

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DESIDERO SOTO, et al.,

Plaintiffs,

v.

O.C. COMMUNICATIONS, INC., et al.,

Defendants.

Case No. 17-cv-00251-VC

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

Re: Dkt. No. 289

The Renewed Motion for Preliminary Approval of Class and Collective Action Settlement, filed by Plaintiffs Desidero Soto, Steven Stricklen, Steeve Fondrose, Lorenzo Ortega, and Jose Antonio Farias, Jr. (“Plaintiffs”) in the above-captioned action, came on for hearing regularly in Courtroom 4 of the above captioned court, the Honorable Vince Chhabria presiding. Defendants O.C. Communications, Inc. (“OCC”), Comcast Corporation and Comcast Cable Communications Management, LLC (collectively, “Comcast”) do not oppose the motion. Plaintiffs bring a representative wage and hour action under federal and state laws on behalf of themselves and other Technicians employed by OCC who install cable television, phone, security and internet services. Plaintiffs Desidero Soto and Steven Stricklen filed their initial Collective and Class Action Complaint in this action on January 18, 2017, which asserted FLSA and California law claims. Dkt. No. 1. On August 18, 2017, Plaintiffs filed their First Amended Collective and Class Action Complaint, which added Plaintiff Fondrose, refined the factual allegations, and added a cause of action for violation of California Labor Code Section 226.2. Dkt. No. 117. Plaintiffs filed their Second Amended Collective and Class Action Complaint on March 13, 2018, which added the Comcast Defendants under a joint-employer theory, along with

Plaintiff Ortega and the Washington state law claims that he asserts. Dkt. No. 232. On June 20, 2018, Plaintiffs filed their Third Amended Collective and Class Action Complaint (“TAC”), which added Plaintiff Farias and California Private Attorneys General Act (“PAGA”) claims against Comcast. *See* Dkt. No. 255.

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

The Parties executed a Class Action Settlement Agreement on March 1, 2019. Likewise, on March 1, 2019, Plaintiffs filed their first Notice of Motion and Motion for Preliminary Approval of Class and Collective Action Settlement, *see* ECF No. 284. The Court held a hearing on Plaintiffs’ initial Motion on March 21, 2019 and denied the motion on April 1, 2019, *see* ECF No. 286. Following the Court’s denial of Plaintiffs’ Motion for Preliminary Approval, Class Counsel and the parties engaged in subsequent settlement negotiations and entered into the Addendum to Class Action Settlement Agreement. They filed a renewed Motion for Preliminary Approval on May 10, 2019, and a telephonic hearing was held before this Court on June 13, 2019.

Having reviewed the papers and documents presented – including the Plaintiffs’ Renewed Motion for Preliminary Approval – the Court finds, concludes, and orders as follows:

1. The Court grants preliminary approval of the terms and conditions contained in the Amended Settlement, attached hereto as **Exhibit 1**, as to the California and Washington Classes.
2. The Court finds on a preliminary basis that the class and collective action settlement memorialized in the Amended Settlement is fair, reasonable, and adequate.

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

4. The Court grants Approval of the terms and conditions contained in the Amended Settlement as to the Collective. The Court preliminarily finds that the terms of the Amended Settlement are reasonable, pursuant to the Fair Labor Standards Act and applicable law. The Court confirms its August 31, 2017, Order conditionally certifying the Collective. *See* Dkt. No. 127. The Collective is defined as “all Opt-In Plaintiffs who are or were employed by OCC at any time from and including January 18, 2014, through December 21, 2018.”

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

6. The Court appoints Schneider Wallace Cottrell Konecky Wotkyns LLP and Berger Montague PC as Counsel for the Classes and the Collective. (For purposes of representing the Classes, the appointment is conditional.) The Court also conditionally appoints Plaintiffs Soto, Stricklen, and Farias as Class Representatives for the California Class, and Plaintiff Ortega as Class Representative for the Washington Class. For purposes of the Collective, Plaintiffs Soto, Stricklen, Fondrose, Ortega, and Farias are appointed as Collective representatives.

7. The Court approves the Notice of Settlement, attached as **Exhibit 2**, and authorizes dissemination of the Notice of Settlement to Members of the California and Washington Classes and the Collective. Subject to the terms of the Amended Settlement, the Notice of Settlement shall be mailed via first-class mail to the most recent known address of each

Member of the California and Washington Classes and the Collective within the timeframe specified in the Settlement, and sent via email to all such persons for whom OCC has an email address.

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

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

10. Class Counsel shall file a motion for final approval of the Amended Settlement, with the appropriate declarations and supporting evidence, including a declaration setting forth the identity of any Members of the California and Washington Classes and the Collective who request exclusion from the Settlement, by September 16, 2019.

11. Each Member of the California and Washington Classes and the Collective shall be given a full opportunity to object to the proposed Settlement and request for attorneys' fees, and to participate at a Final Approval Hearing, which the Court sets to commence on October 17, 2019, at 10:00 a.m. in Courtroom 4 of the United States District Court, Northern District of California, San Francisco Division. Any Member of the Classes and/or the Collective seeking to object to the proposed Settlement may file such objection in writing with the Court and shall serve such objection on Class Counsel and Defendants' Counsel. The written objection requirement may be excused upon a showing of good cause.

12. Accordingly, the Court approves the proposed Notice of Settlement and adopts the following dates and deadlines:

Date of preliminary approval of the Amended Settlement as to Class and approval of the Amended Settlement as to the Collective	June 17, 2019
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
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
Deadline for Class Counsel to file attorneys' fees motion and motion for service awards	At least 14 days before the opt-out/objection deadline
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
Deadline for filing of Final Approval Motion	September 12, 2019
Final Approval Hearing	October 17, 2019
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
Deadline for OCC to pay the Gross Settlement Amount into the Qualified Settlement Fund	Within 10 business days after Effective Date
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
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
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
Deadline for CPT Group, Inc. to send a	90 days before check-cashing deadline

reminder letter to those Class Members who have not yet cashed 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 cashed 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 cashed 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 cashed 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

13. At this time, all proceedings in this Action, except those contemplated herein and in the Amended Settlement, are stayed, and all deadlines are vacated.

IT IS SO ORDERED.

Dated: June 17, 2019



VINCE CHHABRIA
United States District Judge