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16 *the Proposed Settlement Class*

17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**

19
20 MICHAEL EDENBOROUGH and)
PATRICIA WILSON, individually and on)
21 behalf of all others similarly situated,)
22 Plaintiffs,)
23 vs.)
24 ADT, LLC d/b/a ADT SECURITY)
SERVICES, INC. a Florida limited liability)
25 company, and THE ADT CORPORATION, a)
Delaware corporation,)
26 Defendants.)

) Case No: 16-2233 JST
)
) **CLASS ACTION**
) **PLAINTIFFS' NOTICE OF MOTION,**
) **UNOPPOSED MOTION, AND**
) **MEMORANDUM IN SUPPORT OF**
) **PRELIMINARY APPROVAL OF CLASS**
) **ACTION SETTLEMENT**
)
) Judge: Hon. Jon S. Tigar
) Ctrm: 9 – 19th Floor
) Date: April 27, 2017
) Time: __ 2:00 p.m.

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NOTICE

TO ALL PARTIES AND COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on April 27, 2017, at 2:00 p.m., or as soon thereafter that the matter may be heard, in Courtroom 9 of the U.S. District Court for the Northern District of California, located at 450 Golden Gate Avenue, San Francisco, CA, Plaintiffs and other proposed Class Representatives (“Plaintiffs”) will and they hereby do move the Court for an order granting preliminary approval of a national class action settlement, provisionally certifying the Settlement Class, appointing Lead Class Counsel, Class Counsel, and Class Representatives, directing notice to the Settlement Class, and scheduling a formal fairness hearing.

This motion is filed contemporaneously with the motion of Plaintiff Michael Edenborough asking the Court to grant him leave to file a Second Amended Complaint adding Patricia Wilson as an additional class representative and seeking relief on behalf of a national class. Both motions are unopposed.

RELIEF REQUESTED

As discussed below, the Parties have entered into a Settlement Agreement (“Settlement”) resolving five separate actions pending in federal and state courts on behalf of a nationwide Settlement Class that provides substantial monetary compensation to the putative class members and includes a robust notice plan. Plaintiffs respectfully request that the Court now enter an order:

- (1) Granting preliminary approval to the Settlement;
- (2) Certifying the Settlement Class for settlement purposes only;
- (3) Appointing Dahl Administration as the Settlement Administrator;
- (4) Approving the Notice Program and the form and content of the Notices exhibited to the Settlement;
- (5) Approving as to form and content the Claim Form exhibited to the Settlement;
- (6) Appointing Michael Edenborough and Patricia Wilson as Class Representatives;
- (7) Appointing Thomas A. Zimmerman, Jr. of Zimmerman Law Offices, P.C., as Lead Class Counsel and Francis J. Balint, Jr. of Bonnett, Fairbourn, Friedman & Balint, P.C., Mark A. Chavez of Chavez & Gertler LLP, Jonathan M. Stein of Saxena White

1 P.A., and William C. Wright of The Law Offices of William C. Wright, P.A., as
 2 Class Counsel; and

- 3 (8) Scheduling a Final Fairness Hearing to consider entry of a final order approving the
 4 Settlement and the request for Attorneys' Fees and Expenses and Class
 5 Representative Service Awards.

6 **MEMORANDUM OF POINTS AND AUTHORITIES**

7 **I. INTRODUCTION**

8 After litigation of five separate actions in federal and state courts, extensive formal and
 9 informal discovery, and months of negotiations, including two days of mediation overseen by
 10 highly-respected, retired Magistrate Judge and JAMS mediator Edward A. Infante, the Plaintiffs
 11 and putative class representatives in each of the actions – Michael Edenborough, Patricia Wilson,
 12 Janet Cheatham, Dale Baker, and Santiago Hernandez – and Defendants ADT Corporation and
 13 ADT, LLC d/b/a ADT Security Services (collectively, “ADT” or “Defendants”), entered into a
 14 Settlement Agreement (the “Settlement” or “SA”), a copy of which is attached to the Declaration
 15 of proposed Lead Counsel Thomas A. Zimmerman, Jr. (“Zimmerman Decl.”) as Exhibit 1.¹

16 Under the Settlement, ADT agrees to pay sixteen million dollars (\$16,000,000) for the
 17 benefit of Settlement Class Members (“Settlement Amount”). After deducting from the Settlement
 18 Amount the costs for class notice and settlement administration, and Court-approved Attorneys’
 19 Fees and Expenses and Class Representative Service Awards, the Net Settlement Amount will be
 20 allocated to Settlement Class Members who submit valid Claim Forms. The distribution of the Net
 21 Settlement Amount will be in accordance with a Plan of Allocation that provides for a monetary
 22 payment projected to be \$45 and \$15 depending on the Settlement Class Member’s date of
 23 execution of his/her first ADT contract, subject to *pro rata* adjustment so that every valid claim
 24 gets paid and all money is expended. No Settlement Funds will revert to ADT.

25 //

26
 27 ¹ The definitions used in the Settlement are adopted and used herein. The Settlement also
 28 contemplates that Stephanie Hallam Dillard will be added as a Plaintiff in the Illinois (*Baker*)
 Action. On March 23, 2017, the Court in the Illinois Action granted leave to amend, and a Third
 Amended Complaint was filed on that day adding Ms. Dillard as a Plaintiff in the Illinois Action.

II. NATURE OF THE LITIGATION AND PROCEDURAL HISTORY

Each of the settled cases (the “Actions”) share common factual allegations regarding ADT’s alleged failure to disclose to residential customers the alleged vulnerability of its residential security systems to evasion and jamming of the system’s wireless peripheral sensors by various electronic devices, and alleged misrepresentations regarding same. Plaintiffs allege that, unbeknownst to ADT customers when entering into their residential monitoring contracts during the Class Period, their systems’ wireless peripheral sensors could be disabled with inexpensive equipment. Plaintiffs allege that ADT’s concealment of the security flaws was threatened in July 2014 when Logan Lamb, an employee at the Oak Ridge National Laboratories, planned to reveal publicly his findings about how ADT’s wireless sensors could be disabled.

On November 9, 2014, *Baker v. ADT* (the “Illinois Action”) was filed by an Illinois resident, on behalf of putative nationwide and Illinois state classes. *Cheatham v. ADT* (the “Arizona Action”) was filed by an Arizona resident in September 2015 on behalf of a putative class of Arizona residents, and *Edenborough v ADT* (the “California Action”) was filed by a California resident in March 2016 on behalf of a putative class of California residents. Two related cases have also been filed by Florida residents in Florida state court, *Wilson v. ADT* and *Hernandez v. ADT*, both on behalf of putative classes of Florida residents (the “Florida Actions”).

After the Actions were filed, beginning in August 2016, ADT inserted express disclosure language into its standardized contracts, on its web site, and in SEC filings.

Plaintiffs’ statutory consumer fraud claims in the Arizona, California, and Illinois Actions have survived ADT’s motions to dismiss. ADT’s motions to dismiss in the Florida Actions were briefed, argued and awaiting ruling when the Actions were settled. As detailed in the Zimmerman Declaration, the parties initially agreed that the Settlement would be presented for approval to the District Court in Illinois, where a national class claim was asserted. Each of the other Actions were subsequently stayed in their respective courts pending completion of the class settlement approval process. However, due to a subsequent change in direction of the sole named Illinois class representative, Dale Baker, the parties revised the Settlement to provide that, with approval of this Court, the complaint herein would be amended to add a national class, and the Settlement would be

1 presented for approval to this Court. Plaintiffs' Counsel believe that is the most effective way to
2 protect Mr. Baker's individual rights vis à vis ADT, and achieve the substantial benefits of the hard-
3 won Settlement for the other members of the proposed Settlement Class.

4 Each of the Actions has been vigorously litigated by Plaintiffs and ADT. ADT has produced
5 and Plaintiffs' counsel have reviewed over 45,000 pages of documents; most of the Class
6 Representatives and seventeen (17) fact witnesses have been deposed; and detailed, preliminary
7 expert declarations regarding liability and methodology for calculation of damages have been
8 exchanged. Plaintiffs in *Baker*, *Cheatham* and *Edenborough* have filed motions for class
9 certification, and ADT has filed an opposition memorandum in *Cheatham* and *Edenborough*.² (The
10 motions are stayed.)

11 Over a period of several months, the parties had discussions and engaged in arm's-length
12 negotiations in an effort to resolve the Actions. The negotiations included two mediation sessions
13 months apart that were overseen by highly-respected, retired Magistrate Judge and JAMS mediator,
14 Edward A. Infante. (Zimmerman Decl. ¶ 20.) The mediation resulted in the Settlement.

15 Proposed Lead Class Counsel and Class Counsel (together, "Class Counsel") conducted a
16 thorough examination and investigation of the facts and law relating to the matters in the Actions.
17 They also evaluated the merits of all Parties' contentions and the impact of the Settlement on all
18 Parties, especially the Settlement Class Members. Class Representatives and Class Counsel have
19 considered the terms of the Settlement, the numerous risks of continued litigation, and other factors,
20 including: (1) the expense and length of time necessary to prosecute the Actions through trial; (2)
21 the uncertainty of outcome at trial and the possibility of an appeal by either side; (3) the possibility
22 that a contested class might not be certified, and/or that certification would be reversed on appeal;
23 (4) the risk that ADT could file a motion for summary judgment that, if granted, could dispose of
24 all or many of the claims in the Actions; and (5) the benefits being made available to Class
25 Representatives and the Settlement Class Members under the terms of this Agreement.

26 Weighing the above factors, the moving Plaintiffs and their counsel believe that the terms

27 _____
28 ² The *Baker* action was stayed based on the settlement after the motion for class certification was
filed but before ADT's response was due.

1 and conditions of the Settlement are fair, reasonable, adequate, and in the best interests of the
 2 Plaintiffs, Class Representatives, and the other Settlement Class Members.

3 **III. SUMMARY OF SETTLEMENT TERMS**

4 **A. The Settlement Class**

5 The Parties have agreed to certification of the following Settlement Class, subject to typical
 6 exclusions:

7 All current and former ADT customers who between November 13, 2009 and
 8 August 15, 2016 entered into a contract with ADT or an ADT dealer for installation
 9 of a residential security system, or who had ADT or an ADT dealer install a
 10 residential security system, that includes at least one wireless peripheral sensor.

11 SA II, p. 7. Settlement Class Members who exclude themselves or “opt-out” of the Settlement,
 12 pursuant to the procedures set forth in SA XI (pp. 16-17) will not thereafter be Settlement Class
 13 Members, will not be bound by the Settlement, and will not be eligible to make a claim for any
 14 benefit provided by the Settlement.

14 **B. Settlement Benefits**

15 The Settlement provides significant monetary relief to each Settlement Class Member who
 16 submits a valid claim form. ADT will pay \$16,000,000 in exchange for a release which explicitly
 17 *excludes* property damage and personal injury claims. (SA II, p. 7, and IV.A, p. 8). ADT will pay
 18 the Settlement Amount in two payments. ADT’s first payment of \$1.5 million will occur within 7
 19 days after entry of the Preliminary Approval Order, and the second payment of \$14.5 million will
 20 occur within 7 days of the Effective Date of the Settlement. (SA V.B, p.10, VI.B, p. 10). The
 21 Settlement Amount will be used to pay costs for a robust Class Notice Program, explained below,
 22 and settlement administration, including the processing of Claim Forms and the mailing of
 23 settlement checks. (*Id.*; *see also* SA VII (Class Notice), pp. 10-12, VIII (Allocation), pp. 13-15.)

24 **1. Monetary Benefits to Settlement Class Members**

25 After deductions for class notice and settlement administration and Court-approved
 26 Attorneys’ Fees and Expenses and Class Representative Service Awards, the Net Settlement
 27 Amount will be allocated to Settlement Class Members who submit valid Claim Forms. (SA VIII,
 28 pp. 12-15). The Net Settlement Amount will be exhausted to pay Settlement Class Members’

1 Claims, so that no money reverts to ADT. (SA VIII.B.4, p. 14).

2 The Plan of Allocation takes into consideration the strength of Plaintiffs' ability to prove
3 ADT's liability during two different time periods, November 13, 2009 through July 23, 2014, and
4 July 24, 2014 through August 15, 2016, as ADT's knowledge regarding the alleged security flaws
5 was different in those two periods. (Zimmerman Decl. ¶ 24.) Settlement Class Members who
6 executed their first contract with ADT or an ADT dealer for installation of a residential security
7 system with a wireless peripheral sensor during the first period did so before ADT learned of Logan
8 Lamb's presentation and the alleged vulnerabilities of the residential wireless alarm systems he
9 identified. These Settlement Class Members will be entitled to a settlement payment of \$15, subject
10 to any *pro-rata* adjustment up or down as necessary so that every valid claim gets paid and the
11 settlement funds are exhausted. (SA VIII.B.1, p.13, VIII.B.4, p. 14).

12 Settlement Class Members who executed their first residential security contract with ADT
13 or an ADT dealer during the second period have a stronger case for proving ADT's liability given
14 that ADT admits it learned in July 2014 of Logan Lamb's planned presentation and his allegations
15 of security flaws in ADT's wireless residential alarm systems, and Plaintiffs allege that despite its
16 undeniable awareness of these vulnerabilities, ADT failed to adequately disclose them. The ending
17 date of August 15, 2016 was chosen because, by that time, ADT had changed its disclosures on its
18 website, in its contracts, and in SEC filings, to specifically disclose the risk of hacking of the
19 wireless communications with the peripheral sensors. Given this backdrop, the Settlement Class
20 Members in the second category have the stronger case for proving ADT's concealment of alleged
21 security flaws. Thus, those Settlement Class Members will be entitled to a settlement payment of
22 \$45, subject to the same *pro-rata* adjustment up or down. (SA VIII.B.2, p. 13, VIII.B.4, p. 14).
23 Based on projected claims rates, Class Counsel expects no downward adjustment of the payout
24 amounts.³ (Zimmerman Decl. ¶ 25.)

25 The claims process has been designed to make it easy for Settlement Class Members to
26

27 ³ For example, if notice and administration costs are \$1.6 million and 6% of all *potential* ADT
28 customers make a valid claim, no downward adjustment of the payout amounts would be necessary.
These are very conservative estimates, as class notice will be provided to millions of *potential*
Settlement Class Members, many of whom are not actually in the Settlement Class.

1 make claims. The Claim Form (SA Exh. C) enables current and former ADT customers to identify
2 themselves as Settlement Class Members by checking a box indicating that their residential alarm
3 system had at least one wireless peripheral sensor. The customer can then check a box to indicate
4 in which time period they first signed their contract or had their residential security system installed.
5 *Id.* The Postcard Notice (Exh. B-5) will have a tear-off Claim Form that a Settlement Class Member
6 can fill out and mail to the Settlement Administrator. Additionally, a fillable Claim Form that can
7 be submitted electronically will be available on the Settlement Website. (SA VII.E, p. 12).
8 Settlement Class Members do not have to submit any documentation with their Claim Form.

9 **2. Class Notice**

10 As explained in detail in Part IV-C-2 below, direct notice will be given by U.S. mail to all
11 current and former ADT customers who are in the “Probable” Settlement Class Member category.
12 In addition, notice will be given to “Possible” Settlement Class members (and *also* to those in the
13 “Probable” category) through email (where available), publication, a Settlement Website, posting
14 of the Summary Notice on ADT’s corporate website with a link to the Settlement Website, and a
15 Tweet from ADT’s Twitter Account. (SA VII, pp. 11-12). The costs of Notice and Claims
16 Administration will be paid from the Settlement Amount. (SA VIII.C, pp. 14-15).

17 **3. Release**

18 Plaintiffs and Settlement Class Members agree to release all claims predicated upon the
19 facts alleged in the Actions. (SA IV.A, p. 8). However, the definition of Released Claims expressly
20 *excludes* any claims for personal injuries or for damage to or loss of property. *Id.*

21 **4. Attorneys’ Fees, Expenses, and Service Awards**

22 Plaintiffs will seek an award of reasonable attorneys’ fees and costs in an amount approved
23 by the Court, which will be paid from the Settlement Amount. (SA IX, p.15). Plaintiffs’ motion
24 will request up to one-third of the Settlement Amount plus the costs and expenses that Class
25 Counsel have incurred in the prosecution of the Actions. *Id.* Plaintiffs will file their motion at least
26 14 days prior to the deadline for submission of Requests for Exclusion and Objections. *Id.* The
27 motion papers will be made available on the Settlement Website for Settlement Class Members to
28 access and review prior to the deadline for Requests for Exclusion and Objections.

1 Class Counsel also intend to seek Service Awards for each of the Plaintiffs in consideration
2 for their having undertaken the Actions, assisting in their prosecution, and otherwise serving as
3 Class Representatives, in varying amounts up to a maximum of \$10,000, which will be justified at
4 the fairness hearing. (SA X, pp. 15-16). Said application will also be filed at least 14 days prior to
5 the deadline for submission of Requests for Exclusion and Objections. *Id.* Such service awards are
6 commonly granted. *See, e.g., Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009)
7 (“Incentive awards are fairly typical in class action cases.”); *Cook v. Niedert*, 142 F.3d 1004, 1016
8 (7th Cir. 1998) (approving incentive award of \$25,000). Plaintiffs’ support for the Settlement
9 Agreement as fair and reasonable is *not* conditioned upon the Court’s award of the requested
10 Service Awards. (SA X, p. 16).

11 **IV. ARGUMENT**

12 **A. Preliminary Approval of the Settlement is Appropriate**

13 There exists a “strong judicial policy that favors settlements, particularly where complex
14 class action litigation is concerned.” *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008)
15 (citing *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992)). Settlements are
16 particularly favored “in class actions and other complex cases where substantial judicial resources
17 can be conserved by avoiding formal litigation.” *In re NVIDIA Corp. Derivative Litig.*, No. C-06-
18 06110-SBA(JCS), 2008 WL 5382544, at *2 (N.D. Cal. Dec. 22, 2008).

19 Courts employ a two-step process to review proposed class action settlements. First, there
20 is preliminary approval and notice to the class, and then final approval. Manual for Complex
21 Litigation, Fourth, § 21.632. The preliminary approval stage requires that the Court “make a
22 preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms.”
23 *Id.*; *see also* Fed. R. Civ. P. 23(e). Preliminary approval should be granted where the settlement
24 falls “within the range of possible approval.” *In re Tableware Antitrust Litig.*, 484 F.Supp.2d 1078,
25 1080 (N.D. Cal. 2007). A Court should consider whether “the proposed settlement appears to be
26 the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not
27 improperly grant preferential treatment to class representatives or segments of the class, and falls
28 within the range of possible approval.” *Lilly v. Jamba Juice Co.*, No. 13-CV-02998-JST, 2015 WL

1 1248027, at *7 (N.D. Cal. Mar. 18, 2015). “The proposed settlement need not be ideal, but it must
2 be fair and free of collusion, consistent with a plaintiff’s fiduciary obligations to the class.” *Id.*
3 (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998)).

4 An analysis of the factors considered for final approval demonstrates that the Settlement is
5 appropriate for preliminary approval and the dissemination of Notice to the Settlement Class. At
6 the final approval stage, a court “must balance a number of factors: the strength of the plaintiffs’
7 case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining
8 class action status throughout the trial; the amount offered in settlement; the extent of discovery
9 completed and the state of the proceedings; the experience and views of counsel; the presence of a
10 governmental participant; and the reaction of the class members to the proposed settlement.” *Id.*
11 (citing *Hanlon*, 150 F.3d at 1026) (citations omitted). “In some cases, one factor alone may prove
12 determinative in finding sufficient grounds for court approval.” *Curtis-Bauer v. Morgan Stanley*
13 *& Co.*, No. C 06-3903 TEH, 2008 WL 4667090, at *3 (N.D. Cal. Oct. 22, 2008) (citing *Torrisi v.*
14 *Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir.1993)). Analysis of these factors demonstrates
15 that the Settlement is well within the required range of possible approval.

16 **1. The Settlement is the Product of Informed and Non-Collusive Negotiations**

17 “[C]ourts respect the integrity of counsel and presume the absence of fraud or collusion in
18 negotiating the settlement, unless evidence to the contrary is offered.” H. Newberg, A. Conte,
19 Newberg on Class Actions §11.51 (4th ed. 2002). There is an initial presumption of fairness when
20 a proposed class settlement is the product of arm’s-length negotiations, sufficient investigation has
21 been taken to allow the parties and the court to make an informed decision, and counsel involved
22 are competent and experienced. *Id.*, §11.41; *see, e.g., In re First Capital Holdings Corp. Financial*
23 *Products Securities Litig.*, MDL No. 901 at *2 (C.D. Cal. June 10, 1992).

24 Class Counsel are well-respected and highly-experienced in class action and consumer
25 litigation. Before reaching this Settlement, Class Counsel engaged in litigation for over two years,
26 reviewed extensive discovery, considered expert reports submitted by both sides, took numerous
27 depositions, and exchanged mediation briefs. The Parties had ample opportunity to evaluate the
28 respective strengths and weaknesses of the action. The settlement negotiations were at arms’-length

1 and included two mediation sessions months apart that were overseen by a respected and
2 experienced mediator. The use of a mediator supports that “the parties reached the settlement in a
3 procedurally sound manner and that it was not the result of collusion or bad faith by the parties or
4 counsel.” *Sciortino v. PepsiCo, Inc.*, No. 14-CV-00478-EMC, 2016 WL 3519179, at *4 (N.D. Cal.
5 June 28, 2016) (citing *Satchell v. Fed. Exp. Corp.*, No. C 03-2659 SI, 2007 WL 1114010, at *4
6 (N.D. Cal. Apr. 13, 2007) (“The assistance of an experienced mediator in the settlement process
7 confirms that the settlement is non-collusive”).

8 **2. The Settlement Has “No Obvious Deficiencies”**

9 The proposed settlement has no obvious deficiencies. It provides monetary relief and not
10 coupons. The claims process is simple, easy to do, and encourages claims. The Notice program is
11 reasonable. The monetary relief is adequate based on the hurdles that would be faced if litigation
12 were to continue and Plaintiffs would have to obtain class certification and establish liability and
13 damages on a class-wide basis. *See e.g.*, ADT’s Response In Opp. to Plaintiff’s Motion for Class
14 Certification (ECF Doc. 85 [“ADT Opp.”], arguing that plaintiffs cannot establish liability on a
15 class-wide basis because different customers were subject to different disclosures, there is no class-
16 wide proof that the alleged omissions were material or relied upon by the class, and that plaintiffs
17 cannot establish damages on a class-wide basis); *see also* ECF Doc. 85-29 (ADT’s Exhibit 24)
18 (contending that ADT made numerous disclosures concerning its wireless security systems). The
19 absence of any obvious deficiencies weighs in favor of preliminary approval of the Settlement. *Lilly*
20 *v. Jamba Juice Co.*, No. 13-CV-02998-JST, 2015 WL 1248027, at *7 (N.D. Cal. Mar. 18, 2015).

21 **3. The Proposed Relief Does Not Grant Preferential Treatment to Class** 22 **Representatives or Segments of the Class**

23 Class Representatives do not receive any unduly preferential treatment under the Settlement.
24 With the exception of Service Awards for their time and effort devoted to prosecuting the claims
25 on behalf of the Class, Class Representatives are treated the same as every other member of the
26 Settlement Class. “[T]he Ninth Circuit has recognized that service awards to named plaintiffs in a
27 class action are permissible and do not render a settlement unfair or unreasonable.” (*Nen Thio v.*
28 *Genji, LLC*, 14 F.Supp.3d 1324, 1335 (N.D. Cal. 2014) citing *Harris*, 2011 WL 1627973, at *9

1 (citing *Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir.2003)).⁴

2 Nor does the use of two separate categories in the allocation plan result in unwarranted
3 preferential treatment to one segment of the Settlement Class. The categories are based on the time
4 period in which Settlement Class Members executed their contracts, and are directly linked to the
5 comparative strength of the claims. The crux of this litigation is that ADT allegedly misrepresented
6 or omitted information about security flaws in its residential wireless security systems, which flaws
7 were independently identified by Logan Lamb in July 2014. ADT has denied knowledge of those
8 vulnerabilities prior to that time. *See, e.g.*, ADT Opp. at 17:9-10. During their depositions, several
9 ADT employees testified that they were not aware of the hacking techniques identified by Lamb
10 prior to July 2014. *Id.* at 6:16-21. Thus, the claims of Settlement Class Members who initially
11 contracted with ADT *before* ADT learned of Lamb’s findings are significantly weaker than the
12 claims of Settlement Class Members in the “post-Lamb” category, justifying the distinction in the
13 plan of allocation. Zimmerman Decl. ¶ 24; *see Custom LED, LLC v. eBay, Inc.*, No. 12-CV-00350-
14 JST, 2013 WL 6114379, at *8 (N.D. Cal. Nov. 20, 2013) (finding parties justifiably bifurcated class
15 members’ claims into two different time periods because the claims in period 1 were “significantly
16 weaker” than the claims in period 2, and granting preliminary approval of a class action settlement).

17 **4. Strength of Settlement Class Members’ Claims Compared to the Amount** 18 **Offered by the Settlement**

19 ADT denies any wrongdoing, fault, liability or damage to Plaintiffs and members of the
20 Settlement Class, denies that it committed any violation of law or breach of duty, denies that it
21 acted improperly in any way, and contends that the Actions have no merit. (SA I.J (Recitals), p.
22 4). ADT has also argued that certification of a class is improper, and that it will be impossible for
23 Plaintiffs to prove damages. *See, e.g.*, ADT Opp., *supra*.

24 Plaintiffs believe their claims have merit. Plaintiffs recognize, however, the inherent risks

25
26 ⁴ Although service awards in the amount of \$5,000 are routine, Plaintiffs’ Counsel feels that – for
27 reasons that will be explained in the future motion for Court approval – the contribution of some of
28 the named plaintiffs in this case has far exceeded that of the typical class representative.
Accordingly, the Settlement Agreement authorizes Class Counsel to request an enhanced Service
Award for certain deserving Plaintiffs of up to \$10,000. (SA X, pp. 15-16). The Plaintiffs’ support
for the settlement is *not* conditioned upon Court approval of the Service Awards. (*Id.* p.16).

1 of litigating their claims through class certification, summary judgment, trial, and potential appeals,
2 and of achieving a result better than that offered by the Settlement here. The Settlement, in contrast,
3 provides certainty of recovery. There is a very real risk that the Settlement Class could obtain no
4 better outcome against ADT through continued litigation, trial, and appeal.

5 The Settlement provides monetary relief for the alleged economic loss attributable to ADT's
6 alleged omissions to all Settlement Class Members. Plaintiffs' ability to establish a premium price
7 paid by Settlement Class Members for the wireless systems on a class-wide basis is hotly contested.
8 In support of class certification, Plaintiffs argued that a consumer class may recover under an out-
9 of-pocket theory where a seller's misrepresentation allowed it "to command a price premium and
10 to overcharge customers systematically." *Carriuolo v General Motors Co.*, 823 F.3d 977, 987 (11th
11 Cir. 2016). ADT made several arguments against that theory. *See, e.g.*, ADT Opp. at 22-25. For
12 example, ADT argued that its residential wireless alarm systems do provide a measure of security,
13 that Lamb's "publicized experiments have inspired no hacking attacks in the real world," that in
14 2014 no major manufacturer made residential systems that used encryption for wireless sensors
15 (*i.e.*, there was no "encrypted" alternative product), and that courts have rejected a "subjective
16 consumer valuation" of an alleged premium price paid. *Id.* at 4-5, 23.

17 In addition to providing the agreed monetary compensation, the Actions have caused ADT
18 to change its practices. ADT has revised its disclosures on its website, in its contracts, and in SEC
19 filings, to specifically disclose the risk of hacking of wireless communications to and from
20 peripheral sensors. *See, e.g.*, ECF Doc. 85-29, Exh. 24 to ADT Opp. Additionally, ADT has asked
21 alarm system manufacturers to address the vulnerabilities identified by Lamb. *See* ADT Opp. at 8-
22 9 ("Although the Lamb hacks 'would be difficult to implement,' ADT decided to 'make it a
23 requirement to use encryption' in residential systems going forward. [] ADT thus asked
24 manufacturers to create a residential system with sensors that use encryption and spread spectrum
25 []."). These are additional benefits provided by the Actions that also weigh in favor of approving
26 the Settlement. *See Smith v. Am. Greetings Corp.*, No. 14-CV-02577-JST, 2015 WL 4498571, at
27 *8 (N.D. Cal. July 23, 2015) (finding that defendant's changing some of the practices the plaintiffs
28 challenged in the litigation counted as additional benefits to the total "recovery" beyond the

1 payment of past monetary damages, and granting preliminary approval to the settlement).

2 Finally, the Settlement is advantageous to the Settlement Class Members because the
3 Released Claims do not include any claims for personal injuries, or damage to or loss of property.
4 (SA IV, p. 8). Thus, Settlement Class Members can claim the benefits of the Settlement and still
5 pursue any other claims they may have against ADT resulting from, *e.g.*, a residential burglary
6 (subject to any defenses ADT may assert). A comparison of, *inter alia*, the strength of Plaintiffs'
7 claims with the relief offered by the Settlement supports preliminary approval of the Settlement.

8 **5. The Complexity, Time, and Expense of Continued Litigation**

9 Prosecuting Plaintiffs' claims through trial and appeal would be lengthy and complex, and
10 impose significant costs on the Parties. *See, e.g., In re Austrian and German Bank Holocaust Litig.*,
11 80 F. Supp. 2d 164, 174 (S.D.N.Y. 2000). Continued proceedings would likely include substantial
12 motion practice (including completion of class certification briefing and any summary judgment
13 motions), determination of class certification, trial, and appeal. Continued proceedings would be
14 time consuming and complex given the large volume of documents (over 45,000 pages) and
15 deposition testimony (including testimony of most of the Class Representatives and a total of
16 seventeen fact witnesses), and the detailed expert declarations regarding liability and damages that
17 have been exchanged.

18 The Settlement, in contrast, delivers a real and substantial remedy to the Settlement Class
19 without further the risk or delay. This factor favors preliminary approval of the Settlement. *See*
20 *Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir. 1982); *In re Sunrise Sec. Litig.*, 131 F.R.D. 450,
21 455 (E.D. Pa. 1990) (approving a class action settlement because, in part, the settlement "will
22 alleviate . . . the extraordinary complexity, expense and likely duration of this litigation").

23 **6. The Views of Experienced Counsel**

24 Courts consider the opinions of experienced counsel when determining whether a settlement
25 is fair, reasonable, and adequate. *Hanlon*, 150 F.3d at 1026. Class Counsel here have extensive
26 experience litigating complex class actions. They have achieved class action settlements that have
27 been approved by many courts across the country and recovered substantial monetary benefits for
28 Class Members. *See Zimmerman Decl.* ¶¶ 3-7, 21 and Resumes of Zimmerman Law Offices, P.C.,

1 Chavez & Gertler LLP, Bonnett, Fairbourn, Friedman & Balint, P.C., Saxena White P.A., and Law
2 Offices of William C. Wright, P.A., attached thereto as Exhibits 2-6.

3 The Settlement Class Members were well-represented by experienced and fully prepared
4 counsel at the bargaining table. Class Counsel believe the Settlement to be excellent, readily
5 satisfying the standard of being within the range of possible approval.

6 **7. The Stage of Proceedings and the Amount of Discovery Completed**

7 Class Counsel reviewed and analyzed a rolling production of over 45,000 pages of
8 documents and class data produced by Defendants (including the production by ADT during the
9 negotiations and mediation of updated spreadsheets containing information concerning the size and
10 scope of class), took or participated in the depositions of seventeen fact witnesses, defended
11 depositions of most of the Class Representatives, consulted with experts and industry personnel
12 regarding the alleged security flaws, obtained expert reports in support of class certification,
13 assessed the alleged security flaws, and assessed ADT's expert witness reports. (SA I.G;
14 Zimmerman Decl. ¶¶ 16-20).

15 The pertinent question is whether Class Counsel have sufficient information to ensure
16 "effective representation." *In re AT&T Mobility Wireless Data Servs. Sales Tax Litig.*, 789 F.
17 Supp.2d 935, 966 (N.D. Ill. 2011). Courts have repeatedly explained that it does not matter whether
18 the discovery is labelled "formal" or "informal;" instead "the pertinent inquiry is what facts and
19 information have been provided." *Id.*; *see also McBean v. City of New York*, 233 F.R.D. 377, 384-
20 85 (S.D.N.Y. 2006); *In re Elan Secs. Litig.*, 385 F.Supp.2d 363, 370 (S.D.N.Y. 2005). Here, Class
21 Counsel were well-informed of the important facts and relevant legal issues when negotiating this
22 Settlement. This factor favors preliminary approval of the Settlement.

23 **B. The Settlement Class Should Be Certified**

24 Courts favor the use of settlement classes "to foster negotiated conclusions to class actions."
25 *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir.
26 1995). A settlement class in complex litigation "actually enhances absent class members' opt-out
27 rights because the right to exclusion is provided simultaneously with the opportunity to accept or
28 reject the terms of a proposed settlement." *In re Prudential Sec. Ltd. P'ship Litig.*, 163 F.R.D. 200,

1 205 (S.D.N.Y. 1995). When granting preliminary approval of a class action settlement, it is
 2 appropriate for a court to certify a class for settlement purposes. *See Amchem Prods. Inc. v.*
 3 *Windsor*, 521 U.S. 591, 620 (1997).

4 The Parties have agreed to certification of the following Settlement Class for settlement
 5 purposes only:

6 All current and former ADT customers who between November 13, 2009 and
 7 August 15, 2016 entered into a contract with ADT or an ADT dealer for installation
 8 of a residential security system, or who had ADT or an ADT dealer install a
 residential security system, that includes at least one wireless peripheral sensor.

9 SA II, p. 7.⁵ Settlement Class Members who exclude themselves or “opt-out” of the Settlement,
 10 pursuant to the procedures set forth in SA XI.A (pp. 16-17), will no longer thereafter be Settlement
 11 Class Members, will not be bound by the Settlement, and will not be eligible to make a claim for
 12 any benefit provided by the Settlement.

13 **1. The Requirements of Fed. R. Civ. P. 23(a) Are Satisfied**

14 Rule 23(a) sets forth the following prerequisites for certifying a class: “(1) the class is so
 15 numerous that joinder of all members is impracticable, (2) there are questions of law or fact
 16 common to the class, (3) the claims or defenses of the representative parties are typical of the claims
 17 or defenses of the class, and (4) the representative parties will fairly and adequately protect the
 18 interests of the class.” Fed. R. Civ. P. 23(a). Each of these requirements is satisfied here.

19 //

20 **a. The Settlement Class Is So Numerous that Joinder of Individual** 21 **Members Is Impracticable**

22 Fed. R. Civ. P. 23(a)(1) requires a showing that “the class is so numerous that individual
 23 joinder of all members is impracticable.” Although the precise number of Settlement Class

24 ⁵ Excluded from the proposed class are current and former ADT residential customers whose
 25 accounts were assumed, purchased or otherwise acquired by ADT from any third-party other than
 26 ADT dealers, including but not limited to any other alarm company, as well as: (1) current and
 27 former employees, officers and directors of ADT and its agents, subsidiaries, parents, successors,
 28 predecessors, and any entity in which they or their parents have a controlling interest; (2) the judge
 to whom this case is assigned and the judge’s immediate family; (3) any person who executes and
 files a timely request for exclusion from the Class; (4) any persons who have had their claims in
 this matter finally adjudicated and/or otherwise released; and (5) the legal representatives,
 successors and assigns of any such excluded person. (SA p. 7).

1 Members is unknown due to lack of information about the components of some customers'
 2 systems,⁶ ADT's records indicate there are some 6.4 million *potential* Settlement Class Members.
 3 (Zimmerman Decl. ¶ 27) – a number more than sufficient to establish that joinder would be
 4 impracticable. *See, e.g., Staton v. Boeing Co.*, 327 F.3d 938, 953 (9th Cir.2003) (class of 15,000
 5 met numerosity requirement); *Consol. Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir.
 6 1995) (numerosity presumed where class consists of forty or more members); *Newberg, supra*, §
 7 24.18.

8 **b. There Are Questions of Law and Fact Common to the Settlement Class**

9 Rule 23(a)(2) requires the existence of a question of law or fact that is common to all
 10 Settlement Class Members and capable of class-wide resolution, the determination of which is
 11 central to the validity of all Class Members' claims. *Wal-Mart Stores, Inc. v. Dukes*, 546 U.S. 349-
 12 50, 131 S.Ct. 2541, 2551 (2011). "All questions of fact and law need not be common to satisfy the
 13 Rule. The existence of shared legal issues with divergent factual predicates is sufficient, as is a
 14 common core of salient facts coupled with disparate legal remedies 'within the class.'" *In re*
 15 *ConAgra Foods, Inc.*, 90 F.Supp.3d 919, 972 (C.D. Cal. 2015), *aff'd sub nom. Briseno v. ConAgra*
 16 *Foods, Inc.*, 844 F.3d 1121 (9th Cir. 2017), and *aff'd sub nom. Briseno v. ConAgra Foods, Inc.*,
 17 No. 15-55727, 2017 WL 53421 (9th Cir. Jan. 3, 2017) (quoting *Hanlon*, 150 F.3d at 1019).

18 Several questions of law and fact common to all Settlement Class Members exist, including,
 19 but not limited to, the following:

- 20 a. whether ADT's wireless residential security systems are unencrypted or otherwise
 21 vulnerable to attack by unauthorized third parties;
- 22 b. whether ADT's omissions constitute the concealment, suppression, or omission of a
 23 material fact likely to mislead a consumer acting reasonably under the
 24 circumstances, to the consumer's detriment under the Florida Deceptive Unfair
 Trade Practices Act ("FDUTPA");⁷

25 ⁶ The proposed Claim Form will allow Settlement Class Members to check a box to certify to the
 26 best of their knowledge, information, and belief that their residential security system included at
 least one wireless sensor. (SA Exh. C). Notice will be provided to millions of *potential* Settlement
 Class Members. (SA VII.A, Class List, pp.10-11; *see also* Part IV-C below, Notice).

27 ⁷ Plaintiffs allege that ADT's misrepresentations and omissions emanated from Florida, where its
 28 headquarters are located. (FAC ¶¶ 65-66). All of the decision-making regarding the advertisements
 for the wireless residential security systems allegedly occurred in Florida, including ADT's
 decision to allegedly conceal from customers that the systems are not encrypted and not protected

- 1 c. whether ADT's omissions regarding its wireless systems constitute an unfair and/or
deceptive practice under the FDUTPA; and
- 2
- 3 d. whether Plaintiffs and members of the Settlement Class were damaged as a result of
ADT's alleged conduct and in what amount.
- 4

5 Accordingly, the commonality requirement is easily met.

6 **c. Plaintiffs' Claims Are Typical of the Claims of the Settlement Class**

7 Typicality is satisfied when "the claims or defenses of the representative parties are typical
8 of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). A plaintiff's claim "is typical if it
9 arises from the same event or practice or course of conduct that gives rise to the claims of other
10 class members and his or her claims are based on the same legal theory." *Hunt v. Check Recovery*
11 *Sys., Inc.*, 241 F.R.D. 505, 511 (N.D. Cal. 2007) (quot. marks and citations omitted). To be found
12 typical, a plaintiff must show that other class members have been similarly injured by the same
13 course of conduct that is not unique to the named plaintiff. *Ellis v. Costco Wholesale Corp.*, 657
14 F.3d 970, 984 (9th Cir. 2011). However, representative claims "need not be substantially identical;"
15 they are "typical" so long as they are "reasonably co-extensive with those of absent class members."
16 *Hanlon*, 150 F.3d at 1020. Typicality is, thus, generally satisfied if the named plaintiff is a part of
17 the class and has suffered the same injury as other class members. *Gen. Tel. Co. of Sw. v. Falcon*,
18 457 U.S. 147, 156 (1982).

19 The representative Plaintiffs are part of the Settlement Class they seek to represent because
20 they are victims of ADT's alleged uniform failure to disclose the risks associated with the wireless
21 home security systems that ADT sold to them and other Settlement Class Members. Class

22 _____
23 from being electronically jammed or disabled. Further, it is alleged that ADT's decisions and
actions to prevent Logan Lamb from publically revealing the security flaw occurred in Florida. This
conduct was identical for every member of the Settlement Class.

24 The Florida courts have repeatedly held that FDUTPA is not limited to Florida residents. *See,*
25 *e.g., Millennium Commc'n & Fulfillment, Inc. v. Office of the Atty. Gen.*, 761 So.2d 1256, 1262
26 (Fla. Dist. Ct. App. 2000; *Barnext Offshore, Ltd. v. Ferretti Group USA, Inc.*, 10-23869-CIV, 2012
27 WL 1570057, at *6 (S.D. Fla. 2012). Those courts held that "there are no geographical or residential
restrictions" in FDUTPA. *Millennium Commc'n.*, 761 So.2d at 1262. In fact, the FDUTPA
expressly provides that it applies to "any trade or commerce. . . wherever situated." *Barnext*
28 *Offshore* at *5 (citing Fla. Stat. § 501.202; *id.* at § 501.203). Where, as here, the conduct
complained of occurs in Florida, "persons affected by the conduct residing outside of the state may
take corrective measures under the FDUTPA." *Id.* at *6.

1 Representatives' claims are typical of those of Settlement Class Members because they are based
2 on the same theories of liability and will be proved by the same common evidence. Because Class
3 Representatives were harmed by the same omissions and in the same way as Settlement Class
4 Members, their claims are typical of the Settlement Class. *See Asghari v. Volkswagen Grp. of Am.,*
5 *Inc.*, No. CV1302529MMMVBKX, 2015 WL 12732462, at *13 (C.D. Cal. May 29, 2015) (finding
6 typicality where the named plaintiffs were each current or former owners of class vehicles who
7 allege that they were injured by an oil consumption defect and by defendants' purported
8 misrepresentations and omissions regarding the same).

9 **d. The Interests of Class Representatives and Class Counsel Are Aligned**
10 **with the Interests of the Settlement Class**

11 The adequacy requirement is satisfied if the class representative will fairly and adequately
12 protect the interests of the class. Fed. R. Civ. P. 23(a)(4). This requires that the Class
13 Representatives have no conflict of interest with the proposed Settlement Class and be represented
14 by competent counsel. *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 462 (9th Cir. 2000); *Hanlon*,
15 150 F.3d at 1020; *Ellis*, 657 F.3d at 985 (adequacy depends on "an absence of antagonism between
16 representatives and absentees, and a sharing of interest between representatives and absentees"); *In*
17 *re Rubber Chem. Antitrust Litig.*, 232 F.R.D. 346, 351 (N.D. Cal. 2005). When class representatives
18 and members seek the common goal of the largest possible recovery for the class, their interests do
19 not conflict. *In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 208 (5th Cir. 1981).

20 No conflicts exist here. Class Representatives are each members of the Settlement Class,
21 and each has suffered the same or similar injuries as the rest of the Settlement Class. Class
22 Representatives have demonstrated that they are well-suited to represent the Settlement Class. Class
23 Representatives came forward and served as named plaintiffs in the Actions, assisted in the
24 prosecution of the Actions, including (for most of them) sitting for their depositions, considered
25 whether to accept the Settlement, and otherwise served as Class Representatives. (Zimmerman
26 Decl. ¶ 26.) Class Representatives' interests are aligned with those of the other Settlement Class
27 Members in that they sought the largest possible recovery for the Settlement Class given the
28 relevant facts and applicable law. Under the terms of this Settlement, ADT must pay \$16 million

1 with no reverter and every Settlement Class Member can receive a monetary payment.

2 **2. The Requirements of Rule 23(b)(3) Are Satisfied**

3 Rule 23(b)(3) requires that “questions of law or fact common to the members of the class
4 predominate over any questions affecting only individual members of the class, and that a class
5 action is superior to other available methods for the fair and efficient adjudication of the
6 controversy.” Fed. R. Civ. P. 23(b)(3). These requirements were added “to cover cases ‘in which a
7 class action would achieve economies of time, effort, and expense, and promote . . . uniformity of
8 decision as to persons similarly situated, without sacrificing procedural fairness or bringing about
9 other undesirable results.’” *Amchem Products*, 521 U.S. at 615 (quoting Fed. R. Civ. P. 23(b)(3)
10 Adv. Comm. Notes to 1966 Amendment).

11 Both of these requirements are satisfied here.

12 **a. Common Questions Predominate Over Potential Individual Questions**

13 “Commonality exists where class members’ situations share a common issue of law or fact,
14 and are sufficiently parallel to insure a vigorous and full presentation of all claims for relief.” *Wolin*
15 *v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1172 (9th Cir. 2010). “[E]ven a single common
16 question will do.” *Wal-Mart Stores*, 546 U.S. at 359. “What matters to class certification ... is not
17 the raising of common ‘questions’ – even in droves – but rather the capacity of a class-wide
18 proceeding to generate common *answers* apt to drive the resolution of the litigation.” *Id.*, 564 U.S.
19 at 350 (emph. orig., cit. omitted); *see generally* Fed. R. Civ. P. 23, Adv. Comm. Notes, 1966 Am.,
20 Subdiv.(b)(3) (“fraud perpetrated on numerous persons by the use of similar misrepresentations
21 may be an appealing situation for a class action”).

22 As for predominance, “Rule 23(b)(3) asks whether proposed classes are sufficiently
23 cohesive to warrant adjudication by representation.” *In re Wells Fargo Home Mortg. Overtime Pay*
24 *Litig.*, 571 F.3d 953, 957 (9th Cir. 2009) (internal quot. marks and citation omitted). Common
25 questions predominate whenever they “present a significant aspect of the case and they can be
26 resolved for all members of the class in a single adjudication.” 7A Charles A. Wright, Arthur R.
27 Miller & Mary Kay Kane, *Federal Prac. & Proc.: Civil* § 1778; *see also In re Bridgestone/*
28 *Firestone Inc. Tires Products Liability Litig.*, 205 F.R.D. 503, 520 (S.D. Ind. 2001).

1 Even where individualized factual determinations may be necessary, common questions
2 predominate if those individualized determinations are nonetheless susceptible to generalized proof
3 such as design documents and business records. *Newberg on Class Actions* § 4:50 (5th ed.)
4 (common issues predominate when “individual factual determinations can be accomplished using
5 computer records, clerical assistance, and objective criteria – thus rendering unnecessary an
6 evidentiary hearing on each claim”); *see also Smilow v. Southwestern Bell Mobile Sys., Inc.*, 323
7 F.3d 32, 40 (1st Cir. 2003).

8 As set forth above in Part IV-B-1.b, it is clear that common questions exist here. Numerous
9 cases have held that questions such as whether a manufacturer/seller had a duty to disclose
10 information about problems with its products and whether the omitted facts are material are
11 common questions that support class certification. A finding that ADT had a duty to disclose (or
12 not), and that it violated the duty (or not), will provide a “common answer [] apt to drive the
13 resolution of th[is] litigation.” *Wal-Mart*, 564 U.S. at 350; *see also Baker v. Castle & Cooke Homes*
14 *Hawaii, Inc.*, No. CIV. 11-00616 SOM, 2014 WL 1669158, at *5 (D. Haw. Apr. 28, 2014)
15 (commonality requirement is satisfied where every claim depends on the resolution of the threshold
16 question of whether a defect exists or not); *Helmer v. Goodyear Tire & Rubber Co.*, No. 12-CV-
17 00685-RBJ-MEH, 2014 WL 1133299, at *5 (D. Colo. Mar. 21, 2014) (“asking a fact-finder to
18 decide whether the product is indeed defective in the way that the plaintiffs allege would ‘generate
19 common answers apt to drive the resolution of the litigation.’”).

20 Whether or not ADT had a duty to disclose is also a predominant common question. *Wolin*,
21 617 F.3d at 1173 (“Common issues predominate such as whether Land Rover was aware of the
22 existence of the alleged defect, whether Land Rover had a duty to disclose its knowledge and
23 whether it violated consumer protection laws when it failed to do so.”); *Banks v. Nissan N. Am.*,
24 *Inc.*, 301 F.R.D. 327, 335 (N.D. Cal. 2013); *Chamberlan v. Ford Motor Co.*, 223 F.R.D. 524, 526-
25 27 (N.D. Cal. 2004) (predominating common questions “include whether the design of the plastic
26 intake manifold was defective, whether Ford was aware of the alleged design defects, whether Ford
27 had a duty to disclose its knowledge, whether it failed to do so, [and whether the facts that Ford
28 allegedly failed to disclose were material....”).

1 Moreover, whether ADT’s omissions and misrepresentations would deceive an objective
 2 reasonable consumer is a common issue for all the Class Members, amenable to classwide proof.
 3 *Fitzpatrick v. Gen. Mills, Inc.*, 635 F.3d 1279, 1282–83 (11th Cir. 2011); *see also Davis v. Powertel,*
 4 *Inc.*, 776 So.2d 971, 973 (Fla. 1st DCA 2000) (“A party asserting a deceptive trade practice claim
 5 need not show actual reliance on the representation or omission at issue.”); *State, Office of Attorney*
 6 *Gen., Dep’t of Legal Affairs v. Commerce Commercial Leasing, LLC*, 946 So.2d 1253, 1258 (Fla.
 7 1st DCA 2007) (same). Further, it is alleged that common evidence will also establish that during
 8 the Class Period ADT made a deliberate decision to withhold disclosure of the security flaws
 9 inherent in its residential wireless systems, for fear that disclosure would adversely affect its sales
 10 and brand.

11 Here, the common questions of fact and law predominate over any potential questions
 12 affecting only individuals. The predominance requirement is satisfied.

13 **b. A Class Action Is the Superior Method to Fairly and Efficiently**
 14 **Adjudicate this Matter**

15 Rule 23(b)(3) requires a class action to be “superior to other available methods for the fair
 16 and efficient adjudication of the controversy,” and sets forth the following factors:

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

22 Fed. R. Civ. P. 23(b)(3). Where, as here, a court is deciding on the certification question in the
 23 context of a proposed settlement, questions regarding the manageability of the case for trial
 24 purposes do not have to be considered. *See Amchem*, 521 U.S. at 619.

25 A class action is the only reasonable method to fairly and efficiently adjudicate Settlement
 26 Class Members’ claims against ADT. *See, e.g., Phillips Co. v. Shutts*, 472 U.S. 797, 809 (1985)
 27 (“[c]lass actions . . . permit the plaintiffs to pool claims which would be uneconomical to litigate
 28 individually . . . [in such a case,] most of the plaintiffs would have no realistic day in court if a class
 action were not available”); *Wolin*, 617 F.3d at 1175 (class certification proper where “recovery on
 an individual basis would be dwarfed by the cost of litigating on an individual basis”). On the facts

1 here, the superiority requirement is satisfied.

2 **3. Class Counsel Are Well-Qualified to Represent the Settlement Class**

3 “An order certifying a class action . . . must also appoint class counsel under Rule 23(g).”
 4 Fed. R. Civ. P. 23(c)(1)(B). In appointing class counsel, courts should consider (i) the work counsel
 5 has done in identifying or investigating potential claims in the action; (ii) counsel’s experience in
 6 handling class actions, other complex litigation, and the types of claims asserted in the action, (iii)
 7 counsel’s knowledge of the applicable law; and (iv) the resources that counsel will commit to
 8 representing the class. Fed. R. Civ. P. 23(g)(1)(A).

9 Here, all proposed Class Counsel have worked diligently in identifying and investigating
 10 potential claims in the Actions. They have committed thousands of hours of legal services and
 11 incurred over \$265,000 in costs in litigating this matter (including costs of mediation, depositions,
 12 retaining three different experts and obtaining surveys and expert reports, and expenses associated
 13 with depositions and in-person settlement negotiations). (Zimmerman Decl. ¶¶ 17-18.) Further, as
 14 noted, each Class Counsel has extensive experience managing class actions and other complex
 15 litigation, including the types of claims asserted in this action, and therefore has extensive
 16 knowledge of the applicable law. *See generally* Exh. 2-6 to Zimmerman Decl. Finally, Class
 17 Counsel have committed and will continue to commit whatever resources are necessary to represent
 18 the Settlement Class, just as they have done in the numerous class actions they have litigated and
 19 financed in the past. (Zimmerman Decl. ¶ 19.)

20 **C. The Notice Program Satisfies All Applicable Requirements**

21 Notice serves to “afford members of the class due process which, in the context of the Rule
 22 23(b)(3) class action, guarantees them the opportunity to be excluded from the class action and not
 23 be bound by any subsequent judgment.” *Peters v. Nat’l R.R. Passenger Corp.*, 966 F.2d 1483, 1486
 24 (D.C. Cir. 1992) (citing *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173–74 (1974)). The Court
 25 must “direct notice in a reasonable manner to all class members who would be bound by the
 26 proposal.” Fed. R. Civ. P. 23(e)(1). And, notice must fairly describe the litigation and the proposed
 27 settlement and its legal significance. *See, e.g., Twigg v. Sears, Roebuck & Co.*, 153 F.3d 1222, 1227
 28 (11th Cir. 1998)) (“[The notice] must also contain an adequate description of the proceedings

1 written in objective, neutral terms, that, insofar as possible, may be understood by the average
2 absentee class member[.]”). The proposed Notice Plan satisfies those requirements.

3 **1. Appointment of a Settlement Administrator**

4 The Parties agreed to the appointment of a Settlement Administrator chosen by Class
5 Counsel, subject to approval of the Court and any objection by ADT. (SA, p. 7). Plaintiffs have
6 selected Dahl Administration to be the Settlement Administrator. ADT has no objection to this
7 selection. Dahl Administration has significant experience as a class action notice provider and
8 claims administrator. *See* Zimmerman Decl. ¶ 28 and Exh. 1 thereto.

9 **2. Method of Notice**

10 There are approximately 6.4 million *potential* Settlement Class Members in two distinct
11 groups: (1) those customers for whom there are indications that their security system included
12 wireless sensors (“Probables”), and (2) those customers for whom there are no indications whether
13 they are Settlement Class Members (“Possibles”). The proposed Notice program provides for direct
14 notice to the approximately 2.7 million Probables through a mailed Postcard Notice (SA Exh. B-5)
15 *as well as* email (SA Exh. B-3), to the extent email addresses are available. (SA VII.B.1, 2, pp.11-
16 12). If any postcards are returned by the Post Office, the Settlement Administrator will either
17 forward the Postcard Notice to the forwarding address provided, or use reasonable efforts to identify
18 an updated address and then mail the Postcard Notice to that address. *Id.* The approximately 3.7
19 million Possibles will be provided notice through emails, to the extent email addresses are available,
20 publication, the Settlement Website, and a Tweet (SA Exh. B-4) from ADT. (SA VII.B.2, VII.C-E,
21 pp. 11-12). A Summary Notice (SA Exh. B-1) will be published in *USA Today* and banner ads will
22 be run on the Internet. ADT will also post the Summary Notice in a conspicuous location on its
23 company website with a link to the Settlement Website (SA VII.D, p. 12), and will also release a
24 Tweet (SA Exh. B-4) that will mention the Settlement and notify the public that they can go to the
25 Settlement Website for more information. (*Id.*) The Notice program is explained in greater detail in
26 the Declaration of Dahl Administration representative Mark A. Fellows In Support of Settlement
27 Notice Plan filed herewith.

28 ADT has advised that it has email addresses for about 1/3 of all *potential* Settlement Class

1 Members. The Settlement Administrator will electronically transmit the Email Notice (SA Exh. B-
2 3) to all potential Settlement Class Members for whom ADT provides an email address, with links
3 to the Detailed Notice (SA Exh. B-2) and Claim Form (SA Exh. C) If emails are reported
4 undelivered, the Settlement Administrator will update the email addresses through reasonable
5 tracking procedures including an Email Change of Address service (“ECO A”) and then send the
6 Email Notice to that updated address. (SA VII, pp.10-12).

7 The Settlement Administrator will also establish a dedicated settlement website and
8 maintain and update the website throughout the relevant time period. (SA VII.E, p. 12). The
9 Settlement Website has an easy to remember domain name:
10 www.ADTHomeSecuritySettlement.com. The Settlement Website will include links to the
11 Detailed Notice, relevant case documents, a downloadable Claim Form, a fillable copy of the Claim
12 Form that can be submitted electronically, and such other documents and information as may be
13 agreed on by the Parties or ordered by the Court. (*Id.*). The Settlement Website will include the
14 Settlement Administrator’s toll-free telephone number for Settlement Class Members to call for
15 information. (*Id.*).

16 **3. Contents of the Notice Program**

17 The Notice documents are designed to provide information about the Settlement, along with
18 clear, concise, easily understood information about Settlement Class Members’ legal rights. The
19 Notice documents collectively include a fair summary of the Parties’ respective litigation positions;
20 the general terms of the Settlement; instructions for how to opt-out of or object to the Settlement;
21 the Settlement website address; the process and instructions for making a claim; and, as to be set
22 by the Court, the date, time and place of the Final Fairness Hearing.

23 The Notice documents contain information that a reasonable person would consider material
24 in making an informed, intelligent decision of whether to opt out or remain a member of the
25 Settlement Class and be bound by a final judgment, and they inform individuals how they can
26 readily obtain more detailed information. For example, the Email Notice and Postcard Notice both
27 inform Settlement Class Members that they can get more information by looking at the Settlement
28 website, which will have links to certain documents, or by calling the toll-free number.

1 Additionally, Settlement Class Members can call or email Lead Class Counsel, or access Court
2 documents through PACER. (*See* SA Exh. B-2). Altogether, the Notice documents fairly apprise
3 the Settlement Class Members of the terms of the Settlement and the options that are open to them
4 in connection with this litigation.

5 The Notice documents and the Notice Program are the best notice practicable under the
6 circumstances, constitute due and sufficient notice to the Settlement Class, and comply with Fed.
7 R. Civ. P. 23 and due process requirements.

8 **V. CONCLUSION**

9 For all of the reasons discussed above, this unopposed Motion for Preliminary Approval
10 should be granted, and the Court should enter the Proposed Order submitted herewith.

11
12 Dated: March 23, 2017

CHAVEZ & GERTLER LLP

BONNETT, FAIRBOURN, FRIEDMAN &
BALINT P.C.

ZIMMERMAN LAW OFFICES, P.C.

16 By: /s/ Mark A. Chavez
Mark A. Chavez

17 *Attorneys for Plaintiffs, Representative Plaintiffs and*
18 *the Proposed Settlement Class*

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15 *Attorneys for Plaintiffs Michael Edenborough and Patricia Wilson, Class Representatives, and*
16 *the Proposed Settlement Class*

17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**

19
20 MICHAEL EDENBOROUGH and)
PATRICIA WILSON, individually and on)
21 behalf of all others similarly situated,)
22 Plaintiffs,)
23 vs.)
24 ADT, LLC d/b/a ADT SECURITY)
SERVICES, INC. a Florida limited liability)
25 company, and THE ADT CORPORATION, a)
Delaware corporation,)
26 Defendants.)

) Case No: 16-2233 JST
)
) **CLASS ACTION**
) **DECLARATION OF THOMAS A.**
) **ZIMMERMAN, JR., IN SUPPORT OF**
) **PLAINTIFFS' MOTION FOR**
) **PRELIMINARY APPROVAL OF CLASS**
) **ACTION SETTLEMENT**
)
) Judge: Hon. Jon S. Tigar
) Ctrm: 9 – 19th Floor
) Date: April 27, 2017
) Time: 2:00 p.m.

1 I, Thomas A. Zimmerman, Jr., declare as follows:

2 I submit this declaration in connection with Plaintiffs' Unopposed Motion for Preliminary
3 Approval of Class Action Settlement Agreement and Approval of Class Notice, and also in
4 support of Plaintiff Edenborough's Motion for Leave to File First Amended Complaint.

5 1. I am an attorney admitted *pro hac vice* to practice before this Court. [Doc. 74]. I am the
6 owner of Zimmerman Law Offices, P.C., and am one of the attorneys for Plaintiffs in this
7 case and for Class Representatives in the Settlement.

8 2. Attached hereto as Exhibit 1 is a true and correct copy of the executed Settlement
9 Agreement, including all the exhibits to the Settlement Agreement.

10 3. Attached hereto as Exhibit 2 is a true and correct copy of the Firm Resume of Zimmerman
11 Law Offices, P.C.

12 4. Attached hereto as Exhibit 3 is a true and correct copy of the Firm Resume of Chavez &
13 Gertler LLP.

14 5. Attached hereto as Exhibit 4 is a true and correct copy of the Firm Resume of Bonnett
15 Fairbourn Friedman & Balint, P.C.

16 6. Attached hereto as Exhibit 5 is a true and correct copy of the Firm Resume of Saxena
17 White P.A.

18 7. Attached hereto as Exhibit 6 is a true and correct copy of the Firm Resume of Law Offices
19 of William C. Wright, P.A.

20 8. The Settlement Agreement settles, through certification of a nationwide settlement class,
21 the claims alleged in the following related actions:

- 22 • *Michael Edenborough v. ADT, LLC d/b/a ADT Security Services, Inc.*, Case No.
23 16-cv-02233-JST (USDC ND California) (the "California Action");
- 24 • *Janet Cheatham v. ADT Corporation and ADT LLC.*, Case No. 2:15-cv-02137-
25 DGC (USDC Arizona) (the "Arizona Action");
- 26 • *Dale Baker v. The ADT Corporation and ADT, LLC d/b/a ADT Security Services*,
27 Case No. 15-cv-02038-CSB-DGB (USDC CD Illinois) (the "Illinois Action");
- 28 • *Santiago L. Hernandez v. ADT, LLC d/b/a ADT Security Services*, Case No. 50-

1 2016-CA-002944XXXXMB (Cir. Ct. 15th Jud. Cir. Florida) (the “*Hernandez*
2 Action”); and
3 • *Patricia Wilson v. The ADT Corporation and ADT, LLC d/b/a ADT Security*
4 *Services*, Case No. 50-2016-CA-004410XXXXMB (Cir. Ct. 15th Jud. Cir. Florida)
5 (the “*Wilson Action*”);
6 (collectively, the “Actions”).

7 9. The Actions are all premised on ADT’s alleged failure to disclose to residential customers
8 the alleged vulnerability of its residential wireless security systems to evasion and
9 jamming of the system’s wireless peripheral sensors by various electronic devices.

10 10. The Illinois Action originated on November 9, 2014, when Plaintiff Dale Baker filed a
11 complaint against ADT in the United States District Court for the Northern District of
12 Illinois, Case No. 14-cv-08988 (N.D. Ill.), which was subsequently transferred to the
13 United States District Court for the Central District of Illinois, Case No. 15-cv-02038-
14 CSB-DGB (C.D. Ill.). The Illinois Action asserts claims on behalf of Plaintiff Baker, a
15 putative national class, and a putative class of Illinois consumers. On March 23, 2017, the
16 Court in the Illinois Action granted leave to amend, and the Third Amended Complaint
17 was filed on that day adding Stephanie Hallam Dillard as a Plaintiff in the Illinois Action.
18 The Illinois Action has survived a motion to dismiss. Plaintiff’s Renewed Amended
19 Motion for Class Certification was filed on December 14, 2016. On January 25, 2017,
20 pursuant to a Joint Notice of Settlement and Stipulated Request for a Stay, the court
21 entered a stay of the matter pending completion of the settlement approval process.

22 11. On September 9, 2015, Plaintiff Janet Cheatham, an Arizona resident, filed a complaint
23 against ADT on behalf of Plaintiff Cheatham and a putative class of Arizona consumers.
24 The Arizona Action has survived a motion to dismiss. A motion for class certification was
25 filed, and ADT filed its opposition to the motion. On January 23, 2017, the Parties
26 submitted a Joint Notice of Settlement and Stipulated Request for a Stay. On January 30,
27 2017, the court entered a stay of the matter for forty-five days (until March 16, 2017),
28 denied the motion to certify as moot (subject to re-filing if the settlement is not

1 completed), and directed that a joint report be filed addressing several matters. The Parties
2 on February 6, 2017 filed the requested Joint Report. On March 8, 2017, the Parties
3 submitted their First Joint Status Report Regarding Notice of Settlement and Joint Motion
4 to Extend Stay.

5 12. The California Action was filed by Michael Edenborough, a California resident, in March
6 2016 on behalf of a putative class of California residents. The California Action has
7 survived a motion to dismiss. A motion for class certification was filed, and ADT filed its
8 opposition to the motion. On February 27, 2017, pursuant to the parties' Stipulation Re:
9 Stay of Proceedings, the court entered a stay of the matter pending the approval of the
10 proposed national class settlement. [Doc. 90]. As discussed below, and pursuant to
11 stipulation, the Court subsequently lifted the stay to permit the settlement approval
12 process—including the filing of a First Amended Complaint adding the plaintiff in the
13 *Wilson* Action as a Named Plaintiff in the California Action on behalf of herself and a
14 nationwide class, along with allegations that ADT violated the Florida Deceptive and
15 Unfair Trade Practices Act—to go forward in this Court.

16 13. On March 16, 2016, Plaintiff Santiago Hernandez, a Florida resident, filed a complaint
17 against ADT on behalf of Plaintiff Hernandez and a putative class of Florida consumers.
18 At the time of settlement, ADT's motion to dismiss was fully briefed, argued, and waiting
19 for ruling. On January 27, 2017, pursuant to a Joint Notice of Settlement and Joint Motion
20 for Stay, the court entered a stay of the matter pending completion of the settlement
21 approval process.

22 14. On April 20, 2016, Plaintiff Patricia Wilson, a Florida resident, filed a complaint against
23 ADT on behalf of herself and a putative class of Florida consumers. At the time of
24 settlement, ADT's motion to dismiss was fully briefed, argued, and waiting for ruling. On
25 January 31, 2017, the parties submitted a Joint Notice of Settlement and Joint Motion for
26 Stay, along with a proposed order. No order has been entered on the Joint Motion for Stay.

27 15. The settlement was reviewed and approved by all Class Representatives, including Dale
28 Baker (the Plaintiff in the Illinois Action), and executed by all Parties. Subsequently, Dale

1 Baker decided that he wants to pursue his own individual claims and take his matter to
2 trial. All Plaintiffs' Counsel and the other Class Representatives believe that the
3 Settlement is in the best interests of the Parties and the Settlement Class. Dale Baker is
4 still included as a Class Representative, and if he does not opt out, he can submit a claim
5 form. The Settlement Agreement further provides that a service award may be sought on
6 Dale Baker's behalf based upon his efforts in this litigation.

7 16. Plaintiffs' counsel have extensively considered how best to protect and accommodate Mr.
8 Baker's individual interests while securing the substantial benefits of the Settlement for
9 the other Plaintiffs and class members. As the revised Settlement Agreement in Sec. V
10 reflects, Plaintiffs believe that the best approach is to amend the complaint in the
11 Edenborough Action to include the national class claims alleged in the *Baker* action, and
12 to seek approval of the Settlement in this Northern District of California. ADT does not
13 oppose this proposal.

14 17. Plaintiffs' Counsel have vigorously litigated the Actions. They reviewed and analyzed a
15 rolling production of over 45,000 pages of documents and class data produced by
16 Defendants (including the production by ADT during the negotiations and mediation of
17 updated spreadsheets containing information concerning the size and scope of class), took
18 or participated in the depositions of seventeen (17) fact witnesses, defended depositions of
19 most of the Class Representatives, consulted with experts and industry personnel
20 regarding the alleged security flaws, obtained expert reports in support of class
21 certification, assessed the alleged security flaws, and assessed ADT's expert witness
22 reports.

23 18. Plaintiffs' Counsel have worked diligently in identifying and investigating potential
24 claims in the Actions. They have committed thousands of hours of legal services and
25 incurred over \$265,000 in costs in litigating this matter (including costs of mediation,
26 depositions, retaining three different experts and obtaining surveys and expert reports, and
27 expenses associated with depositions and in-person settlement negotiations).
28

1 19. Plaintiffs' Counsel are committed and will continue to commit whatever resources are
2 necessary to represent Class Representatives and the Settlement Class.

3 20. Over a period of several months, the Parties had discussions and engaged in arm's-length
4 negotiations in an effort to resolve the Actions. The negotiations included two mediation
5 sessions months apart that were overseen by highly-respected, retired Magistrate Judge
6 and JAMS mediator, Edward A. Infante. The mediation was successful and resulted in the
7 Settlement.

8 21. I have over twenty years of litigation experience. I have obtained multi-million dollar jury
9 verdicts in class action, corporate, commercial, medical malpractice, consumer fraud,
10 general civil, product liability, toxic tort, and other complex litigation. I have been lead
11 counsel and class counsel in dozens of nationwide and state-wide class action litigation,
12 and have handled other multi-party litigation involving such companies as
13 MCI/Worldcom, United Airlines, Peoples Gas, AT&T, Warner-Lambert, Pfizer, Liberty
14 Mutual Insurance Co., DaimlerChrysler, Commonwealth Edison, Ameritech, and
15 Bridgestone/Firestone.

16 22. It is my opinion that the Settlement achieves an excellent result for the Settlement Class,
17 especially when measured against considerable risks of continued litigation including:

18 (1) the expense and length of time necessary to prosecute the Actions
19 through trial; (2) the uncertainty of outcome at trial and the possibility
20 of an appeal by either side following the trial; (3) the possibility that a
21 contested class might not be certified, and if certified, the possibility
22 that such certification would be reversed on appeal; (4) the risk that
ADT could file a motion for summary judgment that, if granted, could
dispose of all or many of the claims in the Actions.

23 23. Plaintiffs' ability to establish a premium price paid by Settlement Class Members for the
24 wireless systems on a class-wide basis is hotly contested in this litigation. The risks in
25 establishing a class-wide measure of damages was a factor that Plaintiffs' Counsel and the
26 mediator considered in negotiating a settlement of the Action.

27 24. The allocation plan in the Settlement creates two categories that are based on the time
28 period in which Settlement Class Members executed their contracts with ADT, and are

1 directly linked to the comparative strength of the claims. The crux of this litigation is that
2 ADT allegedly misrepresented or omitted information about security flaws in its
3 residential wireless security systems, which flaws were independently identified by Logan
4 Lamb in July 2014. ADT has denied knowledge of those vulnerabilities prior to that time.
5 *See, e.g.*, Defendant ADT’s Response in Opposition to Plaintiff’s Motion for Class
6 Certification [Doc. 85 (“ADT Opp.”)] at 17:9-10. During their depositions, several ADT
7 employees testified that they were not aware of the hacking techniques identified by Lamb
8 prior to July 2014. *Id.* at 6:16-21. Thus, the claims of Settlement Class Members who
9 initially contracted with ADT *before* ADT learned of Lamb’s findings are significantly
10 weaker than the claims of Settlement Class Members in the “post-Lamb” category,
11 justifying the distinction in the plan of allocation.

12 25. Based upon my experience, a typical claims rate for a class action settlement is between
13 2%-6%. Using typical claims rates, Plaintiffs’ Counsel expects no downward adjustment
14 of the payout amounts. For example, if notice and administration costs are \$1.6 million
15 and 6% of all *potential* ADT customers make a valid claim, no downward adjustment of
16 the payout amounts would be necessary. These are very conservative estimates, as a class
17 notice will be provided to millions of *potential* Settlement Class Members, many of whom
18 are not actually in the Settlement Class. In the unlikely event that the claims rate exceeds
19 expectations, then there may be a pro rata adjustment of the payment amounts to
20 Settlement Class Members.

21 26. Class Representatives are each members of the Settlement Class, and each has suffered the
22 same or similar injuries as the rest of the Settlement Class. Class Representatives have
23 demonstrated that they are well-suited to represent the Settlement Class. Class
24 Representatives came forward and served as named plaintiffs in the Actions, assisted in
25 the prosecution of the Actions, including (for most of them) sitting for their depositions,
26 considered whether to accept the Settlement, and otherwise served as Class
27 Representatives.

28

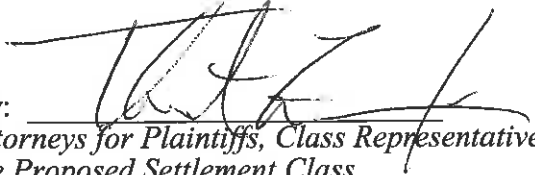
1 27. According to information provided by ADT, there are approximately 6.4 million *potential*
2 Settlement Class Members in two distinct groups: (1) approximately 2.7 million customers
3 for whom there are indications that their security system included wireless sensors
4 (“Probables”), and (2) approximately 3.7 million customers for whom there are no
5 indications whether they are Settlement Class Members (“Possibles”).

6 28. Plaintiffs’ Counsel have selected Dahl Administration to be the Settlement Administrator.
7 Dahl Administration is a very experienced class notice provider and claims administrator.
8 The costs for Notice and claims administration have been estimated at between \$1.5-\$1.6
9 million. ADT does not object to the selection of Dahl Administration as the class notice
10 provider and claims administrator.

11 29. ADT Defendants concur with Plaintiffs’ Counsel that the Settlement should be
12 preliminarily approved and they will not oppose the preliminary approval motion or
13 Plaintiff Edenborough’s motion for leave to file a First Amended Complaint.

14
15 I declare under penalty of perjury under the laws of the United States that the foregoing is
16 true and correct and was executed in Chicago, Illinois on March 23, 2017.

17
18 Respectfully submitted,
19 ZIMMERMAN LAW OFFICES, P.C.

20
21 By: 
22 *Attorneys for Plaintiffs, Class Representatives and*
23 *the Proposed Settlement Class*

24
25
26
27
28

EXHIBIT 1

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17 *Attorneys for Defendant ADT LLC*

18 **UNITED STATES DISTRICT COURT**
19 **NORTHERN DISTRICT OF CALIFORNIA**
20 **SAN FRANCISCO DIVISION**

21 MICHAEL EDENBOROUGH,

22 Plaintiff,

23 vs.

24 ADT, LLC, d/b/a ADT SECURITY
25 SERVICES, INC. a Florida limited liability
26 company,

27 Defendant.

) Case No: 3:16-cv-02233-JST

) **CLASS ACTION**

) **SETTLEMENT AGREEMENT**

1 Plaintiffs DALE BAKER, STEPHANIE HALLAM DILLARD, MICHAEL
2 EDENBOROUGH, JANET CHEATHAM, SANTIAGO HERNANDEZ, and PATRICIA
3 WILSON (collectively, “Plaintiffs”), individually and on behalf of the proposed Settlement Class
4 (defined below), and Defendants ADT CORPORATION and ADT, LLC d/b/a ADT SECURITY
5 SERVICES (collectively, “ADT” or “Defendants”), by and through undersigned counsel, enter
6 into this Settlement Agreement (“Settlement Agreement”) to memorialize the agreement of
7 settlement and mutual release of claims pursuant to Rule 23, *Federal Rules of Civil Procedure*.
8 Plaintiffs and ADT are herein referred to collectively as the “Parties.”

9 **I. RECITALS**

10 WHEREAS:

11 A. On November 9, 2014, Plaintiff Dale Baker filed a complaint against ADT in the
12 United States District Court for the Northern District of Illinois, Case No. 14-cv-08988 (N.D. Ill.),
13 which was subsequently transferred to the United States District Court for the Central District of
14 Illinois, Case No. 15-cv-02038-CSB-DGB (C.D. Ill.) (the “*Baker Action*”). The *Baker Action*
15 asserts claims on behalf of Plaintiff Baker, a putative national class, and a putative class of Illinois
16 consumers. It is anticipated that Stephanie Hallam Dillard will be added as a named plaintiff in
17 the *Baker Action*.

18 B. On September 9, 2015, Plaintiff Janet Cheatham filed a complaint against ADT in
19 the Superior Court of the State of Arizona, County of Maricopa, which was subsequently
20 removed to the United States District Court for the District of Arizona, Case No. 15-cv-02137-
21 DGC (D. Ariz.) (the “*Cheatham Action*”). The *Cheatham Action* asserts claims on behalf of
22 Plaintiff Cheatham and a putative class of Arizona consumers.

23 C. On March 18, 2016, Plaintiff Michael Edenborough filed a complaint against ADT
24 in the Superior Court of the State of California, County of Alameda, which action was
25 subsequently removed to the United States District Court for the Northern District of California –
26 San Francisco Division, Case No. 4:16-cv-02233-JST (N.D. Cal.) (the “*Edenborough Action*”).
27 The *Edenborough Action* asserts claims on behalf of Plaintiff Edenborough and a putative class
28 of California consumers.

1 D. On March 16, 2016, Plaintiff Santiago Hernandez filed a complaint against ADT
2 in Florida state court, Case No. 50-2016-CA-002944XXXXMB (Cir. Ct. 15th Jud. Cir. Fla.) (the
3 “*Hernandez Action*”). The *Hernandez Action* asserts claims on behalf of Plaintiff Hernandez and
4 a putative class of Florida consumers.

5 E. On April 20, 2016, Plaintiff Patricia Wilson filed a complaint against ADT in
6 Florida state court, Case No. 50-2016-CA-004410XXXXMB (Cir. Ct. 15th Jud. Cir. Fla.) (the
7 “*Wilson Action*”). The *Wilson Action* asserts claims on behalf of Plaintiff Wilson and a putative
8 class of Florida consumers.

9 F. Plaintiffs’ claims in each of the foregoing cases (collectively, the “Actions”) share
10 common factual allegations regarding ADT’s alleged failure to disclose to residential customers
11 the alleged vulnerability of its residential security systems to evasion and jamming of the
12 system’s wireless peripheral sensors by various electronic devices.

13 G. Each of the Actions has been vigorously litigated by Plaintiffs and ADT. For
14 example, certain of the Actions have survived a motion to dismiss; ADT has produced and
15 Plaintiffs have reviewed over 45,000 pages of documents; most of the Class Representatives
16 (defined below) and a total of seventeen fact witnesses have been deposed; and detailed,
17 preliminary expert declarations regarding liability and damages have been exchanged. Plaintiffs
18 in each of the *Baker*, *Cheatham* and *Edenborough* Actions have filed a motion for class
19 certification, and in each of the *Cheatham* and *Edenborough* actions ADT has filed an opposition
20 memorandum. The class certification motions are pending in the respective courts, though stayed
21 pending approval of the settlement.

22 H. Counsel for all Parties have meanwhile engaged in discussions and arm’s-length
23 negotiations, including a successful mediation overseen by highly-respected, retired Magistrate
24 Judge and JAMS mediator, Edward A. Infante. The Parties have concluded and agree that the
25 interests of fairness, consistency, and efficiency are best served by a single, national class
26 settlement encompassing all of the Actions.

27 I. Based upon their investigation, Plaintiffs and Plaintiffs’ Counsel (defined below)
28 have concluded and agree that the terms and conditions detailed in this Settlement Agreement are

1 fair, reasonable, and adequate to Plaintiffs and the classes asserted in each of the Actions, and
2 accordingly are in their best interests to effectuate. The Parties have thus agreed, subject to Court
3 approval, to settle Plaintiffs' claims pursuant to the terms and provisions of this Settlement
4 Agreement, after considering (a) the substantial benefits that Plaintiffs and the members of the
5 Settlement Class (defined below) will receive from the settlement of the Actions, (b) the risks of
6 continued litigation, and (c) the desirability of permitting the proposed settlement to be
7 consummated as provided under the terms of this Settlement Agreement. The Settlement
8 Agreement shall not be construed as or deemed to be a concession by Plaintiffs of any infirmity in
9 the claims asserted in any of the Actions.

10 J. ADT denies any wrongdoing, fault, liability or damage to Plaintiffs and any
11 members of the Settlement Class, denies that it engaged in any wrongdoing, denies that it
12 committed any violation of law or breach of duty, denies that it acted improperly in any way, and
13 contends that the Actions have no merit. However, given the risk and uncertainty inherent in this
14 and any litigation, especially complex consumer class action litigation, and the difficulties,
15 substantial expense and other burdens necessary to defend the Actions through trial, post-trial
16 motions, and appeals, ADT has decided to enter into this Settlement Agreement in order to settle
17 the Actions on the terms and conditions provided herein and to put the Plaintiffs' Released Claims
18 (defined below) to rest finally and forever, without in any way acknowledging any wrongdoing,
19 fault, liability or damage to Plaintiffs or the Settlement Class Members. Nothing in this
20 Settlement Agreement or in any of its exhibits shall be construed as, or deemed to be, evidence of
21 an admission or concession on the part of ADT with respect to any claim or defense, or of any
22 fault, wrongdoing, liability or damage whatsoever, or of any infirmity in the defenses that ADT
23 has or could have asserted.

24 NOW THEREFORE, it is hereby STIPULATED AND AGREED, by and among the
25 Parties, through their counsel, and subject to approval of the Court pursuant to Rule 23(e),
26 *Federal Rules of Civil Procedure*, that Plaintiffs' Released Claims (as defined below) and
27 Defendants' Released Claims (as defined below) shall be compromised, settled, released and
28 dismissed with prejudice, upon and subject to the following terms and conditions.

1 **II. DEFINITIONS**

2 As used in this Settlement Agreement, in addition to terms defined elsewhere, the
3 following terms shall have the meanings set forth below:

4 “Attorneys’ Fee and Expense Award” means the amount of attorneys’ fees and
5 reimbursement of costs and expenses awarded by the Court to Plaintiffs’ Counsel.

6 “Authorized Claimants” are Settlement Class Members who timely submit valid Claim
7 Forms and are thus entitled to a share of the Net Settlement Amount.

8 “Claim Form” means the form for submission of claims approved by the Court
9 substantially in the form of Exhibit C attached hereto.

10 “Class Counsel” means, collectively, Francis J. Balint, Jr. of Bonnett, Fairbourn, Friedman
11 & Balint, P.C., Mark A. Chavez of Chavez & Gertler LLP, Jonathan M. Stein of Saxena White
12 P.A., and William C. Wright of The Law Offices of William C. Wright, P.A.

13 “Class Representatives” means the named Plaintiffs in the Actions (*i.e.* Dale Baker, Janet
14 Cheatham, Michael Edenborough, Santiago Hernandez, and Patricia Wilson).

15 “Court” means the U.S. District Court for the Northern District of California, Hon. Jon S.
16 Tigar (the court in which the *Edenborough* Action is pending).

17 “Defendants’ Counsel” means, collectively, Bartlit Beck Herman Palenchar & Scott LLP,
18 Shook Hardy & Bacon, McNew P.A., and Sanders & Parks, P.C.

19 “Effective Date” means one business day following the later of (a) the date upon which
20 the time expires for filing or noticing any appeal of the Judgment; or (b) if there is any appeal or
21 appeals, the date of dismissal or completion of such appeal(s), in a manner that finally affirms and
22 leaves in place the Judgment without any material modifications.

23 “Fairness Hearing” or “Final Approval Hearing” means the hearing at which the Parties
24 will request the Court to confirm certification of the Settlement Class, to grant final approval of
25 the Settlement Agreement as fair, reasonable, and adequate, to approve the Attorneys’ Fee and
26 Expense Award and the Service Awards, and to enter the Judgment.

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1 “Final Approval” means an order entered by the Court approving the Settlement
2 Agreement on terms mutually satisfactory to the Parties that has become final and non-
3 appealable.

4 “Judgment” means the final order and judgment approving the settlement terms set forth
5 in the Settlement Agreement substantially in the form of Exhibit D attached hereto.

6 “Lead Class Counsel” means Thomas A. Zimmerman, Jr. of Zimmerman Law Offices,
7 P.C.

8 “Net Settlement Amount” means the Settlement Amount less the Attorneys’ Fee and
9 Expense Award, the Service Awards, and the costs of class notice and settlement administration.

10 “Notice Date” means the date upon which the Settlement Class Notice is first
11 disseminated to the Settlement Class.

12 “Opt-Out and Objection Deadline” means the deadline for a Settlement Class Member to
13 submit a written objection or a Request for Exclusion, which shall be set by the Court. The
14 deadline for submitting a written objection or a Request for Exclusion will be clearly set forth in
15 the Settlement Class Notice.

16 “Plaintiffs” means the named Plaintiffs in each of the Actions, individually and as
17 representatives of the Settlement Class.

18 “Plaintiffs’ Counsel” means Lead Class Counsel and Class Counsel.

19 “Plan of Allocation” means the settlement payment and allocation plan for payment of the
20 Net Settlement Amount to Settlement Class Members.

21 “Preliminary Approval” means the Court’s conditional certification of the Settlement
22 Class for settlement purposes, preliminary approval of this Settlement Agreement, and approval
23 of the Settlement Class Notice, through an order substantially in the form attached hereto as
24 Exhibit A.

25 “Request for Exclusion” means the timely written communication by or on behalf of a
26 person in the Settlement Class in which he or she requests to be excluded from the Settlement
27 Class.

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1 “Service Awards” means the amount of service awards awarded by the Court to the Class
2 Representatives in each of the Actions.

3 “Settlement” means the terms of this Settlement Agreement.

4 “Settlement Administrator” means, subject to approval of the Court and any objection by
5 ADT, the entity selected by Plaintiffs’ Counsel to administer the settlement. The Settlement
6 Administrator’s address and toll-free telephone number for Settlement Class Members to call for
7 information shall be placed on all forms of Settlement Class Notice except for the tweet to be
8 released from ADT’s Twitter account.

9 “Settlement Amount” means the amount of sixteen million dollars (\$16,000,000.00).

10 “Settlement Class” means the current and former ADT customers who between November
11 13, 2009 and August 15, 2016 entered into a contract with ADT or an ADT dealer for installation
12 of a residential security system, or who had ADT or an ADT dealer install a residential security
13 system, that includes at least one wireless peripheral sensor. The Settlement Class does not
14 include those current and former ADT residential customers whose accounts were assumed,
15 purchased or otherwise acquired by ADT from any third-party other than ADT dealers, including
16 but not limited to any other alarm company. Also excluded from the Settlement Class are: (1) the
17 current and former employees, officers and directors of ADT and its agents, subsidiaries, parents,
18 successors, predecessors, and any entity in which they or their parents have a controlling interest;
19 (2) the judge to whom this case is assigned and the judge’s immediate family; (3) any person who
20 executes and files a timely request for exclusion from the Class; (4) any persons who have had
21 their claims in this matter finally adjudicated and/or otherwise released; and (5) the legal
22 representatives, successors and assigns of any such excluded person.

23 “Settlement Class Member” means an individual who is a member of the Settlement
24 Class.

25 “Settlement Class Notice” means a notice of the pendency and proposed settlement of the
26 Actions, including a Summary Notice (for publication), Detailed Notice, Email Notice, Tweet
27 from ADT, and Postcard Notice, substantially in the forms attached hereto as Exhibits B-1, B-2,
28 B-3, B-4, and B-5.

1 “Settlement Class Period” means November 13, 2009 through August 15, 2016, inclusive.

2 “Settlement Website” means an informational website about the Settlement with an easy
3 to remember domain name to be set up and maintained by the Settlement Administrator, as more
4 fully described in subsection VII.E below.

5 **III. CERTIFICATION OF SETTLEMENT CLASS**

6 Pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, and for purposes of this
7 Settlement only and subject to the approval of the Court, the Parties stipulate to certification of
8 the Settlement Class defined above and to the appointment of Plaintiffs as Class Representatives
9 for the Settlement Class. Should the Court not enter the Judgment or the Effective Date not
10 occur, the certification of the Settlement Class shall be void, the Settlement Class shall be
11 automatically decertified, and this Settlement Agreement shall not constitute, be construed as, or
12 be admissible as evidence of, an admission by any Party, or be used for any purpose whatsoever
13 in the Actions or any other actions. If the Settlement Agreement is not approved or is terminated
14 for any reason, all rights and positions of the Parties existing prior to the execution of this
15 Settlement Agreement with respect to class certification shall be preserved.

16 **IV. RELEASES**

17 A. Plaintiffs’ Released Claims. Upon the Effective Date and in consideration of
18 ADT’s payment of the Settlement Amount, Plaintiffs and Settlement Class Members shall release
19 and forever discharge any and all direct, individual, or class claims, rights or causes of action or
20 liabilities whatsoever, whether known or unknown, whether accrued or unaccrued, and whether
21 arising under federal, state, local, statutory, common or any other law, rule, or regulation that
22 were or could have been asserted against ADT and its present and former affiliates, agents,
23 officers, directors, employees, parents, subsidiaries, predecessors, successors and assigns, by
24 Plaintiffs or any other Settlement Class Members in any of the Actions, predicated upon the facts
25 alleged in the Actions. For the avoidance of doubt, Plaintiffs hereby knowingly waive any and all
26 rights and protections under California Civil Code § 1542 as it applies to any and all unknown or
27 unanticipated claims predicated upon the facts alleged in the Actions. ***Plaintiffs’ Released Claims***
28 ***do not, however, include any claims for personal injuries or for damage to or loss of property.***

1 B. Defendants’ Released Claims. Upon the Effective Date, and in consideration of the
2 representations and promises in this Settlement Agreement (the adequacy of which is hereby
3 acknowledged), ADT and Defendants’ Counsel shall release and forever discharge all claims,
4 rights or causes of action, whether known or unknown, whether accrued or unaccrued, and
5 whether arising under federal, state, local, statutory, or common law, rule or regulation, against
6 any of the Plaintiffs, Settlement Class Members or Plaintiffs’ Counsel, including their respective
7 spouses, children, heirs, associates, co-owners, agents, administrators, executors, devisees,
8 predecessors, and representatives, that arise out of or are in any way related to the prosecution of
9 the Actions.

10 **V. PRELIMINARY APPROVAL**

11 A. Plaintiffs and Plaintiffs’ Counsel will use their best efforts to apply to the Court for
12 an order preliminarily approving the terms of the Settlement Agreement on or before March 30,
13 2017. The motion for preliminary approval (and all subsequent motions relating to the approval of
14 the Settlement) shall be filed with and determined by the Court and will include a request that the
15 Court:

- 16 1. Certify the Settlement Class under Rule 23(b)(3) of the Federal Rules of
17 Civil Procedure for settlement purposes only;
- 18 2. Appoint Plaintiffs as Class Representatives of the Settlement Class;
- 19 3. Appoint Lead Counsel and Class Counsel to represent the Settlement Class;
- 20 4. Preliminarily approve the Settlement Agreement and Plan of Allocation for
21 purposes of disseminating notice to the Settlement Class;
- 22 5. Approve the form and contents of the Settlement Class Notice and the
23 method of its dissemination to Settlement Class Members;
- 24 6. Schedule a Fairness Hearing to (a) review and rule upon any objections to
25 the Settlement, (b) consider the fairness, reasonableness, and adequacy of
26 the Settlement, (c) consider whether the Court should issue a Judgment
27 approving the Settlement and granting Plaintiffs’ Counsel’s application for
28 an Attorneys’ Fee and Expense Award and Service Awards and dismissing

1 the Action with prejudice, and (d) consider such other matters as the Court
2 may deem appropriate.

3 The proposed Preliminary Approval Order attached as Exhibit A will be submitted with Plaintiffs'
4 motion seeking preliminary approval.

5 B. Within 7 days after entry of the Preliminary Approval Order, ADT shall pay
6 \$1,500,000 of the Settlement Amount to the Settlement Administrator in accordance with
7 instructions to be provided by the Settlement Administrator.

8 C. Pending this Court's grant of Final Approval and entry of Judgment to be
9 requested in the *Edenborough* Action, Plaintiffs and ADT will jointly request the courts in the
10 *Baker, Cheatham, Hernandez, and Wilson* Actions to stay or continue to stay all proceedings
11 therein.

12 **VI. FINAL APPROVAL AND JUDGMENT**

13 A. This Settlement Agreement is subject to and conditioned upon the Court's granting
14 of Final Approval and entry of the Judgment following the Fairness Hearing in substantially the
15 form attached as Exhibit D.

16 B. Within 7 days of the Effective Date, ADT shall pay the \$14,500,000 balance of the
17 Settlement Amount to the Settlement Administrator in accordance with instructions to be
18 provided by the Settlement Administrator.

19 C. Upon the Effective Date, Plaintiffs and ADT will stipulate to the dismissal of the
20 *Baker, Cheatham, Hernandez, and Wilson* Actions with prejudice, all parties to bear their own
21 costs, expenses, and fees except as provided under this Settlement Agreement.

22 **VII. SETTLEMENT CLASS NOTICE**

23 A. Class List. The ADT customers who are potential Settlement Class Members
24 consist of two categories: (1) those for whom there are some indications that they are Settlement
25 Class Members because the records show that the security systems exclusively or likely use
26 wireless sensors, referred to herein as "Probables", and (2) those for whom there are no
27 indications whether they are Settlement Class Members because their security systems can use
28 either wired or wireless sensors and readily available information does not indicate which sensors

1 are used, referred to herein as “Possibles”. Within 10 days after Preliminary Approval of this
2 Settlement Agreement including the form and content of the Settlement Class Notice, or as soon
3 thereafter as is practicable, ADT shall provide the Settlement Administrator with a list containing
4 the names and last known mailing addresses of each of its customers that it has identified as a
5 potential Settlement Class Member. If available, ADT shall also provide the Settlement
6 Administrator with a list containing the last known email address for each of the ADT customers
7 that it has identified as a potential Settlement Class Member. The Settlement Administrator shall
8 update the mailing addresses through reasonable tracking procedures including using the National
9 Change of Address database (“NCOA”). The lists of customers who are potentially Settlement
10 Class Members are extremely confidential to ADT. They may not be used for any purpose other
11 than the sending of notices, communicating about the Actions and this Settlement, and providing
12 Settlement relief to Settlement Class Members as set forth in this Settlement Agreement. The
13 Settlement Administrator must agree in writing to maintain the confidentiality of this customer
14 data prior to receipt.

15 B. Direct Notice. No later than 30 days after Preliminary Approval, the Settlement
16 Class Notice shall be disseminated as follows.

17 1. U.S. Mail. The Settlement Administrator shall mail the Postcard Notice
18 (Exhibit B-5) to all potential Settlement Class Members who are in the
19 Probable category. If any such correspondence is returned by the Post
20 Office, the Settlement Administrator shall either forward the Postcard
21 Notice to the forwarding address provided, or use reasonable efforts to
22 identify an updated mailing address and then send the Postcard Notice to
23 that updated address.

24 2. Email. The Settlement Administrator shall electronically transmit the Email
25 Notice (Exhibit B-3) to all potential Settlement Class Members for whom
26 ADT has an email address. The Detailed Notice (Exhibit B-2) and Claim
27 Form (Exhibit C) shall be included in that email transmission. If any such
28 emails are reported undelivered, the Settlement Administrator shall update

1 the email addresses through reasonable tracking procedures including using
2 an Email Change of Address service (“ECO A”) and then send the Email
3 Notice to that updated address.

4 C. Publication. No later than 30 days after Preliminary Approval, the Settlement
5 Administrator shall cause the Summary Notice to be published in appropriate print media (or as
6 soon as practicable thereafter if a publication has a longer lead time), as well as publication on the
7 Internet if the Settlement Administrator deems it necessary to supplement the other forms of
8 notice.

9 D. Other Media. No later than 30 days after Preliminary Approval, ADT shall cause
10 the Summary Notice (Exhibit B-1) to be placed in a conspicuous location on ADT’s company
11 website with a link to the Settlement Website. ADT shall also cause a tweet (Exhibit B-4) to be
12 released from ADT’s Twitter account, which will mention the Settlement and notify the public
13 that they can go to the Settlement Website for more information.

14 E. Settlement Website. At the time the Settlement Class Notice is first disseminated,
15 and no later than 30 days after Preliminary Approval of this Settlement Agreement, including
16 approval of the form and content of the Settlement Class Notice, the Settlement Administrator
17 shall cause the Settlement Website to be activated on the Internet. The Settlement Website shall
18 include the Settlement Administrator’s toll-free telephone number for Settlement Class Members
19 to call for information; links to the Detailed Notice (Exhibit B-2); relevant case documents in
20 connection with the Settlement Agreement; a downloadable Claim Form, and fillable copy of the
21 Claim Form that can be submitted electronically; and such other documents and information as
22 may be agreed on by the Parties or ordered by the Court.

23 **VIII. SETTLEMENT PAYMENT AND PLAN OF ALLOCATION**

24 A. Claim Forms. Settlement Class Members will be required to submit a Claim Form,
25 in the form of Exhibit C attached hereto, subject to the approval of the Court, in
26 order to receive payments from the Net Settlement Amount. Each Settlement
27 Class Member who submits a timely, valid Claim Form and is thus an Authorized
28 Claimant will be paid an amount from the Net Settlement Amount calculated in

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accordance with subsection VIII.B. Settlement Class Members must submit a completed Claim Form by the deadline specified by the Court, and that deadline shall be clearly set forth in the Summary Notice, Detailed Notice, Email Notice, Claim Form, and Settlement Website.

B. Payments to Settlement Class Members.

The Plan of Allocation of payments to Settlement Class Members is as follows:

1. Each Settlement Class Member who executed a residential security contract with ADT or an ADT dealer for installation of a residential security system during the period November 13, 2009 through July 23, 2014, inclusive, will be entitled to a payment of \$15 from the Net Settlement Amount, subject to any adjustment pursuant to subsection VIII.B.3.
2. Each Settlement Class Member who executed a residential security contract with ADT or an ADT dealer for installation of a residential security system during the period July 24, 2014 through August 15, 2016, inclusive, will be entitled to a payment of \$45 from the Net Settlement Amount, subject to any adjustment pursuant to subsection VIII.B.3.
3. The determination of whether a Settlement Class Member executed a residential security contract with ADT or an ADT dealer for installation of a residential security system, or whether a Settlement Class Member had ADT or an ADT dealer install a residential security system, during the period November 13, 2009 through July 23, 2014, or during the period July 24, 2014 through August 15, 2016, is based on the date that the Settlement Class Member entered into their **first** residential security contract with ADT or an ADT dealer for installation of a residential security system with a wireless peripheral sensor, or the date that the Settlement Class Member **first** had ADT or an ADT dealer install a residential security system with a wireless peripheral sensor, regardless of whether the Settlement Class Member subsequently renewed that contract, entered into any subsequent

1 contracts, or had any residential security system or security system
2 components subsequently installed. Additionally, each Settlement Class
3 Member is entitled to receive one settlement check regardless of whether
4 the Settlement Class Member subsequently renewed their first contract,
5 entered into any subsequent contracts, or had any residential security
6 system or security system components subsequently installed after the first
7 installation.

8 4. The Settlement Administrator shall adjust the amounts of the above-
9 specified settlement payments by increasing or decreasing them *pro rata* to
10 the extent necessary to pay Settlement Class Members who have submitted
11 timely and valid Claim Forms their *pro rata* shares of the Net Settlement
12 Amount and to fully allocate and pay the Net Settlement Amount so that no
13 money reverts back to ADT.

14 Payment in accordance with this Settlement Agreement shall be deemed final and
15 conclusive against all Settlement Class Members. Any Settlement Class Member who fails to
16 submit a timely and valid Claim Form or whose claim is otherwise not approved by the
17 Settlement Administrator shall be barred from participating in distributions from the Net
18 Settlement Amount, but otherwise shall be bound by all of the terms of this Settlement
19 Agreement, including the Judgment and the release of Plaintiffs' Released Claims. All
20 proceedings with respect to the administration, processing and determination of claims and the
21 determination of all controversies relating thereto, including disputed questions of law and fact
22 with respect to the validity of claims, shall be subject to the jurisdiction of the Court.

23 C. Method and Timing of Payments. Upon Preliminary Approval, the Settlement
24 Administrator shall pay from the Settlement Amount the amounts necessary to pay the costs of
25 Settlement Class Notice, the Settlement Website, and settlement administration. Upon ADT's full
26 and final payment of the Settlement Amount subsequent to the Effective Date, the Settlement
27 Administrator shall pay the Attorneys' Fee and Expense Award and the Service Awards to the
28 Zimmerman Law Offices, P.C. Client Trust Account for distribution of the Attorneys' Fee and

1 Expense Award to Plaintiffs' Counsel in a manner which Lead Counsel, in good faith, believes
2 reflects the contributions of Plaintiffs' Counsel to the prosecution and settlement of the Actions
3 on behalf of the Settlement Class, and to the Class Representatives as awarded by the Court. The
4 Settlement Administrator shall then pay from the Net Settlement Amount the payments due to
5 Authorized Claimants by mailing the checks for the amounts due to them within 10 days of the
6 date that the Settlement Administrator is ordered to provide the compliance declaration regarding
7 claims. The settlement checks shall be void if not cashed within 6 months after the date of
8 issuance. In the event a balance of Net Settlement Amount remains as a result of Settlement
9 Class Members' failure to cash checks within the stated expiration period, the Settlement
10 Administrator's inability to locate Settlement Class Members, or for any other reason, said funds
11 shall not revert to ADT but shall be distributed as a *cy pres* award to the National Crime
12 Prevention Council—which is a non-profit organization dedicated to crime prevention—subject
13 to Court approval.

14 **IX. ATTORNEYS' FEES, COSTS AND EXPENSES**

15 Plaintiffs' Counsel will make an application to the Court for payment from the Settlement
16 Amount of attorneys' fees of up to one-third of the Settlement Amount plus the costs and
17 expenses that Plaintiffs' Counsel have incurred in the prosecution of the Actions. Said application
18 shall be filed at least 14 days prior to the deadline for submission of Requests for Exclusion and
19 Objections. The amount of fees, costs and expenses awarded by the Court shall be deducted from
20 the Settlement Amount and paid by the Settlement Administrator as awarded by the Court.
21 Plaintiffs' Counsel's support of the Settlement Agreement as fair and reasonable is not
22 conditioned upon the Court's award of the requested fees and expenses.

23 **X. SERVICE AWARDS**

24 Plaintiffs' Counsel will make an application to the Court for Service Awards to each of the
25 Plaintiffs in consideration for their having undertaken the Actions, assisted in the prosecution and
26 otherwise serving as Class Representatives. Said application shall be filed at least 14 days prior to
27 the deadline for submission of Requests for Exclusion and Objections. In consideration of the
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1 relative contributions of the Class Representatives, the amounts to be requested will be an amount
2 up to and no greater than the following:

3 Dale Baker: \$10,000
4 Michael Edenborough: \$10,000
5 Janet Cheatham: \$10,000
6 Santiago Hernandez: \$2,500
7 Patricia Wilson: \$2,500

8 Plaintiffs' support for the Settlement Agreement as fair and reasonable is not conditioned
9 upon the Court's award of the requested Service Awards.

10 **XI. OPT-OUTS AND OBJECTIONS**

11 A. Right to Exclusion. Any Settlement Class Member may submit a Request for
12 Exclusion from the Settlement Class postmarked on or before the Opt-Out and Objection
13 Deadline. In order to exercise the right to be excluded, a Settlement Class Member must timely
14 send a written Request for Exclusion to the Settlement Administrator providing: their name and
15 address; their physical signature; the name and number of the Action; and a statement that they
16 wish to be excluded from the Settlement Class. Any person who elects to opt out of the
17 Settlement Class shall: (a) not be bound by any orders or Judgment entered in this Action, (b) not
18 be entitled to relief under this Settlement Agreement, (c) not gain any rights by virtue of this
19 Settlement Agreement, and (d) not be entitled to object to any aspect of this Settlement
20 Agreement. No person may opt out of the Settlement Class through a so-called "mass" or "class"
21 opt-out.

22 B. Right to Object. Any Settlement Class Member who does not opt out of the
23 Settlement Class may object to the Settlement or any portion of the Settlement Agreement in
24 writing, in person, or through counsel at the Fairness Hearing, at their own expense. The
25 Settlement Class Notice shall specify that any objection to the Settlement, and any papers
26 submitted in support of said objection, shall be considered by the Court at the Fairness Hearing
27 only if, on or before the Opt-Out and Objection Deadline approved by the Court and specified in
28 the Class Notice, the person making the objection files notice of an intention to do so and at the
same time (a) files copies of any papers they propose to be submitted at the Fairness Hearing with

1 the Clerk of the Court, and (b) either (i) files the objection through the Court’s ECF system if the
2 objection is from a Settlement Class Member represented by counsel, or (ii) sends copies of such
3 papers by mail, hand, or overnight delivery service to the following:

4 For Plaintiffs:

5 Thomas A. Zimmerman, Jr.
6 Zimmerman Law Office, P.C.
77 W. Washington St., Suite 1220
Chicago, IL 60602

7 For ADT:

8 Mark L. Levine
9 Bartlit Beck Herman Palenchar & Scott LLP
54 W. Hubbard St., Suite 300
10 Chicago, IL 60654

11 Any Settlement Class Member who intends to object to this Settlement must include in the
12 written objection: their name and address; their arguments, citations, and evidence supporting the
13 objection (including copies of any documents relied on); a statement that they are a Settlement
14 Class Member; state the date they first entered into their contract with ADT or an ADT dealer for
15 installation of a residential security system that has a wireless peripheral sensor; provide the
16 model of residential security system that is the subject of their contract with ADT or an ADT
17 dealer; their physical signature; and a statement indicating whether they intend to appear at the
18 Fairness Hearing with or without counsel. Any Settlement Class Member who fails to object in
19 the manner prescribed herein shall be deemed to have waived their objection(s) and be forever
20 barred from making any such objections in the Action or in any other action or proceeding.
21 While the statement described above in this paragraph is *prima facie* evidence that the objector is
22 a member of the Settlement Class, subject to verification based on ADT’s records, in the event of
23 inaccuracies or inconsistencies in the statement, either or both Parties may take limited discovery
24 regarding the matter, subject to Court approval.

25 **XII. TERMINATION AND PRESERVATION OF RIGHTS**

26 The Settlement Agreement is admissible in the Court solely for the purposes of
27 effectuating and enforcing this Settlement. If the Settlement Agreement does not receive the Final
28 Approval of the Court or Judgment is not entered, any and all rights of the Parties existing prior to

1 the execution of this Settlement Agreement, including but not limited to Plaintiffs' right to seek
2 and ADT's right to oppose certification of one or more Plaintiff classes in each of the Actions,
3 shall be preserved, and each Action shall proceed in all respects as if the Settlement Agreement
4 and any related orders had not been entered. In such event, none of the terms of the Settlement
5 Agreement or the Parties' prior Memorandum of Understanding (executed January 23, 2017) shall
6 be admissible in any trial or otherwise used against any Party, except to enforce the terms thereof
7 that relate to the Parties' obligations in the event of termination. The portion of the Settlement
8 Amount transferred to the Settlement Administrator shall be returned to ADT, less notice and
9 administrative expenses incurred by the Settlement Administrator (as to which ADT shall have no
10 right of reimbursement from any person, including the Settlement Administrator, Plaintiffs or
11 Plaintiffs' Counsel). If the portion of the Settlement Amount transferred to the Settlement
12 Administrator is not sufficient to pay all of the notice and administrative expenses incurred by the
13 Settlement Administrator, ADT shall separately pay to the Settlement Administrator any
14 additional amounts owing at the time of termination.

15 **XIII. MISCELLANEOUS PROVISIONS**

16 A. Exhibits. The exhibits to this Settlement Agreement are integral parts of the
17 Parties' agreement and are incorporated by reference as if set forth herein.

18 B. Governing Law and Forum. The Settlement Agreement and all documents
19 necessary to effectuate it shall be governed by the laws of the State of California, without giving
20 effect to choice-of-law principles, and by the *Federal Rules of Civil Procedure*. The Court shall
21 retain jurisdiction over the implementation and enforcement of the terms of the Settlement
22 Agreement, and the Parties submit to the jurisdiction of the Court for those purposes. If the Court
23 determines it lacks subject matter or personal jurisdiction over a claim or Party with respect to the
24 implementation and enforcement of the terms of the Settlement Agreement, the Parties submit to
25 the jurisdiction of the other courts in which each of the Actions was filed.

26 C. Good Faith and Arm's Length Negotiations. The Judgment will contain a
27 statement that throughout the course of the Action the Parties and their counsel at all times
28 complied with the requirements of Rule 11, *Federal Rules of Civil Procedure*. The Parties agree

1 that the Settlement Amount and the other terms of the Settlement were negotiated at arm's length
2 and in good faith by the Parties and reflect a settlement that was reached voluntarily after
3 consultation with experienced legal counsel.

4 D. Cooperation. Plaintiffs' Counsel and Defendant's Counsel agree to cooperate fully
5 with one another in seeking Court entry of the orders granting Preliminary Approval and Final
6 Approval of the Settlement Agreement, and to promptly agree upon and execute all such other
7 documentation as may be reasonably required to obtain Final Approval of the Settlement
8 Agreement and the Court's entry of the Judgment.

9 E. Authorization to Sign. The persons executing this Settlement Agreement represent
10 that they have been duly authorized to do so and that they have the authority to take appropriate
11 action required or permitted to be taken pursuant to the Settlement Agreement in order to
12 effectuate its terms.

13 F. Confidentiality. The Parties shall maintain the strict confidentiality of the terms of
14 the Settlement and Settlement Agreement prior to its filing with the Court.

15 G. Complete Agreement. This Settlement Agreement with the exhibits hereto
16 constitutes the entire agreement of the Parties with respect to their subject matter and supersedes
17 any prior agreement, whether written or oral, as to that subject matter. No representations or
18 inducements have been made by any Party hereto concerning the Settlement Agreement other
19 than those contained and memorialized herein. The provisions of the Settlement Agreement and
20 its exhibits may not be modified or amended, nor may any of their provisions be waived, except
21 by a writing signed by all Parties hereto or their successors-in-interest.

22 H. Headings. The headings used in this Settlement Agreement are intended for the
23 convenience of the reader only and shall not affect the meaning or interpretation of this
24 Settlement Agreement.

25 I. No Party Is the Drafter. None of the parties hereto shall be considered to be the
26 drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case
27 law, or rule of interpretation or construction that would or might cause any provision to be
28 construed against the drafter thereof.

1 J. No Admission. Nothing in this Settlement Agreement shall be construed in any
2 action or proceeding of any kind whatsoever, civil, criminal, or otherwise, before any court,
3 administrative agency, regulatory body, or any other body or authority, present or future, as an
4 admission by ADT that it has engaged in any conduct or practices that violate any rule or law.

5 K. No Waiver. The waiver by any Party of a breach of this Settlement Agreement by
6 any other Party shall not be deemed a waiver of any other breach of this Settlement Agreement.

7 L. Execution in Counterparts. This Settlement Agreement may be executed in one or
8 more counterparts, each of which when so executed shall constitute an original, but all of which
9 together shall constitute the same instrument. Fax and PDF copies of signatures shall be treated as
10 originals for all purposes.

11 M. Recitals. The Recitals are hereby incorporated into and made a part of this
12 Settlement Agreement.

13
14 IN WITNESS WHEREOF, the Parties hereto through their fully authorized representatives have
15 agreed to the Settlement Agreement as of March 10, 2017.



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ADT, LLC d/b/a ADT Security Services, Inc.*

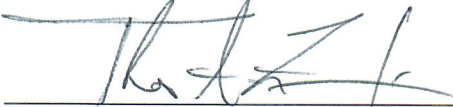
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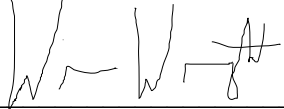
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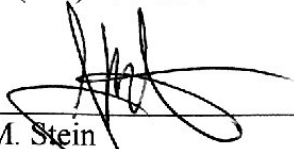


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17 *Attorneys for Plaintiffs*

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