UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

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RICARDO CASTILLO, individually and on behalf of all others similarly situated, Plaintiff, v. ADT LLC and DOES 1 through 100 inclusive, Defendant.	CIV. NO. 2:15-383 WBS DAD MEMORANDUM AND ORDER RE: MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

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Plaintiff Ricardo Castillo brought this putative class action against defendant ADT LLC, alleging that defendant violated various California wage and hour laws. (Second Am. Compl. ("SAC") (Docket No. 42).) Presently before the court is plaintiff's motion for preliminary approval of a class action settlement reached between the two parties. (Pl.'s Mot. (Docket No. 44).)

I. Factual and Procedural Background

Defendant provides electronic security, alarm, and home and business automation services throughout the United States. (Pl.'s Mot., Mem. ("Pl.'s Mem.") at 3.) Defendant operates some twenty locations in California, each of which employs "non-exempt High Volume Installers" ("class members"). (Id. at 1-3.)

Plaintiff, a non-exempt high volume installer, contends that defendant violated California wage and hour laws by paying class members pursuant to a wage policy that fails to compensate them for off-the-clock work, such as traveling between customer sites and picking up supplies from warehouses. (Id. at 2-3.) By underpaying class members pursuant to that policy, plaintiff alleges, defendant also under-calculates their overtime rate, which must be "at least one and one-half times [their] regular rate of pay" under California law. (Id.) Plaintiff also alleges that defendant failed to "reimburse [class members] for necessary business expenses and provide compliant itemized wage statements." (Id. at 1.)

Based on these allegations, plaintiff asserts the following claims against defendant: (1) failure to pay proper overtime and/or minimum wages, Cal. Lab. Code §§ 510 and 1194; (2) failure to timely pay earned wages, Cal. Lab. Code § 204; (3) failure to provide adequate pay stubs, Cal Lab. Code § 226; (4) continuing wages, Cal. Lab. Code § 203; (5) failure to reimburse expenses, Cal. Lab. Code § 2802; (6) unfair competition, Cal. Bus. and Prof. Code § 17200 et seq.; (7) civil penalties pursuant to the Labor Code Private Attorneys General Act ("LCPAGA"), Cal. Lab. Code § 2699.3(a)(2)(C); and (8) failure to provide or

compensate for rest breaks, Cal. Lab. Code § 226.7 and Industrial Welfare Commission Order 4. (SAC at 14-21.)

Plaintiff seeks to certify a class of "non-exempt individuals employed by ADT in California as high volume installers who were paid for services performed at any time from April 18, 2013 to the date of preliminary approval of this Settlement Agreement" ("settlement class"). (Decl. of Linda Claxton Ex. E., Settlement Agreement ¶ 2.23 (Docket No. 46-6).) Plaintiff seeks, on behalf of himself and the class, damages allegedly accrued during the "period between April 18, 2013 and the date of Preliminary Approval of this Settlement Agreement" ("class period"). (Id. ¶ 2.26.)

Plaintiff and defendant litigated this case for over a year before reaching a settlement agreement on April 24, 2016 before a mediator. (Pl.'s Mem. at 3-4.) Under the terms of the agreement, defendant agrees to pay a non-reversionary sum of $1,060,000 ("settlement amount") in satisfaction of plaintiff's class-wide claims. (Id. at 6.) The settlement amount is to be distributed as follows: (1) class counsel will apply for a fee of 33% of the settlement amount--$349,800; (2) plaintiff will apply for an enhancement award not to exceed $5,000; (3) up to $16,000 will be used for litigation expenses; (4) $8,000 will be paid to the class administrator; (5) $3,750 will be paid to the California Labor & Workforce Development Agency in satisfaction of defendant's alleged penalties under LCPAGA; and (6) the remaining amount--approximately $677,450 ("class fund")--will be distributed to the settlement class based on the number of weeks

each class member worked during the class period.[1] (Id. at 6-7.)

Plaintiff estimates that defendant will have employed some 362 class members, including himself, during the class period. (Id. at 1, 7.) Assuming a 100% rate of return on claim forms, plaintiff estimates that each class member will receive an average recovery of $1,871, a sum which, according to plaintiff, "represents a recovery of a substantial percent of [each class member's] actual damages." (Id. at 7.) In the event that not all class members return their forms, the remaining amount will be redistributed to those who do return their forms according to number of weeks worked during the class period.

Plaintiff now seeks preliminary approval of the settlement agreement pursuant to Federal Rule of Civil Procedure 23(e).

II. Discussion

Rule 23(e) provides that "[t]he claims, issues, or defenses of a certified class may be settled . . . only with the

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[1] The parties agree that the class period is comprised of two sub-periods: (1) a 'piece rate' period, during which defendant allegedly paid class members pursuant to a piece rate system; and (2) an 'hourly rate' period, during which defendant allegedly paid class members pursuant to an hourly rate system. (Pl.s' Mem. at 1.) Ninety percent of class funds will go towards compensating weeks worked during the 'piece rate' period, and ten percent of class funds will go towards compensating weeks worked during the 'hourly rate' period. (Id.) The implication of this split is that defendant's 'piece rate' system undercompensated class members more severely than its 'hourly rate' system did. (See Decl. of Alan Harris ¶ 10 ("The plan of allocation was negotiated in such a way as to fairly allocate the recovery among Class Members in accordance with Plaintiff's theories of potential damages as well as the relative strengths and weaknesses of the claims . . . .") (Docket No. 45).) The court finds no reason to doubt the fairness of this allocation.

court's approval." Fed. R. Civ. P. 23(e). "Approval under 23(e) involves a two-step process in which the Court first determines whether a proposed class action settlement deserves preliminary approval and then, after notice is given to class members, whether final approval is warranted." Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc., 221 F.R.D. 523, 525 (C.D. Cal. 2004) (citing Manual for Complex Litig., Third, § 30.41 (1995)).

This Order is the first step in that process and analyzes only whether the proposed class action settlement deserves preliminary approval. See Murillo v. Pac. Gas & Elec. Co., 266 F.R.D. 468, 473 (E.D. Cal. 2010). Preliminary approval authorizes the parties to give notice to putative class members of the settlement agreement and lays the groundwork for a future fairness hearing, at which the court will hear objections to (1) the treatment of this litigation as a class action and (2) the terms of the settlement. See id.; Diaz v. Trust Territory of Pac. Islands, 876 F.2d 1401, 1408 (9th Cir. 1989) (stating that a district court's obligation when considering dismissal or compromise of a class action includes holding a hearing to "inquire into the terms and circumstances of any dismissal or compromise to ensure that it is not collusive or prejudicial"). The court will reach a final determination as to whether the parties should be allowed to settle the class action on their proposed terms after that hearing.

The Ninth Circuit has declared a strong judicial policy favoring settlement of class actions. Class Plaintiffs v. City of Seattle, 955 F.2d 1268, 1276 (9th Cir. 1992). Nevertheless, where, as here, "the parties reach a settlement agreement prior

to class certification, courts must peruse the proposed compromise to ratify both [1] the propriety of the certification and [2] the fairness of the settlement." Staton v. Boeing Co., 327 F.3d 938, 952 (9th Cir. 2003).

The first part of this inquiry requires the court to "pay 'undiluted, even heightened, attention' to class certification requirements" because, unlike in a fully litigated class action suit, the court "will lack the opportunity . . . to adjust the class, informed by the proceedings as they unfold." Amchem Prods. Inc. v. Windsor, 521 U.S. 591, 620 (1997); see Hanlon v. Chrysler Corp., 150 F.3d 1011, 1019 (9th Cir. 1998). The parties cannot "agree to certify a class that clearly leaves any one requirement unfulfilled," and consequently the court cannot blindly rely on the fact that the parties have stipulated that a class exists for purposes of settlement. See Windsor, 521 U.S. at 621-22 (stating that courts cannot fail to apply the requirements of Rule 23(a) and (b)).

The second part of this inquiry obliges the court to "carefully consider 'whether a proposed settlement is fundamentally fair, adequate, and reasonable,' recognizing that '[i]t is the settlement taken as a whole, rather than the individual component parts, that must be examined for overall fairness . . . .'" Staton, 327 F.3d at 952 (quoting Hanlon, 150 F.3d at 1026); see also Fed. R. Civ. P. 23(e) (outlining class action settlement procedures).

A. Class Certification

A class action will be certified only if it meets the four prerequisites identified in Rule 23(a) and additionally fits

within one of the three subdivisions of Rule 23(b). Fed. R. Civ. P. 23(a)-(b). Although a district court has discretion in determining whether the moving party has satisfied each Rule 23 requirement, the court must conduct a rigorous inquiry before certifying a class. See Califano v. Yamasaki, 442 U.S. 682, 701 (1979); Gen. Tel. Co. of Sw. v. Falcon, 457 U.S. 147, 161 (1982).

1. Rule 23(a)

Rule 23(a) restricts class actions to cases where:

> (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a). These requirements are commonly referred to as numerosity, commonality, typicality, and adequacy of representation.

a. Numerosity

Under the first requirement, "[a] proposed class of at least forty members presumptively satisfies the numerosity requirement." Avilez v. Pinkerton Gov't Servs., 286 F.R.D. 450, 456 (C.D. Cal. 2012); see also, e.g., Collins v. Cargill Meat Solutions Corp., 274 F.R.D. 294, 300 (E.D. Cal. 2011) (Wanger, J.) ("Courts have routinely found the numerosity requirement satisfied when the class comprises 40 or more members."). Here, plaintiff estimates that the settlement class will contain "some 362 Class Members." (Pl.'s Mem. at 1.) This satisfies Rule 23's numerosity requirement.

b. Commonality

Commonality requires that the class members' claims

"depend upon a common contention" that is "capable of classwide resolution--which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." Wal-Mart Stores, Inc. v. Dukes, 131 S. Ct. 2541, 2550 (2011). "[A]ll questions of fact and law need not be common to satisfy the rule," and the "existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class." Hanlon, 150 F.3d at 1019.

Here, the settlement class is comprised of "current and former ADT High Volume Installers employed in California during the class period."[2] (Pl.'s Mem. at 7.) Such individuals, like plaintiff, would be alleging that defendant paid them pursuant to a wage policy that fails to compensate them for off-the-clock work, under-calculates overtime pay, fails to reimburse business expenses, and fails to provide compliant wage statements. (See id. at 2-3.) Thus, the class shares a common core of salient facts--payment pursuant to a single wage policy--which gives rise to the same legal contentions--violations of California wage and hours laws. Accordingly, the settlement class meets Rule 23's commonality requirement.

c. Typicality

Typicality requires that the named plaintiff have

[2] Plaintiff refers to the settlement class as "non-exempt high volume installers" in some instances and just "high volume installers" in others. (Compare Pl.'s Mem. at 1, with id. at 7.) The court assumes that both refer to the same set of 362 individuals.

claims "reasonably coextensive with those of absent class members," but does not require their claims to be "substantially identical." Hanlon, 150 F.3d at 1020. The test for typicality "is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiff[], and whether other class members have been injured by the same course of conduct." Hanon v. Dataproducts Corp., 976 F.2d 497, 508 (9th Cir. 1992) (citation omitted).

As discussed above, plaintiff alleges that he suffers the same injury as the rest of the class--underpayment of wages--and that their injuries arise from the same conduct--defendant's use of an unlawful wage policy. (Pl.'s Mem. at 2-3.) Accordingly, plaintiff has met Rule 23's typicality requirement.[3]

d. Adequacy of Representation

Rule 23(a)(4) requires a showing that the proposed class representatives "will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). In deciding whether plaintiff has met that requirement, the court must answer two questions: "(1) do the named plaintiff[] and [his] counsel have any conflicts of interest with other class members and (2) will the named plaintiff[] and [his] counsel prosecute the action vigorously on behalf of the class?" Hanlon, 150 F.3d at 1020.

With respect to the first question, plaintiff states that he shares the class's interest in receiving full

[3] Plaintiff's allegation that he worked during both the 'piece rate' period and the 'hourly rate' period, (see SAC ¶ 6), addresses any questions that may arise as to whether his claim is typical of those of class members who may have worked only 'piece rate' or 'hourly rate' periods.

compensation for work he performed for defendant. (Pl.'s Mem. at 5.) The court finds no reason to doubt that representation. While plaintiff plans to apply for a $5,000 incentive award,[4] federal courts have generally held that such awards do not create conflicts of interest as to defeat class settlements. See Staton, 327 F.3d at 977–78 (holding that "reasonable incentive payments" do not create conflicts of interest as to defeat class settlements); Hopson v. Hanesbrands Inc., Civ. No. 08-0844 EDL, 2009 WL 928133, at *10 (N.D. Cal. Apr. 3, 2009) ("In general, courts have found that $5,000 incentive payments are reasonable."); Alberto v. GMRI, Inc., 252 F.R.D. 652, 669 (E.D. Cal. 2008) (holding the same). The courts have held the same with respect to class counsel's plans to apply for a 33% attorneys' fee. See Garnett v. ADT, LLC, No. CV 2:14-02851 WBS AC, 2016 WL 3538354, at *4 (E.D. Cal. June 28, 2016) (counsel's application for 33% fee does not defeat class certification). Accordingly, the court finds that plaintiff and his counsel do not have conflicts of interest that prevent them from representing the class.

"Although there are no fixed standards by which [the second question of Hanlon] can be assayed, considerations include competency of counsel and . . . an assessment of the rationale for not pursuing further litigation." Hanlon, 150 F.3d at 1021. Here, plaintiff has provided evidence that "Class Counsel have

[4] As justification for the award, plaintiff states that he "expended considerable time conferring with Class Counsel and their investigators, providing factual background and support, and analyzing ADT provided data." (Pl.'s Mem. at 8.) Plaintiff "also travelled to San Francisco to participate in the two mediation sessions." (Id.)

substantial experience in prosecuting class actions, including wage-and-hour matters." (Decl. of Alan Harris ¶¶ 20-22 (class counsel each have years of experience litigating multi-million dollar wage-and-hour matters) (Docket No. 45).) Class counsel decided to forgo further litigation after engaging in "voluminous" discovery, "diligent[]" investigation, two "lengthy" mediation sessions, and assessment of the "risks of further litigation of this matter," including "risks to maintenance of class certification, risk of loss on the merits at trial, and risk of an appeal." (Id. at 2-3, 15.) Because the court finds no reason to doubt plaintiff or class counsel's vigor in representing the class, it holds that they have satisfied Rule 23(a)'s adequacy assessment for purposes of preliminary approval.

2. Rule 23(b)

An action that meets all the prerequisites of Rule 23(a) may be certified as a class action only if it also satisfies the requirements of one of the three subdivisions of Rule 23(b). Leyva v. Medline Indus. Inc., 716 F.3d 510, 512 (9th Cir. 2013). Plaintiff seeks certification under Rule 23(b)(3), which provides that a class action may be maintained only if (1) "the court finds that questions of law or fact common to class members predominate over questions affecting only individual members" and (2) "that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

"Because Rule 23(a)(3) already considers commonality, the focus of the Rule 23(b)(3) predominance inquiry is on the balance between individual and common issues." Murillo, 266

F.R.D. at 476 (citing Hanlon, 150 F.3d at 1022); see also Windsor, 521 U.S. at 623 ("The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.").

As explained in the 'commonality' analysis, the claims of class members in this case appear to raise similar, if not identical questions of fact and law. Though the amount of time worked during the class period will likely differ from class member to class member, the Ninth Circuit has held that differences in damage calculations do not defeat a finding of predominance. Yokoyama v. Midland Nat. Life Ins. Co., 594 F.3d 1087, 1089 (9th Cir. 2010) ("[T]he amount of damages is invariably an individual question and does not defeat class action treatment." (internal quotation marks and citation omitted)). Accordingly, the court finds that common questions of fact and law predominate over individual issues in this case.

With respect to whether "a class action is superior to other available methods for fairly and efficiently adjudicating the [present] controversy," Rule 23(b)(3) sets forth four non-exhaustive factors to consider:

> (A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action.

Fed. R. Civ. P. 23(b) (3). The parties settled this action prior to certification, making factors (C) and (D) inapplicable. See Murillo, 266 F.R.D. at 477 (citing Windsor, 521 U.S. at 620).

With respect to factor (A), class members' interest in individually litigating this case is likely low in light of the significant time and financial cost that individual litigation would likely require. (See Pl.'s Mem. at 16 (plaintiff estimates that "[w]ithout settlement, the duration of further litigation is very likely to be several more years").) Moreover, defendant contends that "a number of defenses" it intends to assert in this litigation--such as failure to exhaust administrative remedies, failure to mitigate, time bar under various statutes of limitations, and reimbursement of the allegedly unreimbursed business expenses--"present serious threats to the claims of Plaintiff and the other Class Members." (Id. at 15; see also Answer at 6-10 (Docket No. 31).) In light of these obstacles, plaintiff's representation that the settlement amount constitutes at least 33% of the maximum possible recovery further counsels against individual litigation. See Rodriguez v. W. Pub. Corp., No. CV05-3222 R (MCX), 2007 WL 2827379, at *9 (C.D. Cal. Sept. 10, 2007) (a "settlement amount representing 33% of maximum possible recovery was well within a reasonable range" (quoting In re Warfarin Sodium Antitrust Litig., 212 F.R.D. 231, 257 (D. Del. 2002))), rev'd on other grounds in Rodriguez v. W. Publ'g Corp., 563 F.3d 948 (9th Cir. 2009).

With respect to (B), the court is unaware of any concurrent litigation already begun by class members regarding plaintiff's claims.[5] Objectors at the final fairness hearing may

[5] Defendant recently settled a similar case before this court--Garnett v. ADT, LLC, No. CV 2:14-02851 WBS AC, 2016 WL 3538354 (E.D. Cal. June 28, 2016). Garnett, however, dealt with defendant's alleged failure to reimburse vehicle expenses of and

reveal otherwise. See Alberto, 252 F.R.D. at 664.

Because common issues of fact and law predominate in this action, and because the class action device appears to be the superior method of adjudicating the claims in this case, the court finds that plaintiff has satisfied Rule 23(b)'s certification requirement for purposes of preliminary approval.

3. Rule 23(c)(2) Notice Requirements

If the court certifies a class under Rule 23(b)(3), it "must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). Rule 23(c)(2) governs both the form and content of a proposed notice. See Ravens v. Iftikar, 174 F.R.D. 651, 658 (N.D. Cal. 1997) (citing Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 172–77 (1974)). Although that notice must be "reasonably certain to inform the absent members of the plaintiff class," actual notice is not required. Silber v. Mabon, 18 F.3d 1449, 1454 (9th Cir. 1994) (citation omitted).

The parties agree that Dahl Administration ("Dahl") will provide notice to the class and administer the claims process. (Pl.'s Mem. at 9.) The parties settled on Dahl after seeking out and reviewing bids from "five established providers of the required services." (Id. at 11.)

The parties agree that within fourteen calendar days

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provide compliant wage statements to its sales representatives and sales managers. See id. at *6-7. As the court noted in the July 28, 2015 Order in this case, this case deals with different factual allegations and claims. (See July 28, 2015 Order at 2 (Docket No. 25).)

after preliminary approval, defendant will provide Dahl with a list of the last-known names, addresses, telephone numbers, social security numbers, and estimated recovery of each class member. (Id. at 12.) Dahl will update the addresses "using all customary procedures." (Id.) Dahl will then "deliver the Class Notice and Claim Form to Class Members via first-class mail within twenty days of the Court's Order granting Preliminary Approval." (Id. 11-12.) "Any Notices returned as undeliverable will then be re-mailed to the forwarding address provided by the U.S. Postal Service or to an address located by the Settlement Administrator using customary skip-tracing methods." (Id. at 12.)

The class notice will explain: (1) the nature of this action, (2) the definition of the class, (3) plaintiff's claims, (4) the settlement amount and its contemplated deductions, (5) the number of weeks each class member worked during the class period and their estimated minimum settlement award; (6) the binding effect of participating in the settlement, (7) the class member's right to enter an appearance through an attorney; (8) the class member's right to request exclusion from the class, (9) the timing and procedure for requesting exclusion, and (10) the time and place of the final approval hearing. (Id. at 2, 11.) The content of this notice satisfies Rule 23(c)(2)(B). See Fed. R. Civ. P. 23(c)(2)(B); see also Churchill Vill., L.L.C. v. Gen. Elec., 361 F.3d 566, 575 (9th Cir. 2004) ("Notice is satisfactory if it 'generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.'" (quoting Mendoza

v. Tucson Sch. Dist. No. 1, 623 F.2d 1338, 1352 (9th Cir. 1980))).

The court is also satisfied with the parties' claim form, which reports the number of weeks worked during the class period, provides an estimated settlement amount, specifies that submission of the form is necessary for receipt of payment, and provides the deadline for submission. (Settlement Agreement Ex. A, Claim Form at 1-2.) Class members who want to make a claim for a different settlement sum based on a different number of weeks worked may set forth the information he or she believes to be correct on the claim form and submit supporting documentation. (Id. at 2.)

The court is satisfied that this system is reasonably calculated to provide notice to class members and is the best form of notice available under the circumstances.

B. Preliminary Settlement Approval

After determining that the proposed class satisfies the requirements of Rule 23, the court must determine whether the terms of the parties' settlement appear fair, adequate, and reasonable. See Fed. R. Civ. P. 23(e)(2); Hanlon, 150 F.3d at 1026. This process requires the court to "balance a number of factors," including:

> the strength of the plaintiff's case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement.

Hanlon, 150 F.3d at 1026. Many of these factors cannot be

considered until the final fairness hearing, so the court need only conduct a preliminary review at this time to resolve any "glaring deficiencies" in the settlement agreement before authorizing notice to class members. Ontiveros v. Zamora, Civ. No. 2:08-567 WBS DAD, 2014 WL 3057506, at *12 (E.D. Cal. July 7, 2014) (citing Murillo, 266 F.R.D. at 478).

At the preliminary stage, "the court need only 'determine whether the proposed settlement is within the range of possible approval.'" Murillo, 266 F.R.D. at 479 (quoting Gautreaux v. Pierce, 690 F.2d 616, 621 n.3 (7th Cir. 1982)). This generally requires consideration of "whether the proposed settlement discloses grounds to doubt its fairness or other obvious deficiencies, such as unduly preferential treatment of class representatives or segments of the class, or excessive compensation of attorneys." Id. (quoting W. v. Circle K Stores, Inc., Civ. No. 04-0438 WBS GGH, 2006 WL 1652598, at *11-12 (E.D. Cal. June 13, 2006)). "District Courts have preliminarily approved class settlements with minor defects while giving the parties the opportunity to correct those defects." Hofmann v. Dutch LLC, No. 314CV02418GPCJLB, 2016 WL 1644700, at *8 (S.D. Cal. Apr. 26, 2016).

1. Negotiation of the Settlement Agreement

Courts often begin by examining the process that led to the settlement's terms to ensure that those terms are "the result of vigorous, arms-length bargaining" and then turn to the substantive terms of the agreement. See, e.g., W., 2006 WL 1652598, at *11-12; In re Tableware Antitrust Litig., 484 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007) ("[P]reliminary approval of

a settlement has both a procedural and a substantive component.").

Here, the parties reached the settlement agreement after engaging in "voluminous" discovery, "diligent[]" investigation, motion practice, assessment of the "risks of further litigation," and two "lengthy" mediation sessions at which "they each aggressively advocated for their respective positions." (Id. at 2-3, 15.) In light of these efforts, the court finds no reason to doubt the parties' representation that the settlement was the result of vigorous, arms-length bargaining. See La Fleur v. Med. Mgmt. Int'l, Inc., Civ. No. 5:13-00398, 2014 WL 2967475, at *4 (N.D. Cal. June 25, 2014) ("Settlements reached with the help of a mediator are likely non-collusive.")

2. Amount Recovered and Distribution

In determining whether a settlement agreement is substantively fair to the class, the court must balance the value of expected recovery against the value of the settlement offer. See Tableware, 484 F. Supp. 2d at 1080. This inquiry may involve consideration of the uncertainty class members would face if the case were litigated to trial. See Ontiveros, 2014 WL 3057506, at *14.

Here, plaintiff settled the case for $1,060,000, a sum which represents at least 33% of the maximum possible recovery. (See Pl.'s Mem. at 16.) That settlement amount is "well within a reasonable range when compared with recovery percentages in other class action settlements." Rodriguez, 2007 WL 2827379, at *9 (quoting In re Warfarin Sodium Antitrust Litig., 212 F.R.D. at

257). The parties decided upon that amount after considering "payroll, time punch and commission earning data." (Pl.'s Mem. at 4.)

The court notes that the settlement agreement requires class members to take the affirmative step of opting in to receive payment and opting out if they do not wish to be part of the settlement class. (See Settlement Agreement Ex. B, Notice of Class Action Settlement at 1-3.) Class members who do not request to be excluded will release defendant from the claims asserted in this action. (Id. at 3.) Therefore, there is a risk that some class members will opt into the judgment by default, thus releasing defendant, but also receive no recovery because they fail to timely return the claim form.

While the settlement amount represents only a fraction of the possible recovery and the agreement contains a potentially unfair opt-in/opt-out requirement, there are many uncertainties associated with further litigation that justify this settlement. Specifically, defendant asserts some twenty-three defenses against plaintiff's claims, such as failure to exhaust administrative remedies, failure to mitigate, time bar under various statutes of limitations, and reimbursement of the allegedly unreimbursed business expenses. (See Answer at 6-10.) Defendant believes these and other defenses "present serious threats to the claims of Plaintiff and the other Class Members." (Pl.'s Mem. at 15.) Without settlement, plaintiff estimates that "duration of [this] litigation is very likely to be several more years." (Id. at 16.)

In light of these uncertainties, the court will grant

preliminary approval to the settlement agreement because the settlement amount is within the range of possible approval. Murillo, 266 F.R.D. at 479 (quoting Gautreaux, 690 F.2d at 621 n.3).

3. Attorneys' Fees

If a negotiated class action settlement includes an award of attorneys' fees, that fee award must be evaluated in the overall context of the settlement. Knisley v. Network Assocs., 312 F.3d 1123, 1126 (9th Cir. 2002); Monterrubio, 291 F.R.D. at 455. The court "ha[s] an independent obligation to ensure that the award, like the settlement itself, is reasonable, even if the parties have already agreed to an amount." In re Bluetooth Headset Prods. Liab. Litig., 654 F.3d 935, 941 (9th Cir. 2011).

The settlement agreement provides that class counsel will apply to the court for a fee award of 33% of the gross settlement amount, or $349,800. (Settlement Agreement ¶ 5.1.) Attorneys' fees are to be paid from the settlement amount. (Id.) Defendant agrees not to oppose class counsel's petition for the fee award so long as the award does not exceed 33%. (Id.) The parties agree that the settlement agreement is not contingent upon court approval of the full amount of the requested attorneys' fees and that a court order granting a lesser fee will not invalidate the settlement agreement. (Id.)

In deciding the attorneys' fees motion, the court will have the opportunity to assess whether the requested fee award is reasonable by multiplying a reasonable hourly rate by the number of hours class counsel reasonably expended. See Van Gerwen v. Gurantee Mut. Life. Co., 214 F.3d 1041, 1045 (9th Cir. 2000). As

part of this lodestar calculation, the court may take into account factors such as the "degree of success" or "results obtained" by class counsel. See Cunningham v. County of Los Angeles, 879 F.2d 481, 488 (9th Cir. 1988). If the court, in ruling on the fees motion, finds that the amount of the settlement warrants a fee award at a rate lower than what class counsel requests, then it will reduce the award accordingly. The court will therefore not evaluate the fee award at length here in considering whether the settlement is adequate.

IT IS THEREFORE ORDERED that plaintiff's motion for preliminary certification of a conditional settlement class and preliminary approval of the class action settlement be, and the same hereby is, GRANTED.

IT IS FURTHER ORDERED THAT:

(1) The claims administrator shall notify class members of the settlement agreement in the manner specified within the settlement agreement (Docket No. 46-6);

(2) Class members who want to receive a settlement payment under the settlement agreement must complete and postmark the claim form for delivery to the address indicated on the claim form no later than forty-five calendar days after the date the class notices are mailed;

(3) Class members who want to object to the settlement agreement must postmark a written objection for delivery to the address indicated on the claim form no later than forty-five calendar days after the date the class notices are mailed. The objection must include the objecting person's full name, current address, telephone number, signature, a statement that the person

qualifies as a class member, all objections and reasons for the objections, and any supporting papers. Any class member who submits an objection remains eligible to submit a claim form and receive monetary compensation;

(4) Class members who fail to object to the settlement agreement in the manner specified above shall be deemed to have waived their right to object to the settlement agreement and any of its terms;

(5) Class members who want to be excluded from the settlement must complete and postmark the claim form for delivery to the address indicated on the claim form no later than forty-five calendar days after the date the class notices are mailed. Class members who opt out shall not receive any settlement proceeds or be bound by any of the terms of the settlement, including its release provisions;

(6) The settlement class is provisionally certified as all non-exempt individuals employed by ADT in California as high volume installers who were paid for services performed at any time from April 18, 2013 to the date this Order is signed;

(7) plaintiff Ricardo Castillo is conditionally certified as the class representative to implement the parties' settlement in accordance with the settlement agreement. Alan Harris and Priya Mohan of Harris & Ruble, and David S. Harris of North Bay Law Group, are conditionally appointed as class counsel. Plaintiff and counsel must fairly and adequately protect the class's interests;

(8) The parties agree that Dahl Administration will serve as the claims administrator;

(9) If the settlement agreement terminates for any reason, the following will occur: (a) class certification will be automatically vacated; (b) plaintiff will stop functioning as class representative; and (c) this action will revert to its previous status in all respects as it existed immediately before the parties executed the settlement agreement;

(10) All discovery and pretrial proceedings and deadlines are stayed and suspended until further notice from the court, except for such actions as are necessary to implement the settlement agreement and this Order;

(11) The final fairness hearing is set for January 23, 2017 at 1:30 p.m., in Courtroom No. 5, to determine whether the settlement agreement should be finally approved as fair, reasonable, and adequate;

(12) The following are the certain associated dates in this settlement:

(a) The claims administrator shall send notice of the settlement to the settlement class pursuant to the parties' notice plan by November 21, 2016;

(b) Class members shall complete and postmark objections, requests for exclusion, and claim forms by January 5, 2017;

(c) Plaintiff shall file a motion for attorneys' fees no later than December 29, 2016;

(13) The parties shall file briefs in support of the final approval of the settlement no later than December 29, 2016.

Dated: October 31, 2016

WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE