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

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

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
PRELIMINARY APPROVAL OF CLASS
AND COLLECTIVE ACTION
SETTLEMENT**

Date: March 21, 2019

Time: 10:00 a.m.

Courtroom: 4 (17th Floor)

Judge: Honorable Vince Chhabria

Complaint Filed: January 18, 2017

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

2 1. I am an attorney at law duly licensed and in good standing to practice law in the courts
3 of California (No. 166977) and am admitted to practice law before this Court, the United States
4 District Court Northern District of California.

5 2. I am a partner at the law firm of Schneider Wallace Cottrell Konecky Wotkyns LLP
6 (“SWCKW”). SWCKW specializes in class, collective, and PAGA litigation in state and federal
7 court.

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

14 4. A true and correct copy of the fully-executed Class Action Settlement Agreement
15 (“Settlement”) in the above-captioned case is attached hereto as **Exhibit 1**. The Notice of Settlement
16 (“Class Notice”) is attached to the Settlement as **Exhibit A**.

17 **QUALIFICATIONS, EXPERIENCE, AND EXPERTISE**

18 5. SWCKW is regarded as one of the leading private plaintiff’s firms in wage and hour
19 class actions and employment class actions. In November 2012, the Recorder listed the firm as one
20 of the “top 10 go-to plaintiffs’ employment firms in Northern California.” The partners and
21 attorneys have litigated major wage and hour class actions, have won several prestigious awards,
22 and sit on important boards and committees in the legal community. SWCKW was founded by Todd
23 Schneider in 1993, and I have been a member of the firm since 1995.

24 6. SWCKW has acted or is acting as class counsel in numerous cases. A partial list of
25 cases which have been certified and/or settled as class actions includes: *Van Liew v. North Star*
26 *Emergency Services, Inc., et al.* (Case No. RG17876878) (Alameda County Superior Court) (final
27 approval of a class action settlement for failure to pay for all hours worked, failure to pay minimum

1 and overtime wages, failure to provide meal and rest breaks, failure to reimburse for necessary
2 business expenditures, waiting time penalties, and failure to provide itemized wage statements,
3 under federal law); *Asalati v. Intel Corp.* (Case No. 16cv302615) (Santa Clara Superior Court) (final
4 approval of a class and collective action settlement for failure to pay for all hours worked, failure to
5 pay overtime, failure to provide meal and rest breaks, failure to reimburse for necessary business
6 expenditures, failure to adhere to California record keeping requirements, waiting time penalties,
7 and failure to provide itemized wage statements, under federal and California law); *Harmon, et al. v.*
8 *Diamond Wireless, LLC*, (Case No. 34-2012-00118898) (Sacramento Superior Court) (final
9 approval of a class action settlement for failure to pay wages free and clear, failure to pay overtime
10 and minimum wages, failure to provide meal and rest breaks, failure to pay full wages when due,
11 failure to adhere to California record keeping requirements, and failure to provide adequate seating,
12 under California law); *Aguilar v. Hall AG Enterprises, Inc., et al.*, (Case No. BCV-16-10994-DRL)
13 (Kern County Superior Court) (final approval of a class action settlement for failure to provide meal
14 and rest periods, failure to compensate for all hours worked, failure to pay minimum and overtime
15 wages, waiting time penalties, failure to provide itemized wage statements, and failure to pay
16 undiscounted wages, under California law); *Viceral and Krueger v. Mistras Group, Inc.*, (Case No.
17 3:15-cv-02198-EMC) (Northern District of California) (final approval of a class and collective
18 action settlement for failure to compensate for all hours worked, including overtime, under federal
19 and California law); *Jeter-Polk, et al. v. Casual Male Store, LLC, et al.*, (Case No. 5:14-CV-00891)
20 (Central District of California) (final approval of a class action settlement for failure to provide meal
21 and rest periods, failure to compensate for all hours worked, failure to pay overtime wages, unpaid
22 wages and waiting time penalties, and failure to provide itemized wage statements); *Meza, et al. v.*
23 *S.S. Skikos, Inc., et al.*, (Case No. 15-cv-01889-TEH) (Northern District of California) (final
24 approval of class and collective action settlement for failure to compensate for all hours worked,
25 including overtime, under federal and California law, failure to provide meal and rest breaks, failure
26 to reimburse for necessary business uniforms, failure to pay full wages upon termination to, and
27 failure to provide accurate itemized wage statements); *Holmes, et al v. Xpress Global Systems, Inc.*,

1 (Case No. 34-2015-00180822) (Sacramento Superior Court) (final approval of a class action
2 settlement for failure to provide meal and rest breaks and failure to provide accurate itemized wage
3 statements); *Guilbaud, et al. v. Sprint Nextel Corp. et al.*, (Case No. 3:13-cv-04357-VC) (Northern
4 District of California) (final approval of a class and collective action settlement for failure to
5 compensate for all hours worked, including overtime, failure to provide meal and rest breaks, failure
6 to reimburse for necessary business uniforms, failure to pay full wages upon termination to, and
7 failure to provide accurate itemized wage statements); *Molina, et al. v. Railworks Track Systems,
8 Inc.*, (Case No. BCV-15-10135) (Kern County Superior Court) (final approval of a class action
9 settlement for failure to provide meal and rest breaks, unpaid wages, unpaid overtime, off-the-
10 clocker work, failure to pay full wages upon termination to, and failure to provide accurate itemized
11 wage statements); *Allen, et al. v. County of Monterey, et al.*, (Case No. 5:13-cv-01659) (Northern
12 District of California) (settlement between FLSA Plaintiffs and Defendant to provide relief to
13 affected employees); *Barrera v. Radix Cable Holdings, Inc., et al.*, (Case No. CIV 1100505) (Marin
14 County Superior Court) (final approval of class action settlement for failure to provide meal and rest
15 breaks to, off-the-clock work by, failure to provide overtime compensation to, failure to reimburse
16 business expenditures to, failure to pay full wages upon termination to, and failure to provide
17 accurate itemized wage statements to retention specialists working for cable companies); *Glass
18 Dimensions, Inc., et al. v. State Street Corp. et al.*, (Case No. 1:10-cv-10588) (District of
19 Massachusetts) (final approval of class action settlement for claims of breach of fiduciary duty and
20 self-dealing in violation of ERISA); *Friend, et al. v. The Hertz Corporation*, (Case No. 3:07-
21 052222) (Northern District of California) (settlement of claims that rental car company misclassified
22 non-exempt employees, failed to pay wages, failed to pay premium pay, and failed to provide meal
23 periods and rest periods); *Hollands v. Lincare, Inc., et al.*, (Case No. CGC-07-465052) (San
24 Francisco County Superior Court) (final approval of class action settlement for overtime pay, off-
25 the-clock work, unreimbursed expenses, and other wage and hour claims on behalf of a class of
26 center managers); *Jantz, et al. v. Colvin*, (Case No. 531-2006-00276X) (In the Equal Employment
27 Opportunity Commission Baltimore Field Office) (final approval of class action settlement for the

1 denial of promotions based on targeted disabilities); *Shemaria v. County of Marin*, (Case No. CV
2 082718) (Marin County Superior Court) (final approval of class action settlement on behalf of a
3 class of individuals with mobility disabilities denied access to various facilities owned, operated,
4 and/or maintained by the County of Marin); *Perez, et al. v. First American Title Ins. Co.*, (Case No.
5 2:08-cv-01184) (District of Arizona) (final approval of class action settlement in action challenging
6 unfair discrimination by title insurance company); *Perez v. Rue21, Inc., et al.*, (Case No.
7 CISCV167815) (Santa Cruz County Superior Court) (final approval of class action settlement for
8 failure to provide meal and rest breaks to, and for off-the-clock work performed by, a class of retail
9 employees); *Sosa, et al. v. Dreyer's Grand Ice Cream, Inc., et al.*, (Case No. RG 08424366)
10 (Alameda County Superior Court) (final approval of class action settlement for failure to provide
11 meal and rest breaks to, and for off-the-clock work performed by, a class of ice cream
12 manufacturing employees); *Villalpando v. Exel Direct Inc., et al.* (Case Nos. 3:12-cv-04137 and
13 4:13-cv-03091) (Northern District of California) (certified class action on behalf of delivery drivers
14 allegedly misclassified as independent contractors); *Choul, et al. v. Nebraska Beef, Ltd.* (Case Nos.
15 8:08-cv-90, 8:08-cv-99) (District of Nebraska) (final approval of class action settlement for off-the-
16 clock work by, and failure to provide overtime compensation to, production-line employees of meat-
17 packing plant); *Morales v. Farmland Foods, Inc.* (Case No. 8:08-cv-504) (District of Nebraska)
18 (FLSA certification for off-the-clock work by, and failure to provide overtime compensation to,
19 production-line employees of meat-packing plant); *Barlow, et al. v. PRN Ambulance Inc.* (Case No.
20 BC396728) (Los Angeles County Superior Court) (final approval of class action settlement for
21 failure to provide meal and rest breaks to and for off-the-clock work by certified emergency medical
22 technicians); *Espinosa, et al. v. National Beef, et al.* (Case No. ECU0467) (Imperial Superior Court)
23 (final approval of class action settlement for off-the-clock work by, and failure to provide overtime
24 compensation to, production-line employees of meat-packing plant); *Wolfe, et al. v. California*
25 *Check Cashing Stores, LLC, et al.* (Case Nos. CGC-08-479518 and CGC-09-489635) (San
26 Francisco Superior Court) (final approval of class action settlement for failure to provide meal and
27 rest breaks to, and for off-the-clock work by, employees at check cashing stores); *Carlson v.*

1 *eHarmony* (Case No. BC371958) (Los Angeles County Superior Court) (final approval of class
2 action settlement on behalf of gays and lesbians who were denied use of eHarmony); *Salcido v.*
3 *Cargill* (Case Nos. 1:07-CV-01347-LJO-GSA, 1:08-CV-00605-LJO-GSA) (Eastern District of
4 California) (final approval of class action settlement for off-the-clock work by production-line
5 employees of meat-packing plant); *Elkin v. Six Flags* (Case No. BC342633) (Los Angeles County
6 Superior Court) (final approval of class action settlement for missed meal and rest periods on behalf
7 of hourly workers at Six Flags amusement parks); *Jimenez v. Perot Systems Corp.* (Case No.
8 RG07335321) (Alameda County Superior Court) (final approval of class action settlement for
9 misclassification of hospital clerical workers); *Chau v. CVS RX Services, Inc.* (Case No. BC349224)
10 (Los Angeles County Superior Court) (final approval of class action settlement for failure to pay
11 overtime to CVS pharmacists); *Reed v. CALSTAR* (Case No. RG04155105) (Alameda County
12 Superior Court) (certified class action on behalf of flight nurses); *National Federation of the Blind v.*
13 *Target* (Case No. C 06-01802 MHP) (N.D. Cal.) (certified class action on behalf of all legally blind
14 individuals in the United States who have tried to access Target.com); *Bates v. United Parcel*
15 *Service, Inc.* (2004 WL 2370633) (N.D. Cal.) (certified national class action on behalf of deaf
16 employees of UPS); *Satchell v. FedEx Express, Inc.* (Case No. 03-02659 SI) (N.D. Cal.) (certified
17 regional class action alleging widespread discrimination within FedEx); *Siddiqi v. Regents of the*
18 *University of California* (Case No. C-99-0790 SI) (N.D. Cal.) (certified class action in favor of deaf
19 plaintiffs alleging disability access violations at the University of California); *Lopez v. San*
20 *Francisco Unified School District* (Case No. C-99-03260 SI) (N.D. Cal.) (certified class action in
21 favor of plaintiffs in class action against school district for widespread disability access violations);
22 *Campos v. San Francisco State University* (Case No. C-97-02326 MCC) (N.D. Cal.) (certified class
23 action in favor of disabled plaintiffs for widespread disability access violations); *Singleton v.*
24 *Regents of the University of California* (Case No. 807233-1) (Alameda County Superior Court)
25 (class settlement for women alleging gender discrimination at Lawrence Livermore National
26 Laboratory); *McMaster v. BCI Coca-Cola Bottling Co.* (Case No. RG04173735) (Alameda County
27 Superior Court) (final approval of class action settlement for drive-time required of Coca-Cola

1 account managers); *Portugal v. Macy's West, Inc.* (Case No. BC324247) (Los Angeles County
2 Superior Court) (California statewide wage and hour "misclassification" class action resulting in a
3 class-wide \$3.25 million settlement); *Taormina v. Siebel Systems, Inc.* (Case No. RG05219031)
4 (Alameda County Superior Court) (final approval of class action settlement for misclassification of
5 Siebel's inside sales employees); *Joseph v. The Limited, Inc.* (Case No. CGC-04-437118) (San
6 Francisco County Superior Court) (final approval of class action settlement for failure to provide
7 meal and rest periods to employees of The Limited stores); *Rios v. Siemens Corp.* (Case No. C05-
8 04697 PJH) (N.D. Cal.) (final approval of class action settlement for failure to pay accrued vacation
9 pay upon end of employment); *DeSoto v. Sears, Roebuck & Co.* (Case No. RG0309669) (Alameda
10 County Superior Court) and *Lenahan v. Sears, Roebuck & Co.* (Case No. 3-02-CV-000045 (SRC)
11 (TJB)) (final approval of class action settlement for failure to pay Sears drivers for all hours
12 worked); among many others.

13 7. Nearly my entire legal career has been devoted to advocating for the rights of
14 individuals who have been subjected to illegal pay policies, discrimination, harassment and
15 retaliation and representing employees in wage and hour and discrimination class actions. I have
16 litigated hundreds of wage and hour, employment discrimination and civil-rights actions, and I
17 manage many of the firm's current cases in these areas. I am a member of the State Bar of
18 California, and have had memberships with Public Justice, the National Employment Lawyers
19 Association, the California Employment Lawyers Association, and the Consumer Attorneys of
20 California. I served on the Board of Directors for the San Francisco Trial Lawyers Association and
21 co-chaired its Women's Caucus. I was named one of the "Top Women Litigators for 2010" by the
22 Daily Journal. In 2012, I was nominated for Woman Trial Lawyer of the Year by the Consumer
23 Attorneys of California. I have been selected as a Super Lawyer every year since 2014. I earned my
24 Bachelor's degree from the University of California, and I am a graduate of the University of the
25 Pacific, McGeorge School of Law.

CASE SUMMARY AND PROCEDURAL HISTORY

1
2 8. Defendant O.C. Communications, Inc. (“OCC”) is a national contractor for low-
3 voltage installations, providing cable and equipment installations on behalf of cable operators—
4 primarily, Comcast—throughout the United States.

5 9. Defendants Comcast Corporation and Comcast Cable Communications Management,
6 LLC (collectively, “Comcast”) are a global telecommunications conglomerate and the largest cable
7 TV company and home Internet service provider in the United States.

8 10. Plaintiffs allege that OCC and Comcast jointly employ the Class Members, who are
9 classified as non-exempt employees, to carry out installation services. The workers perform these
10 services throughout the United States, including in California and Washington. Plaintiffs and
11 members of the proposed Classes and Collective are referred to hereafter as “Class Members” or
12 “Technicians” for ease of reading.

13 11. Plaintiffs allege that Class Members—who work long and difficult hours, typically
14 five to six days per week, and upwards of ten hours per day—experience wage and hour violations
15 in their work with OCC, and with Comcast as an alleged joint employer. Plaintiffs allege that
16 Defendants compensate Class Members on a hybrid hourly and piece-rate basis, based on the
17 various jobs and tasks that Class Members perform for Comcast’s customers. Plaintiffs allege that
18 Defendants also compensate Technicians with a “miscellaneous” hourly rate for “non-productive
19 time,” such as drive time between jobs. Plaintiffs allege that Defendants add the total dollar value
20 for “miscellaneous” time to the total dollar value for piece-rate work, and divide that total by the
21 number of hours recorded as worked to generate Technicians’ regular hourly rates for the week,
22 which are reflected on Technicians’ pay stubs. Plaintiffs allege that Defendants then multiply the
23 regular hourly rates by one-point-five (1.5) or two (2) to compute the overtime rates or double time
24 rates, respectively. The hourly rates reflected on Technicians’ OCC pay stubs fluctuate weekly.

25 12. Plaintiffs allege that Defendants implemented and maintained uniform practices of (1)
26 pressuring Class Members to underreport their hours, report meal periods that were never taken, and
27 omit completed piece rates, and; (2) manipulating Class Members’ time cards to reduce hours,

1 fabricate meal breaks, and eliminate completed piece rates; (3) refusing to reimburse necessary
2 expenses; (4) actively preventing Class Members from taking meal and rest periods; and (5) issuing
3 wage statements that intentionally conceal the rate at which time and work are compensated, and
4 otherwise make it impossible for Class Members to know how they were compensated.

5 13. As a result of these alleged violations, Plaintiffs allege that Defendants systematically
6 violate the Fair Labor Standards Act, as well as California, and Washington labor law. Throughout
7 the relevant time period, Plaintiffs allege that Defendants eschewed their obligations to Plaintiffs and
8 Class Members by: (1) not paying proper minimum, overtime wages, and completed piece rates; (2)
9 failing to provide a reasonable opportunity to take meal and rest periods, and failing to compensate
10 Class Members when such meal and rest periods are not taken; (3) failing to reimburse necessarily-
11 incurred expenses; and (4) failing to issue accurate, itemized wage statements. Plaintiffs aver that
12 these alleged violations give rise to derivative claims, including failing to provide accurate, itemized
13 wage statements and failing to pay all wages owed after termination of employment.

14 14. Plaintiffs allege that, as joint employers, OCC and Comcast are jointly liable for the
15 violations at issue.

16 15. Defendants have at all times denied, and continue to deny, all of these allegations, and
17 Plaintiffs' joint employer theory in particular.

18 16. Plaintiffs Desidero Soto and Steven Stricklen filed their initial Collective and Class
19 Action Complaint in this action on January 18, 2017, which asserted FLSA and California law
20 claims. Dkt. No. 1. On August 18, 2017, Plaintiffs filed their First Amended Collective and Class
21 Action Complaint, which added Plaintiff Fondrose, refined the factual allegations, and added a cause
22 of action for violation of California Labor Code Section 226.2. Dkt. No. 117. After conducting
23 discovery into the joint employer issue, Plaintiffs filed their Second Amended Collective and Class
24 Action Complaint on March 13, 2018, which added the Comcast Defendants, along with Plaintiff
25 Ortega and the Washington state law claims that he asserts. Dkt. No. 232. On June 20, 2018,
26 Plaintiffs filed their Third Amended Collective and Class Action Complaint ("TAC"), which added
27

1 Plaintiff Farias and California Private Attorneys General Act (“PAGA”) claims against Comcast.
2 *See* Dkt. No. 255.

3 17. In the operative TAC (Dkt. No. 253-1), Plaintiffs allege eighteen causes of action
4 under the federal Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.* (“FLSA”), the California
5 Labor Code and Business and Professions Code §§ 17200, *et seq.* (“UCL”), and Washington wage
6 and consumer protection laws. Plaintiffs assert the first cause of action under the FLSA on behalf of
7 themselves and the Collective for Defendants’ alleged failure to compensate Technicians for all
8 hours worked, including legally mandated overtime premiums.

9 18. Plaintiffs Soto, Stricklen, and Farias assert eleven additional causes of action under
10 California law on behalf of themselves and the California class: (1) failure to authorize, permit,
11 and/or make available meal and rest periods; (2) failure to compensate piece-rate workers for rest
12 and recovery periods and other non-productive time, and related wage statement violations; (3)
13 failure to pay for all hours worked; (4) failure to pay minimum wage; (5) failure to pay overtime
14 wages; (6) failure to reimburse for necessary business expenditures (including tools and supplies);
15 (7) waiting time penalties; (8) failure to provide itemized wage statements; (9) violation of the UCL
16 for unlawful, unfair, and/or fraudulent business acts or practices; (10) penalties pursuant to § 2699(a)
17 of the PAGA; and (11) penalties pursuant to § 2699(f) of the PAGA.

18 19. Plaintiff Ortega asserts six additional causes of action under Washington law on behalf
19 of himself and the Washington class: (1) failure to pay minimum wage; (2) failure to pay overtime
20 wages; (3) failure to authorize, permit, and/or make available meal and rest periods; (4) failure to
21 pay all wages due upon termination; (5) willful refusal to pay wages; and (6) violation of
22 Washington’s Consumer Protection Act, RCW 19.86, *et seq.*

23 20. Plaintiffs moved for conditional certification of the FLSA claim and facilitation of
24 notice under 29 U.S.C. § 216(b) on July 17, 2017. Dkt. No. 105. On August 31, 2017, the Court
25 conditionally certified a Collective of Defendants’ Technicians. *See* Dkt. No. 127.

1 21. The Administrator disseminated the Notice to the Collective members on September
2 29, 2017, including 3,822 mailed notices and 3,243 emailed notices, with an opt-in deadline of
3 December 28, 2017. 1,018 Technicians opted into the Collective.

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

12 23. 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 24. 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 Shrader, and had
20 noticed depositions of two other Comcast officials when the Parties reached an agreement to settle
21 the case.

22 25. OCC took the depositions of Plaintiffs Soto and Stricklen.

23 26. Defendants each filed motions to compel arbitration on August 23, 2018, based on the
24 varying forms of arbitration agreements that OCC had entered with Class Members. Dkt. Nos. 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* Dkt. No. 262. Plaintiffs cited OCC's delay

1 in 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,
3 989 (9th Cir. 2016), in support of their waiver argument. *Id.* Plaintiffs opposed Comcast's motion,
4 *inter alia*, on the grounds that Comcast was not a signatory to the agreements, and by further
5 challenging Comcast's equitable estoppel and agency exception arguments on legal and factual
6 grounds. *See* Dkt. No. 263.

7 27. The Court granted Defendants' motion as to all the Named Plaintiff's and
8 approximately 990 Opt-In Plaintiffs on November 21, 2018. *See* Dkt. No. 272. Specifically, the
9 Court ruled that the claims of Plaintiffs who had executed the 2013, 2015, and 2017 versions of the
10 arbitration agreements were compelled to arbitration. The Court denied in part the motions only and
11 without prejudice in regard to the PAGA claims and the claims of eight Opt-In Plaintiffs who signed
12 a 2004 arbitration agreement. Dkt. No. 272. The Court ruled that Comcast was entitled to compel
13 arbitration on third-party beneficiary and agency principles.

14 28. Thereafter, Plaintiffs' counsel served 678 individual demands for arbitration on
15 Defendants on December 12, 2018. These demands each asserted the claims on an individual basis
16 for 678 Opt-In Plaintiffs subject to the arbitration order. Plaintiffs' counsel were able to serve these
17 hundreds of demands as a result of their outreach and investigation efforts with Opt-In Plaintiffs and
18 other case participants; through that process, Plaintiffs' counsel entered retainers with these workers
19 that allowed Plaintiffs' counsel to file individual arbitration proceedings. As OCC was required to
20 pay the arbitration fees under the 2013, 2015, and 2017 versions of the agreements, the filing of
21 these demands would potentially subject Defendants to millions of dollars in arbitration fees.

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

26 30. On October 18, 2018, the Plaintiffs, OCC and Comcast participated in a mediation
27 session with Jeff Ross, another highly respected and experienced wage and hour mediator. The

1 session lasted some 14 hours, but the Parties were unable to reach an agreement on that date.
2 Litigation continued, and in particular, Plaintiffs commenced depositions of Comcast officials, while
3 additional settlement negotiations continued through the mediator. On December 19, 2018, Mr. Ross
4 issued a mediator's proposal, which contained the essential terms of the instant Settlement. All
5 Parties accepted the proposal by December 20, 2018.

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

10 **THE SETTLEMENT**

11 32. OCC has agreed to pay a non-reversionary Gross Settlement Amount of \$7,500,000.00
12 to settle all aspects of the case. The "Net Settlement Amount," which is the amount available to pay
13 settlement awards to the Class Members, is defined as the Gross Settlement Amount less: the
14 payment made to the California Labor & Workforce Development Agency ("LWDA") pursuant to
15 PAGA (\$75,000); any enhancement payments awarded to the Class Representatives (up to
16 \$15,000.00 for Plaintiff Soto and up to \$10,000.00 for Plaintiffs Stricklen, Fondrose, Ortega, and
17 Farias); the Settlement Administrator's fees and costs (up to \$40,000.00); and any attorneys' fees
18 and costs awarded to Class Counsel (fees of up to one third of the Gross Settlement Amount, or
19 \$2,500,000, plus costs currently estimated at \$180,000).

20 33. The Parties agree to allocate \$100,000.00 of the Gross Settlement Amount to the
21 settlement of the PAGA claims, which the Parties believe in good faith is a fair and reasonable
22 apportionment. The Settlement Administrator shall pay 75%, or \$75,000.00, of this amount to the
23 LWDA, and 25%, or \$25,000.00, shall remain as part of the Net Settlement Amount.

24 34. The Settlement Administrator will deposit a ten (10) percent holdback of the Fee
25 Award into a separate interest-bearing account, which will be released following completion of the
26 distribution process and filing of the Post-Distribution Accounting with the Court.
27

1 35. The Gross Settlement Amount is a negotiated amount that resulted from substantial
2 arms' length negotiations and significant investigation and analysis by Plaintiffs' Counsel. Plaintiffs
3 and their counsel considered all of the risks described hereinafter, and relied on their significant
4 experience and expertise, when considering the proposed Settlement.

5 36. The settlement will result in immediate and certain payment to Settlement Class
6 Members of meaningful amounts. The average recovery is \$1,033 per Class Member (this amount
7 divides the net recovery by total number of Class Members), or approximately \$40 per workweek.
8 This amount provides significant compensation to the Class Members, and the Settlement provides
9 an excellent recovery in the face of expanding and uncertain litigation. In light of all of the risks, the
10 settlement amount is fair, reasonable, and adequate.

11 37. An individual is a member of the Settlement Class under the proposed Settlement if he
12 or she belongs to any of the following:

- 13 • The "California Class" means all Technicians who are or were employed by OCC in the State of
14 California at any time from January 18, 2013 through December 21, 2018, and who do not
15 validly exclude themselves from the Settlement. The California Class is to be certified for
16 settlement purposes only under Federal Rule of Civil Procedure 23.
- 17 • The "Washington Class" means all Technicians who are or were employed by OCC in the State
18 of Washington from March 13, 2015 through December 21, 2018, and who do not validly
19 exclude themselves from the Settlement. The Washington Class is to be certified for settlement
20 purposes only under Federal Rule of Civil Procedure 23.
- 21 • The "Collective" is a certified collective action for settlement purposes only pursuant to 29
22 U.S.C. § 216(b), which includes all Opt-In Plaintiffs who are or were employed by OCC at any
23 time from and including January 18, 2014 through December 21, 2018. There are 1,018 Opt-In
24 Plaintiffs.

25 38. The Net Settlement Amount to be paid to Class Members is approximately
26 \$4,650,000.00.

27

1 39. Class Members will each receive a settlement award check without the need to submit
2 a claim form.

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

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

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

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

1 44. 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.

6 45. The Parties and their counsel do not have any financial, business, or personal
7 relationships with the Institute for Research on Labor and Employment, to the best of my
8 knowledge.

9 46. If the total residual amount is \$75,000 or greater, a second distribution will occur to
10 those Class Members who cashed their Settlement Award checks. The second distribution will occur
11 on a pro rata basis according to workweeks. In the event of such a redistribution, the additional
12 settlement administration costs will be deducted from the total amount of uncashed checks prior to
13 the redistribution.

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

17 48. The release contemplated by the proposed Settlement will release all claims in
18 connection with the lawsuit that were or could have been asserted in the operative TAC based on the
19 facts alleged in support of Plaintiffs’ specific causes of action. Upon final approval, Class Members
20 will be deemed to have released such claims based on California and Washington law. Additionally,
21 upon final approval, Named Plaintiffs and Collective Members will be deemed to have released
22 their claims under the FLSA. As to other Class Members, only those who cash or deposit their
23 Settlement Award check will release their FLSA claims. The release extends to December 21, 2018,
24 and the Released Parties are Defendants and their related persons and entities. The release period for
25 PAGA claims runs from November 14, 2015 through December 21, 2018.

26 49. The Named Plaintiffs also agree to a general release.
27

1 50. The Parties have agreed to use CPT Group, Inc. to administer the Settlement, for total
2 fees and costs it has agreed will not exceed \$40,000.

3 51. The Settlement Administrator will distribute the Notice of Settlement via mail and
4 email, calculate individual settlement payments, calculate all applicable payroll taxes, withholdings
5 and deductions, and prepare and issue all disbursements to Class Members, the LWDA, the Class
6 Representatives, Class Counsel, the LWDA, and applicable state, and federal tax authorities. The
7 Settlement Administrator is also responsible for the timely preparation and filing of all tax returns
8 and reporting, and will make timely and accurate payment of any and all necessary taxes and
9 withholdings.

10 52. The Settlement Administrator will establish a settlement website that will allow Class
11 Members to view the Class Notice (in generic form), the Settlement Agreement, and all papers filed
12 by Class Counsel to obtain preliminary and final approval of the Settlement. The Settlement
13 Administrator will also establish a toll-free call center for telephone inquiries from Class Members.

14 **PRELIMINARY APPROVAL OF THE SETTLEMENT AS TO THE CALIFORNIA AND**
15 **WASHINGTON CLASSES AND APPROVAL OF THE SETTLEMENT AS TO THE**
16 **COLLECTIVE**

17 53. This class action settlement satisfies the requirements of Rule 23(a) and (b), and it is
18 fair, reasonable, and adequate in accordance with Rule 23(e)(2). Accordingly, the Court should
19 preliminary approve the settlement as to the Classes.

20 54. The Court has already conditionally certified a collective under § 216(b) for Plaintiffs'
21 FLSA claims, and 1,018 Technicians have opted in to the action. *See* Dkt. No. 127. Defendants have
22 not moved for decertification of the FLSA claim. The proposed Settlement provides an excellent
23 recovery to the Opt-In Plaintiffs in a reasonable compromise. Accordingly, the Court should approve
24 the Settlement as to the Collective.

25 **Certification**

26 55. The approximately 3,500 members of the California Class and 350 members of the
27 Washington Class render the each class so large as to make joinder impracticable. The Class

1 Members may be readily identified from OCC's payroll records.

2 56. Common questions of law and fact predominate here, satisfying paragraphs (a)(2) and
3 (b)(3) of Rule 23, as alleged in the operative complaint.

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

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

27

1 59. Plaintiffs' claims are typical of those of all other Class Members. They were subject to
2 the alleged illegal policies and practices that form the basis of the claims asserted in this case.

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

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

10 62. Moreover, Class Counsel has extensive experience in class action and employment
11 litigation, including wage and hour class actions, and do not have any conflict with the Classes.
12 Class Counsel have diligently litigated this action in the interests of the Class Members for over two
13 years.

14 63. Plaintiffs contend the common questions raised in this action predominate over any
15 individualized questions concerning the California and Washington Classes. The Classes are entirely
16 cohesive because resolution of Plaintiffs' claims hinge on the uniform policies and practices of
17 Defendants, rather than the treatment the Class Members experienced on an individual level. As a
18 result, the resolution of these alleged class claims would be achieved through the use of common
19 forms of proof, such as Defendants' uniform policies, and would not require inquiries specific to
20 individual class members.

21 64. Further, Plaintiffs contend the class action mechanism is a superior method of
22 adjudication compared to a multitude of individual suits.

23 65. The Class Members do not have a strong interest in controlling their individual claims,
24 although many Class Members have agreed to pursue their claims in individual arbitrations as a last
25 resort. The action involves thousands of workers with very similar, but relatively small, claims for
26 monetary injury. If the Class Members proceeded on their claims as individuals, their many
27 individual suits would require duplicative discovery and duplicative litigation, and each Class

1 Member would have to personally participate in the litigation effort to an extent that would never be
2 required in a class proceeding. Thus, the class action mechanism would efficiently resolve numerous
3 substantially identical claims at the same time while avoiding a waste of judicial resources and
4 eliminating the possibility of conflicting decisions from repetitious litigation and arbitrations.

5 66. The issues raised by the present case are much better handled collectively by way of a
6 The Settlement presented by the Parties provides finality, ensures that workers receive redress for
7 their relatively modest claims, and avoids clogging the legal system with cases that could easily be
8 kept in this proceeding. Accordingly, class treatment is efficient and warranted, and the Court should
9 conditionally certify the California and Washington Classes for settlement purposes.

10 **The proposed settlement is fair, reasonable, and adequate**

11 67. The proposed settlement is fair, reasonable, and adequate under both Rule 23 and the
12 FLSA approval standards.

13 68. A review of the Settlement Agreement reveals the fairness, reasonableness, and
14 adequacy of its terms. The Gross Settlement Amount of \$7,500,000 represents a significant recovery
15 of the possible damages that Plaintiffs might recover assuming success on all claims on a
16 representative basis. The result is well within the reasonable standard when considering the
17 difficulty and risks presented by pursuing further litigation.

18 69. Furthermore, after reviewing financial information provided by OCC, Plaintiffs
19 recognize OCC's potential inability to pay a significant portion of damages and the reality that while
20 Comcast may have an ability to pay, Comcast could successfully avoid joint employer liability here
21 as it has in similar cases.

22 70. The final settlement amount takes into account the substantial risks inherent in any
23 class action wage-and hour case, as well as the procedural posture of this action and the specific
24 defenses asserted by Defendants, many of which are unique to this case.

25 71. In an effort to ensure fairness, the Parties have agreed to allocate the settlement
26 proceeds amongst Class Members in a manner that recognizes that amount of time that the particular
27 Class Member worked for Defendants in the applicable limitations period. The allocation method,

1 which is based on the number of workweeks, will ensure that longer-tenured workers receive a
2 greater recovery. Moreover, the allocation tracks the differences in substantive law and penalty
3 claims, including the limitations period for each claims, by weighting the workweek shares more
4 heavily for work performed in California and Washington. The allocation was made based on Class
5 Counsel’s assessment to ensure that employees are compensated accordingly and in the most
6 equitable manner.

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

11 73. The Parties engaged in extensive formal and informal discovery that has enabled both
12 sides to assess the claims and potential defenses in this action. The Parties were able to accurately
13 assess the legal and factual issues that would arise if the case proceeded to trial.

14 74. In addition, in reaching this settlement, Class Counsel relied on their substantial
15 litigation experience in similar wage and hour class and collective actions.

16 75. Class Counsel’s liability and damages evaluation was premised on a careful and
17 extensive analysis of the effects of Defendants’ compensation policies and practices on Class
18 Members’ pay.

19 76. Ultimately, facilitated by mediator Jeff Ross, the Parties used this information and
20 discovery to fairly resolve the litigation.

21 77. The monetary value of the proposed Settlement represents a fair compromise given the
22 risks and uncertainties posed by continued litigation.

23 78. If this case were to go to trial as a class and collective action (which Defendants would
24 vigorously oppose if this Settlement Agreement were not approved), Class Counsel estimates that
25 fees and costs would exceed \$5,000,000.00. Litigating the class and collective action claims would
26 require substantial additional preparation and discovery. It would require depositions of experts, the
27 presentation of percipient and expert witnesses at trial, as well as the consideration, preparation, and

1 presentation of voluminous documentary evidence and the preparation and analysis of expert
2 reports.

3 79. Recovery of the full damages and penalties would also require complete success and
4 certification of all of Plaintiffs' claims, a questionable feat in light of developments in wage and
5 hour and class and collective action law as well as the legal and factual grounds that Defendants
6 have asserted to defend this action.

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

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

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

23 83. Moreover, Plaintiffs considered the risk that the Court would, in the end, decline to
24 find Comcast liable as a joint employer. Though OCC would still be liable in the event of a
25 favorable outcome for Plaintiffs, a finding that Comcast is a joint employer would ensure that the
26 Class Members would be able to obtain full recovery, particularly in the event of a large award.
27 Though Plaintiffs successfully amended their complaint to aver claims of liability against Comcast

1 on a joint employer basis, the issue would be heavily contested at summary judgment and/or trial.

2 84. If Comcast is found not to be a joint employer, the value of the case would be
3 lessened, and Plaintiffs had to consider this risk.

4 85. Furthermore, on December 18, 2017, OCC produced confidential financial
5 information to Plaintiffs' counsel in support of its contention of an inability to pay a significant
6 portion of damages. If the Court declined to find Comcast liable as a joint employer, and OCC did
7 not have an ability pay damages, Plaintiffs risked receiving no recovery at all.

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

11 87. In contrast to litigating this suit, resolving this case by means of the Settlement will
12 yield a prompt, certain, and very substantial recovery for the CMs. Such a result will benefit the
13 Parties and the court system. It will bring finality to the two years of arduous litigation in this action,
14 and will foreclose the possibility of expanding litigation across arbitration and the federal forum

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

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

23 90. Plaintiffs are represented by experienced and respected litigators of representative
24 wage and hour actions. I feel strongly that the proposed Settlement achieves an excellent result for
25 the Class Members.

26

27

SERVICE AWARDS

1
2 91. The enhancement payments of up to \$15,000.00 for Plaintiff Soto and up to
3 \$10,000.00 for Plaintiffs Stricklen, Fondrose, Ortega, and Farias are intended to compensate
4 Plaintiffs for the critical role they played in this case, and the time, effort, and risks undertaken in
5 helping secure the result obtained on behalf of the Class Members.

6 92. In agreeing to serve as Class and Collective representatives, Plaintiffs formally agreed
7 to accept the responsibilities of representing the interests of all Class Members.

8 93. Defendants do not oppose the requested payments to the Plaintiffs as reasonable
9 service awards.

10 **ATTORNEYS' FEES AND COSTS**

11 94. In their fee motion to be submitted with the final approval papers, Class Counsel will
12 request up to one third of the Gross Settlement Amount, or \$2,500,000, plus reimbursement of costs,
13 which to date total approximately \$180,000.

14 95. Here, Class Counsel's current cumulative lodestar is \$3,360,825.90, which exceeds the
15 requested fee award, not inclusive of all of the work that Class Counsel will continue to perform in
16 bringing this settlement to a close. On this basis, the requested attorneys' fees award is eminently
17 reasonable.

18 96. SWCKW's lodestar to date is currently \$2,187,697.00. SWCKW's litigation costs to
19 date are currently approximately \$125,000.00.

20 97. The typical range of acceptable attorneys' fees in the Ninth Circuit is 20% to 33 1/3%
21 of the total settlement value, with 25% considered the benchmark.

22 98. In this case, given the excellent results achieved, the effort expended litigating the
23 case, including the preparation of 678 individual arbitration demands, and the difficulties attendant
24 to litigating this case, such an upward adjustment is warranted. There was no guarantee of
25 compensation or reimbursement. Rather, counsel undertook all the risks of this litigation on a
26 completely contingent fee basis. These risks were front and center. Defendants' vigorous and skillful
27 defense further confronted Class Counsel with the prospect of recovering nothing or close to nothing

1 for their commitment to and investment in the case.

2 99. Nevertheless, Plaintiffs and Class Counsel committed themselves to developing and
3 pressing Plaintiffs' legal claims to enforce the employees' rights and maximize the class and
4 collective recovery. During the litigation, counsel had to turn away other less risky cases to remain
5 sufficiently resourced for this one.

6 100. Attorneys who litigate on a wholly or partially contingent basis expect to receive
7 significantly higher effective hourly rates in cases where compensation is contingent on success,
8 particularly in hard-fought cases where, like in the case at bar, the result is uncertain. This does not
9 result in any windfall or undue bonus. In the legal marketplace, a lawyer who assumes a significant
10 financial risk on behalf of a client rightfully expects that his or her compensation will be
11 significantly greater than if no risk was involved (*i.e.*, if the client paid the bill on a monthly basis),
12 and that the greater the risk, the greater the "enhancement." Adjusting court-awarded fees upward in
13 contingent fee cases to reflect the risk of recovering no compensation whatsoever for hundreds of
14 hours of labor simply makes those fee awards consistent with the legal marketplace, and in so doing,
15 helps to ensure that meritorious cases will be brought to enforce important public interest policies
16 and that clients who have meritorious claims will be better able to obtain qualified counsel.

17 101. For these reasons, Class Counsel respectfully submits that a one-third recovery for
18 fees is modest and appropriate. The lodestar amount will increase with preparation of the final
19 approval papers, preparation and attendance at remaining hearings, correspondence and
20 communications with Class Members, and settlement administration and oversight.

21 102. Class Counsel also requests reimbursement for their litigation costs.

22 103. Class Counsel's efforts resulted in an excellent settlement, and the requested fee award
23 is exceeded by Class Counsel's lodestar. The fee and costs award should be preliminarily approved
24 as fair and reasonable.

25 **THE NOTICE OF SETTLEMENT AND RELATED ADMINISTRATION**

26 104. The Notice of Settlement, attached as **Exhibit A** to the Settlement Agreement, and
27 manner of distribution negotiated and agreed upon by the Parties is "the best notice practicable."

1 105. All Class Members have been identified and the Notice of Settlement will be mailed
2 directly to each Class Member, and emailed to those for whom Defendants have an email address.
3 The proposed Notice is clear and straightforward, and provides information on the nature of the
4 action and the proposed Classes and Collective, the terms and provisions of the Settlement
5 Agreement, and the monetary awards that the Settlement will provide Class Members.

6 106. In addition, the Parties will provide a settlement website that provides a generic form
7 of the Notice, the Settlement Agreement, and other case related documents and contact information.

8 107. The proposed Notices fulfill the requirement of neutrality in class notices. They
9 summarize the proceedings necessary to provide context for the Settlement Agreement and
10 summarize the terms and conditions of the Settlement, including an explanation of how the
11 settlement amount will be allocated between the named Plaintiffs, Class Counsel, the Settlement
12 Administrator, and the Class Members, in an informative, coherent and easy-to-understand manner,
13 all in compliance with the Manual for Complex Litigation's recommendation that "the notice contain
14 a clear, accurate description of the terms of the settlement."

15 108. The Class Notice clearly explains the procedures and deadlines for requesting
16 exclusion from the Settlement, objecting to the Settlement, the consequences of taking or foregoing
17 the various options available to Class members, and the date, time and place of the Final Approval
18 Hearing. The Notice clarifies that the failure to submit a written objection may be excused upon a
19 showing of good cause. Pursuant to Rule 23(h), the proposed Class Notice also sets forth the amount
20 of attorneys' fees and costs sought by Plaintiffs, as well as an explanation of the procedure by which
21 Class Counsel will apply for them.

22 109. The Class Notice clearly states that the settlement does not constitute an admission of
23 liability by Defendants. It makes clear that the final settlement approval decision has yet to be
24 made.

25 110. Furthermore, reasonable steps will be taken to ensure that all Class Members receive
26 the Notice. Before mailing, OCC will provide to the Settlement Administrator a database that
27 contains the names, last known addresses, last known telephone numbers (if any), last known email

1 addresses (if any), and social security numbers or tax ID numbers of each Class Member, along with
2 the total number of workweeks they worked as a Technician for OCC (beginning from the longest
3 applicable statute of limitations) for calculating the respective settlement shares. The notice will be
4 sent by United States Mail, and also via email to the maximum extent possible. The Settlement
5 Administrator will make reasonable efforts to update the contact information in the database using
6 public and private skip tracing methods. Within ten business days of receipt of the database from
7 OCC, the Settlement Administrator will mail the Class Notice to each Class Member.

8 111. With respect to Class Notices returned as undeliverable, the Settlement Administrator
9 will re-mail any Notices returned to the Settlement Administrator with a forwarding address within
10 three business days following receipt of the returned mail. If any Notice is returned to the Settlement
11 Administrator without a forwarding address, the Settlement Administrator will undertake reasonable
12 efforts to search for the correct address, and will promptly re-mail the Settlement Notice to any
13 newly found address.

14 112. Class Members will have 60 days from the mailing of the Notice to opt-out or object
15 to the Settlement. Any Class Member who does not submit a timely request to exclude themselves
16 from the Settlement will be deemed a Class Member whose rights and claims are determined by any
17 order the Court enters granting final approval, and any judgment the Court ultimately enters in the
18 case. However, California and Washington Class Members who are not Named Plaintiffs or Opt-In
19 Plaintiffs will only release their FLSA claims if they endorse or cash their Settlement Award checks.

20 113. Administration of the Settlement will follow upon the occurrence of the Effective Date
21 of the Settlement.

22 114. The Settlement Administrator will provide Class Counsel and Defendants' Counsel
23 with a final report of all Settlement Awards at least ten business days before the Settlement Awards
24 are mailed to Class Members.

25 115. Because the proposed Notice of Settlement clearly and concisely describe the terms of
26 the Settlement and the awards and obligations for Class Members who participate, and because the
27

1 Notices will be disseminated in a way calculated to provide notice to as many Class Members as
2 possible, the Class Notice should be preliminarily approved.
3

4 I declare under penalty of perjury under the laws of the United States that the foregoing is true
5 and correct. Executed on this 1st day of March, 2019, in Emeryville, California.

6 /s/ Carolyn Hunt Cottrell

7 Carolyn Hunt Cottrell
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