.e., attorney fees
19 and costs, the enhancement award, and claims administration costs); the procedures and
20 deadlines for participating in, opting out of, or objecting to, the settlement; the
21 consequences of participating in, opting out of, or objecting to, the settlement; and the
22 date, time, and place of the final approval hearing. See Cal Rules of Court, rule 3.766(d).
23

24 **3. Settlement Administration Costs**

25

1 Settlement administration costs are estimated at **\$50,000**, including the cost of
2 notice. Prior to the time of the final fairness hearing, the settlement administrator must
3 submit a declaration attesting to the total costs incurred and anticipated to be incurred to
4 finalize the settlement for approval by the Court.

6 E. ATTORNEY FEES AND COSTS

7 California Rule of Court, rule 3.769(b) states: “Any agreement, express or
8 implied, that has been entered into with respect to the payment of attorney fees or the
9 submission of an application for the approval of attorney fees must be set forth in full in
10 any application for approval of the dismissal or settlement of an action that has been
11 certified as a class action.”

12 Ultimately, the award of attorney fees is made by the court at the fairness
13 hearing, using the lodestar method with a multiplier, if appropriate. *PLCM Group, Inc.*
14 *v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096; *Ramos v. Countrywide Home Loans,*
15 *Inc.* (2000) 82 Cal.App.4th 615, 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4th
16 1122, 1132-1136. In common fund cases, the court may use the percentage method. If
17 sufficient information is provided a cross-check against the lodestar may be conducted.
18 *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 503. Despite any
19 agreement by the parties to the contrary, “the court ha[s] an independent right and
20 responsibility to review the attorney fee provision of the settlement agreement and
21 award only so much as it determined reasonable.” *Garabedian v. Los Angeles Cellular*
22 *Telephone Company* (2004) 118 Cal.App.4th 123, 128.

23 The question of class counsel’s entitlement to **\$211,666.67 (33%)** in attorney
24 fees will be addressed at the final fairness hearing when class counsel brings a noticed
25 motion for attorney fees. If a lodestar analysis is requested class counsel must provide

1 the court with current market tested hourly rate information and billing information so
2 that it can properly apply the lodestar method and must indicate what multiplier (if
3 applicable) is being sought.

4 Class counsel should also be prepared to justify the costs sought (capped at
5 \$40,000) by detailing how they were incurred.

6 7 **F. SERVICE AWARD**

8 The Settlement Agreement provides for a service award of up to \$15,000 for the
9 class representatives (\$7,500 each). Trial courts should not sanction enhancement
10 awards of thousands of dollars with “nothing more than *pro forma* claims as to
11 ‘countless’ hours expended, ‘potential stigma’ and ‘potential risk.’ Significantly more
12 specificity, in the form of quantification of time and effort expended on the litigation,
13 and in the form of reasoned explanation of financial or other risks incurred by the
14 named plaintiffs, is required in order for the trial court to conclude that an enhancement
15 was ‘necessary to induce [the named plaintiff] to participate in the suit’” *Clark v.*
16 *American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807, italics and
17 ellipsis in original.

18 In connection with the final fairness hearing, the named Plaintiffs must submit a
19 declaration attesting to why they should be compensated for the expense or risk they
20 have incurred in conferring a benefit on other members of the class. *Id.* at 806.

21 The Court will decide the issue of the enhancement award at the time of final
22 approval.

23 24 **V. CONCLUSION AND ORDER**

25 The Court hereby:

- 1 (1) Grants preliminary approval of the settlement as fair, adequate, and
2 reasonable;
3 (2) Grants conditional class certification;
4 (3) Appoints Oscar Gardner and Christine Smith as Class Representatives;
5 (4) Appoints Kearney Littlefield, LLP and Catherine Burke Schmidt, Attorney at
6 Law, as Class Counsel;
7 (5) Appoints tor Phoenix Settlement Administrators as Settlement Administrator;
8 (6) Approves the proposed notice plan; and
9 (7) Approves the proposed schedule of settlement proceedings as follows:

- 10 • Preliminary approval hearing: February 18, 2021
11 • Deadline for settlement administrator to mail notices: 3/22, 2021
12 • Deadline for class members to opt out: 6/21, 2021
13 • Deadline for class members to object: 6/21, 2021
14 • Deadline for class counsel to file motion for final approval:
15 [Signature], 2021 (16 court days prior to final fairness hearing)
16
17
18 • Final fairness hearing: 7/26, 2021, at 10:00 am

19
20 Dated: 2/18/21

21 [Signature]
22 Hon. Amy Hogue

23 Judge of the Superior Court
24
25