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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' RENEWED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND COLLECTIVE ACTION
SETTLEMENT**

Judge: Vince Chhabria

Hearing: [DATE]

Time: [TIME]

Location: [LOCATION]

Complaint Filed: January 18, 2017

1 The Renewed Motion for Preliminary Approval of Class and Collective Action Settlement,
2 filed by Plaintiffs Desidero Soto, Steven Stricklen, Steeve Fondrose, Lorenzo Ortega, and Jose
3 Antonio Farias, Jr. (“Plaintiffs”) in the above-captioned action, came on for hearing regularly in
4 Courtroom 4 of the above captioned court, the Honorable Vincent Chhabria presiding. Defendants
5 O.C. 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
14 filed their Second Amended Collective and Class Action Complaint on March 13, 2018, which
15 added the Comcast Defendants under a joint-employer theory, along with Plaintiff Ortega and the
16 Washington state law claims that he asserts. Dkt. No. 232. On June 20, 2018, Plaintiffs filed their
17 Third 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
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1 and recovery periods and other non-productive time, and related wage statement violations; (3)
2 failure to pay for all hours worked; (4) failure to pay minimum wage; (5) failure to pay overtime
3 wages; (6) failure to reimburse for necessary business expenditures (including tools and supplies);
4 (7) waiting time penalties; (8) failure to provide itemized wage statements; (9) violation of the UCL
5 for unlawful, unfair, and/or fraudulent business acts or practices; (10) penalties pursuant to §
6 2699(a) of the PAGA; and (11) penalties pursuant to § 2699(f) of the PAGA.

7 Plaintiff Ortega asserts six additional causes of action under Washington law on behalf of
8 himself and the Washington class: (1) failure to pay minimum wage; (2) failure to pay overtime
9 wages; (3) failure to authorize, permit, and/or make available meal and rest periods; (4) failure to
10 pay all wages due upon termination; (5) willful refusal to pay wages; and (6) violation of
11 Washington's Consumer Protection Act, RCW 19.86, *et seq.* Defendants dispute and deny all of
12 Plaintiffs' claims. After extensive and voluminous discovery, including written discovery and
13 depositions, the Parties entered into private mediation with respected neutral mediator Jeff Ross in
14 an attempt to resolve the claims. As a result of the mediation session on October 18, 2018, and
15 subsequent negotiations via the mediator, the Parties reached a settlement. The Parties then
16 executed a Class Action Settlement Agreement on March 1, 2019. Likewise, on March 1, 2019,
17 Plaintiffs filed their first Notice of Motion and Motion for Preliminary Approval of Class and
18 Collective Action Settlement, *see* ECF No. 284. The Court held a hearing on Plaintiffs' initial
19 Motion on March 21, 2019.

20 On April 1, 2019, the Court entered an Order denying Plaintiffs' Motion, *see* ECF No. 286,
21 and, in doing so, raised three concerns: 1) whether the settlement allocation was fair and reasonable
22 with respect to the claims of members of the FLSA collective who did not work in Washington or
23 California, on the basis that they may also have state law wage and hour claims; 2) whether the
24 settlement allocation was fair and reasonable insofar as workers from California and Washington
25 would be entitled to the same settlement shares; and 3) whether the settlement should be preliminarily
26 approved where no assurances were provided that the violations at issue in the case were not likely
27 to recur. *See* ECF No. 286.

1 Following the Court’s denial of Plaintiffs’ Motion for Preliminary Approval, Class Counsel
2 and the parties engaged in subsequent settlement negotiations and entered into the Addendum to
3 Class Action Settlement Agreement (“Addendum”, and together with the Class Action Settlement
4 Agreement, “Amended Settlement” or the “Amended Settlement Agreement”). A hearing was held
5 before this Court on _____, for the purpose of determining, among other things, whether the
6 proposed Amended Settlement is within the range of possible approval, if notice of the Settlement
7 to Members of the California and Washington Classes and the Collective is appropriate, and
8 whether a formal fairness hearing, also known as a final approval hearing, should be scheduled.
9 Appearing at the hearing was Schneider Wallace Cottrell Konecky Wotkyns LLP and Berger
10 Montague PC on behalf of Plaintiffs, the Collective, and Putative Classes; Littler Mendelson, P.C.
11 on behalf of OCC; and Morgan, Lewis & Bockius LLP on behalf of Comcast.

12 The Court’s scrutiny of a proposed settlement is as rigorous at the preliminary approval
13 stage as at the final approval stage. *See Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1036-37 (N.D.
14 Cal. 2016). Having reviewed the papers and documents presented – including the Plaintiffs’
15 Renewed Motion for Preliminary Approval – and having heard the statements of counsel, and
16 having considered the matter, the Court FINDS, CONCLUDES, and HEREBY ORDERS as
17 follows:

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

23 2. The Court finds on a preliminary basis that: (1) the settlement amount is fair and
24 reasonable to the California and Washington Class Members when balanced against the probable
25 outcome of further litigation relating to class certification, liability and damages issues, and
26 potential appeals; (2) the allocation plan that accounts for the relative strength of potentially
27 underlying state law claims is fair, reasonable, and adequate; (3) significant discovery,
28 investigation, research, and litigation have been conducted such that counsel for the Parties at this

1 time are able to reasonably evaluate their respective positions; (4) settlement at this time will avoid
2 substantial costs, delay, and risks that would be presented by the further prosecution of the
3 litigation; and (5) the proposed Amended Settlement has been reached as the result of intensive,
4 serious, and non-collusive negotiations between the Parties. Accordingly, the Court preliminarily
5 finds that the Amended Settlement was entered into in good faith.

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

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

18 5. The Court finds that: (1) the settlement amount is fair and reasonable to the
19 Collective Members when balanced against the probable outcome of further litigation relating to
20 class certification, liability and damages issues, and potential appeals; (2) the allocation plan that
21 accounts for the relative strength of potentially underlying state law claims is fair, reasonable, and
22 adequate; (3) significant discovery, investigation, research, and litigation have been conducted such
23 that counsel for the Parties at this time are able to reasonably evaluate their respective positions; (4)
24 settlement at this time will avoid substantial costs, delay, and risks that would be presented by the
25 further prosecution of the litigation; and (5) the proposed Amended Settlement has been reached as
26 the result of intensive, serious, and non-collusive negotiations between the Parties. Accordingly,
27 the Court finds that the Amended Settlement was entered into in good faith.
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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 Amended Settlement, with reasonable administration costs
6 estimated not 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
9 conditionally appoints Plaintiffs Soto, Stricklen, and Farias as Class Representatives for the
10 California Class, and 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 Stricklen, Fondrose, Ortega, and Farias as Collective representatives for the Collective.

14 10. The Court hereby APPROVES the Notice of Settlement, attached to the Amended
15 Settlement as **Exhibit A**. The Court finds that the Notice of Settlement, along with the related
16 notification procedure contemplated by the Amended Settlement, constitutes the best notice
17 practicable under the circumstances and is in full compliance with the applicable laws and the
18 requirements of due process. The Court further finds that the Notice of Settlement appears to fully
19 and accurately inform the Members of the California and Washington Classes and the Collective of
20 all material elements of the proposed Amended Settlement, of their right to be excluded from the
21 Amended Settlement, and of their right and opportunity to object to the Amended 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 Amended
24 Settlement, the Notice of Settlement shall be mailed via first-class mail to the most recent known
25 address of each Member of the California and Washington Classes and the Collective within the
26 timeframe specified in the Settlement, and sent via email to all such persons for whom OCC has an
27 email address. The parties are authorized to make non-substantive changes to the proposed Notice
28 of Settlement that are consistent with the terms of the Amended Settlement and this Order.

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

8 13. The Court further PRELIMINARILY APPROVES Class Counsel’s request for
9 attorneys’ fees of up to one-third of the initial Gross Settlement Amount of \$7,500,000, or
10 \$2,500,000, plus their costs, 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 Amended Settlement.

15 15. The Court ORDERS that Class Counsel shall file a motion for final approval of the
16 Amended Settlement, with the appropriate declarations and supporting evidence, including a
17 declaration setting forth the identity of any Members of the California and Washington Classes and
18 the 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		
2	Date of preliminary approval of the Amended Settlement as to Class and approval of the Amended Settlement as to the Collective	
3		
4	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 Amended Settlement
5		
6	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
7	Deadline for Class Counsel to file attorneys' fees motion and motion for service awards	At least 14 days before the opt-out/objection deadline
8	Deadline for Class Members to postmark requests to opt-out or file objections to the Amended Settlement	60 days after Notice of Settlement is mailed
9		
10	Deadline for filing of Final Approval Motion	According to Northern District of California Local Rules
11	Final Approval Hearing	No earlier than thirty (30) days after the opt-out/objection deadline
12	Effective Date	(i) if there is an objection to the Amended 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 Amended 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 Amended Settlement
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21	Deadline for OCC to pay the Gross Settlement Amount into the Qualified Settlement Fund	Within 10 business days after Effective Date
22	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
23		
24	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
25		
26	Deadline for CPT Group, Inc. to make payments for attorneys' fees and costs, service awards, Class Member Settlement Awards, and LWDA	Within 30 days after the Effective Date or as soon as reasonably practicable
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1	Payment	
2	Deadline for CPT Group, Inc. to send a reminder letter to those Class Members who have not yet cashed their Class Member Settlement Award checks	90 days before check-cashing deadline
3		
4	Deadline for CPT Group, Inc. to place a reminder phone call to those Class Members who have not yet cashed their Class Member Settlement Award checks	60 days before check-cashing deadline
5		
6	Check-cashing deadline	180 days after issuance
7	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 cashed their Class Member Settlement Award checks	As soon as practicable after check-cashing deadline
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9		
10	Deadline for Plaintiffs to file the Post-Distribution Accounting.	Within 21 days after the distribution of any remaining monies to Settlement Class Members who cashed their Settlement Award check or to the <i>cy pres</i> recipient
11		
12	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
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 16 18. The Court further ORDERS that, pending further order of this Court, all proceedings
 17 in this Action, except those contemplated herein and in the Amended Settlement, are stayed, and all
 18 deadlines are vacated.

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

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

24 **IT IS SO ORDERED.**

25
 26 Dated: _____

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

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