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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**

**[PROPOSED] ORDER GRANTING  
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

1 The Motion for Preliminary Approval of Class and Collective Action Settlement, filed by  
2 Plaintiffs Desidero Soto, Steven Stricklen, Steeve Fondrose, Lorenzo Ortega, and Jose Antonio  
3 Farias, Jr. (“Plaintiffs”) in the above-captioned action, came on for hearing regularly in Courtroom  
4 4 of the above captioned court, the Honorable Vincent Chhabria presiding. Defendants O.C.  
5 Communications, Inc. (“OCC”), Comcast Corporation and Comcast Cable Communications  
6 Management, LLC (collectively, “Comcast”) do not oppose the motion.

7 Plaintiffs bring a representative wage and hour action under federal and state laws on behalf  
8 of themselves and other Technicians employed by OCC who install cable television, phone, security  
9 and internet services. Plaintiffs Desidero Soto and Steven Stricklen filed their initial Collective and  
10 Class Action Complaint in this action on January 18, 2017, which asserted FLSA and California  
11 law claims. Dkt. No. 1. On August 18, 2017, Plaintiffs filed their First Amended Collective and  
12 Class Action Complaint, which added Plaintiff Fondrose, refined the factual allegations, and added  
13 a cause of action for violation of California Labor Code Section 226.2. Dkt. No. 117. Plaintiffs filed  
14 their Second Amended Collective and Class Action Complaint on March 13, 2018, which added the  
15 Comcast Defendants under a joint-employer theory, along with Plaintiff Ortega and the Washington  
16 state law claims that he asserts. Dkt. No. 232. On June 20, 2018, Plaintiffs filed their Third  
17 Amended Collective and Class Action Complaint (“TAC”), which added Plaintiff Farias and  
18 California Private Attorneys General Act (“PAGA”) claims against Comcast. *See* Dkt. No. 255.

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

25 Plaintiffs Soto, Stricklen, and Farias assert eleven additional causes of action under  
26 California law on behalf of themselves and the California class: (1) failure to authorize, permit,  
27 and/or make available meal and rest periods; (2) failure to compensate piece-rate workers for rest  
28 and recovery periods and other non-productive time, and related wage statement violations; (3)

1 failure to pay for all hours worked; (4) failure to pay minimum wage; (5) failure to pay overtime  
2 wages; (6) failure to reimburse for necessary business expenditures (including tools and supplies);  
3 (7) waiting time penalties; (8) failure to provide itemized wage statements; (9) violation of the UCL  
4 for unlawful, unfair, and/or fraudulent business acts or practices; (10) penalties pursuant to §  
5 2699(a) of the PAGA; and (11) penalties pursuant to § 2699(f) of the PAGA.

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

11 After extensive and voluminous discovery, including written discovery and depositions, the  
12 Parties entered into private mediation with respected neutral mediator Jeff Ross in an attempt to  
13 resolve the claims. As a result of the mediation session on October 18, 2018 and subsequent  
14 negotiations via the mediator, the Parties reached a settlement. The Parties then executed a Class  
15 Action Settlement Agreement (“Settlement”) on March 1, 2019.

16 A hearing was held before this Court on March 21, 2019 for the purpose of determining,  
17 among other things, whether the proposed Settlement is within the range of possible approval, if  
18 notice of the Settlement to Members of the California and Washington Classes and the Collective is  
19 appropriate, and whether a formal fairness hearing, also known as a final approval hearing, should  
20 be scheduled. Appearing at the hearing was Schneider Wallace Cottrell Konecky Wotkyns LLP and  
21 Berger Montague PC on behalf of Plaintiffs, the Collective, and Putative Classes; Littler  
22 Mendelson, P.C. on behalf of OCC; and Morgan, Lewis & Bockius LLP on behalf of Comcast.

23 Having reviewed the papers and documents presented, having heard the statements of  
24 counsel, and having considered the matter, the Court HEREBY ORDERS as follows:

25 1. The Court hereby GRANTS preliminary approval of the terms and conditions  
26 contained in the Settlement, attached hereto as **Exhibit 1**, as to the California and Washington  
27 Classes. The Court preliminarily finds that the terms of the Settlement appear to be within the range  
28 of possible approval, pursuant to Federal Rule of Civil Procedure 23 and applicable law.

1           2.       The Court finds on a preliminary basis that: (1) the settlement amount is fair and  
2 reasonable to the California and Washington Class Members when balanced against the probable  
3 outcome of further litigation relating to class certification, liability and damages issues, and  
4 potential appeals; (2) significant discovery, investigation, research, and litigation have been  
5 conducted such that counsel for the Parties at this time are able to reasonably evaluate their  
6 respective positions; (3) settlement at this time will avoid substantial costs, delay, and risks that  
7 would be presented by the further prosecution of the litigation; and (4) the proposed Settlement has  
8 been reached as the result of intensive, serious, and non-collusive negotiations between the Parties.  
9 Accordingly, the Court preliminarily finds that the Settlement was entered into in good faith.

10           3.       The Court hereby GRANTS conditional certification of the provisional California  
11 and Washington Classes, in accordance with the Settlement, for the purposes of this Settlement  
12 only. The California Class is defined as “all Technicians who are or were employed by OCC in the  
13 State of California at any time from January 18, 2013 through December 21, 2018, and who do not  
14 validly exclude themselves from the Settlement.” The Washington Class is defined as “all  
15 Technicians who are or were employed by OCC in the State of Washington from March 13, 2015  
16 through December 21, 2018, and who do not validly exclude themselves from the Settlement.”

17           4.       The Court hereby GRANTS Approval of the terms and conditions contained in the  
18 Settlement as to the Collective. The Court finds that the terms of the Settlement are within the range  
19 of possible approval, pursuant to the Fair Labor Standards Act and applicable law.

20           5.       The Court finds that: (1) the settlement amount is fair and reasonable to the  
21 Collective Members when balanced against the probable outcome of further litigation relating to  
22 class certification, liability and damages issues, and potential appeals; (2) significant discovery,  
23 investigation, research, and litigation have been conducted such that counsel for the Parties at this  
24 time are able to reasonably evaluate their respective positions; (3) settlement at this time will avoid  
25 substantial costs, delay, and risks that would be presented by the further prosecution of the  
26 litigation; and (4) the proposed Settlement has been reached as the result of intensive, serious, and  
27 non-collusive negotiations between the Parties. Accordingly, the Court finds that the Settlement  
28 was entered into in good faith.

1           6.       The Court hereby confirms its August 31, 2017 Order conditionally certifying the  
2 Collective. *See* Dkt. No. 127. The Collective is defined as “all Opt-In Plaintiffs who are or were  
3 employed by OCC at any time from and including January 18, 2014 through December 21, 2018.”

4           7.       The Court hereby authorizes the retention of CPT Group, Inc. as Settlement  
5 Administrator for the purpose of the Settlement, with reasonable administration costs estimated not  
6 to exceed \$40,000.00.

7           8.       The Court hereby conditionally appoints Schneider Wallace Cottrell Konecky  
8 Wotkyns LLP and Berger Montague PC as Counsel for the Classes. The Court hereby conditionally  
9 appoints Plaintiffs Soto, Stricklen, and Farias as Class Representatives for the California Class, and  
10 Plaintiff Ortega as Class Representative for the Washington Class.

11          9.       The Court hereby appoints Schneider Wallace Cottrell Konecky Wotkyns LLP and  
12 Berger Montague PC as Counsel for the Collective. The Court hereby appoints Plaintiffs Soto,  
13 Steven, Fondrose, Ortega, and Farias as Collective representatives for the Collective.

14          10.      The Court hereby APPROVES the Notice of Settlement attached to the Settlement as  
15 **Exhibit A**. The Court finds that the Notice of Settlement, along with the related notification  
16 procedure contemplated by the Settlement, constitutes the best notice practicable under the  
17 circumstances and is in full compliance with the applicable laws and the requirements of due  
18 process. The Court further finds that the Notice of Settlement appears to fully and accurately inform  
19 the Members of the California and Washington Classes and the Collective of all material elements  
20 of the proposed Settlement, of their right to be excluded from the Settlement, and of their right and  
21 opportunity to object to the Settlement.

22          11.      The Court hereby authorizes dissemination of the Notice of Settlement to Members  
23 of the California and Washington Classes and the Collective. Subject to the terms of the Settlement,  
24 the Notice of Settlement shall be mailed via first-class mail to the most recent known address of  
25 each Member of the California and Washington Classes and the Collective within the timeframe  
26 specified in the Settlement, and sent via email to all such persons for whom OCC has an email  
27 address. The parties are authorized to make non-substantive changes to the proposed Notice of  
28 Settlement that are consistent with the terms of the Settlement and this Order.

1           12.     The Court hereby APPROVES the proposed procedure for exclusion from the  
2 Settlement, which is to submit a written statement requesting exclusion to the Settlement  
3 Administrator no later than 60 days following the date on which the Settlement Administrator first  
4 mails the Notice of Settlement to Members of the California and Washington Classes and the  
5 Collective. Any Members of the California and Washington Classes who submit a written exclusion  
6 shall not be a Member of the Settlement Class, shall be barred from participating in the Settlement,  
7 and shall receive no benefit from the Settlement.

8           13.     The Court further PRELIMINARILY APPROVES Class Counsel’s request for  
9 attorneys’ fees of up to one-third of the Gross Settlement Amount, or \$2,500,000, plus their costs,  
10 currently estimated at \$180,000.

11           14.     The Court ORDERS that Class Counsel shall file a motion for approval of the fee  
12 and cost award and of the service awards to the Class Representatives, with the appropriate  
13 declarations and supporting evidence, at least 14 days prior to the Notice Deadline, to be heard at  
14 the same time as the motion for final approval of the Settlement.

15           15.     The Court ORDERS that Class Counsel shall file a motion for final approval of the  
16 Settlement, with the appropriate declarations and supporting evidence, including a declaration  
17 setting forth the identity of any Members of the California and Washington Classes and the  
18 Collective who request exclusion from the Settlement, by\_\_\_\_\_.

19           16.     The Court further ORDERS that each Member of the California and Washington  
20 Classes and the Collective shall be given a full opportunity to object to the proposed Settlement and  
21 request for attorneys’ fees, and to participate at a Final Approval Hearing, which the Court sets to  
22 commence on \_\_\_\_\_ at 10:00 a.m. in Courtroom 4 of the United States  
23 District Court, Northern District of California, San Francisco Division. Any Member of the Classes  
24 and/or the Collective seeking to object to the proposed Settlement may file such objection in writing  
25 with the Court and shall serve such objection on Class Counsel and Defendants’ Counsel. The  
26 written objection requirement may be excused upon a showing of good cause.

27           17.     Accordingly, GOOD CAUSE APPEARING, the Court hereby APPROVES the  
28 proposed Notice of Settlement and adopts the following dates and deadlines:

1	Date of preliminary approval of the Settlement as to Class and approval of the Settlement as to the Collective	
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3	Deadline for OCC to provide to CPT Group, Inc. a database containing Class Members' contact information	Within 10 business days after the Court's preliminary approval of the Settlement
4		
5	Deadline for CPT Group, Inc. to mail the Notice of Settlement to Class Members	Within 10 business days after CPT Group, Inc. receives the Class Member database
6	Deadline for Class Counsel to file attorneys' fees motion and motion for service awards	At least 14 days before the opt-out/objection deadline
7	Deadline for Class Members to postmark requests to opt-out or file objections to the Settlement	60 days after Notice of Settlement is mailed
8		
9	Deadline for filing of Final Approval Motion	According to Northern District of California Local Rules
10	Final Approval Hearing	No earlier than thirty (30) days after the opt-out/objection deadline
11	Effective Date	(i) if there is an objection to the Settlement that is not subsequently withdrawn, then the date upon the expiration of time for appeal of the Court's Final Approval Order; or (ii) if there is a timely objection and appeal by an objector, then after such appeal is dismissed or the Court's Final Approval Order is affirmed on appeal; or (iii) if there are no timely objections to the Settlement, or if any objections which were filed are withdrawn before the date of final approval, then the first business day after the Court's order granting Final Approval of the Settlement
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19	Deadline for OCC to pay the Gross Settlement Amount into the Qualified Settlement Fund	Within 10 business days after Effective Date
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21	Deadline for CPT Group, Inc. to provide Class Counsel and Defendants' Counsel with a final report of all Settlement Awards	At least 10 business days before the Settlement Awards are mailed to Class Members
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23	Deadline for CPT Group, Inc. to transfer the 10 percent holdback of the attorneys' fees award into a separate interest-bearing account	As soon as practicable after funding of the Gross Settlement Amount, and prior to any payment of the attorneys' fees award to Class Counsel
24		
25	Deadline for CPT Group, Inc. to make payments for attorneys' fees and costs, service awards, Class Member Settlement Awards, and LWDA Payment	Within 30 days after the Effective Date or as soon as reasonably practicable
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27	Deadline for CPT Group, Inc. to send a reminder letter to those Class Members who have not yet	90 days before check-cashing deadline
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cashied their Class Member Settlement Award checks	
Deadline for CPT Group, Inc. to place a reminder phone call to those Class Members who have not yet cashied their Class Member Settlement Award checks	60 days before check-cashing deadline
Check-cashing deadline	180 days after issuance
Deadline for CPT Group, Inc. to either distribute uncashed check funds to <i>cy pres</i> recipient or redistribute such funds to those Class Members who cashied their cashied their Class Member Settlement Award checks	As soon as practicable after check-cashing deadline
Deadline for Plaintiffs to file the Post-Distribution Accounting.	Within 21 days after the distribution of any remaining monies to Settlement Class Members who cashied their Settlement Award check or to the <i>cy pres</i> recipient
Deadline for CPT Group, Inc. to release the 10 percent holdback of the attorneys’ fees award to Class Counsel	As soon as practicable following completion of the distribution process and filing of the Post-Distribution Accounting with the Court

18. The Court further ORDERS that, pending further order of this Court, all proceedings in this Action, except those contemplated herein and in the Settlement, are stayed, and all deadlines are vacated.

19. If for any reason the Court does not execute and file a Final Approval Order and Judgment, the proposed Settlement subject to this Order and all evidence and proceedings had in connection with the Settlement shall be null and void.

20. The Court may, for good cause, extend any of the deadlines set forth in this Order or adjourn or continue the final approval hearing without further notice to the Classes and Collective.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
 HON. VINCENT CHHABRIA  
 United States District Judge,  
 Northern District of California