

1 and approval of attorneys' fees, costs, and an incentive award,
2 (Pl.'s Mot. for Attorneys' Fees (Docket No. 50)).

3 I. Factual and Procedural Background

4 Defendant provides electronic security, alarm, and home
5 and business automation services throughout the United States.
6 (SAC ¶ 10.) It operates some twenty locations in California,
7 each of which employs "non-exempt High Volume Installers." (See
8 id. ¶¶ 10, 23.)

9 Plaintiff, a non-exempt high volume installer, alleges
10 that defendant violated various provisions of the California
11 Labor Code by paying him and other high volume installers
12 pursuant to a wage policy that fails to compensate them for off-
13 the-clock work, such as traveling between customer sites and
14 picking up supplies from warehouses. (Id. ¶ 17.) By underpaying
15 them pursuant to such a policy, plaintiff alleges, defendant also
16 under-calculates their overtime pay, which must be "at least one
17 and one-half times [their] regular rate of pay" under California
18 law. (Id. ¶ 4.) Plaintiff also alleges that defendant failed to
19 "reimburse [him and other installers] for necessary business
20 expenses and provide compliant wage statements." (Id. ¶ 5.)

21 Plaintiff brought this action on behalf of himself and
22 other high volume installers who were paid on a similar basis.
23 (See id. ¶ 4.) The parties litigated this case for over a year
24 before reaching a settlement on April 24, 2016 before mediator
25 Alan Berkowitz. (Docket No. 44 at 3-4.)

26 After reaching settlement, the parties filed a motion
27 for preliminary approval of settlement on September 30, 2016.
28 (Id.) The court granted preliminary approval and provisionally

1 certified the following class: “[A]ll non-exempt individuals
2 employed by ADT in California as high volume installers who were
3 paid for services performed at any time from April 18, 2013 to
4 [November 1, 2016].” (Nov. 1, 2016 Order at 22 (Docket No. 48).)
5 The court appointed plaintiff as class representative; Alan
6 Harris and Priya Mohan of the firm of Harris & Ruble and David
7 Harris of North Bay Law Group as class counsel; and Dahl
8 Administration as claims administrator. (Id.)

9 The court also approved plaintiff’s opt-in/opt-out form
10 and notice of settlement, (id. at 15-16); directed the claims
11 administrator to send notice of settlement to class members by
12 November 21, 2016, (id. at 23); directed class members to file
13 claims, objections, and opt-outs by January 5, 2017, (id.);
14 directed plaintiff to file a motion for attorneys’ fees by
15 December 29, 2016, (id.); and directed the parties to file briefs
16 in support of final approval of settlement by December 29, 2016,
17 (id.). The final fairness hearing in this action took place on
18 January 23, 2017 at 1:30 p.m.

19 After conducting the final fairness hearing and
20 carefully considering the settlement terms, the court now
21 addresses whether this action should receive final class
22 certification, whether the proposed settlement should receive
23 final approval, and whether plaintiff’s request for attorneys’
24 fees, costs, and an incentive award should be granted.

25 II. Discussion

26 The Ninth Circuit has declared that a strong judicial
27 policy favors settlement of class actions. Class Plaintiffs v.
28 City of Seattle, 955 F.2d 1268, 1276 (9th Cir. 1992).

1 Nevertheless, where, as here, "the parties reach a settlement
2 agreement prior to class certification, courts must peruse the
3 proposed compromise to ratify both [1] the propriety of the
4 certification and [2] the fairness of the settlement." Staton v.
5 Boeing Co., 327 F.3d 938, 952 (9th Cir. 2003).

6 The first part of the inquiry requires the court to
7 "pay 'undiluted, even heightened, attention' to class
8 certification requirements" because, unlike in a fully litigated
9 class action suit, the court "will lack the opportunity . . . to
10 adjust the class, informed by the proceedings as they unfold."
11 Amchem Prods. Inc. v. Windsor, 521 U.S. 591, 620 (1997); see
12 Hanlon v. Chrysler Corp., 150 F.3d 1011, 1019 (9th Cir. 1998).

13 In the second stage, the court holds a fairness hearing
14 where the court entertains any class member's objections to (1)
15 the treatment of this litigation as a class action and (2) the
16 terms of the settlement. See Diaz v. Tr. Territory of Pac.
17 Islands, 876 F.2d 1401, 1408 (9th Cir. 1989) (holding that a
18 court is required to hold a hearing prior to final approval of a
19 dismissal or compromise of class claims to "inquire into the
20 terms and circumstances of any dismissal or compromise to ensure
21 it is not collusive or prejudicial"). Following such a hearing,
22 the court must reach a final determination as to whether the
23 court should allow the parties to settle the class action
24 pursuant to the agreed-upon terms. See Telecomms. Coop. v.
25 DIRECTV, Inc., 221 F.R.D. 523, 525 (C.D. Cal. 2004).

26 A. Class Certification

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

1 of the three subdivisions of Rule 23(b). Fed. R. Civ. P. 23(a)-
2 (b). Although a district court has discretion in determining
3 whether the moving party has satisfied each Rule 23 requirement,
4 the court must conduct a rigorous inquiry before certifying a
5 class. See Califano v. Yamasaki, 442 U.S. 682, 701 (1979).

6 1. Rule 23(a) Requirements

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

8 (1) the class is so numerous that joinder of all
9 members is impracticable; (2) there are questions of
10 law or fact common to the class; (3) the claims or
11 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.

12 Fed. R. Civ. P. 23(a). In the court's Order granting preliminary
13 approval of settlement, the court found that the putative class
14 satisfied the Rule 23(a) requirements. Because the court is not
15 aware of any facts that would alter its initial Rule 23(a)
16 analysis, the court finds that the class definition proposed by
17 plaintiff meets the requirements of Rule 23(a).

18 2. Rule 23(b) Requirements

19 An action that meets all of the prerequisites of Rule
20 23(a) may be certified as a class action only if it also
21 satisfies the requirements of one of the three subdivisions of
22 Rule 23(b). Leyva v. Medline Indus. Inc., 716 F.3d 510, 512 (9th
23 Cir. 2013). Plaintiff seeks certification under Rule 23(b) (3),
24 which provides that a class action may be maintained only if (1)
25 "the court finds that questions of law or fact common to class
26 members predominate over questions affecting only individual
27 members" and (2) "a class action is superior to other available
28 methods for fairly and efficiently adjudicating the controversy."

1 Fed. R. Civ. P. 23(b) (3).

2 In its Order granting preliminary approval of
3 settlement, the court found that both prerequisites of Rule
4 23(b) (3) were satisfied. The court is not aware of any facts
5 that would alter this conclusion. Because the settlement class
6 satisfies both Rule 23(a) and 23(b) (3), the court will grant
7 final class certification in this action.

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

9 If the court certifies a class under Rule 23(b) (3), it
10 "must direct to class members the best notice that is practicable
11 under the circumstances, including individual notice to all
12 members who can be identified through reasonable effort." Fed.
13 R. Civ. P. 23(c) (2) (B). Rule 23(c) (2) governs both the form and
14 content of a proposed notice. See Ravens v. Iftikar, 174 F.R.D.
15 651, 658 (N.D. Cal. 1997) (citing Eisen v. Carlisle & Jacquelin,
16 417 U.S. 156, 172-77 (1974)). Although that notice must be
17 "reasonably certain to inform the absent members of the plaintiff
18 class," actual notice is not required. Silber v. Mabon, 18 F.3d
19 1449, 1454 (9th Cir. 1994) (citation omitted).

20 The parties agreed that Dahl Administration would serve
21 as claims administrator in this action. (Docket No. 44 at 9.)

22 Defendant identified and provided Dahl with the records
23 of 427 class members on November 17, 2016. (Decl. of Kelly Kratz
24 ("Kratz Decl.") ¶ 4 (Docket No. 54-1).) Dahl obtained the most
25 current mailing addresses for each class member using the
26 National Change of Address database maintained by the United
27 States Postal Service ("USPS"). (Id. ¶ 5.) On November 21,
28 2016, Dahl mailed notice of settlement to the 427 class members

1 via first class USPS mail.¹ (Id. ¶ 6.) Dahl sent a second
2 notice on December 21, 2016 to the 285 class members who had not
3 responded by that point. (Id. ¶ 7.)

4 Of the 427 class members identified and sent notice,
5 287 filed timely claim forms. (Jan. 13, 2017 Decl. of Alan
6 Harris ("Harris Decl. II") ¶ 3 (Docket No. 54).) Four class
7 members filed late claim forms, which the parties have agreed to
8 accept. (See id. ¶ 4; Jan. 19, 2017 Decl. of Alan Harris
9 ("Harris Decl. III") at 2 (Docket No. 55).) Counting the late
10 claim forms, the class settlement participation rate in this
11 action was 68%. Seven class members² decided to opt out, and no
12 class member objected to the settlement. (Harris Decl. II ¶ 5.)

13 The notice sent by Dahl explained the proceedings in
14 this action; who comprised the settlement class; the claim form
15 requirement and the binding effect of opting in; the procedure
16 for opting out or objecting; when and where the final fairness
17 hearing would be held; and how to contact class counsel should
18 the class member have any questions or wish to request more
19 information. (See Kratz Decl. Ex. A, Notice of Settlement.) The
20 notice also explains that class members' individual settlement
21 awards would be determined based on number of weeks worked during
22

23 ¹ Ten class notices were returned as undeliverable.
24 (Kratz Decl. ¶ 8.) Dahl forwarded those notices to a
25 professional search firm for tracing. (Id.) Plaintiff stated at
26 the final fairness hearing that seven of the ten undeliverable
27 notices were re-mailed pursuant to updated addresses. The
28 remaining three notices did not have updated addresses and could
not be re-sent. (Id.)

² The parties stated at the final fairness hearing that
two of the seven opt-out members may decide to re-opt in.

1 the class period, and that weeks worked during the 'piece rate'
2 period would be compensated differently from weeks worked during
3 the 'hourly rate' period.³ (See id. at 4-5.)

4 The court is satisfied that the parties' notice plan
5 was "best notice that [was] practicable under the circumstances,"
6 and that the content of their notice satisfied Rule 23(c)(2)(B).
7 See Fed. R. Civ. P. 23(c)(2)(B); see also Churchill Vill., L.L.C.
8 v. Gen. Elec., 361 F.3d 566, 575 (9th Cir. 2004) ("Notice is
9 satisfactory if it generally describes the terms of the
10 settlement in sufficient detail to alert those with adverse
11 viewpoints to investigate and to come forward and be heard."
12 (citation omitted)).

13 B. Rule 23(e): Fairness, Adequacy, and Reasonableness of
14 Proposed Settlement

15 Having determined class treatment to be warranted and
16 notice to be adequate, the court must now determine whether the

18 ³ Pursuant to their settlement, the parties agree that
19 the class period will be comprised of two sub-periods: (1) a
20 'piece rate' period, during which defendant allegedly paid class
21 members pursuant to a piece rate system; and (2) an 'hourly rate'
22 period, during which defendant allegedly paid class members
23 pursuant to an hourly rate system. (Dec. 29, 2016 Decl. of Alan
24 Harris ("Harris Decl. I") Ex. 1, Settlement Agreement at 8-9
25 (Docket No. 53-1).) Ninety percent of class funds will go
26 towards compensating weeks worked during the 'piece rate' period,
27 and ten percent of class funds will go towards compensating weeks
28 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 Harris Decl. I ¶ 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. 53).) The
court finds no reason to doubt the fairness of this allocation.

1 terms of the parties' settlement are fair, adequate, and
2 reasonable. See Fed. R. Civ. P. 23(e)(2); Hanlon, 150 F.3d at
3 1026. This process requires the court to "balance a number of
4 factors," including:

5 the strength of the plaintiff's case; the risk,
6 expense, complexity, and likely duration of further
7 litigation; the risk of maintaining class action status
8 throughout the trial; the amount offered in settlement;
9 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.

10 Hanlon, 150 F.3d at 1026. But see In re Bluetooth Headset Prods.
11 Liab. Litig., 654 F.3d 935, 946 (9th Cir. 2011) ("The factors in
12 a court's fairness assessment will naturally vary from case to
13 case.").

14 1. Strength of Plaintiff's Case

15 An important consideration is the strength of
16 plaintiff's case balanced against the amount offered in the
17 settlement. DIRECTV, 221 F.R.D. at 526. The district court,
18 however, is not required to reach any ultimate conclusions on the
19 merits of the case, "for it is the very uncertainty of outcome in
20 litigation and avoidance of wastefulness and expensive litigation
21 that induce consensual settlements." Officers for Justice v.
22 Civil Serv. Comm'n of the City & Cnty. of SF, 688 F.2d 615, 625
23 (9th Cir. 2004).

24 The terms of the parties' settlement compare favorably
25 to the uncertainties of plaintiff's case. If the parties had not
26 settled, defendant would have opposed plaintiff's request for
27 class certification, contested the merits of his claims at
28 summary judgment and/or trial, and appealed any adverse judgment

1 the court issued. (See Pl.'s Mot. for Final Approval of
2 Settlement at 14.) In doing so, defendant would have asserted
3 some twenty-three defenses against plaintiff's claims, such as
4 failure to exhaust administrative remedies, failure to mitigate
5 damages, time bar under various statutes of limitations, and
6 inaccuracy of various allegations made in plaintiff's second
7 amended Complaint. (See Answer at 6-10 (Docket No. 31).) These
8 defenses, defendant contends, "present serious threats to the
9 claims of Plaintiff and the other Class Members." (Pl.'s Mot.
10 for Final Approval of Settlement at 14.)

11 Even if plaintiff succeeded on the merits of his
12 claims, he may have faced difficulty recovering statutory damages
13 and civil penalties from defendant in light of recent cases from
14 courts in this circuit holding that such damages and penalties
15 cannot be "stack[ed]" on top of each other. See Smith v. Lux
16 Retail N. Am., Inc., No. C 13-01579 WHA, 2013 WL 2932243, at *3
17 (N.D. Cal. June 13, 2013).

18 In light of the uncertainties plaintiff would have
19 faced had he not settled this case, the court finds that the
20 proposed settlement, which will provide an average recovery
21 totaling in the thousands of dollars to participating class
22 members, is a fair resolution of the claims brought in this case.

23 2. Risk, Expense, Complexity, and Likely Duration of
24 Further Litigation

25 As explained above, plaintiff would have faced risk
26 with respect to defendant's defenses and recovering damages had
27 he not settled this case. Defendant's representation that it
28 would have opposed class certification, contested the merits of

1 this case at summary judgment and/or trial, and appealed any
2 adverse judgment, would have resulted in "several more years" of
3 litigation, at the end of which "any damage/penalty [recovered by
4 plaintiff and the class may] be dwarfed by the fees and costs
5 expended to obtain it." (Pl.'s Mot. for Final Approval of
6 Settlement at 15-16.) Accordingly, the risks, expense, and
7 duration of further litigation in this matter weigh in favor of
8 approving the settlement. See Nat'l Rural Telecommunications
9 Coop. v. DIRECTV, Inc., 221 F.R.D. 523, 526 (C.D. Cal. 2004)
10 ("[U]nless the settlement is clearly inadequate, its acceptance
11 and approval are preferable to lengthy and expensive litigation
12 with uncertain results.").

13 3. Risk of Maintaining Class Action Status Throughout
14 Trial

15 Though defendant has agreed to class certification for
16 purposes of this settlement, it "intends to vigorously oppose
17 class certification" should this case proceed on the merits.
18 (Pl.'s Mot. for Final Approval of Settlement at 15.) Based on
19 plaintiff's allegations, it appears that class certification may
20 be warranted in this case. (See SAC ¶ 4 (alleging that defendant
21 "pays employees an impermissibly low overtime rate" "as a matter
22 of company policy").) However, plaintiff acknowledges that there
23 is nevertheless "risk that class-wide status may be denied"
24 should this case proceed on the merits and defendant contest
25 class certification. (Pl.'s Mot. for Final Approval of
26 Settlement at 15-16.) Because "class certification is not
27 guaranteed," Morales v. Conopco, Inc., No. 2:13-2213 WBS EFB,
28 2016 WL 6094504, at *5 (E.D. Cal. Oct. 18, 2016), this factor

1 weighs in favor of approving the settlement.

2 4. Amount Offered in Settlement

3 "In assessing the consideration obtained by the class
4 members in a class action settlement, it is the complete package
5 taken as a whole, rather than the individual component parts,
6 that must be examined for overall fairness." Ontiveros v.
7 Zamora, 303 F.R.D. 356, 370 (E.D. Cal. 2014). In determining
8 whether a settlement agreement is substantively fair to the
9 class, the court must balance the value of expected recovery
10 against the value of the settlement offer. See In re Tableware
11 Antitrust Litig., 484 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007).
12 This inquiry may involve consideration of the uncertainty class
13 members would face if the case were litigated to trial. See
14 Ontiveros, 303 F.R.D. at 370-71.

15 The gross settlement amount in this case is \$1,060,000.
16 (Dec. 29, 2016 Decl. of Alan Harris ("Harris Decl. I") Ex. 1,
17 Settlement Agreement ¶ 2.21 (Docket No. 53-1).) The parties have
18 agreed to distribute that amount as follows: (1) class counsel
19 will receive a fee of \$349,800, equal to 33% of the gross
20 settlement amount, (id. ¶ 5.1); (2) plaintiff will receive an
21 incentive award of \$5,000, (id. ¶ 5.3); (3) \$14,080 will go
22 towards litigation costs, (Harris Decl. III at 2-3); (4) \$3,750
23 will be paid to the California Labor & Workforce Development
24 Agency in satisfaction of defendant's alleged penalties under the
25 Labor Code Private Attorneys General Act, (Settlement Agreement ¶
26 5.6); (5) \$7,971 will be paid to Dahl Administration, (see Pl.'s
27 Proposed Order ¶ 11 (Docket No. 51-1)); and (6) the remaining
28 amount--\$679,399--will be distributed to the settlement class

1 based on number of weeks worked during the class period, (see
2 Settlement Agreement ¶ 4.2). The entire settlement amount is
3 non-reversionary. (Harris Decl. II ¶ 7.)

4 Each of the 291 class members who submitted claim forms
5 will receive a settlement payment based on the number of weeks he
6 or she worked for defendant during the class period. (See id. ¶
7 6.) The average recovery per participating class member will be
8 approximately \$2,334.70. Plaintiff notes that the settlement
9 amount represents "33% of the maximum possible recovery," (Pl.'s
10 Mot. for Final Approval of Settlement at 16), which is "well
11 within a reasonable range . . . [for] class action settlements,"
12 Rodriguez v. W. Pub. Corp., No. CV 05-3222 R (MCX), 2007 WL
13 2827379, at *9 (C.D. Cal. Sept. 10, 2007), rev'd on other grounds
14 in Rodriguez v. W. Publ'g Corp., 563 F.3d 948 (9th Cir. 2009).

15 In light of the risks and expense of further litigation
16 in this matter, the court finds the settlement amount to be fair
17 and adequate.

18 5. Extent of Discovery and State of Proceedings

19 A settlement that occurs in an advanced stage of the
20 proceedings indicates that the parties carefully investigated the
21 claims before reaching a resolution. Alberto v. GMRI, Inc., Civ.
22 No. 07-1895 WBS DAD, 2008 WL 4891201, at *9 (E.D. Cal. Nov. 12,
23 2008). Here, the parties litigated this action for over a year
24 before settling it. (Docket No. 44 at 3-4.) They reached
25 settlement only after engaging in "voluminous" discovery,
26 "diligent[]" investigation, motion practice, assessment of the
27 "risks of further litigation," and two "lengthy" mediation
28 sessions at which "they each aggressively advocated for their

1 respective positions.” (Id. at 2-3, 15.) Accordingly, the
2 extent of discovery and state of proceedings in this action weigh
3 in favor of approving the parties’ settlement.

4 6. Experience and Views of Counsel

5 “When approving class action settlements, the court
6 must give considerable weight to class counsel’s opinions due to
7 counsel’s familiarity with the litigation and [their] previous
8 experience with class action lawsuits.” Murillo v. Pac. Gas &
9 Elec. Co., Civ. No. 2:08-1974 WBS GGH, 2010 WL 2889728, at *8
10 (E.D. Cal. July 21, 2010). Here, plaintiff has provided evidence
11 that class counsel have “substantial experience in prosecuting
12 class actions, including wage-and-hour matters.” (Pl.’s Mot. for
13 Final Approval of Settlement at 16; see also Harris Decl. I ¶¶
14 13-16.) Class counsel is “of the opinion that the Settlement
15 Agreement [in this action] represents a good compromise for the
16 Class, given the inherent risks, hazards, and expenses of
17 carrying the Action through trial.” (Pl.’s Mot. for Final
18 Approval of Settlement at 16-17.) The court gives “considerable
19 weight to class counsel’s opinions due to counsel’s familiarity
20 with the litigation and [their] previous experience with class
21 action lawsuits.” Alberto, 2008 WL 4891201, at *10.
22 Accordingly, this factor weighs in favor of approving the
23 settlement.

24 7. Presence of Government Participant

25 No government entity participated in this matter. This
26 factor, therefore, is irrelevant to the court’s analysis.

27 8. Reaction of Class Members to the Proposed
28 Settlement

1 “[T]he absence of a large number of objections to a
2 proposed class action settlement raises a strong presumption that
3 the terms of a proposed class settlement action are favorable to
4 the class members.” DIRECTV, 221 F.R.D. at 529. Here, notice of
5 settlement was sent to 427 class members and no class member
6 objected. (Harris Decl. II ¶ 5.) Only seven members⁴ opted out.
7 (Id.) This factor weighs in favor of approving the settlement.

8 9. Conclusion

9 Having considered the foregoing factors, the court
10 finds the parties’ settlement to be fair, adequate, and
11 reasonable under Rule 23(e).

12 C. Attorney’s Fees

13 Federal Rule of Civil Procedure 23(h) provides that
14 “[i]n a certified class action, the court may award reasonable
15 attorney’s fees and nontaxable costs that are authorized by law
16 or by the parties’ agreement.” If a class action settlement
17 includes an award of attorney’s fees, that award must be
18 evaluated in the overall context of the settlement. Knisley v.
19 Network Assocs., 312 F.3d 1123, 1126 (9th Cir. 2002); Monterrubio
20 v. Best Buy Stores, L.P., 291 F.R.D. 443, 455 (E.D. Cal. 2013)
21 (England, J.). The court “ha[s] an independent obligation to
22 ensure that the award, like the settlement itself, is reasonable,
23 even if the parties have already agreed to an amount.” Bluetooth
24 Headset, 654 F.3d at 941.

25 The Ninth Circuit has approved two methods of assigning
26 attorneys’ fees in class settlements: percentage-of-recovery and
27

28 ⁴ See supra note 2.

1 lodestar. Vizcaino v. Microsoft Corp., 290 F.3d 1043, 1047 (9th
2 Cir. 2002). The court has discretion in common fund cases, such
3 as here, to choose either method. Id. It may also use one as a
4 “cross-check[]” upon the other. See Bluetooth Headset, 654 F.3d
5 at 944.

6 Class counsel in this case request \$349,000 in
7 attorneys’ fees, and \$14,080 in litigation costs. (Pl.’s Mot.
8 for Attorneys’ Fees at 1; Harris Decl. III at 2-3.) Defendant
9 has agreed not to oppose either request. (Settlement Agreement
10 ¶¶ 5.1-5.2.) The attorneys’ fees requested by counsel constitute
11 33% of the gross settlement amount, and is slightly below the
12 lodestar figure of \$370,245, which counsel calculated based on
13 706 hours expended in this case times rates of \$650 for partners,
14 \$350 for associates, and \$150 for paralegals.⁵ (Pl.’s Mot. for
15 Attorneys’ Fees at 11, 20.) Counsel submitted detailed invoices
16 justifying the number of hours worked and litigation costs
17 incurred. (See Docket No. 50-1 Exs. 1-3, Invoices; Harris Decl.
18 I Ex. 2, Invoices (Docket No. 53-2); Harris Decl. III.)

19 While the attorneys’ fees requested is above the 25%
20 “benchmark” set by the Ninth Circuit for “common fund”
21 settlements, see Six Mexican Workers v. Arizona Citrus Growers,
22 904 F.2d 1301, 1311 (9th Cir. 1990), courts in this circuit have
23 approved fees that exceeded that “benchmark” in many cases, see
24 Bond v. Ferguson Enterprises, Inc., No. 1:09-CV-1662 OWW MJS,
25 2011 WL 2648879, at *9 (E.D. Cal. June 30, 2011) (“[T]he exact

26 ⁵ The rates are the same as those the court approved in
27 Garnett v. ADT, LLC, No. CV 2:14-02851 WBS AC, 2016 WL 3538354,
28 at *4 (E.D. Cal. June 28, 2016), which involved the same
defendant and similar claims.

1 percentage [of attorneys' fees] varies depending on the facts of
2 the case, and in most common fund cases, the award exceeds [the
3 25%] benchmark."). A fees award amounting to "33 1/3% of the
4 total settlement value" is considered "acceptable." Id. The
5 fact that the requested fees in this case are below the lodestar
6 figure further supports granting approval. See Vizcaino, 290
7 F.3d at 1050 ("[T]he lode star . . . provides a check on the
8 reasonableness of the percentage award.").

9 In light of the risks counsel incurred by taking this
10 case on a contingency basis, the nearly two years they spent
11 litigating this case, and the reasonable result they obtained for
12 class members, the court finds the requested fees to be
13 reasonable. The court also finds the requested litigation costs
14 to be reasonable in light of the invoices counsel have submitted
15 with their Motion. Accordingly, the court will approve counsel's
16 requested fees and costs.

17 D. Incentive Payment to Plaintiff

18 "Incentive awards are fairly typical in class action
19 cases." Rodriguez, 563 F.3d at 958. "[They] are intended to
20 compensated class representatives for work done on behalf of the
21 class, to make up for financial or reputational risk undertaken
22 in bringing the action, and, sometimes, to recognize their
23 willingness to act as a private attorney general." Id. at 958-
24 59. Courts in this circuit have found awards of \$5,000 to be
25 reasonable. Hopson v. Hanesbrands Inc., Civ. No. 08-0844 EDL,
26 2009 WL 928133, at *10 (N.D. Cal. Apr. 3, 2009) (citing In re
27 Mego Fin. Corp. Sec. Litig., 213 F.3d 454, 463 (9th Cir. 2000)).

28 Here, plaintiff requests an incentive award of \$5,000.

1 (Pl.'s Mot. for Attorneys' Fees at 21.) In justifying the award,
2 plaintiff represents that he "expended considerable time
3 conferring with Class Counsel and their investigators" regarding
4 this case, "provid[ed] factual background and support" to
5 counsel, and "analyz[ed] ADT provided data" to assist counsel.
6 (Id. at 21-22.) Plaintiff also notes that he "travelled to San
7 Francisco to participate in the [parties'] two mediation
8 sessions." (Id.) Finally, plaintiff states that he "undertook
9 the financial risk that, in the event of a judgment in favor of
10 ADT in this action, he could have been personally responsible for
11 any costs awarded in favor of ADT." (Id.) In light of the
12 efforts plaintiff put in to and the risks he incurred in bringing
13 this action, the court finds his requested incentive award to be
14 reasonable, and will approve the award.

15 III. Conclusion

16 Based on the above, the court grants final class
17 certification in this action and finds the parties' settlement to
18 be fair, reasonable, and adequate. Consummation of the
19 settlement in accordance with the terms and provisions of the
20 parties' settlement agreement is approved. The settlement
21 agreement shall be binding upon all class members who did not
22 timely opt out of this action.

23 The court also finds plaintiff's request of \$349,800
24 in attorneys' fees, \$14,080 in litigation costs, and \$5,000 in
25 incentive award to be reasonable, and grants final approval with
26 respect to those payments.

27 IT IS THEREFORE ORDERED that plaintiff's Motions for
28 class certification, final approval of class settlement, and

1 attorneys' fees, costs, and incentive award be, and the same
2 hereby are, GRANTED.

3 IT IS FURTHER ORDERED THAT:

- 4 (1) Solely for the purpose of this settlement, and pursuant
5 to Federal Rule of Civil Procedure 23, the court hereby
6 certifies the following class: All non-exempt
7 individuals employed by ADT in California as high
8 volume installers who were paid for services performed
9 at any time from April 18, 2013 to November 1, 2016.
- 10 (2) The court appoints plaintiff Ricardo Castillo as class
11 representative and finds that he meets the requirements
12 of Rule 23.
- 13 (3) The court appoints Alan Harris and Priya Mohan of the
14 firm of Harris & Ruble and David Harris of North Bay
15 Law Group as class counsel and finds that they meet the
16 requirements of Rule 23.
- 17 (4) The court finds that the notice plan described in the
18 parties' settlement agreement (Docket No. 53-1) was the
19 best notice practicable under the circumstances and
20 satisfies the requirements of due process and Rule 23.
21 That plan is approved and adopted. The notice of
22 settlement sent to the class (Docket No. 52 Ex. A)
23 complies with Rule 23(c)(2) and 23(e), and is approved
24 and adopted.
- 25 (5) The court finds that the parties and their counsel took
26 appropriate efforts to locate and inform all class
27 members of the settlement. Given that no class member
28 filed an objection to the settlement, the court finds

1 that no additional notice to the class is necessary.

2 (6) As of the date of the entry of this Order, plaintiff
3 and all class members who have not timely opted out of
4 this settlement hereby do and shall be deemed to have
5 fully, finally, and forever released, settled,
6 compromised, relinquished, and discharged defendant of
7 and from any and all settled claims, pursuant to the
8 release provisions stated in the parties' settlement
9 agreement.

10 (7) Plaintiff's counsel are entitled to attorneys' fees in
11 the amount of \$349,800, and litigation costs in the
12 amount of \$14,080.

13 (8) Plaintiff Castillo is entitled to receive an incentive
14 award in the amount of \$5,000.

15 (9) Dahl Administration is entitled to administration costs
16 in the amount of \$7,971.

17 (10) \$3,750 from the gross settlement amount shall be paid
18 to the California Labor & Workforce Development Agency
19 in satisfaction of defendant's alleged penalties under
20 the Labor Code Private Attorneys General Act.

21 (11) The remaining settlement funds shall be paid to
22 participating class members in accordance with the
23 terms of the parties' settlement agreement.

24 (12) This action is dismissed with prejudice. However,
25 without affecting the finality of this Order, the court
26 shall retain continuing jurisdiction over the
27 interpretation, implementation, and enforcement of the
28 settlement agreement with respect to all parties in

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this action and their counsel of record.

The clerk is instructed to enter judgment accordingly.

Dated: January 24, 2017



WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE