

1 Carolyn H. Cottrell (SBN 166977)  
2 David C. Leimbach (SBN 265409)  
3 Scott L. Gordon (SBN 319872)  
4 SCHNEIDER WALLACE  
5 COTTRELL KONECKY  
6 WOTKYNS LLP  
7 2000 Powell Street, Suite 1400  
8 Emeryville, California 94608  
9 Telephone: (415) 421-7100  
10 Facsimile: (415) 421-7105  
11 ccottrell@schneiderwallace.com  
12 dleimbach@schneiderwallace.com  
13 sgordon@schneiderwallace.com

14 *[Additional Counsel listed on next page]*

15 Attorneys for Plaintiffs and the Settlement  
16 Classes

17  
18  
19 **UNITED STATES DISTRICT COURT**  
20 **NORTHERN DISTRICT OF CALIFORNIA**  
21

22 DESIDERO SOTO, STEVEN STRICKLEN,  
23 STEEVE FONDROSE, LORENZO  
24 ORTEGA, and JOSE ANTONIO FARIAS, JR.,  
25 on behalf of themselves and all others similarly  
26 situated,

27 Plaintiffs,

vs.

O.C. COMMUNICATIONS, INC., COMCAST  
CORPORATION, and COMCAST CABLE  
COMMUNICATIONS MANAGEMENT, LLC;

Defendants.

Case No.: 3:17-cv-00251-VC

**DECLARATION OF CAROLYN HUNT  
COTTRELL IN SUPPORT OF  
PLAINTIFFS' MOTION FOR FINAL  
APPROVAL OF CLASS AND  
COLLECTIVE ACTION SETTLEMENT**

Date: October 17, 2019

Time: 10:00 a.m.

Courtroom: 4 (17th Floor)

Judge: Honorable Vince Chhabria

Complaint Filed: January 18, 2017

1 Shanon J. Carson (*pro hac vice*)  
2 Sarah R. Schalman-Bergen (*pro hac vice*)  
3 BERGER MONTAGUE PC  
4 1818 Market Street, Suite 3600  
5 Philadelphia, Pennsylvania 19103  
6 Telephone: (215) 875-3000  
7 Facsimile: (215) 875-4604  
8 scarson@bm.net  
9 sschalman-bergen@bm.net

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
Attorneys for Plaintiffs and the  
Settlement Classes

1 I, Carolyn Hunt Cottrell, hereby declare as follows:

2 1. I am an attorney duly licensed to practice law in the State of California. I am a  
3 member in good standing of the State Bar of California, I am admitted to the United States District  
4 Courts for the Northern, Eastern, Central, and Southern Districts of California. I am admitted to the  
5 Ninth Circuit Court of Appeals, and I am a member of the Bar of the United States Supreme Court.

6 2. I am a partner at the law firm of Schneider Wallace Cottrell Konecky Wotkyns LLP  
7 (“SWCKW”). SWCKW specializes in class, collective, and PAGA litigation in state and federal  
8 court. SWCKW has prosecuted the instant Action together with our Co-Counsel, Berger Montague  
9 PC (“Berger Montague”).

10 3. I am counsel of record for Plaintiffs Desidero, Steven Stricklen, Steeve Fondrose,  
11 Lorenzo Ortega, and Jose Antonio Farias, Jr., on behalf of themselves and all others similarly  
12 situated (“Plaintiffs”), in the above-captioned case. I respectfully submit this declaration in support  
13 of Plaintiffs’ Motion for Final Approval of Class and Collective Action Settlement. I am familiar  
14 with the file, the documents, and the history related to this case. The following statements are based  
15 on my personal knowledge and review of the files. If called to do so, I could and would testify  
16 competently thereto.

17 4. The Class Action Settlement Agreement and related Addendum (together, the  
18 “Settlement”) reached with Defendants O.C. Communications, Inc. (“OCC”) and Comcast Cable  
19 Communications Management, LLC (“Comcast”) was preliminarily approved by this Court on June  
20 17, 2019. *See* ECF 296. The Settlement was filed with the Court at ECF 289-2, and the finalized  
21 Notice of Settlement (“Class Notice”) was filed with the Court at ECF 295-1.

22 **QUALIFICATIONS, EXPERIENCE, AND EXPERTISE**

23 5. SWCKW is regarded as one of the leading private plaintiff’s firms in wage and hour  
24 class actions and employment class actions. In November 2012, the Recorder listed the firm as one  
25 of the “top 10 go-to plaintiffs’ employment firms in Northern California.” The partners and  
26 attorneys have litigated major wage and hour class actions, have won several prestigious awards,  
27

1 and sit on important boards and committees in the legal community. SWCKW was founded by Todd  
2 Schneider in 1993, and I have been a member of the firm since 1995.

3           6. SWCKW has acted or is acting as class counsel in numerous cases. A partial list of  
4 cases which have been certified and/or settled as class actions includes: *Manni v. Eugene N. Gordon,*  
5 *Inc. d/b/a La-Z-Boy Furniture Galleries* (Case No. 34-2017-00223592) (Sacramento Superior Court)  
6 (final approval of a class action settlement for failure to pay for all hours worked, failure to pay  
7 minimum and overtime wages, failure to provide meal and rest breaks, waiting time penalties, and  
8 failure to provide itemized wage statements, under California law); *Van Liew v. North Star*  
9 *Emergency Services, Inc., et al.* (Case No. RG17876878) (Alameda County Superior Court) (final  
10 approval of a class action settlement for failure to pay for all hours worked, failure to pay minimum  
11 and overtime wages, failure to provide meal and rest breaks, failure to reimburse for necessary  
12 business expenditures, waiting time penalties, and failure to provide itemized wage statements,  
13 under California law); *Asalati v. Intel Corp.* (Case No. 16cv302615) (Santa Clara Superior Court)  
14 (final approval of a class and collective action settlement for failure to pay for all hours worked,  
15 failure to pay overtime, failure to provide meal and rest breaks, failure to reimburse for necessary  
16 business expenditures, failure to adhere to California record keeping requirements, waiting time  
17 penalties, and failure to provide itemized wage statements, under federal and California law);  
18 *Harmon, et al. v. Diamond Wireless, LLC*, (Case No. 34-2012-00118898) (Sacramento Superior  
19 Court) (final approval of a class action settlement for failure to pay wages free and clear, failure to  
20 pay overtime and minimum wages, failure to provide meal and rest breaks, failure to pay full wages  
21 when due, failure to adhere to California record keeping requirements, and failure to provide  
22 adequate seating, under California law); *Aguilar v. Hall AG Enterprises, Inc., et al.*, (Case No. BCV-  
23 16-10994-DRL) (Kern County Superior Court) (final approval of a class action settlement for failure  
24 to provide meal and rest periods, failure to compensate for all hours worked, failure to pay minimum  
25 and overtime wages, waiting time penalties, failure to provide itemized wage statements, and failure  
26 to pay undiscounted wages, under California law); *Viceral and Krueger v. Mistras Group, Inc.*,  
27 (Case No. 3:15-cv-02198-EMC) (Northern District of California) (final approval of a class and

1 collective action settlement for failure to compensate for all hours worked, including overtime,  
2 under federal and California law); *Jeter-Polk, et al. v. Casual Male Store, LLC, et al.*, (Case No.  
3 5:14-CV-00891) (Central District of California) (final approval of a class action settlement for  
4 failure to provide meal and rest periods, failure to compensate for all hours worked, failure to pay  
5 overtime wages, unpaid wages and waiting time penalties, and failure to provide itemized wage  
6 statements); *Meza, et al. v. S.S. Skikos, Inc., et al.*, (Case No. 15-cv-01889-TEH) (Northern District  
7 of California) (final approval of class and collective action settlement for failure to compensate for  
8 all hours worked, including overtime, under federal and California law, failure to provide meal and  
9 rest breaks, failure to reimburse for necessary business uniforms, failure to pay full wages upon  
10 termination to, and failure to provide accurate itemized wage statements); *Holmes, et al v. Xpress*  
11 *Global Systems, Inc.*, (Case No. 34-2015-00180822) (Sacramento Superior Court) (final approval of  
12 a class action settlement for failure to provide meal and rest breaks and failure to provide accurate  
13 itemized wage statements); *Guilbaud, et al. v. Sprint Nextel Corp. et al.*, (Case No. 3:13-cv-04357-  
14 VC) (Northern District of California) (final approval of a class and collective action settlement for  
15 failure to compensate for all hours worked, including overtime, failure to provide meal and rest  
16 breaks, failure to reimburse for necessary business uniforms, failure to pay full wages upon  
17 termination to, and failure to provide accurate itemized wage statements); *Molina, et al. v. Railworks*  
18 *Track Systems, Inc.*, (Case No. BCV-15-10135) (Kern County Superior Court) (final approval of a  
19 class action settlement for failure to provide meal and rest breaks, unpaid wages, unpaid overtime,  
20 off-the-clocker work, failure to pay full wages upon termination to, and failure to provide accurate  
21 itemized wage statements); *Allen, et al. v. County of Monterey, et al.*, (Case No. 5:13-cv-01659)  
22 (Northern District of California) (settlement between FLSA Plaintiffs and Defendant to provide  
23 relief to affected employees); *Barrera v. Radix Cable Holdings, Inc., et al.*, (Case No. CIV 1100505)  
24 (Marin County Superior Court) (final approval of class action settlement for failure to provide meal  
25 and rest breaks to, off-the-clock work by, failure to provide overtime compensation to, failure to  
26 reimburse business expenditures to, failure to pay full wages upon termination to, and failure to  
27 provide accurate itemized wage statements to retention specialists working for cable companies);

---

DECLARATION OF CAROLYN HUNT COTTRELL

*Soto, et al. v. O.C. Communications, Inc., et al.*, Case No.: 3:17-cv-00251-VC

1 *Glass Dimensions, Inc., et al. v. State Street Corp. et al.*, (Case No. 1:10-cv-10588) (District of  
2 Massachusetts) (final approval of class action settlement for claims of breach of fiduciary duty and  
3 self-dealing in violation of ERISA); *Friend, et al. v. The Hertz Corporation*, (Case No. 3:07-  
4 052222) (Northern District of California) (settlement of claims that rental car company misclassified  
5 non-exempt employees, failed to pay wages, failed to pay premium pay, and failed to provide meal  
6 periods and rest periods); *Hollands v. Lincare, Inc., et al.*, (Case No. CGC-07-465052) (San  
7 Francisco County Superior Court) (final approval of class action settlement for overtime pay, off-  
8 the-clock work, unreimbursed expenses, and other wage and hour claims on behalf of a class of  
9 center managers); *Jantz, et al. v. Colvin*, (Case No. 531-2006-00276X) (In the Equal Employment  
10 Opportunity Commission Baltimore Field Office) (final approval of class action settlement for the  
11 denial of promotions based on targeted disabilities); *Shemaria v. County of Marin*, (Case No. CV  
12 082718) (Marin County Superior Court) (final approval of class action settlement on behalf of a  
13 class of individuals with mobility disabilities denied access to various facilities owned, operated,  
14 and/or maintained by the County of Marin); *Perez, et al. v. First American Title Ins. Co.*, (Case No.  
15 2:08-cv-01184) (District of Arizona) (final approval of class action settlement in action challenging  
16 unfair discrimination by title insurance company); *Perez v. Rue21, Inc., et al.*, (Case No.  
17 CISCV167815) (Santa Cruz County Superior Court) (final approval of class action settlement for  
18 failure to provide meal and rest breaks to, and for off-the-clock work performed by, a class of retail  
19 employees); *Sosa, et al. v. Dreyer's Grand Ice Cream, Inc., et al.*, (Case No. RG 08424366)  
20 (Alameda County Superior Court) (final approval of class action settlement for failure to provide  
21 meal and rest breaks to, and for off-the-clock work performed by, a class of ice cream  
22 manufacturing employees); *Villalpando v. Exel Direct Inc., et al.* (Case Nos. 3:12-cv-04137 and  
23 4:13-cv-03091) (Northern District of California) (certified class action on behalf of delivery drivers  
24 allegedly misclassified as independent contractors); *Choul, et al. v. Nebraska Beef, Ltd.* (Case Nos.  
25 8:08-cv-90, 8:08-cv-99) (District of Nebraska) (final approval of class action settlement for off-the-  
26 clock work by, and failure to provide overtime compensation to, production-line employees of meat-  
27 packing plant); *Morales v. Farmland Foods, Inc.* (Case No. 8:08-cv-504) (District of Nebraska)

---

DECLARATION OF CAROLYN HUNT COTTRELL

*Soto, et al. v. O.C. Communications, Inc., et al.*, Case No.: 3:17-cv-00251-VC

1 (FLSA certification for off-the-clock work by, and failure to provide overtime compensation to,  
2 production-line employees of meat-packing plant); *Barlow, et al. v. PRN Ambulance Inc.* (Case No.  
3 BC396728) (Los Angeles County Superior Court) (final approval of class action settlement for  
4 failure to provide meal and rest breaks to and for off-the-clock work by certified emergency medical  
5 technicians); *Espinosa, et al. v. National Beef, et al.* (Case No. ECU0467) (Imperial Superior Court)  
6 (final approval of class action settlement for off-the-clock work by, and failure to provide overtime  
7 compensation to, production-line employees of meat-packing plant); *Wolfe, et al. v. California*  
8 *Check Cashing Stores, LLC, et al.* (Case Nos. CGC-08-479518 and CGC-09-489635) (San  
9 Francisco Superior Court) (final approval of class action settlement for failure to provide meal and  
10 rest breaks to, and for off-the-clock work by, employees at check cashing stores); *Carlson v.*  
11 *eHarmony* (Case No. BC371958) (Los Angeles County Superior Court) (final approval of class  
12 action settlement on behalf of gays and lesbians who were denied use of eHarmony); *Salcido v.*  
13 *Cargill* (Case Nos. 1:07-CV-01347-LJO-GSA, 1:08-CV-00605-LJO-GSA) (Eastern District of  
14 California) (final approval of class action settlement for off-the-clock work by production-line  
15 employees of meat-packing plant); *Elkin v. Six Flags* (Case No. BC342633) (Los Angeles County  
16 Superior Court) (final approval of class action settlement for missed meal and rest periods on behalf  
17 of hourly workers at Six Flags amusement parks); *Jimenez v. Perot Systems Corp.* (Case No.  
18 RG07335321) (Alameda County Superior Court) (final approval of class action settlement for  
19 misclassification of hospital clerical workers); *Chau v. CVS RX Services, Inc.* (Case No. BC349224)  
20 (Los Angeles County Superior Court) (final approval of class action settlement for failure to pay  
21 overtime to CVS pharmacists); *Reed v. CALSTAR* (Case No. RG04155105) (Alameda County  
22 Superior Court) (certified class action on behalf of flight nurses); *National Federation of the Blind v.*  
23 *Target* (Case No. C 06-01802 MHP) (N.D. Cal.) (certified class action on behalf of all legally blind  
24 individuals in the United States who have tried to access Target.com); *Bates v. United Parcel*  
25 *Service, Inc.* (2004 WL 2370633) (N.D. Cal.) (certified national class action on behalf of deaf  
26 employees of UPS); *Satchell v. FedEx Express, Inc.* (Case No. 03-02659 SI) (N.D. Cal.) (certified  
27 regional class action alleging widespread discrimination within FedEx); *Siddiqi v. Regents of the*

---

DECLARATION OF CAROLYN HUNT COTTRELL

*Soto, et al. v. O.C. Communications, Inc., et al.*, Case No.: 3:17-cv-00251-VC

1 *University of California* (Case No. C-99-0790 SI) (N.D. Cal.) (certified class action in favor of deaf  
2 plaintiffs alleging disability access violations at the University of California); *Lopez v. San*  
3 *Francisco Unified School District* (Case No. C-99-03260 SI) (N.D. Cal.) (certified class action in  
4 favor of plaintiffs in class action against school district for widespread disability access violations);  
5 *Campos v. San Francisco State University* (Case No. C-97-02326 MCC) (N.D. Cal.) (certified class  
6 action in favor of disabled plaintiffs for widespread disability access violations); *Singleton v.*  
7 *Regents of the University of California* (Case No. 807233-1) (Alameda County Superior Court)  
8 (class settlement for women alleging gender discrimination at Lawrence Livermore National  
9 Laboratory); *McMaster v. BCI Coca-Cola Bottling Co.* (Case No. RG04173735) (Alameda County  
10 Superior Court) (final approval of class action settlement for drive-time required of Coca-Cola  
11 account managers); *Portugal v. Macy's West, Inc.* (Case No. BC324247) (Los Angeles County  
12 Superior Court) (California statewide wage and hour "misclassification" class action resulting in a  
13 class-wide \$3.25 million settlement); *Taormina v. Siebel Systems, Inc.* (Case No. RG05219031)  
14 (Alameda County Superior Court) (final approval of class action settlement for misclassification of  
15 Siebel's inside sales employees); *Joseph v. The Limited, Inc.* (Case No. CGC-04-437118) (San  
16 Francisco County Superior Court) (final approval of class action settlement for failure to provide  
17 meal and rest periods to employees of The Limited stores); *Rios v. Siemens Corp.* (Case No. C05-  
18 04697 PJH) (N.D. Cal.) (final approval of class action settlement for failure to pay accrued vacation  
19 pay upon end of employment); *DeSoto v. Sears, Roebuck & Co.* (Case No. RG0309669) (Alameda  
20 County Superior Court) and *Lenahan v. Sears, Roebuck & Co.* (Case No. 3-02-CV-000045 (SRC)  
21 (TJB)) (final approval of class action settlement for failure to pay Sears drivers for all hours  
22 worked); among many others.

23 7. Nearly my entire legal career has been devoted to advocating for the rights of  
24 individuals who have been subjected to illegal pay policies, discrimination, harassment and  
25 retaliation and representing employees in wage and hour and discrimination class actions. I have  
26 litigated hundreds of wage and hour, employment discrimination and civil-rights actions, and I  
27 manage many of the firm's current cases in these areas. I am a member of the State Bar of



1 California, and have had memberships with Public Justice, the National Employment Lawyers  
2 Association, the California Employment Lawyers Association, and the Consumer Attorneys of  
3 California. I served on the Board of Directors for the San Francisco Trial Lawyers Association and  
4 co-chaired its Women’s Caucus. I was named one of the “Top Women Litigators for 2010” by the  
5 Daily Journal. In 2012, I was nominated for Woman Trial Lawyer of the Year by the Consumer  
6 Attorneys of California. I have been selected as a Super Lawyer every year since 2014. I earned my  
7 Bachelor’s degree from the University of California, and I am a graduate of the University of the  
8 Pacific, McGeorge School of Law.

9 **CASE SUMMARY AND PROCEDURAL HISTORY**

10 *Plaintiffs’ Claims*

11 8. OCC is a national contractor for low-voltage installations, providing cable and  
12 equipment installations on behalf of cable operators—primarily, Comcast—throughout the United  
13 States.

14 9. Comcast is a global telecommunications conglomerate and the largest cable TV  
15 company and home Internet service provider in the United States.

16 10. Plaintiffs allege that OCC and Comcast jointly employ the Class Members<sup>1</sup>, who are  
17 classified as non-exempt employees, to carry out installation services. The workers perform these  
18 services in California, Washington, Florida, Utah, Oregon and Arizona.

19 11. Plaintiffs allege that Class Members—who work long and difficult hours, typically  
20 five to six days per week, and upwards of ten hours per day—experience wage and hour violations  
21 in their work with OCC, and with Comcast as an alleged joint employer.

22 12. Throughout the relevant time period, Plaintiffs allege that Defendants eschewed their  
23 obligations to Plaintiffs and Class Members by: (1) not paying proper minimum, overtime wages,  
24 and completed piece rates; (2) failing to provide a reasonable opportunity to take meal and rest  
25 periods, and failing to compensate Class Members when such meal and rest periods are not taken;

26 \_\_\_\_\_  
27 <sup>1</sup> Plaintiffs and members of the Classes and Collective are referred to hereafter as “Class Members”  
or “Technicians” for ease of reading.

1 and (3) failing to reimburse necessarily-incurred expenses. Plaintiffs aver that these alleged  
2 violations give rise to derivative claims, including failing to provide accurate, itemized wage  
3 statements and failing to pay all wages owed after termination of employment.

4 13. Plaintiffs allege that, as joint employers, OCC and Comcast are jointly liable for the  
5 violations at issue.

6 14. Plaintiffs Desidero Soto and Steven Stricklen filed their initial Collective and Class  
7 Action Complaint in this action on January 18, 2017, which asserted FLSA and California law  
8 claims. ECF 1. On August 18, 2017, Plaintiffs filed their First Amended Collective and Class Action  
9 Complaint, which added Plaintiff Fondrose, refined the factual allegations, and added a cause of  
10 action for violation of California Labor Code Section 226.2. ECF 117. After conducting discovery  
11 into the joint employer issue, Plaintiffs filed their Second Amended Collective and Class Action  
12 Complaint on March 13, 2018, which added the Comcast Defendants, along with Plaintiff Ortega  
13 and the Washington state law claims that he asserts. ECF 232. On June 20, 2018, Plaintiffs filed  
14 their Third Amended Collective and Class Action Complaint (“TAC”), which added Plaintiff Farias  
15 and California Private Attorneys General Act (“PAGA”) claims against Comcast. *See* ECF 255.

16 15. In the operative TAC (ECF 253-1), Plaintiffs allege eighteen causes of action under  
17 the federal Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.* (“FLSA”), the California Labor Code  
18 and Business and Professions Code §§ 17200, *et seq.* (“UCL”), and Washington wage and consumer  
19 protection laws.

20 16. Defendants have at all times denied, and continue to deny, all of these allegations,  
21 including Plaintiffs’ theory that OCC and Comcast are joint employers, and deny any and all liability  
22 for Plaintiffs’ claims. Defendants further deny that Plaintiffs’ allegations are appropriate for class,  
23 collective, and/or representative treatment for any purpose other than for settlement purposes only.

24 ***FLSA Conditional Certification***

25 17. Plaintiffs moved for conditional certification of the FLSA claim and facilitation of  
26 notice under 29 U.S.C. § 216(b) on July 17, 2017. ECF 105. On August 31, 2017, the Court  
27 conditionally certified a Collective of Defendants’ Technicians. *See* ECF 127.

1 18. The Administrator disseminated the Notice to the Collective members on September  
2 29, 2017, by mail and email, with an opt-in deadline of December 28, 2017. 1,019 Technicians opted  
3 into the Collective.

4 ***Discovery***

5 19. The Parties engaged in extensive and voluminous discovery, including written  
6 discovery and depositions. OCC produced well in excess of 1.5 million documents, which Plaintiffs  
7 extensively analyzed using dedicated document-review attorneys and technology-assisted review.  
8 These documents included policies and procedures regarding how the work should be completed,  
9 timekeeping, overtime, compensation, and meal and rest breaks. OCC also produced timecards,  
10 payroll documents, personnel files, and agreements between OCC and Comcast. The production  
11 included ESI, including hundreds of thousands of emails and attachments.

12 20. Plaintiffs secured this sizeable production through extensive, diligent discovery  
13 practice. Plaintiffs and OCC litigated numerous discovery disputes, which resulted in the Parties  
14 filing joint letter briefs with the Court on October 24, 2017 (Dkt. No. 150), December 8, 2017 (Dkt.  
15 No. 192), December 29, 2017 (Dkt. No. 208), and March 14, 2018 (Dkt. No. 234).

16 21. Plaintiffs also took four depositions of OCC representatives, including Chief  
17 Operating Officer Larry Wray, Payroll and Billing Manager Denae Hefley, Vice President Reggie  
18 Wight, and Manager and Regional Director Joe Raposa. Additionally, Plaintiffs took one deposition  
19 of a Comcast representative, Director of Business Partner Development Kristen Schrader, and had  
20 noticed depositions of two other Comcast officials when the Parties reached an agreement to settle  
21 the case. OCC took the depositions of Plaintiffs Soto and Stricklen.

22 ***Motions to Compel Arbitration***

23 22. OCC and Comcast each filed motions to compel arbitration on August 23, 2018, based  
24 on the varying forms of arbitration agreements that OCC had entered with Class Members. ECF 259,  
25 261. Plaintiffs opposed OCC's motion chiefly on the basis that OCC had waived its right to arbitrate  
26 by not moving to compel arbitration until 18 months into the proceedings, by which time there had  
27 been lengthy and vigorous litigation in federal court. *See* ECF 262. Plaintiffs cited OCC's delay in

1 producing the arbitration agreements, and that OCC did not move to stay the proceedings pending  
2 the Supreme Court's review of the Ninth Circuit's decision in *Morris v. Ernst Young*, 834 F. 3d 975  
3 (9th Cir. 2016), in support of their waiver argument. Plaintiffs opposed Comcast's motion, *inter alia*,  
4 on the grounds that Comcast was not a signatory to the agreements, and by further challenging  
5 Comcast's equitable estoppel and agency exception arguments. *See* ECF 263.

6       23. The Court granted Defendants' motion as to the Named Plaintiffs and approximately  
7 990 Opt-In Plaintiffs who had executed the 2013, 2015, and 2017 versions of the arbitration  
8 agreements. *See* ECF 272. The Court denied in part the motions only and without prejudice in regard  
9 to the PAGA claims and the claims of eight Opt-In Plaintiffs who signed a 2004 arbitration  
10 agreement. ECF 272.

11       24. Thereafter, Plaintiffs' counsel served 678 individual demands for arbitration on  
12 Defendants on December 12, 2018. These demands each asserted the claims on an individual basis  
13 for 678 Opt-In Plaintiffs subject to the arbitration order. Plaintiffs' counsel were able to serve these  
14 hundreds of demands as a result of their outreach and investigation efforts with Opt-In Plaintiffs and  
15 other case participants. As OCC was required to pay the arbitration fees under the 2013, 2015, and  
16 2017 versions of the agreements, the filing of these demands would potentially subject Defendants  
17 to millions of dollars in arbitration fees.

### 18 *Mediation*

19       25. Plaintiffs and OCC first mediated this dispute on November 6, 2017 before Michael  
20 Dickstein, a respected and experienced wage and hour mediator. This initial mediation was  
21 unsuccessful, and litigation continued in the ordinary course, including the addition of the Comcast  
22 Defendants to the case in March 2018.

23       26. On October 18, 2018, the Plaintiffs, OCC and Comcast participated in a mediation  
24 session with Jeff Ross, another highly respected and experienced wage and hour mediator. The  
25 session lasted some 14 hours, but the Parties were unable to reach an agreement on that date.  
26 Litigation continued, and in particular, Plaintiffs commenced depositions of Comcast officials, while  
27 additional settlement negotiations continued through the mediator. On December 19, 2018, Mr. Ross  
issued a mediator's proposal, which contained the essential terms of the instant Settlement. All

1 Parties accepted the proposal by December 20, 2018.

2 27. Throughout the mediation process, the Parties engaged in serious and arm's-length  
3 negotiations, culminating in the mediator's proposal. After the mediation, counsel for the Parties  
4 worked to finalize the proposed long-form Settlement and corresponding notice documents, subject  
5 to the Court's approval. The initial Settlement Agreement was fully-executed on March 1, 2019.

6 ***Preliminary Approval of the Settlement***

7 28. Plaintiffs filed their Preliminary Approval Motion on March 1, 2019. *See* ECF 284.  
8 Following the hearing on March 21, 2019, the Court issued an order on April 1, 2019 that declined  
9 to preliminarily approve the initial Settlement, and asked Counsel to address the allocation of  
10 Settlement proceeds relating to state laws and Defendants' conduct going forward. *See* ECF 286.

11 29. To address the Court's concerns, Class Counsel conducted extensive factual and legal  
12 reviews of state wage and hour laws for every state where the OCC Technicians worked, and  
13 analyzed potential recoveries under each of those state's laws in order to formulate a revised  
14 allocation plan. As a result of these analyses and after extensive meet and confer sessions, the Parties  
15 reached agreement on the Addendum to the Settlement, executed on May 10, 2019.

16 30. Among other modifications to the Settlement, the Addendum addressed language in  
17 the Notice and modified the allocation formula relating to the wage laws and remedies released in  
18 the various states where Technicians worked. Specifically, California workweeks are weighted as  
19 three settlement shares, Washington and Oregon workweeks are weighted as two settlement shares,  
20 and Arizona and Utah workweeks are weighted as 1.25 settlement shares; workweeks in all other  
21 states are unweighted (*i.e.*, one settlement share per workweek).

22 31. The Addendum also includes an accompanying increase of \$10,555.21 to the Gross  
23 Settlement Amount to account for the addition of settlement shares attributable to the approximately  
24 18 Collective Members who performed work in Oregon, Utah and Arizona; the total non-  
25 reversionary settlement amount is \$7,510,555.21. The increase to the Gross Settlement Amount  
26 ensures that the increased allocation does not reduce the awards to other Technicians below the  
27

1 amounts proposed under the original Settlement Agreement. Class Counsel does not seek additional  
2 fees on the increase to the Gross Settlement Amount.

3 32. Plaintiffs filed their Renewed Motion for Preliminary Approval of Class and  
4 Collective Action Settlement (the “Renewed Motion”) on May 10, 2019, which sought preliminary  
5 approval of the Settlement, as modified by the Addendum. *See* ECF 289. After holding a telephonic  
6 hearing on June 13, 2019, the Court granted the Renewed Motion on June 17, 2019. *See* ECF 296.  
7 The Court found “on a preliminary basis that the class and collective action settlement memorialized  
8 in the Amended Settlement is fair, reasonable, and adequate.” The Court further approved the Notice  
9 of Settlement, in the form attached to the Preliminary Approval Order, and authorized the proposed  
10 notice plan. With respect to the Collective, the Court “granted Approval of the terms and conditions  
11 contained in the Amended Settlement as to the Collective” and confirmed its August 31, 2017 Order  
12 conditionally certifying the Collective (ECF 127).

13 *Notice of Settlement and Response of Class Members*

14 33. CPT Group, Inc. (“CPT Group”) is responsible for distributing the Notice of  
15 Settlement, calculating individual settlement payments, calculating all applicable payroll taxes,  
16 withholdings and deductions, preparing and issuing all disbursements to be paid to Class Members,  
17 the Class Representatives, Class Counsel, the LWDA, any applicable local, state, and federal tax  
18 authorities, and handling inquiries and/or disputes from Class Members. CPT Group is also  
19 responsible for the timely preparation and filing of all tax returns, and making the timely and  
20 accurate payment of all necessary taxes and withholdings.

21 34. CPT Group established a case website<sup>2</sup>, which provides (1) the case name, case  
22 number, and Court; (2) CPT Group’s toll-free telephone number for Class Member inquiries; (3)  
23 Class Counsel’s name and contact information; (4) PDF versions of the Settlement, a generic form  
24 of the Notice of Settlement, the documents filed by Plaintiffs to obtain approval of the Settlement,  
25

26 \_\_\_\_\_  
27 <sup>2</sup> The case website is available at <https://www.cptgroup.com/occommunicationsettlement/>. A true and correct printout of the website is attached hereto as **Exhibit 1**.

1 and the Preliminary Approval Order. CPT Group established a toll-free call center to field questions,  
2 address updates, and inquiries from Class Members.

3 35. Following the Court's order, CPT Group received the class data from OCC on July 2,  
4 2019. The data contained the names, last known mailing addresses, last known personal email  
5 addresses, workweeks, and other personal information for 4,502 Technicians. From this data, CPT  
6 Group identified 3,745 California Class Members and 419 Washington Class Members.

7 Additionally, six Technicians worked in Arizona, three Technicians worked in Oregon, and eight  
8 Technicians worked in Utah. 321 Technicians worked only in other states (*i.e.*, Florida) and assert  
9 only FLSA claims.

10 36. CPT Group sent the Notice of Settlement to the 4,502 Technicians on July 25, 2019  
11 via U.S. Mail, and via email to those Technicians for whom a personal email address was available.  
12 As OCC provided email addresses for most Technicians, the majority of the Class Member received  
13 email notice in addition to hard copy notice.

14 37. The Notice was supposed to be disseminated by July 17, 2019, pursuant to the terms  
15 of the Settlement and the Preliminary Approval Order. However, this timeline could not be met  
16 despite the Parties' best efforts due to revisions to the case website, changes to the formatting of the  
17 email notice used by CPT Group to send the email Notice of Settlement, and obtaining required  
18 approvals from all counsel through several rounds of changes. The Parties were required to finalize  
19 and approve the case website and the logistics for the email blast prior to the dissemination of the  
20 notice.

21 38. In order to mail notices to the Class Members, CPT Group first calculated the  
22 individual Settlement Awards for every Technician, using the workweek data provided by OCC, in  
23 order to include such information on the notices. The Notice informed the Class Members of: the  
24 Settlement terms; their expected share; the September 23, 2019 deadline to submit objections,  
25 requests for exclusions, or disputes; the October 17, 2019 final approval hearing; and that Plaintiffs  
26 would seek attorneys' fees, costs, and service awards and the corresponding amounts. CPT Group  
27

1 included the URL for the case website, the toll-free call center number in the Notice of Settlement,  
2 and the names and contact information for Class Counsel.

3 39. As of September 9, 2019, 443 hard-copy notices have been returned to CPT Group as  
4 undeliverable. CPT Group performed skip-tracing and other techniques to identify current addresses,  
5 and 98 hard-copy notices (2.18%) remain undelivered after re mailing. Additionally, the  
6 dissemination of notice via email in addition to U.S. Mail increases the likelihood that Class  
7 Members successfully receive the notice. The deadline for Class Members to opt-out, object, and  
8 dispute their reported workweeks expires September 23, 2019.

9 40. To date, roughly three quarters of the way into the notice period, not a single objection  
10 has been filed and not a single Class Member has opted out of the Settlement. Moreover, only five  
11 Class Members have disputed the workweek figures reported in their notices. Following final  
12 approval of the Settlement, CPT Group will issue checks to the Class Members.

13 41. Plaintiffs will file a declaration from CPT Group, after the opt-out, objection, and  
14 dispute deadline passes, that will attest to its dissemination of the notice via U.S. Mail and email,  
15 including the number of undelivered, skip-traced, and re mailed notices; the final number of  
16 objections, opt-out requests, and disputes; and the finalized settlement administration fees.

#### 17 **TERMS OF THE SETTLEMENT**

18 42. OCC has agreed to pay a non-reversionary Gross Settlement Amount of \$7,510,555.21  
19 to settle all aspects of the case. The “Net Settlement Amount,” which is the amount available to pay  
20 settlement awards to the Class Members, is defined as the Gross Settlement Amount less: the  
21 payment made to the California Labor & Workforce Development Agency (“LWDA”) pursuant to  
22 PAGA (\$75,000); any enhancement payments awarded to the Class Representatives (up to  
23 \$15,000.00 for Plaintiff Soto and up to \$10,000.00 for Plaintiffs Stricklen, Fondrose, Ortega, and  
24 Farias); the Settlement Administrator’s fees and costs (\$40,000.00); and any attorneys’ fees and  
25 costs awarded to Class Counsel (fees of up to one third of the initial \$7,500,000 Gross Settlement  
26 Amount, or \$2,500,000, plus costs in the amount of \$207,361.46).

27



1           43.     The Parties agree to allocate \$100,000.00 of the Gross Settlement Amount to the  
2 settlement of the PAGA claims, which the Parties believe in good faith is a fair and reasonable  
3 apportionment. The Settlement Administrator will pay 75%, or \$75,000.00, of this amount to the  
4 LWDA, and 25%, or \$25,000.00, will remain as part of the Net Settlement Amount.

5           44.     The Settlement Administrator will deposit a ten (10) percent holdback of the Fee  
6 Award into a separate interest-bearing account, which will be released following completion of the  
7 distribution process and filing of the Post-Distribution Accounting with the Court.

8           45.     An individual is a member of the Settlement Class under the proposed Settlement if he  
9 or she belongs to any of the following:

- 10           • The “California Class” means all Technicians who are or were employed by OCC in  
11 the State of California at any time from January 18, 2013 through December 21, 2018,  
12 and who do not validly exclude themselves from the Settlement. The California Class  
13 is to be certified for settlement purposes only under Federal Rule of Civil Procedure  
14 23.
- 15           • The “Washington Class” means all Technicians who are or were employed by OCC in  
16 the State of Washington from March 13, 2015 through December 21, 2018, and who  
17 do not validly exclude themselves from the Settlement. The Washington Class is to be  
18 certified for settlement purposes only under Federal Rule of Civil Procedure 23.
- 19           • The “Collective” is a certified collective action for settlement purposes only pursuant  
20 to 29 U.S.C. § 216(b), which includes all Opt-In Plaintiffs who are or were employed  
21 by OCC at any time from and including January 18, 2014 through December 21, 2018.  
22 There are 1,019 Opt-In Plaintiffs.

23           46.     The Net Settlement Amount to be paid to Class Members is approximately  
24 \$4,633,000.

25           47.     Class Members will each receive a settlement award check without the need to submit  
26 a claim form.

27

1           48. Each Class Member's settlement share will be determined based on the total number  
2 of weeks that the respective Class Member worked for Defendants during the applicable limitations  
3 period. Specifically, each Class Member will be credited for the number of weeks that he or she  
4 worked for OCC at any time from January 18, 2013 through December 21, 2018 for California Class  
5 Members; from March 13, 2015 through December 21, 2018 for Washington Class members, and  
6 three years prior to the Opt-In Date through December 21, 2018 for Opt-In Plaintiffs. Each  
7 workweek will be equal to one settlement share, but to reflect the increased value of state law  
8 claims, California workweeks are weighted as three settlement shares, Washington and Oregon  
9 workweeks are weighted as two settlement shares, and Arizona and Utah workweeks are weighted  
10 as 1.25 settlement shares.

11           49. The total number of settlement shares for all Settlement Class Members will be added  
12 together and the resulting sum will be divided into the Net Settlement Amount to reach a per share  
13 dollar figure. That figure will then be multiplied by each Class Member's number of settlement  
14 shares to determine the Class Member's Settlement Award.

15           50. The Notice of Settlement provides the estimated Settlement Award and number of  
16 workweeks for each Class Member, assuming full participation in the Settlement. Settlement Award  
17 and eligibility determinations are based on employee workweek information that OCC provided to  
18 the Settlement Administrator; however, Class Members are able to dispute their workweeks by  
19 submitting convincing evidence proving that they worked more workweeks than shown by OCC  
20 records.

21           51. Settlement Awards will be paid to Class Members by the Settlement Administrator  
22 within 30 days after the occurrence of the "Effective Date." Settlement Award checks will remain  
23 valid for 180 days from the date of their issuance. CPT Group will send a reminder letter via U.S.  
24 Mail and email to those Class Members with uncashed checks at 90 days remaining, and will place a  
25 call at 60 days remaining. The disposition of any uncashed check funds remaining after the check-  
26 cashing deadline will depend on the total amount.

27

1           52.     If the total residual amount is less than \$75,000, then the amount will revert to *cy pres*.  
2 The Parties have proposed the University of California Berkeley’s Institute for Research on Labor  
3 and Employment, which promotes better understanding of the conditions, policies, and institutions  
4 that affect the well-being of workers and their families and communities, as the *cy pres* recipient,  
5 subject to the Court’s approval. If the total residual amount is \$75,000 or greater, a second  
6 distribution will occur to those Class Members who cashed their Settlement Award checks. The  
7 second distribution will occur on a *pro rata* basis according to workweeks. In the event of such a  
8 redistribution, the additional settlement administration costs will be deducted from the total amount  
9 of uncashed checks prior to the redistribution.

10           53.     The Parties and their counsel do not have any financial, business, or personal  
11 relationships with the Institute for Research on Labor and Employment, to the best of my  
12 knowledge.

13           54.     Within 21 days after the final distribution to the *cy pres* recipient or to Class  
14 Members who cashed their checks, Plaintiffs will file a Post-Distribution Accounting in  
15 accordance with the Northern District’s Procedural Guidance.

16           55.     The release contemplated by the Settlement is dependent upon the Technicians’  
17 membership in the FLSA Collective and/or the California and Washington Classes, and relatedly,  
18 whether they deposit or cash their Settlement Award checks. The finalized terms of the release are  
19 set forth in the Addendum to Settlement Agreement (¶ B.17) and in the Notice of Settlement  
20 (Section 5).

21           56.     The Collective Members release any and all claims against the Releasees (defined as  
22 OCC, Comcast, and their affiliated entities and persons, per the Settlement Agreement, ¶ 2.bb)  
23 through December 21, 2018 that were or could have been asserted under the FLSA and under  
24 Arizona, California, Florida, Oregon, Utah, and Washington law based on the identical factual  
25 predicate alleged in the operative TAC. These waived claims include claims for the alleged failure to  
26 pay minimum, straight time, overtime, and double time wages or any other form of compensation,  
27 failure to authorize and permit and/or make available meal and rest periods, failure to pay wages

1 upon termination, engaging in unfair and unlawful business practices, and statutory and civil  
2 penalties. The released claims include other penalties, related tort, contract, liquidated, and punitive  
3 damages claims, claims for interest, attorneys' fees, litigation and other costs, expenses, restitution,  
4 and equitable and declaratory relief.

5 57. For California and Washington Class Members who did not file consents to join the  
6 action as FLSA Opt-In Plaintiffs, only those who cash or deposit their Settlement Award checks will  
7 become Collective Members and release their FLSA claims.

8 58. California Class Members release any and all claims against Releasees through  
9 December 21, 2018 that were or could have been asserted under California law based on the  
10 identical factual predicate alleged in the TAC. These waived claims include claims for the alleged  
11 failure to provide meal and rest breaks, failure to compensate for all hours worked, failure to pay  
12 minimum, straight time, overtime, and double time wages or any other form of compensation, failure  
13 to pay all wages due upon termination, failure to provide timely and compliant itemized wage  
14 statements, failure to properly compensate piece-rate workers for rest and recovery periods and other  
15 nonproductive time, failure to maintain accurate records, failure to reimburse for necessary business  
16 expenses, engaging in unfair and unlawful business practices, statutory and civil penalties, other  
17 penalties, related tort, contract, liquidated, and punitive damages claims, claims for interest,  
18 attorneys' fees, litigation and other costs, expenses, restitution, and equitable and declaratory relief.  
19 The release period for PAGA claims runs from November 14, 2015 through December 21, 2018.

20 59. Washington Class Members release any and all claims against Releasees through  
21 December 21, 2018 that were or could have been asserted under Washington law based on the  
22 identical factual predicate alleged in the TAC. These waived claims include claims for the alleged  
23 failure to pay minimum, straight time, overtime, and double time wages or any other form of  
24 compensation, failure to authorize and permit and/or make available meal and rest periods, failure to  
25 pay wages upon termination, engaging in unfair and unlawful business practices, statutory and civil  
26 penalties, other penalties, related tort, contract, liquidated, and punitive damages claims, claims for  
27

1 interest, attorneys' fees, litigation and other costs, expenses, restitution, and equitable and  
2 declaratory relief.

3 60. The Settlement Award checks will also include release language on the back of each  
4 check that provides brief information about the case and the nature of the release. The release  
5 language is tailored to whether the Technician is a FLSA Opt-In Plaintiff or solely a Member of the  
6 California or Washington Classes. In particular, it explains that Rule 23 Class Members will release  
7 their FLSA claims by signing or cashing their check, to the extent that they are not FLSA Opt-In  
8 Plaintiffs.

9 61. Lastly, the Named Plaintiffs also agree to a general release of any and all claims  
10 against the Releasees.

11 **THE COURT SHOULD FINALLY APPROVE THE SETTLEMENT**

12 62. A review of the Settlement reveals the fairness, reasonableness, and adequacy of its  
13 terms. The Gross Settlement Amount of \$7,510,555, resulting in a Net Settlement Amount of  
14 approximately \$4,633,000, will result in fair and just relief to the Class Members.

15 63. The Gross Settlement Amount represents more than 86% of the approximately \$8.7  
16 million that Class Counsel have calculated in unpaid wages that would have been owed to all Class  
17 Members if each had been able to prove that he or she worked 2.5 hours off the clock in every  
18 workweek during the relevant time period. Moreover, the \$7,510,555 settlement amount represents  
19 approximately 17.2% of Defendants' total potential exposure of \$43.6 million.

20 64. The average individual Settlement Awards for Class Members are estimated as  
21 follows. With respect to California Class Members, the average award is approximately \$1,112.86,  
22 and the maximum award is approximately \$8,409.53. With respect to Washington Class Members,  
23 the average award is approximately \$797.88, and the maximum award is approximately \$2,449.38.  
24 With respect to Opt-In Plaintiffs who assert FLSA-only claims, the average award is approximately  
25 \$391.47, and the maximum award is approximately \$2,331.44.

26 65. These results are well within the reasonable standard when considering the difficulty  
27 and risks presented by pursuing further litigation. The final settlement amount takes into account the

1 substantial risks inherent in any class action wage and hour case as well as the specific risks  
2 presented here.

3         66. In an effort to ensure fairness, the Parties have agreed to allocate the settlement  
4 proceeds amongst Class Members in a manner that recognizes that amount of time that the particular  
5 Class Member worked for Defendants in the applicable limitations period. The allocation method,  
6 which is based on the number of workweeks, will ensure that longer-tenured workers receive a  
7 greater recovery. Moreover, the allocation tracks the differences in substantive law and penalty  
8 claims, including the limitations period for each claims, by weighting the workweek shares more  
9 heavily for work performed in states that have wage and hour laws with protections above and  
10 beyond the FLSA. The allocation was made based on Class Counsel’s assessment to ensure that  
11 employees are compensated accordingly and in the most equitable manner

12         67. To the extent that any Class Member is *both* a FLSA Opt-In Plaintiff and a member of  
13 the California or Washington Classes, these workers will only receive a recovery based on their  
14 workweeks as a California or Washington Class Member. Such workers will not receive a “double  
15 recovery.”

16         68. The Parties engaged in extensive formal and informal discovery that has enabled both  
17 sides to assess the claims and potential defenses in this action. The Parties were able to accurately  
18 assess the legal and factual issues that would arise if the case proceeded to trial. Class Counsel also  
19 relied on their substantial litigation experience in similar wage and hour class and collective actions.

20         69. Class Counsel’s liability and damages evaluation was premised on a careful and  
21 extensive analysis of the effects of Defendants’ compensation policies and practices on Class  
22 Members’ pay. Ultimately, facilitated by mediator Jeff Ross, the Parties used this information and  
23 discovery to fairly resolve the litigation.

24         70. The monetary value of the Settlement represents a fair compromise given the risks and  
25 uncertainties posed by continued litigation.

26         71. If this case were to go to trial as a class and collective action (which Defendants would  
27 vigorously oppose if this Settlement Agreement were not approved), Class Counsel estimates that

1 fees and costs would exceed \$5,000,000.00. Litigating the class and collective action claims would  
2 require substantial additional preparation and discovery. It would require depositions of experts, the  
3 presentation of percipient and expert witnesses at trial, as well as the consideration, preparation, and  
4 presentation of voluminous documentary evidence and the preparation and analysis of expert  
5 reports.

6 72. Recovery of the damages and penalties previously referenced would also require  
7 complete success and certification of all of Plaintiffs' claims, a questionable feat in light of  
8 developments in wage and hour and class and collective action law as well as the legal and factual  
9 grounds that Defendants have asserted to defend this action.

10 73. Plaintiffs face risk that the Court would decline to certify the Classes for at least some  
11 claims. Certification of off-the-clock work claims is complicated by the lack of documentary  
12 evidence and reliance on employee testimony, and Plaintiffs would likely face motions for  
13 decertification as the case progressed.

14 74. Plaintiffs would encounter difficulties in moving for certification and proving their  
15 claims on the merits in part due to the fact that key Class Member compensation documents were  
16 kept in paper format. For example, Class Member timecards and the work orders that controlled the  
17 services performed were largely written by hand and heavily edited. Plaintiffs would face logistical  
18 difficulties in reviewing and analyzing the massive amounts of hard copy records.

19 75. Plaintiffs also recognize the impact of the Court's order granting Defendants' motion  
20 to compel arbitration. Although certain Class Members and claims, including the PAGA claims,  
21 would remain in the federal forum, the underlying FLSA and state law claims for thousands of Class  
22 Members are compelled to individual arbitration. Though Plaintiffs' Counsel are prepared to litigate  
23 hundreds of individual arbitrations, and the PAGA claims continue on a representative basis, the  
24 arbitration order affects the prospects for recovery for the Classes and Collective.

25 76. Moreover, Plaintiffs considered the risk that the Court would, in the end, decline to  
26 find Comcast liable as a joint employer. Though OCC would still be liable in the event of a  
27 favorable outcome for Plaintiffs, a finding that Comcast is a joint employer would ensure that the

1 Class Members would be able to obtain full recovery, particularly in the event of a large award.  
2 Though Plaintiffs successfully amended their complaint to aver claims of liability against Comcast  
3 on a joint employer basis, the issue would be heavily contested at summary judgment and/or trial. If  
4 Comcast is found not to be a joint employer, the value of the case would be lessened, and Plaintiffs  
5 had to consider this risk.

6 77. Furthermore, during the mediation process OCC produced confidential financial  
7 information to Plaintiffs' counsel in support of its contention of an inability to pay a significant  
8 portion of damages. If the Court declined to find Comcast liable as a joint employer, and OCC did  
9 not have an ability pay damages, Plaintiffs risked receiving no recovery.

10 78. This risk was substantial, particularly given that district courts around the country  
11 have determined that cable providers such as Comcast and Time Warner were not joint employers of  
12 a third party vendor's cable installation technicians.

13 79. In contrast to litigating this suit, resolving this case by means of the Settlement will  
14 yield a prompt, certain, and substantial recovery for the Class Members. Such a result will benefit  
15 the Parties and the court system. It will bring finality to over two years of litigation, and will  
16 foreclose the possibility of expanding litigation across arbitration and the federal forum.

17 80. The settlement was a product of non-collusive, arm's-length negotiations. The Parties  
18 participated in two mediations. The second mediation before Jeff Ross, who is a skilled mediator  
19 with many years of experience mediating employment matters, was a marathon session that lasted  
20 until 11:00 p.m. Mr. Ross assisted the Parties in their extensive, continued arm's-length negotiations  
21 subsequent to the mediation.

22 81. The Parties then spent weeks negotiating the long form settlement agreement, with  
23 several rounds of meet and confer and correspondence related to the terms and details of the  
24 Settlement.

25 82. Plaintiffs are represented by experienced and respected litigators of representative  
26 wage and hour actions, and these attorneys feel strongly that the proposed Settlement achieves an  
27 excellent result for the Class Members.



1           83.     To date, no Class Members have objected to the Settlement, and no Class Members  
2 have opted out of the Settlement. In addition, all five Class Representatives support the terms of the  
3 Settlement.

4           **THE COURT SHOULD FINALLY CERTIFY THE CALIFORNIA AND WASHINGTON**  
5                                 **CLASSES**

6           84.     The approximately 3,745 members of the California Class and 419 members of the  
7 Washington Class render the each class so large as to make joinder impracticable.

8           85.     Common questions of law and fact predominate here, satisfying paragraphs (a)(2) and  
9 (b)(3) of Rule 23, as alleged in the operative complaint. Defendants have uniform policies applicable  
10 to all Technicians. Specifically, Plaintiffs allege that Technicians all perform essentially the same  
11 job duties—installing Comcast services pursuant to Defendants’ standards and requirements.  
12 Plaintiffs allege that the wage and hour violations are in large measure borne of OCC’s relationship  
13 with Comcast and the standardized policies, practices, and procedures that Comcast imposes,  
14 creating pervasive issues of fact and law that are amenable to resolution on a class-wide basis. In  
15 particular, the Technicians are subject to the same: hiring and training process; timekeeping, payroll,  
16 and compensation policies; meal and rest period policies and practices; and reimbursement policies.  
17 Plaintiffs’ other derivative claims will rise or fall with the primary claims. Because these questions  
18 can be resolved at the same juncture, Plaintiffs contend the commonality requirement is satisfied for  
19 the Classes.

20           86.     Plaintiffs’ claims are typical of those of all other Class Members. They were subject to  
21 the alleged illegal policies and practices that form the basis of the claims asserted in this case.  
22 Interviews with Class Members and review of timekeeping and payroll data confirm that the  
23 employees throughout California and Washington were apparently subjected to the same alleged  
24 illegal policies and practices to which Plaintiffs were subjected. Thus, the typicality requirement is  
25 also satisfied.

26           87.     Common questions of law and fact predominate here over any individualized  
27 questions concerning the California and Washington Classes, satisfying paragraphs (a)(2) and (b)(3)

1 of Rule 23, as alleged in the operative complaint.

2 88. Defendants have uniform policies applicable to all Technicians. Specifically, Plaintiffs  
3 allege that Technicians all perform essentially the same job duties—installing Comcast services  
4 pursuant to Defendants’ standards and requirements. Plaintiffs allege that the wage and hour  
5 violations are in large measure borne of OCC’s relationship with Comcast and the standardized  
6 policies, practices, and procedures that Comcast imposes, creating pervasive issues of fact and law  
7 that are amenable to resolution on a class-wide basis. In particular, the Technicians are subject to the  
8 same: hiring and training process; timekeeping, payroll, and compensation policies; meal and rest  
9 period policies and practices; and reimbursement policies. Plaintiffs’ other derivative claims will rise  
10 or fall with the primary claims. Because these questions can be resolved at the same juncture,  
11 Plaintiffs contend the commonality requirement is satisfied for the Classes.

12 89. With regards to the Collective, this Court has already made an initial determination  
13 that the Technicians are similarly situated. Plaintiffs’ conditional certification motion called on the  
14 Court to “decid[e] whether a collective action should be certified for the purpose of sending notice  
15 of the action to potential class members.” *Guilbaud v. Sprint/United Management Co., Inc.*, 2014  
16 WL 10676582, at \*1 (N.D. Cal. 2014). The Court concluded that Plaintiffs have satisfied their  
17 burden of making substantial allegations and a modest factual showing Technicians were subject to a  
18 common practice or policy that violated the FLSA. Dkt. No. 127, p. 2. As an example, the Court  
19 pointed to Plaintiffs’ allegation that Technicians are not compensated for time spent while at  
20 company warehouses at the beginning of their shifts, supported by the declarations of ten  
21 Technicians. These practices and policies raise common issues of law and fact. Because Defendants  
22 maintain various common policies and practices as to what work they compensate and what work  
23 they do not compensate, and apply these policies and practices to the Technicians, Plaintiffs contend  
24 that there are no individual defenses available to Defendants.

25 90. Plaintiffs’ claims are typical of those of all other Class Members. They were subject to  
26 the alleged illegal policies and practices that form the basis of the claims asserted in this case.  
27

1           91. Interviews with Class Members and review of timekeeping and payroll data confirm  
2 that the employees throughout California and Washington were apparently subjected to the same  
3 alleged illegal policies and practices to which Plaintiffs were subjected. Thus, the typicality  
4 requirement is also satisfied.

5           92. Plaintiffs' claims are in line with the claims of the Classes, and Plaintiffs' claims are  
6 not antagonistic to the claims of Class Members. Plaintiffs have prosecuted this case with the  
7 interests of the Class Members in mind.

8           93. Moreover, Class Counsel has extensive experience in class action and employment  
9 litigation, including wage and hour class actions, and do not have any conflict with the classes, as  
10 the Court recognized when conditionally certifying the FLSA Collective.

11           94. Further, Plaintiffs contend the class action mechanism is a superior method of  
12 adjudication compared to a multitude of individual suits, because it involves thousands of workers  
13 with very similar, but relatively small, claims for monetary injury. If the Class Members proceeded  
14 on their claims as individuals, their many individual suits would require duplicative discovery and  
15 duplicative litigation, and each Class Member would have to personally participate in the litigation  
16 effort to an extent that would never be required in a class proceeding. Thus, the class action  
17 mechanism would efficiently resolve numerous substantially identical claims at the same time while  
18 avoiding a waste of judicial resources and eliminating the possibility of conflicting decisions from  
19 repetitious litigation and arbitrations.

20           95. The issues raised by the present case are much better handled collectively by way of a  
21 settlement. The Settlement presented by the Parties provides finality, ensures that workers receive  
22 redress for their relatively modest claims, and avoids clogging the legal system with cases that could  
23 easily be kept in this proceeding.

24           //

25           //

26           //

27           //

1 I declare under penalty of perjury under the laws of the United States that the foregoing is true  
2 and correct. Executed on this 12th day of September, 2019, in Emeryville, California.

3 /s/ Carolyn Hunt Cottrell  
4 Carolyn Hunt Cottrell  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27