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**Attorneys for Defendants Vivint, Inc., Vivint Smart Home, Inc., Smart Home
Pros, Inc., and Arm Security, Inc.**

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

BRAYDEN HUMPHERYS, and JEREMY
HATCHER, each individually, on behalf of all
similarly situated former and current employees,
and LOGAN SHANE CRABTREE, on behalf of
the similarly situated aggrieved employees,

Plaintiffs,

v.

VIVINT, INC., a Delaware corporation;
VIVINT SMART HOME, INC., a Delaware
corporation; SMART HOME PROS, INC., a
Delaware corporation; ARM SECURITY, INC.,
a corporation state unknown; and DOES 1
through 50, inclusive,

Defendants.

CASE NO. 30-2020-01141910-CU-OE-CXC

CLASS ACTION

**JOINT OPPOSITION TO THE SOLE
OBJECTION TO FINAL APPROVAL
OF CLASS ACTION AND
REPRESENTATIVE ACTION
SETTLEMENT**

Date: December 8, 2023

Time: 1:30 p.m.

Dept: CX103

Judge: Hon. Lon Hurwitz

Plaintiffs Brayden Humpherys, Jeremy Hatcher and Logan Shane Crabtree (collectively,

1 the “**Plaintiffs**”) and Defendants Vivint, Inc.; Vivint Smart Home, Inc.; Smart Home Pros, Inc.;
2 and Arm Security, Inc. (collectively referred to as the “**Defendants**”), by and through their
3 respective counsel of record, hereby submit the following Joint Opposition to the Sole Objection
4 to the Settlement filed by Class Member/Objector Rodney Ratheal (the “**Objector**”) on October
5 27, 2023 (the “**Objection**”), a true and correct copy which is attached to the CPT Declaration as
6 ***Exhibit A*** and the Notice of Lodgment filed concurrently herewith as ***Exhibit B***.

7 **A. THE OBJECTION**

8 The Objector objected to the Settlement claiming:

9 “Managers shouldn’t participate in the settlement. The managers were guilty of
10 taking referrals from the low level sales agents (door-to-door) and made a lot of
11 money. Remove the managers from benefitting from this settlement.”

12 **B. JOINT OPPOSITION ARGUMENT**

13 The Objection should be overruled for, *inter alia*, the following reasons:

14
15 **1. The Objector Misconstrues the Class Definition As Including All Persons In Manager**
16 **Positions.** The Class is defined as:

17 “All persons currently and formerly employed by Defendants in solar or alarm sales in
18 the State of California on a door-to-door basis who made at least one sale in California
19 between June 3, 2016 and June 1, 2022 (the “**Class Period**”).”

20 The Class definition does not include or exclude participants because of their job title (i.e.,
21 manager), because Class Members, regardless of title, were alleged to be similarly situated in job
22 duties, compensation plans, wage and hour procedures, and employment contracts. Additionally,
23 participation and eligibility was ascertainable from their California activity (i.e. sales in California
24 zip codes) and not job title. As such, managers who sold door-to-door in California (essentially
25 field managers) qualify as Class Members for their eligible California sales activities, but those
26 who did not sell door-to-door during the Class Period, are not included within the Class.

27 **2. The Weighted Allocation Formula Awards Points For Door-to-Door California**
28 **Sales Activities, And Excludes Points For Team Overrides Typically Earned By Managers.**

The Settlement Agreement and Class Notice provided that Verified Settlement Class Members earn points during the Class Period as follows:

<u>Points Category</u>	<u>Points Awarded</u>
Work Weeks in a door-to-door sales position (including managers); plus	1 point per
Completed California alarm installations during the Class Period recorded under each Class Member's unique badge ID (excluding team overrides); plus	2 points per
Completed California solar installations during the Class Period recorded under each Class Member's unique badge ID (excluding team overrides).	3 points per

As such, managers are *not* participating in the Settlement greater than non-managers because all Class Members earn the same points for California workweeks in a **door-to-door sales position**. As for points, Class Members only earn points for their own unique door-to-door sales but *excluding team overrides* (which is an additional component of compensation given to some managers). Thus, to the extent a manager was earning team sales or overrides, such manager did not get additional credit for these sales to the detriment of non-managers.

3. The Objector Raises Defenses That, Even If True, Would Likely Be Individualized And Not Ascertainable Or Amenable To Class Treatment. The Objector's proposal to exclude managers because they are potentially high earners is unfair because higher earnings does not necessarily equate to lesser or no Labor Code violations. Indeed, a highly productive sales representative (manager or not) would have higher California work activity and thus, higher earnings, but also likely suffered more unpaid expenses and training time violations. This need for balance is met by the design of the weighted allocation formula. Additionally, it would be impossible to ascertain which managers "took referrals from the low level sales agents" (as alleged by the Objector) without individualized factual inquiries that could not be resolved on a classwide exclusionary basis.

1 **4. The Objector Has Significantly More “Non-Relevant” Experience With Defendants**
2 **Which Could Skew His Views Of The Settlement.** Objector worked for Defendants for six years,
3 of which only two years were within the Class Period. Additionally, because the Objector worked
4 predominantly outside California (and primarily in Kentucky, Ohio, Kansas, Oklahoma, Texas,
5 Montana, Nevada, Utah, Arizona, New Mexico and Florida), he has not established that his
6 complaints are both California based **and** during the Class Period.

7 **5. The Objector does not raise sufficient factors to overcome Plaintiffs’ demonstration of**
8 **fairness using the Dunk factors.** Review of approval of a class settlement is limited to whether
9 or not the trial court’s approval was a clear abuse of discretion. (See, *Dunk v. Ford Motor Co.*,
10 (1996) 48 Cal.App.4th 1794, 1801). The inquiry ‘must be limited to the extent necessary to reach a
11 reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion
12 between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and
13 adequate to all concerned.’ (*Id.*, (citing *Officers for Justice v. Civil Service Com.*, (9th Cir.1982)
14 688 F.2d 615, 625) (emphasis added)). With regard to fairness, the Court possesses broad discretion
15 to determine fairness based on “[1] the strength of plaintiffs' case, [2] the risk, expense, complexity
16 and likely duration of further litigation, [3] the risk of maintaining class action status through trial,
17 [4] the amount offered in settlement, [5] the extent of discovery completed and the stage of the
18 proceedings, [6] the experience and views of counsel, ... and [7] the reaction of the class members
19 to the proposed settlement.” (*Dunk, supra*, at 1801).

20 Here, the Objector does not assert that the Settlement is the product of fraud, overreaching by,
21 or collusion between, the negotiating parties, nor that the Settlement is unreasonable or inadequate.
22 Similarly, the Objector does not challenge (1) the strength of Plaintiffs’ case; (2) the risk, expense,
23 complexity and likely duration of further litigation; (3) the risk of maintaining class status; (4) the
24 amount offered in settlement; (5) the extent of discovery and the stage of the proceedings; (6) the
25 views of counsel; or (7) the reaction of other class members (solely his own). Indeed, his sole
26 complaint is that a certain group of Class Members should be excluded – a result which itself would
27 be patently unfair to those Class Members for all of the reasons stated above.

6. The Objector Could Have Exercised The Option To Opt-Out. If the Objector suffered wage theft (of referrals) at the hands of his manager(s), he could have elected to Opt-Out of the Settlement and pursue his unique claims instead of trying to extrapolate those claims to exclude some portion of the Class that is not ascertainable or provable on a classwide basis.

C. CONCLUSION.

Because approval of the settlement is reviewed only as to whether there was a clear abuse of discretion, and this Court's discretion may not be otherwise disturbed where it finds the settlement is not the result of fraud or collusion, is fair, reasonable, and adequate, and where the reaction of the class is overwhelmingly positive save for the Objector's sole objection, Plaintiffs urge that the Court overrule the Objector's objection and grant final approval of the Settlement.¹

RESPECTFULLY SUBMITTED,

KEEGAN & BAKER, LLP

Dated: November 17, 2023

By: /s/ Jason E. Baker
Jason E. Baker, Esq.
Attorneys for Plaintiffs

SIMPSON THACHER & BARTLETT LLP

Dated: November 17, 2023

By: /s/ Chet Kronenberg
Chet A. Kronenberg, Esq.
Attorneys for Defendants

¹ Unnamed class members who object to a proposed settlement do not have standing to appeal the judgment approving the settlement unless they have intervened in the action. (*Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260, 263, 267).