

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

JAVIER RODRIGUEZ, JORGE  
ESQUILIN, HARRY CHARCALIS, and  
DARREN COUTURIER, individually and  
on behalf of all persons similarly situated,

Plaintiffs,

v.

TRI-WIRE ENGINEERING SOLUTIONS,  
INC.; COMCAST CORPORATION; and  
COMCAST CABLE COMMUNICATIONS  
MANAGEMENT, LLC,

Defendants.

No.: 1:21-cv-10752

Hon. Patti B. Saris, U.S.D.J.

**DECLARATION OF ORI EDELSTEIN IN SUPPORT OF PLAINTIFFS'  
UNOPPOSED MOTION FOR APPROVAL OF COLLECTIVE SETTLEMENT AND  
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

I, Ori Edelstein, hereby declare as follows:

1. I am an attorney at law duly licensed and in good standing to practice law in the courts of California (No. 268145) and am admitted *pro hac vice* to practice law before this Court, the United States District Court, District of Massachusetts.

2. I am a partner at the law firm of Schneider Wallace Cottrell Konecky LLP (“SWCK”). SWCK specializes in class and collective litigation in state and federal court.

3. I am counsel of record for Javier Rodriguez, Jorge Esquilin, Harry Charcalis, and Darren Couturier on behalf of themselves and all others similarly situated (“Plaintiffs”), in the above-captioned case. I submit this declaration in support of Plaintiffs’ Motion for Approval of Collective Settlement and Preliminary Approval of Class Action Settlement. I am familiar with the file, the documents, and the history related to these cases. The following statements are based on my personal knowledge and review of the files. If called to do so, I could and would testify competently thereto.

4. A true and correct copy of the fully-executed Class Action Settlement Agreement and Release (“Settlement”) is attached hereto as **Exhibit 1**. The Notice of Class Action Settlement (“Class Notice”) and Notice of Collective Action Settlement (“Collective Notice”) are attached to the Settlement as **Exhibits A and B**, respectively.

#### **QUALIFICATIONS, EXPERIENCE, AND EXPERTISE**

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

6. SWCK has acted or is acting as class counsel in numerous cases. A partial list of cases which have been certified and/or settled as class actions includes: *Wright, et al. v. Frontier*

*Management LLC, et al.*, (Case No. 2:19-cv-01767-JAM-CKD) (Eastern District of California, March 13, 2023) (final approval of California, Illinois, Oregon, and Washington class and FLSA collective action settlement); *Campos v. Extra Express (Cerritos) Inc.*, (Case No. BC715057) (Los Angeles Superior Court, Jan. 18, 2023) (final approval of California law wage and hour class action settlement alleging misclassification of short haul delivery drivers); *Huddleston v. John Christner Trucking, LLC*, (Case No. 4:17-cv-00549-GKF-CDL) (Northern District of Oklahoma, October 31, 2022) (final approval of California and Oklahoma class and FLSA collective action settlement where Plaintiff obtained class certification on behalf of misclassified truck drivers); *Tinaco v. Quik Stop Markets, Inc.* (Case No. RG20061119) (Alameda County Superior Court, June 23, 2022) (final approval of a class action settlement for failure to pay for all hours worked, failure to pay minimum and overtime wages, failure to provide meal and rest breaks, waiting time penalties, and failure to provide itemized wage statements, under California law); *Ramirez, et al. v. Rite Aid Corp., et al.*, (Case No. CV 20-3531-GW-SKx) (Central District of California, May 19, 2022) (final approval of California class action and PAGA representative action settlement); *Madrigal v. Mission Lakes Country Club, Inc.* (Case No. RIC2003428) (Riverside County Superior Court, May 18, 2022) (final approval of California class action and PAGA representative action); *Hazel v. Himagine Solutions, Inc.* (Case No. RG20068159) (Alameda County Superior Court, Nov. 2, 2021) (final approval of a California class action settlement for failure to pay for all hours worked, failure to pay minimum and overtime wages, failure to provide meal and rest breaks, failure to reimburse necessary business expenditures, waiting time penalties, and failure to provide itemized wage statements); *Pine Manor Investors, LLC v. FPI Management, Inc.* (Case No. 34-2018-00237315) (Sacramento County Superior Court, October 20, 2021) (final approval of a California class action settlement in action that alleged improper billing for workers compensation charges by an apartment complex management company); *Etcheverry v. Franciscan Health System, et al.* (Case No. 3:19-cv-05261-RJB-MAT) (Western District of Washington, October 19, 2021) (final approval of hybrid Fair Labor Standards Act and

Washington class action); *Jean-Pierre, et al. v. J&L Cable TV Services, Inc.* (Case No. 1:18-cv-11499-MLW) (District of Massachusetts, August 31, 2021) (final approval of hybrid Fair Labor Standards Act and Massachusetts, New Hampshire, Maine, and Pennsylvania class action); *Amaraut, et al. v. Sprint/United Management Co.* (Case No. 19-cv-411-WQH-AHG) (Southern District of California, August 5, 2021) (final approval of hybrid Fair Labor Standards Act and California Labor Code Rule 23 action); *Diaz, et al. v. TAK Communications CA, Inc., et al.* (Case No. RG20064706) (Alameda Superior Court, July 27, 2021) (final approval of hybrid Fair Labor Standards Act and California Labor Code class action); *Villafan v. BROADSPECTRUM Downstream Services, Inc., et al.* (Case No. 3:18-cv-06741-LB) (Northern District of California, April 8, 2021) (final approval of hybrid Fair Labor Standards Act and California law class action settlement for failure to pay for all hours worked, failure to provide meal and rest breaks, unreimbursed business expenses, waiting time penalties, and failure to provide itemized wage statements); *Jones, et al. v. CertifiedSafety, Inc., et al.* (lead Case No. 3:17-cv-02229-EMC) (Northern District of California, June 1, 2020) (final approval of hybrid Fair Labor Standards Act and California, Washington, Illinois, Minnesota, Alaska, and Ohio class action settlement for failure to pay for all hours worked, failure to provide meal and rest breaks, unreimbursed business expenses, waiting time penalties, and failure to provide itemized wage statements); *El Pollo Loco Wage and Hour Cases* (Case No. JCCP 4957) (Orange County Superior Court, January 31, 2020) (final approval of a class action settlement for failure to pay for all hours worked, failure to provide meal and rest breaks, unreimbursed business expenses, waiting time penalties, and failure to provide itemized wage statements, under California law); *Soto, et al. v. O.C. Communications, Inc., et al.* (Case No. 3:17-cv-00251-VC) (Northern District of California, Oct. 23, 2019) (final approval of a hybrid Fair Labor Standards Act and California and Washington law Rule 23 action with joint employer allegations); *Manni v. Eugene N. Gordon, Inc. d/b/a La-Z-Boy Furniture Galleries* (Case No. 34-2017-00223592) (Sacramento Superior Court) (final approval of a class action settlement for failure to pay for all hours worked, failure to pay minimum and overtime

wages, failure to provide meal and rest breaks, waiting time penalties, and failure to provide itemized wage statements, under California law); *Van Liew v. North Star Emergency Services, Inc., et al.* (Case No. RG17876878) (Alameda County Superior Court) (final approval of a class action settlement for failure to pay for all hours worked, failure to pay minimum and overtime wages, failure to provide meal and rest breaks, failure to reimburse for necessary business expenditures, waiting time penalties, and failure to provide itemized wage statements, under federal law); *Asalati v. Intel Corp.* (Case No. 16cv302615) (Santa Clara Superior Court) (final approval of a class and collective action settlement for failure to pay for all hours worked, failure to pay overtime, failure to provide meal and rest breaks, failure to reimburse for necessary business expenditures, failure to adhere to California record keeping requirements, waiting time penalties, and failure to provide itemized wage statements, under federal and California law); *Harmon, et al. v. Diamond Wireless, LLC*, (Case No. 34-2012-00118898) (Sacramento Superior Court) (final approval of a class action settlement for failure to pay wages free and clear, failure to pay overtime and minimum wages, failure to provide meal and rest breaks, failure to pay full wages when due, failure to adhere to California record keeping requirements, and failure to provide adequate seating, under California law); *Aguilar v. Hall AG Enterprises, Inc., et al.*, (Case No. BCV-16-10994-DRL) (Kern County Superior Court) (final approval of a class action settlement for failure to provide meal and rest periods, failure to compensate for all hours worked, failure to pay minimum and overtime wages, waiting time penalties, failure to provide itemized wage statements, and failure to pay undiscounted wages, under California law); *Viceral and Krueger v. Mistras Group, Inc.*, (Case No. 3:15-cv-02198-EMC) (Chen, J.) (Northern District of California) (final approval of a class and collective action settlement for failure to compensate for all hours worked, including overtime, under federal and California law); *Jeter-Polk, et al. v. Casual Male Store, LLC, et al.*, (Case No. 5:14-CV-00891) (Central District of California) (final approval of a class action settlement for failure to provide meal and rest periods, failure to compensate for all hours worked, failure to pay overtime wages, unpaid wages and waiting time

penalties, and failure to provide itemized wage statements); *Meza, et al. v. S.S. Skikos, Inc., et al.*, (Case No. 15-cv-01889-TEH) (Northern District of California) (final approval of class and collective action settlement for failure to compensate for all hours worked, including overtime, under federal and California law, failure to provide meal and rest breaks, failure to reimburse for necessary business uniforms, failure to pay full wages upon termination to, and failure to provide accurate itemized wage statements); *Holmes, et al v. Xpress Global Systems, Inc.*, (Case No. 34-2015-00180822) (Sacramento Superior Court) (final approval of a class action settlement for failure to provide meal and rest breaks and failure to provide accurate itemized wage statements); *Guilbaud, et al. v. Sprint Nextel Corp. et al.*, (Case No. 3:13-cv-04357-VC) (Northern District of California) (final approval of a class and collective action settlement for failure to compensate for all hours worked, including overtime, failure to provide meal and rest breaks, failure to reimburse for necessary business uniforms, failure to pay full wages upon termination to, and failure to provide accurate itemized wage statements); *Molina, et al. v. Railworks Track Systems, Inc.*, (Case No. BCV-15-10135) (Kern County Superior Court) (final approval of a class action settlement for failure to provide meal and rest breaks, unpaid wages, unpaid overtime, off-the-clocker work, failure to pay full wages upon termination to, and failure to provide accurate itemized wage statements); *Allen, et al. v. County of Monterey, et al.*, (Case No. 5:13-cv-01659) (Northern District of California) (settlement between FLSA Plaintiffs and Defendant to provide relief to affected employees); *Barrera v. Radix Cable Holdings, Inc., et al.*, (Case No. CIV 1100505) (Marin County Superior Court) (final approval of class action settlement for failure to provide meal and rest breaks to, off-the-clock work by, failure to provide overtime compensation to, failure to reimburse business expenditures to, failure to pay full wages upon termination to, and failure to provide accurate itemized wage statements to retention specialists working for cable companies); *Glass Dimensions, Inc., et al. v. State Street Corp. et al.*, (Case No. 1:10-cv-10588) (District of Massachusetts) (final approval of class action settlement for claims of breach of fiduciary duty and self-dealing in violation of ERISA); *Friend, et al. v. The Hertz Corporation,*

(Case No. 3:07-052222) (Northern District of California) (settlement of claims that rental car company misclassified non-exempt employees, failed to pay wages, failed to pay premium pay, and failed to provide meal periods and rest periods); *Hollands v. Lincare, Inc., et al.*, (Case No. CGC-07-465052) (San Francisco County Superior Court) (final approval of class action settlement for overtime pay, off-the-clock work, unreimbursed expenses, and other wage and hour claims on behalf of a class of center managers); *Jantz, et al. v. Colvin*, (Case No. 531-2006-00276X) (In the Equal Employment Opportunity Commission Baltimore Field Office) (final approval of class action settlement for the denial of promotions based on targeted disabilities); *Shemaria v. County of Marin*, (Case No. CV 082718) (Marin County Superior Court) (final approval of class action settlement on behalf of a class of individuals with mobility disabilities denied access to various facilities owned, operated, and/or maintained by the County of Marin); *Perez, et al. v. First American Title Ins. Co.*, (Case No. 2:08-cv-01184) (District of Arizona) (final approval of class action settlement in action challenging unfair discrimination by title insurance company); *Perez v. Rue21, Inc., et al.*, (Case No. CISCv167815) (Santa Cruz County Superior Court) (final approval of class action settlement for failure to provide meal and rest breaks to, and for off-the-clock work performed by, a class of retail employees); *Sosa, et al. v. Dreyer's Grand Ice Cream, Inc., et al.*, (Case No. RG 08424366) (Alameda County Superior Court) (final approval of class action settlement for failure to provide meal and rest breaks to, and for off-the-clock work performed by, a class of ice cream manufacturing employees); *Villalpando v. Exel Direct Inc., et al.* (Case Nos. 3:12-cv-04137 and 4:13-cv-03091) (Northern District of California) (certified class action on behalf of delivery drivers allegedly misclassified as independent contractors); *Choul, et al. v. Nebraska Beef, Ltd.* (Case Nos. 8:08-cv-90, 8:08-cv-99) (District of Nebraska) (final approval of class action settlement for off-the-clock work by, and failure to provide overtime compensation to, production-line employees of meat-packing plant); among many others.



7. Throughout this action, I was the primary senior associate on this matter before I became partner at SWCK in 2022. I have been practicing for approximately 14 years and I earned my Juris Doctor from Georgetown University Law Center in 2009. My legal career has been focused on employment and representative action litigation, and my experience in employment class actions runs the gamut from claims concerning meal and rest breaks, wage statements, off-the-clock issues, and misclassification, just to name a few. At any given time, I am responsible for dozens of wage and hour class and collective actions, and have extensive experience in these types of actions. Before I took on a partner position at SWCK, Carolyn Hunt Cottrell, a partner at SWCK and a member of the firm since 1995, acted as the only partner from SWCK on this action. Nearly her entire legal career has been devoted to advocating for the rights of individuals who have been subjected to illegal pay policies, discrimination, harassment and retaliation and representing employees in wage and hour and discrimination class actions. She has litigated hundreds of wage and hour, employment discrimination and civil-rights actions, and manages many of the firm's current cases in these areas. She is a member of the State Bar of California, and has had memberships with Public Justice, the National Employment Lawyers Association, the California Employment Lawyers Association, and the Consumer Attorneys of California. She served on the Board of Directors for the San Francisco Trial Lawyers Association and co-chaired its Women's Caucus. She was named one of the "Top Women Litigators for 2010" by the Daily Journal. In 2012, she was nominated for Woman Trial Lawyer of the Year by the Consumer Attorneys of California. She has been selected as a Super Lawyer every year since 2014. She earned her Bachelor's degree from the University of California, and is a graduate of the University of the Pacific, McGeorge School of Law.

### **DISCOVERY**

8. The Parties engaged in extensive formal and informal discovery leading up to and following mediation. This included documentation relating to Comcast Corporation's and Comcast Cable Communications Management, LLC's (together, "Comcast") contractual



relationship with Tri-Wire Engineering Solutions, Inc. (“Tri-Wire”) and Tri-Wire’s compensation policies and practices, payroll data for the Settlement Class, and a 20% sampling of data relating to the Technicians’ work for Tri-Wire on Comcast customers’ accounts.

9. Plaintiffs further conducted significant formal discovery requests. On February 25, 2022, Plaintiffs propounded approximately 20 special interrogatories and 51 requests for production on each Defendant. Comcast responded to these requests on April 11, 2022. The Parties were in the process of extensive meet and confer regarding these responses when the Parties agreed to focus on pre-mediation discovery and potential informal resolution of this matter, which resulted in the Settlement at issue.

10. On February 11, 2022, Comcast also propounded formal discovery requests on each of the named Plaintiffs, consisting of approximately 58 requests for production of documents and 17 special interrogatories, to which Plaintiffs responded on March 28, 2022. Plaintiffs supplemented their responses to the requests for production on May 27, 2022, as well as to the special interrogatories on June 30, 2022, and again on November 14, 2022, following significant meet and confer between the Parties.

11. Plaintiffs’ counsel have also completed extensive outreach with Class and Collective Members, including approximately 100 in-depth interviews. These interviews covered topics including dates and locations of work, hours of work, pre-shift and post-shift off-the-clock work, meal and rest breaks, and reimbursement of work-related expenses.

12. I am informed that on February 24, 2022, Automatic Data Processing Inc. (“ADP”) released the payroll records of all class and collective members in response to Plaintiffs’ subpoena to ADP requesting Tri-Wire’s employee tax and payroll documents, payroll policies, and communications with ADP regarding payroll.

13. Comcast also provided class-wide figures ahead the mediation, to enable Plaintiffs’ counsel to evaluate damages on a Class and Collective basis. Plaintiffs’ counsel completed an

exhaustive review of the documents and data provided herein, and used the information and data from them to prepare for mediation.

### **MEDIATION**

14. The settlement was a product of non-collusive, arm's-length negotiations.

15. Prior to the mediation, Plaintiffs prepared a detailed mediation statement, and performed calculations of potential damages based on their investigations and the extensive payroll and timekeeping data produced by ADP and Comcast. Plaintiffs further conducted extensive factual and legal research in connection with Plaintiffs' motion for certification of the collective and facilitation of notice to potential collective members.

16. On November 30, 2022, the Parties conducted a hybrid in-person and remote, full-day mediation before Magistrate Judge Diane Welsh (Ret.) that lasted into the evening. The Parties reached a settlement in principle that evening to resolve all claims in this litigation.

17. The Parties executed a memorandum of understanding on December 28, 2022, which contained the essential terms of the instant Settlement, and extensively met and conferred to memorialize the terms of the long-form settlement agreement over the next few months, during which Counsel for the Parties worked to finalize the proposed long-form settlement agreement and corresponding notice documents, with several rounds of revisions and proposals related to the terms and details of the Settlement. The Parties eventually reached an accord with Judge Welsh's assistance, which resulted in the Parties' execution of the long-form settlement agreement on March 9, 2023.

### **THE SETTLEMENT**

18. The Gross Settlement Amount of \$1,995,000 represents a compromised resolution of the factual and legal disputes presented by this Action, and takes into account the risks that members of the proposed Class and the Collective would face if this case were to proceed to trial.

19. The Parties have selected Phoenix Class Action Administration Solutions ("Phoenix") to administer the Settlement. Based on an estimate my office received from Phoenix,

the costs of the administration of the Settlement are estimated to be \$21,000.

20. After deducting the requested amounts of attorneys' fees and costs, service awards, settlement administration costs, and the Contingency Reserve Fund pursuant to the Settlement, and subject to the Court's approval, the Net Settlement Amount available to be paid to Settlement Class Members is currently estimated to be approximately \$1,204,000.

21. Based on relevant work records and confirmed by Comcast, there are approximately 467 Class Members.<sup>1</sup>

22. Under the Settlement, the Net Settlement Amount will be allocated to Settlement Class Members based on the number of workweeks that each Settlement Class Member worked for Tri-Wire and provided services to Comcast customers' accounts in the applicable period, which ensures that longer-tenured workers receive a greater recovery. The allocation also tracks the differences in the increased value of substantive law and penalty claims of specific state laws by providing each workweek worked in those states with additional settlement shares instead of one. Plaintiffs' Counsel performed an in-depth analysis of workweek weightings and the underlying state law provisions to develop the weightings. This included Plaintiffs' contention that Massachusetts and New Jersey unpaid wages claims, which allow for treble damages, are more valuable, as well as the greater value of New Hampshire and Pennsylvania claims, which allow for liquidated damages of 10% to 25%. Based on Plaintiffs' Counsel's analysis and on the workweek data provided by Comcast and ADP, Plaintiffs' Counsel determined the average per-workweek exposure for Class Members by State Class, and compared such exposure to the average per-workweek exposure for the FLSA-only Collective Members. Based on this analysis,

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<sup>1</sup> This includes approximately six Class members resided in Maine, approximately 160 resided in Massachusetts, approximately 20 resided in New Hampshire, approximately 230 resided in New Jersey, and approximately 68 resided in Pennsylvania during the relevant periods applicable to each State. But based on Plaintiffs' Counsel's investigations, these totals represent unique individuals who often traveled to different states to provide services, such that the actual number of class members per state are greater than what is represented by their respective residences. Indeed, based on Plaintiffs' Counsel's investigations, approximately 6% of all Class Members (i.e., 28 Class Members), reported working in multiple states outside of their resident state.

Plaintiffs' Counsel determined the appropriate weighting of settlement shares, as provided by the Settlement, is: 1.1 settlement shares for work performed in New Hampshire and Pennsylvania, 2 settlement shares for work performed in Massachusetts and New Jersey, and 1 settlement share for all other workweeks in which work was performed in the United States. Plaintiffs' Counsel made the allocation to ensure that employees are compensated accordingly and in the most equitable manner.

23. Based on Plaintiffs' Counsel's investigation, each of the named Plaintiffs share interests virtually identical to those of the putative State Class Members that each Plaintiff seeks to represent; namely, all seek to obtain alleged unpaid overtime wages for times in which they worked more than forty hours per week for Tri-Wire.

24. The Gross Settlement Amount is a negotiated amount that resulted from substantial arms' length negotiations, investigation, and analysis by Plaintiffs' Counsel. Plaintiffs' Counsel premised their liability and damages evaluation on a careful and extensive analysis of the effects of Tri-Wire's wage and hour policies and practices on Settlement Class Members' pay. Class Counsel based their damages analysis and settlement negotiations on formal and informal discovery, including Tri-Wire payroll data produced by ADP, data relating to the Technicians' work for Tri-Wire on Comcast customers' accounts, and extensive interviews with Class Members and Opt-In Plaintiffs.

25. Plaintiffs' Counsel built a comprehensive exposure model from the payroll data produced by ADP and the relevant work records, and applied inputs based on its investigation and interviews to determine the total alleged exposure for unpaid wages. Using this model, Plaintiff's Counsel determined that the total potential exposure if Plaintiffs prevailed on their claims – inclusive of penalty claims and claims for liquidated damages – is approximately \$7,403,232.35.

26. This total exposure was based on the assumptions that employees worked 1.4 hours per day off-the-clock and worked approximately 4.9 shifts per week at the average hourly rate of

\$20.70. Although Plaintiffs' Counsel calculated that the average alleged non-reimbursed work expenses per Technician are \$1,206.47, such expenses rarely if ever dipped Technicians' wages under the applicable state or federal minimum wage, and were estimated to be *de minimis*.

27. Based on those favorable assumptions, Plaintiffs calculated a maximum potential liability for the overtime claims of \$2,286,835.02, and liquidated damages and penalties of \$5,116,397.33. Plaintiffs' Counsel did not separately calculate damages attributable to minimum wage violations because the overtime damages calculation accounted for the straight time owed for the off-the-clock hours (the data indicated that, in most if not all applicable workweeks, Settlement Class Members were compensated at an effective hourly rate that exceeded minimum wage). That is, in calculating these damages, Plaintiffs' Counsel used 1.5 times the hourly rate for each hour of off-the-clock work to calculate potential off-the-clock exposure for the Settlement Class Members under the FLSA and applicable state laws.

28. The negotiated non-reversionary Gross Settlement Amount of \$1,995,000 represents approximately 87% of Defendants' substantive exposure of \$2,286,835.02 for off-the-clock overtime claims, and approximately 27% of Defendants' total estimated potential exposure of \$7,403,232.35. The proposed Settlement offers an average recovery of approximately \$2,104.90 to State Class Members and Collective Members (dividing the estimated Net Settlement Amount by 572 total State Class Members and Collective Members).

29. These figures are based on Plaintiffs' assessment of a best-case scenario. To have obtained such a result at trial, Plaintiffs would have had to succeed in obtaining certification of the State Classes and withstand any decertification motions, as well as prevail on the merits of all claims and prove that all 572 State Class Members and Collective Members experienced the violations at the levels described for every shift and prove that Comcast acted knowingly or in bad faith. Comcast would, of course, hotly dispute and contest these figures.

30. In addition, in reaching this Settlement, Plaintiffs' counsel relied on their substantial litigation experience in similar wage and hour class and collective actions. Plaintiffs'

Counsel has extensive experience in class action and employment litigation, including wage and hour class actions, and do not have any conflict with the classes.

31. Plaintiffs' counsel considered the significant risks of continued litigation when considering the proposed Settlement. For example, if Comcast is found not to be a joint employer, the value of the case would plummet, given Tri-Wire has declared bankruptcy. Further, although the Court has conditionally certified the collective, there is a risk that Plaintiffs would not succeed in maintaining a collective or certifying and maintaining state law classes through trial.

32. In addition, a trial on the merits would involve significant risks for Plaintiffs as to both liability and the appropriate rate and calculation of damages, and any verdict at trial could be delayed based on appeals by Comcast. For example, the FLSA provides that, if an employer that shows any act or omission giving rise to an FLSA violation "was in good faith" or made under "reasonable grounds for believing that his act or omission was not a violation," a court may award "no liquidated damages or award any amount thereof." 29 U.S.C. § 260. Comcast, while denying it is a joint employer, would be prepared to submit evidence showing that it had acted in good faith and on reasonable grounds that its actions were not in violation of the FLSA, and whether this Court agrees with Comcast would be a risk that Plaintiffs would necessarily undertake had litigation continued.

33. The path to an award of additional damages and penalties at trial for overlapping FLSA and state law claims is equally uncertain. Plaintiffs' recovery analysis above assumes State Class Members could receive both liquidated damages under the FLSA, but also civil penalties or liquidated damages under applicable state case law for the same underlying overtime and minimum wage claims. Although Plaintiffs are confident they would be able to succeed in arguing for these penalties and liquidated damages, Comcast disputes the propriety of such an approach, and would argue that such remedies could not be ordered on top of FLSA damages as a "double recovery."

34. These risks were front and center, particularly given the nature of the off-the-clock work and that the Technicians work in multiple states, which would invariably complicate certification efforts and proving the claims on the merits.

35. Measured against these risks and delays, the Settlement will result in immediate and certain payment to Settlement Class Members. In contrast, if the Action were to go to trial as a class and collective action (which Defendants would vigorously oppose if the Court does not approve this Settlement Agreement), Class Counsel estimates that fees and costs, including very significant expenditures for expert fees and discovery costs, would exceed \$3,000,000.

36. Litigating the class and collective action claims would require substantial additional preparation and discovery. It would require third-party discovery, depositions of experts, the presentation of percipient and expert witnesses at trial, as well as the consideration, preparation, and presentation of voluminous documentary evidence and the preparation and analysis of expert reports. This Settlement provides significant compensation to the Technicians, and the Settlement provides an excellent recovery in the face of expansive and uncertain litigation, well within the reasonable standard when considering the difficulty and risks presented by expanding litigation.

37. Plaintiffs provided invaluable assistance to the prosecution of this action, by: providing background information about their employment and Tri-Wire's policies and practices, including allegations relating to Tri-Wire's practices in Maine, Massachusetts, New Hampshire, New Jersey, and/or Pennsylvania and the facts forming the basis for their alleged belief that Comcast was their joint employer; filing the claims in the Complaint on behalf of themselves and other similarly situated Technicians; demonstrating willingness to serve as active class representatives on behalf of the State Classes; responding to Plaintiffs' Counsel's inquiries to assist with the case; responding to significant written discovery; searching for and producing relevant documents; and providing declarations in support of Plaintiffs' motion for conditional certification. Each Plaintiff stepped forward to represent the interests of their fellow workers, despite the perceived risk of knowing their names would appear on a public docket available



through an internet search and that employers might take their participation into consideration when making hiring decisions. All Settlement Class and Collective Members will be receiving a significant benefit in the form of monetary compensation as a result of Plaintiffs' service.

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

39. The Parties' agreed-upon *cy pres* beneficiary, National Employment Law Project, is a national nonprofit legal and policy advocacy organization that protects employees. *See* Declaration of Catherine K. Ruckelshaus, attached hereto as **Exhibit 2**. The Parties and their counsel do not have any financial, business, or personal relationships with the National Employment Law Project, to the best of my knowledge.

40. In their fee motion to be submitted with the final approval papers, Class Counsel will request up to one third of the Gross Settlement Amount, or \$665,000, plus reimbursement of costs of up to \$75,000.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and is based on my own personal knowledge.

Executed this 17th day of March 2023, in Oakland, California.

/s/ Ori Edelstein  
Ori Edelstein