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9 Attorneys for Arturo Gonzalez,
10 on behalf of himself, all others similarly situated,
11 and on behalf of the general public

12 *[Additional counsel listed on following page]*

13 **UNITED STATES DISTRICT COURT**

14 **EASTERN DISTRICT OF CALIFORNIA**

15 ARTURO GONZALEZ on behalf of himself,
16 all others similarly situated, and on behalf of
17 the general public,

18 Plaintiffs,

19 v.

20 NCI GROUP, INC., dba NCI BUILDING
21 SYSTEMS; and DOES 1-100,

22 Defendants.

Case No. 1:18-cv-00948-AWI-SKO

Assigned to the Hon. Anthony W. Ishii

**DECLARATION OF DAVID MARA, ESQ.
IN SUPPORT OF PLAINTIFF'S MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: March 16, 2020

Time: 1:30 p.m.

Judge: Hon. Anthony W. Ishii

Courtroom: 2

Complaint Filed: June 6, 2018

Removed: July 12, 2018

Trial Date: None Set

1 I, DAVID MARA, declare as follows:

- 2 1. I am President of Mara Law Firm, PC and counsel of record for Plaintiffs and the putative
3 class in this matter. I am duly admitted to practice before all the courts of the state of
4 California. The following facts are within my personal knowledge and, if called to testify, I
5 could and would competently testify thereto.
- 6 2. I have been practicing law in California since 2004.
- 7 3. I extensively handle employment cases which involve violations of the California Labor
8 Code and Industrial Welfare Commission Wage Orders, such as wage and hour class
9 actions and cases alleging violations of the Private Attorneys General Act of 2004
10 ("PAGA").
- 11 4. I was co-class counsel in *Hohnbaum v. Brinker Restaurant Corp.*, San Diego Superior
12 Court, Case No. GIC834348, which was the underlying case in the California Supreme
13 Court's landmark decision in *Brinker Restaurant Corp. v. Superior Court* (2012) 53
14 Cal.4th 1004, in which the California Supreme Court delineated the scope of employer
15 obligations to provide, and employee rights to receive, meal and rest periods under
16 California law.
- 17 5. I wrote an Amicus brief on behalf of Consumer Attorneys Of California ("CAOC") in the
18 recent decision by the California Supreme Court in *Augustus v. ABM Security Services,*
19 *Inc.* (2016) 2 Cal.5th 257 (rest breaks must be duty-free and time spent being on call
20 during rest breaks is not considered duty-free).
- 21 6. My firm also wrote an Amicus brief on behalf of CAOC in the recent decision by the
22 California Supreme Court in *Williams v. Superior Court* (2017) 3 Cal. 5th 531 (PAGA and
23 wage and hour class action).
- 24 7. My firm has been granted class certification in both state and federal courts.
- 25 8. I am also Plaintiff's counsel in a host of other class actions involving violations of
26 California's wage and hour laws, many of which involve the transportation industry. For
27 example, I have been and am involved as counsel for plaintiffs in the following sampling
28 of class action cases involving wage and hour violations under California law: *Davis v.*

Apria Healthcare Group (Case No. 37-2015-00007743); *Norona v. B&G Delivery System, Inc.* (Case No. RG1577005); *Perez v. City of San Diego* (Case No. 37-2014-00016621); *Cuellar-Ramirez v. US Foods, Inc.* (Case No. RG15770766); *Peron v. The Vons Companies, Inc.* (Case No. 15-cv-01567-L-JMA); *Hilderbrand v. LinkUs Enterprises, LLC* (Case No. DR150155); *Belton v. Pacific Pulmonary Services* (Case No. CGC-15-547564); *Medina v. Central Cal Transportation, Inc.* (Case No. RG15770011); *Eure v. Dotson v. Asbury Environmental Services* (Case No. RG16842620); *Spikes v. Bear Trucking, Inc.* (Case No. 16CECG02389); *Reynoso v. Benjamin's Transfer, Inc.* (Case No. FCS048845); *Montes v. Coram Specialty Infusion Services, Inc.* (Case No. 37-2016-00028950-CU-OE-CTL); *Rodriguez v. Delta Sierra Beverage, LLC* (Case No. 34-2017-00206727); *Clavel v. La Jolla Beach & Tennis Club, Inc.* (Case No. 37-2017-00004802-CU-OE-CTL); *Martin v. Sysco Central California, Inc.* (Case No. 9000052).

9. Mara Law Firm, PC (formerly The Turley & Mara Law Firm, APLC) devotes a significant portion of its practice specifically to wage and hour class actions. A majority of the cases I handle are wage and hour class actions and actions filed pursuant to the Private Attorneys General Act of 2004 ("PAGA"). Ms. Serb and Ms. Trenner solely handle wage and hour class actions and PAGA actions. Mara Law Firm, PC, has been appointed class counsel in numerous federal and state class actions. Mara Law Firm, PC, and its lawyers have handled over three hundred and fifty (350) class action and PAGA lawsuits. Mara Law Firm, PC, and its lawyers have successfully settled over one hundred (100) cases over a period of approximately fifteen (15) years, resulting in the recovery of millions of dollars for class members.

10. Mara Law Firm, PC, is well versed in wage and hour class action law. Specifically, Mara Law Firm, PC, has obtained class certification and has been certified as class counsel in the following cases: *Mario Norona v. B&G Delivery System, Inc.* (Sacramento County Superior Court, Case No. 34-2015-00186826-CU-OE-GDS); *Jerald Schroeder v. YRC, Inc.; YRC Worldwide, Inc.* (Central District of California, Case No. 12-cv-01374-TJH); *John Martin v. Sysco Corporation; Sysco Central California, Inc.* (Eastern District of

1 California, Case No. 1:16-cv-00990-DAD-SAB); *William Smith v. Werner Enterprises,*
2 *Inc. d/b/a C.L. Werner, Inc.* (District of Nebraska, Case No. 8:15-cv-287); and *Thomas*
3 *Perez v. City of San Diego* (San Diego County Superior Court, Case No. 37-2014-
4 00016621-CU-OE-CTL).

5 11. In addition, Mara Law Firm, PC, filed and fully briefed class certification motions before
6 the following cases were settled: *Alton Davis v. Apria Healthcare Group, Inc.* (San Diego
7 County Superior Court, Case No. 37-2014-00004724); *Rick Frieri v. Sysco Corporation;*
8 *Sysco San Diego, Inc.* (Southern District of California, Case No. 16-cv-1432-JLS-NLS);
9 *Alberto Solano and Damon Randall v. Professional Auto Transport, Inc.* (San Bernardino
10 County Superior Court, Case No. CIVDS1619020); *Richard Terry v. Hoovestol, Inc.*
11 (Northern District of California, Case No. 3:16-cv-05183-JST); and *Kristina McConville v.*
12 *Renzenberger, Inc.* (Central District of California, Case No. 2:17-cv-02972-FMO-JC).

13 12. I have litigated over three hundred and fifty (350) class action and PAGA lawsuits. I have
14 been litigating wage and hour class action lawsuits for approximately fifteen (15) years. I
15 graduated from California Western School of Law and was admitted to practice law in
16 California in May 2004. I primarily handle wage and hour class actions and PAGA actions.
17 I am the president of Mara Law Firm, PC and was a partner of The Turley & Mara Law
18 Firm, APLC. I supervise and oversee the class action department of the firm which
19 consists of five (5) associate attorneys.

20 13. I was co-class counsel in *Hohnbaum v. Brinker Restaurant Corp.* (San Diego County
21 Superior Court, Case No. GIC834348) which was the underlying case in the California
22 Supreme Court's landmark decision in *Brinker Restaurant Corp. v. Superior Court* (2012)
23 53 Cal.4th 1004, in which the California Supreme Court delineated the scope of employer
24 obligations to provide, and employee rights to receive, meal and rest periods under
25 California law. I also wrote the Amicus Curiae brief on behalf of Consumer Attorneys of
26 California ("CAOC") in the decision by the California Supreme Court in *Augustus v. ABM*
27 *Security Services, Inc.* (2016) 2 Cal.5th 257 (rest breaks must be duty-free and time spent
28 being on call during rest breaks is not considered duty-free). I also wrote the Amicus

1 Curiae brief on behalf of CAOC in the matter currently pending before the California
2 Supreme Court, *Frlekin v. Apple, Inc.* (Cal. S. Ct. No. S243805).

3 14. I oversee all aspects of the class action and PAGA action cases Mara Law Firm, PC,
4 handles. I also write a wide range of motions and argue at a wide range of hearings. I
5 review and edit motions written by the associates at Mara Law Firm, PC; develop
6 strategies with associates at Mara Law Firm, PC, in how to best litigate each case; review
7 and edit discovery that is sent out to employers; review and edit clients' discovery
8 responses; draft and revise complaints; draft and revise retainers sent to clients;
9 communicate with clients; communicate with class members; communicate with defense
10 counsel; communicate with co-counsel; review documents produced by employers;
11 conduct investigations into potential cases; research and stay up to date in relevant law;
12 attend mediations; draft, review, and revise settlement agreements; and oversee all day to
13 day matters in cases.

14 15. I have been named as class counsel in the following certified cases as a result of the court
15 granting a motion for class certification: *Mario Norona v. B&G Delivery System, Inc.*
16 (Sacramento County Superior Court, Case No. 34-2015-00186826-CU-OE-GDS); *Jerald*
17 *Schroeder v. YRC, Inc.; YRC Worldwide, Inc.* (Central District of California, Case No. 12-
18 cv-01374-TJH); *John Martin v. Sysco Corporation; Sysco Central California, Inc.* (Eastern
19 District of California, Case No. 1:16-cv-00990-DAD-SAB); *William Smith v. Werner*
20 *Enterprises, Inc. d/b/a C.L. Werner, Inc.* (District of Nebraska, Case No. 8:15-cv-287); and
21 *Thomas Perez v. City of San Diego* (San Diego County Superior Court, Case No. 37-2014-
22 00016621-CU-OE-CTL).

23 16. In 2017, I was co-first chair in a maritime/employment related trial in federal court, of
24 which Ms. Serb also assisted with, that lasted one week. In 2012, I was second chair in a
25 product liability trial in state court that lasted just over a month. In 2008 and 2010, I was
26 heavily involved in a wrongful death, product liability trial that involved multiple firms
27 and lasted approximately two and a half months.

28 17. Jamie Serb is an associate at Mara Law Firm, PC. She solely handles wage and hour class

1 actions and PAGA actions. Ms. Serb graduated from California Western School of Law
2 and was admitted to practice law in California in June 2013 and received her
3 undergraduate degree from University of California, San Diego in 2004. Ms. Serb has been
4 litigating wage and hour class actions for over four (4) years and has handled over one
5 hundred (100) class action and PAGA lawsuits. Ms. Serb received her training in wage and
6 hour class action and PAGA lawsuits while at Mara Law Firm, PC. Ms. Serb has been at
7 the Mara Law Firm, PC, for over four (4) years and oversees another associate at Mara
8 Law, PC, Ms. Nikki Trenner. She also co-wrote an amicus brief on behalf of CAOC in
9 *Williams v. Superior Court* (2017) 3 Cal.5th 531.

10 18. Ms. Serb oversees all aspects of the cases assigned to her and litigates these cases with the
11 assistance of Ms. Trenner. Ms. Serb oversees Ms. Trenner's work. Ms. Serb routinely
12 writes and opposes motions and argues at hearings. Ms. Serb edits motions written by Ms.
13 Trenner and other associates; drafts and revises discovery propounded on employers;
14 communicates with clients; communicates with class members; communicates with co-
15 counsel; communicates with defense counsel; drafts and revises notices to the Labor and
16 Workforce Development Agency pursuant to the Private Attorneys General Act of 2004;
17 creates exhibits for use in cases; reviews documents produced by employers; deposes
18 employer witnesses; defends client depositions; attends mediations; drafts, reviews, and
19 revises settlement agreements; drafts, reviews, and revises settlement approval motions;
20 argues at hearings on settlement motions; and oversees all day to day work in her cases.

21 19. Ms. Serb has been named as class counsel in the following certified cases as a result of the
22 court granting a motion for class certification: *William Smith v. Werner Enterprises, Inc.*
23 *d/b/a C.L. Werner, Inc.* (District of Nebraska, Case No. 8:15-cv-287) and *Thomas Perez v.*
24 *City of San Diego* (San Diego County Superior Court, Case No. 37-2014-00016621-CU-
25 OE-CTL).

26 20. In 2016, Ms. Serb tried a case in New Orleans, Louisiana, involving claims under the
27 Defense Base Act, which lasted a full day. In 2017, Ms. Serb assisted me in a
28 maritime/employment related trial in federal court that lasted one week.

21. Ms. Nikki Trenner is an associate at Mara Law Firm, PC. Ms. Trenner solely handles wage and hour class actions and PAGA lawsuits. Ms. Trenner graduated from Trinity Law School. Ms. Trenner was admitted to practice law in California in July 2017. Ms. Trenner has been litigating wage and hour class actions for approximately two (2) years. Ms. Trenner received her training in wage and hour class action and PAGA lawsuits while at Mara Law Firm, PC. Ms. Trenner has been at the Mara Law Firm, PC, for approximately two (2) years.

22. Ms. Trenner has acquired extensive experience handling wage and hour class and PAGA actions and has been heavily involved in all phases of this litigation and the following sampling of cases: *Shroeder v. YRC Global, Inc.* (Case No. 2:16-cv-06173); *Montes v. CORAM Specialty Infusion Services, Inc.* (Case No. 37-2016-00028950-CU-OE-CTL); *Valentich v. Hub Construction Specialties, Inc.* (Case No. RIC 1610267); *Terry v. Hoovestol, Inc.* (Case No. RG16823879); *Belton v. Satellite Affordable Housing Associates* (Case No. RG17885127).

23. The proposed settlement is the product of serious, informed, non-collusive negotiations, has no obvious defects, does not improperly grant preferential treatment to the class representative or segments of the class and falls within the range of fair and reasonable settlements. I believe that this non-reversionary settlement is in the best interests of the class as fair, reasonable, and adequate. Therefore, I recommend approval of the settlement.

24. NCI manufactures and markets metal building systems and components for the nonresidential construction industry. To carry out its business, NCI employs warehouse workers. This lawsuit alleges that NCI violated various California wage and hour laws applicable to NCI's warehouse workers.

25. Plaintiff filed this matter in Merced County Superior Court on June 6, 2018. NCI filed an Answer on July 12, 2018 and removed this matter on July 12, 2018.

26. Plaintiff propounded special interrogatories and demands for production of documents to which NCI responded. NCI produced hundreds of documents including employee handbooks and policy manuals, earning statements, personnel files, break logs, job

1 descriptions and work tasks. NCI also produced tens of thousands of lines of time
2 records—the majority of which were produced in a raw electronic format which had to be
3 analyzed and interpreted. NCI also propounded written discovery to which Plaintiff
4 responded.

5 27. The Parties attended a mediation on November 19, 2019 and engaged in extensive arm's-
6 length negotiations mediated by retired Superior Court judge and well-respected mediator,
7 Honorable Joan A. Lewis (ret). As a result of meditation, the Parties signed a Term Sheet
8 Settlement Agreement and continued to negotiate over the terms of the Stipulation
9 Regarding Settlement of Class and Representative Action, which is now before the Court
10 for preliminary and final approval.

11 28. Though the fee agreement provides that Class Counsel would pay such costs in the event
12 his case was not won, Mr. Gonzalez could nevertheless have had a cost bill entered against
13 him if he were unsuccessful, leaving him liable for potentially hundreds of thousands of
14 dollars in the unexpected possibility that Class Counsel did not meet their obligation to
15 cover those costs.

16 29. The Settlement allots an amount not to exceed \$15,000 to administer this Settlement,
17 which falls within the range of estimates Class Counsel has received in the past for
18 settlements of similar size and circumstances. The Settlement Administration Costs will be
19 paid out of the MSA. If Rust's actual expenses or the amount awarded is less than the
20 amount allotted in the Settlement, the difference shall become part of the NSA and be
21 available for distribution to Settlement Class Members.

22 30. Nothing in the record indicates that any class member has a particular individual interest in
23 controlling the prosecution or defense of separate actions. All class members' harm arises
24 out of the same unlawful policies challenged in this lawsuit. There are also no other known
25 actions pending raising the same issues against NCI.

26 31. The factors noted above are commonly considered at preliminary approval. The factors
27 here, in their respective levels of applicability, favor approval of the Settlement. Mr.
28 Gonzalez submits—and NCI disputes—that this case was factually and legally strong. This

1 matter was settled after substantial discovery, which included written discovery that
2 resulted in hundreds of pages of documents and thousands of lines of data. Thus, at the
3 point the Settlement was initially agreed to, no one was in a better position than Plaintiff's
4 counsel to understand the strengths and potential limitations of Mr. Gonzalez's case and
5 thus evaluate the reasonableness of the amount offered in settlement.

6 32. Mr. Gonzalez contends that NCI's failure to provide compliant meal and rest periods and
7 pay all wages owed are the predominant claims in the lawsuit.

8 33. Plaintiff recognizes that none of his class-wide claims would result in a guaranteed win.
9 Plaintiff's core claims here are for meal and rest break violations and unpaid wages, which
10 faced significant challenges that had to be considered in negotiating class-wide settlement.

11 34. Plaintiff contends NCI requires Class Members to wear protective gear during their shifts.
12 Plaintiff contends NCI requires employees to use part of their break time to don and doff
13 their personal protective gear and to be back at their workstations within the time provided
14 for the break (30 minutes for meal periods, and 15 minutes for rest breaks). Further, each
15 of NCI's employee handbooks state, "employees are expected to be punctual in starting
16 and ending their breaks and may be disciplined for tardiness in returning to work upon the
17 conclusion of their breaks." Based on these policies, Plaintiff contends that NCI's meal and
18 rest period policies are unlawful because they fail to provide employees with a full 30
19 minutes of duty-free time for meal breaks and a full net 10 minutes of rest during a rest
20 period, given that employees must use part of their break time to don and doff protective
21 gear and travel to and from the break area.

22 35. Plaintiff estimates that NCI's *maximum* exposure under Plaintiff's meal and rest break
23 claims would be \$4,513,860 (173,610 shifts x \$13.00 per hour x 2 violations per shift (one
24 meal and one rest)), representing two violations per shift (one for a meal period violation
25 and one for a rest break violation) per employee.

26 36. As stated above, Plaintiff argues that NCI's policies require Class Members to perform
27 work before the end of their meal periods to don protective gear and to doff protective gear
28 after beginning their meal period. If the factfinder agreed with Plaintiff, Class Members

would be entitled to wages for the time spent donning/doffing protective gear while on unpaid meal periods. Plaintiff calculated the unpaid wage exposure at 5 minutes per shift during the Class Period. NCI's *maximum* exposure under Plaintiff's unpaid wages theory of liability would range between \$180,554.40 (calculated as straight time wages - 173,610 shifts x \$13.00 per hour x 0.08 hours = \$180,554.40) and \$270,831.60 [calculated as overtime wages - 173,610 shifts x \$19.50 per hour (overtime rate of \$13 x 1.5) x 0.08 hours].

37. The wages Plaintiff claims are owed are the same unpaid wages that are the subject of the unpaid straight time and overtime claims. Thus, the only additional issue that would need to be resolved would be whether NCI's failure to pay all wages was "willful" within the meaning of the statute. If the factfinder agrees with Plaintiff's theories of liability, Section 203 penalties will be proven in the single-stroke post-certification determination of whether NCI willfully failed to these wages at termination. Plaintiff calculated these penalties as equal to thirty (30) days' worth of wages for all 122 former employees. Thus, NCI's *maximum* potential exposure would be \$380,640.

38. \$13 per hour x 8 hours = \$104.00 x 30 days = \$3,120; 122 former employees x \$3,120 (30 days' worth of wages) = \$380,640.

39. Plaintiff's theory of liability for wage statement violations derives from his unpaid wages claim. In other words, if Plaintiff prevails on his theory of liability for unpaid wages, then Plaintiff contends Class Members are entitled to penalties under Cal. Lab. Code § 226(e) for failure to include gross wages earned, total hours worked by the employee, and net wages earned, pursuant to Cal. Lab. Code § 226(a)(1)-(2) and (5). The statute of limitations for Plaintiff's inaccurate wage statement cause of action is only one (1) year. As such, Plaintiff calculates NCI's *maximum* potential exposure under this cause of action as \$608,000.

40. Approximately 152 employees employed within the statute of limitations x \$4,000 (maximum damages per employee under California Labor Code § 226).

41. This claim is subject to the same potential defenses NCI is likely to raise in defense of the

1 above substantive claims. Plaintiff considers these defenses in evaluating the overall
2 strength of the wage statement claim.

3 42. If NCI prevails on its defense regarding stacking, then penalties would be assessed at 1
4 violation per pay period for all warehouse workers ($152 \times \$100 \times 1 \text{ violation} \times 52 \text{ pay}$
5 $\text{periods} = \$790,400$).

6 43. Should the Court agree with any of NCI's defenses, there is a potential that the individual
7 class members would take nothing on their claims, and any associated PAGA penalties
8 would be extinguished, as penalties can only be awarded if the Court agrees with the
9 underlying allegations. Even if NCI's liability is established, the Court is empowered to
10 reduce any PAGA penalties. The likelihood of a penalty reduction is higher in this case
11 than others, as the Court may determine that NCI believed in good faith that it did not
12 intrude into employees' break time. In addition, denial of walking time and time donning
13 and doffing gear may not be considered as egregious as other meal period and rest breaks
14 violations where absolutely zero break time is afforded. Further, if Plaintiff is successful
15 on the merits, PAGA penalties would be duplicative of the recovery from the underlying
16 violations. Therefore, Plaintiff recognizes and reasonably believes the Court could
17 significantly reduce any PAGA penalties if NCI was found liable for the underlying Labor
18 Code violations.

19 44. In performing his exposure analysis, Plaintiff considered the realistic potential of
20 recovering under the each of his theories. Based on the above strengths and challenges,
21 Plaintiff and his experienced counsel calculated the potential value of the putative class's
22 claims, and determined that the gross settlement amount of \$600,000 is a fair and
23 reasonable settlement value.

24 45. A true and correct copy of the Stipulation re: Settlement of Class and Representative
25 Action (i.e. Settlement Agreement) is attached hereto as **Exhibit A**. This exhibit has been
26 signed by Plaintiff and his counsel. At the time of filing, Defense-side signatures had not
27 yet been provided to Plaintiff's Counsel. Therefore, Plaintiff intend to file the fully
28 executed Settlement Agreement once the signatures have been obtained and provided by

1 Defendant.

2 46. A true and correct copy of the Notice to Class Members re: Pendency of a Class Action
3 and Notice of Hearing on Proposed Settlement (i.e. Class Notice) is attached herein as
4 Exhibit 1 to Exhibit A.

5
6 I hereby declare under penalty of perjury under the laws of the United States of America
7 that the foregoing is true and correct.

8
9 Dated: February 3, 2020

By: David Mara
David Mara, Esq.

EXHIBIT A

1 DAVID MARA, Esq., Bar No. 230498
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2 NIKKI TRENNER, Esq., Bar No. 316007
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on behalf of himself, all others similarly situated,
and on behalf of the general public
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13 Attorneys for Defendant
NCI GROUP, INC.
14

15 UNITED STATES DISTRICT COURT

16 FOR THE EASTERN DISTRICT OF CALIFORNIA

17 ARTURO GONZALEZ on behalf of himself,
all others similarly situated, and the general
18 public,

19 Plaintiffs,

20 vs.

21 NCI GROUP, INC., dba NCI BUILDING
SYSTEMS; and DOES 1 through 100,
22 inclusive,

23 Defendants.
24
25
26
27
28

Case No. 1:18-cv-00948-AWI-SKO

**STIPULATION RE: SETTLEMENT OF
CLASS AND REPRESENTATIVE
ACTION;**

IT IS HEREBY STIPULATED AND AGREED by and between Arturo Gonzalez (as Class Representative), on behalf of himself and all others similarly situated to him and as defined below, on the one hand, and NCI Group, Inc. (herein "Defendant"), on the other hand, as set forth below:

I. The Conditional Nature of This Stipulation.

This Stipulation re: Settlement, including all associated exhibits or attachments, (herein "Stipulation") is made for the sole purpose of attempting to consummate settlement of this action on a class-wide and representative basis. Defendant denies all of the claims as to liability, damages, penalties, and restitution as well as the class representative allegations asserted in the Litigation. This Stipulation and the settlement it evidences are made in compromise of disputed claims. Because this is a class action, this settlement must receive preliminary and final approval from the Court. Accordingly, Defendant enters into this Stipulation and associated settlement on a conditional basis. In the event that the Court does not execute and file the Order Granting Final Approval of Settlement, or in the event that the Court does not enter the Judgment, or in the event that the associated Judgment does not become Final for any reason, this Stipulation shall be deemed null and void *ab initio*, it shall be of no force or effect whatsoever, it shall not be referred to or utilized for any purpose whatsoever, and the negotiation, terms and entry of it shall remain subject to the provisions of Federal Rule of Evidence 408 and California Evidence Code sections 1119 and 1152.

Defendant has agreed to resolve this Litigation via this Stipulation, but to the extent this Stipulation is deemed void or does not take effect for any reason, Defendant does not waive, but rather expressly reserves, all rights to challenge all such claims and allegations in the Litigation upon all procedural and factual grounds, including without limitation the ability to challenge class and/or representative treatment on any grounds or to assert any and all defenses or privileges. The Class Representative and Class Counsel agree that Defendant retains and reserves these rights, and they agree not to take a position to the contrary; specifically, the Class Representative and Class Counsel waive, and agree not to argue or present, any argument that Defendant could not contest class certification or representative status on the grounds that

1 Defendant entered into this Stipulation should this Litigation proceed. In particular, the Class
2 Representatives and Class Counsel waive, and agree not to argue or present, any argument that
3 Defendant would be estopped from contesting class certification and/or representative status
4 because it has entered this Stipulation. Class Representative and Class Counsel further agree that,
5 by entering into this Stipulation, Defendant has not waived its ability to seek to enforce any
6 applicable arbitration agreement and any associated class or representative waiver. The Settling
7 Parties agree that in the event the Court does not approve this settlement or the agreement is
8 voided for any reason, the Settling Parties will not make any substantive reference to this proposed
9 settlement when advocating their positions in the litigation of this matter.

10 **II. The Parties to This Stipulation.**

11 This Stipulation (with the associated exhibits) is made and entered into by and
12 among the following Settling Parties: (i) the Class Representative (on behalf of himself and each
13 of the Settlement Class Members), with the assistance and approval of Class Counsel; and (ii)
14 Defendant, with the assistance of its counsel of record in the Litigation. The Stipulation is
15 intended by the Settling Parties to result in the final resolution with prejudice of the Litigation
16 pursuant to the Judgment and to fully, finally and forever resolve, discharge and settle the
17 Released Claims upon and subject to the terms and conditions herein.

18 **III. The Litigation.**

19 Class Representative Arturo Gonzalez filed an action against Defendant NCI
20 Group, Inc. on June 6, 2018 in the California Superior Court for the County of Merced. Class
21 Representative is represented by the Mara Law Firm PC. Defendant removed the action to this
22 Court on July 12, 2018. On behalf of himself and others allegedly similarly situated to him, the
23 Class Representative has alleged in the Complaint, among other things, that Defendant failed to
24 pay these employees all wages due; failed to compensate employees working overtime and double
25 time at the applicable premium rates of pay; failed to pay the applicable minimum wage; failed to
26 compensate such employees for all hours worked; failed to provide them meal and rest periods or
27 pay additional sums of money in lieu thereof; and failed to furnish accurate and compliant wage
28 and hour statements and to pay timely final wages.

1 During the course of this litigation, the parties engaged in class-wide factual
2 discovery. The parties and their counsel then attended a mediation before retired Superior Court
3 judge and now professional mediator, the Honorable Joan A. Lewis (ret.) on November 19, 2019.
4 After the exchange of substantial data and materials and extended negotiations, Class
5 Representative and Defendant reached a class-wide settlement agreement that resulted from arm's
6 length negotiations that included the mediation session. In sum, Class Representative and his
7 counsel had sufficient information to assess this Litigation.

8 The parties to this agreement recognize and acknowledge that, at the time of the
9 execution of the settlement, there are unsettled questions of law which may have impact on the
10 claims at issue in the Litigation. The parties further recognize that they are reaching this
11 settlement in light of the risks created by all of these unresolved issues, and that all parties will
12 take all reasonable efforts to enforce this agreement and obtain court approval for this settlement
13 regardless of how any such issues of law are or may be decided after this settlement is executed.

14 **IV. Defendant's Denial of Wrongdoing or Liability.**

15 Defendant denies all of the claims and contentions alleged by the Class
16 Representative in the Litigation. Defendant further contends that it has meritorious defenses to all
17 of the class claims. Nonetheless, Defendant has concluded that further conduct of the Litigation
18 would be protracted and expensive, and that it is desirable that the Litigation be fully and finally
19 settled in the manner and upon the terms and conditions set forth in this Stipulation. Defendant
20 has also taken into account the uncertainty and risks inherent in any litigation, especially in
21 putative class actions like this Litigation. Defendant has therefore determined that it is desirable
22 and beneficial to Defendant that the Litigation be settled in the manner and upon the terms and
23 conditions set forth in this Stipulation. The Class Representative and Class Counsel agree that this
24 Stipulation will not be deemed any admission of liability or wrongdoing on the part of Defendant,
25 and that it may not be used in any proceeding to such an effect.

26 **V. Claims of the Class Representatives and Benefits of Settlement.**

27 Class Representative Gonzalez believes that the claims asserted in the Litigation
28 have merit and that evidence developed to date supports the claims. Nonetheless, the Class

1 Representative and Class Counsel recognize and acknowledge the expense and length of the type
2 of continued proceedings necessary to prosecute the Litigation against Defendant through trial and
3 through appeals. The Class Representative and Class Counsel have also taken into account the
4 uncertain outcome and the risk of continued litigation, especially in putative class actions such as
5 this Litigation, as well as the difficulties and delays inherent in such litigation. The Class
6 Representative and Class Counsel believe that the settlement set forth in the Stipulation confers
7 substantial benefits upon the Settlement Class. Based upon their evaluation, the Class
8 Representative and Class Counsel have determined that the settlement set forth in the Stipulation
9 is in the best interests of the Settlement Class.

10 **VI. Terms of Stipulation and Agreement of Settlement.**

11 NOW, THEREFORE, IT IS HEREBY FURTHER STIPULATED AND AGREED
12 by and between the Class Representative (for himself and the Settlement Class Members) and
13 Defendant, with the assistance of their respective counsel of record, that, as among the Settling
14 Parties, including all Settlement Class Members, the Litigation and the Released Claims shall be
15 finally and fully compromised, settled and released, and the Litigation shall be resolved with
16 prejudice, as to all Settling Parties, upon and subject to the terms and conditions of the Stipulation
17 and the Judgment.

18 1. Definitions.

19 As used in all parts of this Stipulation (including the exhibits which are part of the
20 Stipulation), the following terms have the meanings specified below:

21 1.1 "Administration Costs" means the fees and costs incurred by the
22 Settlement Administrator to administer this Settlement, which shall not exceed \$15,000. All
23 Administration Costs shall be paid from the Maximum Settlement Amount. If the Court awards
24 less than the amount requested, any amount not awarded will become part of the Net Settlement
25 Amount for distribution to Settlement Class Members.

26 1.2 "Attorney Fees" means the amount not to exceed 25% of the Maximum
27 Settlement Amount (\$150,000), finally approved by the Court and awarded to Class Counsel. The
28 Attorney Fees shall be paid from the Maximum Settlement Amount and will not be opposed by

1 Defendant. If the Court awards less than the amount requested, any amount not awarded will
2 become part of the Net Settlement Amount for distribution to Settlement Class Members.

3 1.1 “Class” means all non-exempt current and former employees who
4 worked for Defendant NCI Group, Inc. as hourly warehouse workers, industrial workers, shipping
5 checkers, distribution employees, shipping clerks, packers, stackers, loaders, packaging clerks,
6 machine operators, receiving clerks, production workers, and all other similarly situated
7 employees in California at any time during the Class Period. The parties understand and agree
8 that this Class will consist of approximately 274 Class Members and 34,722 workweeks.

9 1.2 “Class Counsel” or “Plaintiff’s Counsel” means David Mara, Jamie
10 Serb, and Nikki Trenner of Mara Law Firm PC.

11 1.3 “Class Member” means an individual who is a member of the Class, as
12 defined above.

13 1.4 “Class Notice” means a notice and associated forms entitled “Notice To
14 Class Members Re: Pendency of a Class Action and Notice of Hearing On Proposed Settlement”
15 to be approved by the Court, substantially in the form attached hereto as **Exhibit 1**. Prior to
16 mailing, the Notice may be re-formatted by the Settlement Administrator, and any such re-
17 formatting shall be subject to approval by Class Counsel and counsel for Defendant.

18 1.5 “Class Period” means the period from June 6, 2014 through February
19 24, 2020.

20 1.6 “Class Representative” or “Plaintiff” means Arturo Gonzalez.

21 1.7 “Court” means the United States District Court for the Eastern District
22 of California.

23 1.8 “Defendant Releasees” mean Defendant NCI Group, Inc. and all of its
24 employees, agents, and affiliates, including without limitation parents and subsidiaries,
25 predecessors, successors, divisions, investors, joint ventures and assigns, any benefit plan
26 maintained by any of them and the trustees, fiduciaries, and administrators of any such plan, and
27 each and all of these entities’ past or present directors, officers, employees, agents, partners,
28 members, principals, agents, underwriters, insurers, co-insurers, re-insurers, shareholders,

1 attorneys, accountants or auditors, banks or investment banks, associates, and personal or legal
2 representatives.

3 1.9 “Effective Date” means the date on which the Judgment becomes final
4 and can no longer be appealed or otherwise disturbed because one of the following has occurred:
5 (i) the final affirmance on an appeal of the Judgment; (ii) the final dismissal with prejudice of any
6 appeal from the Judgment; or (iii) if there are no objectors and no plaintiffs in intervention at the
7 time the court grants final approval of the settlement and enters the Judgment, the date the Court
8 grants final approval and enters Judgment. Any proceeding or order, or any appeal or petition for
9 a writ pertaining solely to Class Counsel’s application for or award of attorneys’ fees shall not, by
10 itself, in any way delay or preclude the Judgment from becoming Final.

11 1.10 “Employer Payroll Taxes” means the payroll taxes and associated
12 payments customarily borne by the employer when making standard wage payments to
13 employees, *i.e.*, the employer share of the payroll taxes. Defendant shall pay its portion of payroll
14 taxes as the Settlement Class Members’ current or former employer separate and apart from the
15 Maximum Settlement Amount.

16 1.11 “Enhancement Payment” means the amount the Court awards to
17 Plaintiff, which will not exceed \$5,000. This payment shall be paid from the Maximum Settlement
18 Amount and will not be opposed by Defendant and is being offered in consideration for the
19 Plaintiff’s actions in conferring benefits upon the Class and State of California, the time and effort
20 he put into pursuing this litigation, and reasonable fears of being blacklisted for future
21 employment.

22 1.12 “Final Approval Hearing” means a hearing set by the Court for the
23 purpose of: (i) determining the fairness, adequacy and reasonableness of the Stipulation and
24 associated settlement pursuant to class action procedures and requirements; and (ii) entering
25 Judgment.

26 1.13 “Final Approval Order” shall mean an order to be entered by the Court,
27 granting final approval of this Stipulation, the form of which will be mutually agreed upon by the
28 Settling Parties.

1 1.14 "Judgment" means the judgment to be rendered by the Court pursuant to
2 this Stipulation.

3 1.15 "LWDA" means the California Labor and Workforce Development
4 Agency.

5 1.16 "Last Known Address" means the most recently recorded mailing
6 address for a Class Member as contained in the personnel records maintained by Defendant.

7 1.17 "Litigation" or "Lawsuit" shall mean the lawsuit brought by Plaintiff
8 entitled *Arturo Gonzalez v. NCI Group, Inc. dba NCI Building Systems*, Eastern District of
9 California Case No. 1:18-cv-00948-AWI-SKO.

10 1.18 "Litigation Expenses" means the amount that the Court orders
11 Defendant to pay Class Counsel for payment of actual litigation costs, which shall not exceed
12 \$30,000. The Litigation Expenses will be paid from the Maximum Settlement Amount and will
13 not be opposed by Defendant. The Litigation Expenses are subject to Court Approval. If the Court
14 awards less than the amount requested, any amount not awarded will become part of the Net
15 Settlement Amount for distribution to Settlement Class Members.

16 1.19 "Maximum Settlement Amount" or "MSA" shall mean the maximum
17 total amount that can be paid by Defendant pursuant to this Stipulation, only upon occurrence of
18 the Effective Date. It is agreed that the Maximum Settlement Amount is \$600,000, and it is further
19 agreed that pursuant to the terms of this Stipulation, Defendant will not under any circumstances
20 pay more than the Maximum Settlement Amount. (For avoidance of doubt, this section does not
21 invalidate section 1.10, which requires Defendant to pay payroll taxes as Class Members' current
22 or former employer on the wage portions of Class Members' Settlement Payments separate and
23 apart from the Maximum Settlement Amount.) The Maximum Settlement Amount shall cover all
24 expenses associated with the settlement, which shall be the following, and only the following,
25 items: (1) the Settlement Payments to Settlement Class Members; (2) Attorney Fees to Class
26 Counsel, in an amount not to exceed \$150,000; (3) Litigation Expenses to Class Counsel, in an
27 amount not to exceed \$30,000; (4) an enhancement payment to the Class Representative, in an
28 amount not to exceed \$5,000; (5) administration fees and expenses to the Settlement

1 Administrator in an amount not to exceed \$15,000; and (6) the PAGA Payment to the LWDA and
2 to Settlement Class Members for resolution of claims under California Labor Code section 2698 *et*
3 *seq.*, which shall be \$60,000 (75% or \$45,000 to the LWDA and 25% or \$15,000 to Settlement
4 Class Members).

5 1.20 “Net Settlement Amount” or “NSA” shall mean the difference of the
6 MSA minus the amounts awarded by the Court for attorneys’ fees and costs, the enhancement to
7 the Class Representative, the settlement administration costs, and the payment to the LWDA. If
8 the Court does not approve and/or reduces the amounts of the requested attorneys’ fees and costs,
9 enhancement award, or administration fees, then the amount of any such reduction will become
10 part of the NSA.

11 1.21 “NCI,” “Defendant,” or “NCI Group, Inc.” mean NCI Group, Inc., the
12 defendant in the Litigation.

13 1.22 “Notice Mailing Deadline” means the deadline for the Settlement
14 Administrator to mail the Class Notices, which shall be within twenty-one (21) business days after
15 entry of the Preliminary Approval Order.

16 1.23 “Request for Exclusion” or “Opt Out” means the written and signed
17 requests by Class Members to be excluded from the Settlement Class, which are submitted in the
18 manner specified in the Class Notice, postmarked no later than the Response Deadline.

19 1.24 “PAGA” means the Private Attorneys General Act of 2004, California
20 Labor Code §§ 2698 *et seq.*

21 1.25 “PAGA Payment” means the \$60,000 of the MSA allocated to satisfy
22 the PAGA penalties claim as alleged in the operative complaint. Seventy-five percent (75%) of the
23 PAGA Payment (\$45,000) shall be paid to the LWDA and twenty-five percent (25%) of the
24 PAGA Payment shall be part of the Net Settlement Amount distributed to Settlement Class
25 Members.

26 1.26 “Preliminary Approval Order” shall mean an order to be executed and
27 filed by the Court preliminarily approving of this Settlement.

28

1 1.27 “Qualifying Work Week” shall mean any calendar week, *i.e.*, seven
2 consecutive days from Monday to Sunday during the Class Period in which a Class Member
3 worked for Defendant at least one day in the calendar week. The parties understand and agree that
4 the total number of Qualifying Work Weeks as of November 19, 2019 is approximately 34,722
5 weeks.

6 1.28 “Released Claims” shall collectively mean all claims, including without
7 limitations “Unknown Claims” as defined in Paragraph 1.43 hereof, demands, rights, liabilities
8 and causes of action of every nature and description whatsoever including without limitation
9 statutory, constitutional, contractual or common law claims, whether known or unknown, against
10 the Defendant Releasees, or any of them, for any type of relief arising out of any Settlement Class
11 Member’s employment with Defendant, based on the facts alleged in the Complaint, that accrued
12 during the Class Period for alleged or actual (i) failure to compensate for all hours worked; (ii)
13 failure to pay regular and/or premium wages at the proper hourly rates for all hours worked; (iii)
14 failure to comply with payroll or wage record-keeping documentation or wage statement
15 itemization requirements; (iv) failure to provide sufficient meal and/or rest periods or pay
16 additional sums of money in lieu thereof; (v) failure to timely pay wages due at termination or
17 otherwise; (vi) failure to furnish accurate wage statements; (vii) failure to pay minimum wages;
18 (viii) unfair business practices relating to or arising out of the previous claims; and (ix) to the
19 extent not covered above, any claims pled in or reasonably arising out of the facts alleged in the
20 operative complaint in the Litigation. Released Claims include (1) claims for penalties or any
21 other remedies under any statute or regulation or other provision of law, based on the facts alleged
22 in the Complaint, including without limitation claims under California Labor Code sections 201-
23 204, 216, 225.5, 226, 226.3, 226.7, 500, 510, 512, 558, 1174, 1174.5, 1197, 1198, California
24 Labor Code section 1194, *et seq.*, California Labor Code section 2698 *et seq.*, California Business
25 and Professions Code section 17200 *et seq.*, any applicable California Industrial Welfare
26 Commission Wage Order; (2) claims, based on the facts alleged in the Complaint, for injunctive
27 relief, restitution, disgorgement, accounting, declaratory relief or other equitable relief; (3) any and
28 all claims, based on the facts alleged in the Complaint, for interest, costs, or attorney fees,

1 including without limitation claims under California Labor Code sections 218.5, 1194 & 2698 *et*
2 *seq.* and California Code of Civil Procedure section 1021.5; (4) and, to the extent not covered
3 above, any and all claims arising from the facts alleged in the Complaint in the Litigation.

4 1.29 "Response Deadline" means the deadline for all Class Members to
5 respond to the Class Notice, which shall be forty-five (45) days after the Class Notice is mailed.

6 1.30 "Settlement Administrator" means Rust Consulting, Inc., the third-party
7 settlement administration firm.

8 1.31 "Settlement Class" means the collective group of all Class Members
9 who do not request exclusion from the Settlement Class.

10 1.32 "Settlement Class Member" means a Class Member who has not
11 requested exclusion from the Settlement Class.

12 1.33 "Settlement Payment" means the gross, total amount due to an
13 individual Settlement Class Member, which shall be the product of the Work Week Value
14 multiplied by that Settlement Class Member's number of Qualifying Work Weeks.

15 1.34 "Settling Parties" means Defendant and Class Representative on behalf
16 of himself and all Members of the Settlement Class.

17 1.35 "Stipulation" means this agreement, the Stipulation Re: Settlement of
18 Class and Representative Action and all of its attachments and exhibits, which the Settling Parties
19 understand and agree sets forth all material terms and conditions of the settlement between them.

20 1.36 "Unknown Claims" means any Released Claims which the Class
21 Representative or any Settlement Class Member does not know or suspect to exist in his or her
22 favor at the time of the entry of the Judgment, and which, if known by him or her might have
23 affected his or her settlement with and release of the Defendant Releasees or might have affected
24 his or her decision not to object to this settlement. With respect to any and all Released Claims,
25 the Settling Parties stipulate and agree that, upon the Effective Date, the Class Representative shall
26 expressly and each of the Settlement Class Members shall be deemed to have, and by operation of
27 the Judgment shall have, waived the provisions, rights and benefits of California Civil Code
28 section 1542, which provides:

1 **A general release does not extend to claims that the creditor or releasing party**
2 **does not know or suspect to exist in his or her favor at the time of executing**
3 **the release and that, if known by him or her, would have materially affected**
4 **his or her settlement with the debtor or released party.**

5 The Class Representative and each Settlement Class Member may hereafter discover facts in
6 addition to or different from those which he or she now knows or believes to be true with respect
7 to the subject matter of the Released Claims, but the Class Representative and each Settlement
8 Class Member, upon the Effective Date, shall be deemed to have, and by operation of the
9 Judgment shall have, fully, finally, and forever settled and released any and all Released Claims,
10 known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not
11 concealed or hidden, which then exist, or heretofore have existed upon any theory of law or equity
12 now existing or coming into existence in the future, including, but not limited to, conduct which is
13 negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard
14 to the subsequent discovery or existence of such different or additional facts. The Class
15 Representative acknowledges, and the Settlement Class Members shall be deemed by operation of
16 the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a
17 key element of the settlement of which this release is a part.

18 For the sake of clarity, the Settling Parties agree that Unknown Claims include
19 only those claims that meet the definition of Released Claims and do not include claims that do
20 not meet the definition of Released Claims. As such, for example, Unknown Claims do not
21 include claims for any relief for wrongful termination, unlawful harassment, Workers'
22 Compensation, or other claims that do not arise from the facts alleged in the Complaint.

23 1.37 "Updated Address" means a mailing address that was updated via a
24 Reasonable Address Verification Measure, or Secondary Address Verification Measure or via an
25 updated mailing address provided by the United States Postal Service or a Class Member.

26 1.38 "Work Week Value" shall be the number which is the quotient of the
27 NSA divided by the total number of Qualifying Work Weeks for all Class Members.

28 2. **The Settlement.**

 2.1 ***Taxes.***

1 2.1.1 Defendant, through the Settlement Administrator, and according to the
2 terms, conditions and procedures set forth in this Stipulation, shall pay each Settlement Class
3 Member his or her Settlement Payment. Each Settlement Class Member's gross Settlement
4 Payment will be apportioned as follows: 25% as wages and 75% as non-wages (including
5 penalties and interest). The amounts paid as wages shall be subject to all tax withholdings
6 customarily made from an employee's wages and all other authorized and required withholdings
7 customarily made from an employee's wages and shall be reported on IRS Form W-2. The
8 amounts paid as penalties and interest shall be subject to all authorized and required withholdings
9 customarily made from employees' wages other than tax withholdings and shall be reported on
10 IRS Form 1099.

11 2.1.2 Other than the withholding and reporting requirements set forth herein,
12 each Settlement Class Member shall be responsible for the reporting and payment of any federal,
13 state and/or local income or other tax or any other withholdings, if any, on his or her Settlement
14 Payment. Plaintiff shall be responsible for reporting any taxes or withholdings on any payments
15 made to Plaintiff pursuant to this Stipulation. Likewise, Class Counsel shall be responsible for
16 reporting any taxes or withholdings on any payments made to Class Counsel pursuant to this
17 Stipulation. Defendant makes no representations, and it is understood and agreed that Defendant
18 has made no representations, as to the taxability of any portions of the Settlement Payments to
19 any Settlement Class Members, the payment of any costs or an award of attorney fees, or any
20 payments to the Class Representative. The Class Notice will advise Class Members that they can
21 seek their own tax advice prior to acting in response to that notice, and the Class Representative
22 and Class Counsel agree that Class Members will have an adequate opportunity to seek tax
23 advice prior to acting in response to the Class Notice.

24 2.2 ***No Effect on Employee Benefits.***

25 The enhancement payment and Settlement Payments paid to Plaintiff and Settlement Class
26 Members shall not be deemed to be pensionable earnings and shall not have any effect on the
27 eligibility for, or calculation of, any of the employee benefits (e.g., vacation, holiday pay,
28 retirement plans, etc.) of Plaintiff or the Settlement Class Members. Defendant will not, unless

1 otherwise required by law, make from the Settlement Payments any additional deductions,
2 withholdings or payments, including without limitation, medical or other insurance payments or
3 premiums, employee 401(k) contributions or matching employer contributions, wage
4 garnishments, or charity withholdings.

5 2.3 ***PAGA Notice and the First Amended Complaint***

6 2.3.1 The Class Representative agrees to take all reasonable steps to comply
7 with the notice requirements of California Labor Code section 2699(I). Within seven (7) days of
8 filing the First Amended Complaint, the Class Representative shall provide the LWDA with a
9 file-stamped copy of the First Amended Complaint. At the time of filing the Preliminary
10 Approval Motion, the Class Representative shall provide notice of the settlement set forth in this
11 Stipulation to the LWDA through that agency's Internet portal, and the Settling Parties agree that
12 the release of PAGA claims contained herein is binding.

13 2.3.2 On or before the date that is seven (7) business days after the signing of
14 this Stipulation, the Class Representative shall file a stipulation signed by the Settling Parties,
15 requesting leave to amend and file a First Amended Complaint in the Litigation, adding a claim
16 for relief under the Private Attorneys General Act ("PAGA"), California Labor Code section
17 2698 *et seq.*, based on the same factual allegations as the claims in the original complaint.

18 2.3.3 The First Amended Complaint shall not add or remove any other factual
19 allegations in the original complaint. Defendant consents to the filing of a First Amended
20 Complaint in accordance with the terms of this Stipulation. For avoidance of doubt, Defendant,
21 by consenting to the filing of a First Amended Complaint, does not waive any defense to
22 Plaintiff's claim under PAGA. The stipulation requesting leave to amend and file the First
23 Amended Complaint will also seek to have Defendant's Answer on file deemed responsive to the
24 First Amended Complaint. If the Court requires Defendant to file a responsive pleading, then the
25 initial deadline for Defendant's response to the First Amended Complaint shall be June 30, 2020.
26 The Settling Parties agree that the deadline for Defendant's response to the First Amended
27 Complaint will not occur until and unless this Stipulation is terminated, canceled, declared void
28

1 or fails to become effective in accordance with its terms, or if the Judgment does not become
2 final.

3 2.4 ***Preliminary Approval.***

4 2.4.1 The Plaintiff, through his counsel of record, shall move for preliminary
5 approval of this Stipulation pursuant to Rule 23 of the Federal Rules of Civil Procedure and file
6 this Stipulation with the Court. Plaintiff's Counsel will provide Defendant's Counsel with an
7 advance copy of the preliminary approval motion and chance to comment prior to filing. Via this
8 submission, the Plaintiff shall request that the Court conditionally certify the Class, preliminarily
9 approve the settlement, order the Class Notice be disseminated pursuant to this Stipulation, enter
10 the Preliminary Approval Order, and schedule the Final Approval Hearing.

11 2.4.2 Subject to the availability of the Court, the Class Representative shall
12 notice the motion for preliminary approval for a hearing on February 24, 2020, or the first
13 available date thereafter for a hearing.

14 2.4.3 If the Court enters the Preliminary Approval Order, then at the resulting
15 Final Approval Hearing, the Settling Parties, through their counsel of record, shall address any
16 written objections from Class Members or any concerns from Class Members who attend the
17 Final Approval Hearing as well as any concerns of the Court, and shall and hereby do, unless
18 provided otherwise in this Stipulation, stipulate to final approval of this Stipulation and entry of
19 the Judgment by the Court.

20 2.5 ***Notice to Class Members.***

21 2.5.1 After the Court enters its Preliminary Approval Order, every Class
22 Member will be provided with the Class Notice in accordance with the procedures set forth
23 herein.

24 2.5.2 **Website.** The Settlement Administrator shall maintain a static website
25 for this settlement that will contain this Stipulation, the Preliminary Approval Motion, Class
26 Notice, the Attorneys' Fee Motion, and the Final Approval Motion, and any other document
27 deemed appropriate by the Court. This website will be presented on the Class Notice.
28

1 2.5.3 **Class Database.** Within seven (7) business days after entry of the
2 Preliminary Approval Order, Defendant shall deliver to the Settlement Administrator an
3 electronic database (“Class Database”), which will list for each Class Member: (1) first and last
4 name; (2) Last Known Address; (3) social security number, if known; (4) hire and termination
5 dates; (5) last known email address, if known; and (6) the total number of Qualifying Work
6 Weeks for each Class Member. By approving this settlement, the Court will be deemed to have
7 authorized Defendant to provide the Settlement Administrator with the social security number of
8 the Class Members. If any or all of this information is unavailable to Defendant, Defendant will
9 so inform Plaintiff’s Counsel and the Parties will make their best efforts to reconstruct or
10 otherwise agree upon how to proceed with the unavailable information. The Settlement
11 Administrator will conduct a skip trace for the address of all Class Members who are former
12 employees of Defendant. The Database shall be based on Defendant’s payroll, personnel, and
13 other business records. The Settlement Administrator shall maintain the Database and all data
14 contained within the Database as private and confidential.

15 2.5.4 **Confirmation Prior to Notice Mailing.** The Settlement Administrator
16 shall inform Class Counsel that the total of the Settlement Payments is, or is not, equal to the
17 maximum amount for payments to Settlement Class Members. For avoidance of doubt, the total
18 of the Settlement payments and the maximum amount for payments to Settlement Class Members
19 will not be provided to the Class Representative or Class Counsel, unless agreed upon by the
20 Parties. The Settlement Administrator shall also provide a formatted Class Notice, after entry of
21 the Preliminary Approval Order and before the mailing of the Class Notice, seeking the Parties’
22 approval of the Class Notice prior to mailing.

23 2.5.5 **Notice Mailing.** Within twenty-one (21) business days after entry of the
24 Preliminary Approval Order, the Settlement Administrator will mail the Class Notice to all
25 identified Class Members at their Last Known Addresses via first class mail through the United
26 States Postal Service, postage pre-paid. The Settlement Administrator will also email the Class
27 Notice to all Class Members at their last known email address, if contained in the Class Database.
28

1 2.5.6 **Notice Contents.** The Class Notice shall include instructions on how to
2 opt out of or object to the settlement. The mailing enclosing the Class Notice will not contain any
3 other materials, and no other materials will be sent to any Class Member unless by the Settlement
4 Administrator or Class Counsel in response to a submission or inquiry from a Class Member in
5 response to the Class Notice. The Class Notice and its envelope or covering shall be marked to
6 denote the return address of the Settlement Administrator stated on the Class Notice.

7 2.5.7 **Updated Addresses Prior to Notice Mailing.** Prior to mailing the Class
8 Notice to each Class Member, the Settlement Administrator shall conduct a search for Updated
9 Addresses for all Class Members using the National Change of Address Database, maintained by
10 the United States Postal Service to review the accuracy of the last mailing address known by
11 Defendant, and, if possible, update Class Members' mailing addresses. To the extent this process
12 yields an Updated Address, that Updated Address shall replace the Last Known Address and be
13 treated as the new Last Known Address for purposes of this Stipulation and for subsequent
14 mailings in particular.

15 2.5.8 **Notice Sent via Mail and Email.** The Class Notice shall be mailed to
16 the Last Known Addresses of the Class Members no later than the Notice Mailing Deadline. The
17 Class Notice shall also be sent via email to the Class Members' last known email addresses
18 provided by Defendant, if available.

19 2.5.9 **Undeliverable – Efforts to Find Updated Address.** In the event a
20 Class Notice is returned to the Settlement Administrator by the United States Postal Service as
21 undeliverable because the address of the recipient is no longer valid, *i.e.*, the envelope is marked
22 "Return to Sender," the Settlement Administrator shall conduct a Secondary Address Verification
23 Measure within five (5) days to attempt to ascertain a current address of the particular Class
24 Member in question to locate an Updated Address. A "Secondary Address Verification Measure"
25 is an effort to ascertain the specific Class Member's address through the use of a standard skip
26 trace procedure (such as Lexis/Nexis Accrunit). If this effort does not result in an Updated
27 Address, the Settlement Administrator will promptly provide the contact information of the Class
28 Member with the bad address to Class Counsel. Class Counsel will conduct a search using IDI

1 with the available contact information. The IDI search performs a deep skip trace of the Class
2 Member and will have a greater chance of locating a better address to provide the Class Member
3 with the Class Notice. The Settlement Administrator and Class Counsel shall undertake these
4 efforts to find better addresses even if the Settlement Administrator sent the Class Notice via
5 email to the Class Member's last known email address in order to provide the Class Member with
6 as much opportunity as possible to receive notice of the settlement.

7 **2.5.10 Undeliverable – Updated Address Found.** If an address is ascertained
8 through the Settlement Administrator's Secondary Address Verification Measure or through
9 Class Counsel's IDI search efforts, the Settlement Administrator will re-send that Class Notice
10 within five (5) days of receiving the updated address. If the Class Notice is not returned as
11 undeliverable, the new address found as a result of the Settlement Administrator or Class
12 Counsel's efforts will be the Updated Address and shall be deemed as the new Last Known
13 Address for purposes of this Stipulation and for subsequent mailings in particular. In the event
14 that a second address is ascertained by the Settlement Administrator or Class Counsel, the Class
15 Notice will be deemed to have been delivered upon the second mailing of the Class Notice to the
16 Last Known Address.

17 **2.5.11 Undeliverable – Forwarding Address Provided.** In the event a Class
18 Notice is returned to the Settlement Administrator by the United States Postal Service with a
19 forwarding address for the recipient, the Settlement Administrator shall re-mail the Class Notice
20 to that address within five (5) days of receiving such information. If the Class Notice is not
21 returned as undeliverable, the forwarding address shall be deemed the Last Known Address for
22 purposes of this Stipulation and for subsequent mailings in particular.

23 **2.5.12 Undeliverable – No Updated Address Found.** In the event a Class
24 Notice is returned to the Settlement Administrator by the United States Postal Service as
25 undeliverable because the address of the recipient is no longer valid, *i.e.*, the envelope is marked
26 "Return to Sender," and the Settlement Administrator conducts a Secondary Address Verification
27 Measure that does not result in an Updated Address, Class Counsel is unable to find a better
28 address using IDI or TLOxp, and the Settlement Administrator did not receive a "bounce back"

1 notification in response to the email it sent to the Class Member's last known email address, then
2 the Class Notice will be deemed delivered to the Class Member.

3 **2.5.13 Undeliverable.** In the event that the Class Notice is returned by the
4 United States Postal Service as undeliverable because the address of the recipient is no longer
5 valid, *i.e.*, the envelope is marked "Return to Sender," and (2) no Updated Address can be found
6 for that Class Member as a result of a Secondary Address Verification Measure or IDI search, or
7 any mailing to any Updated Address is returned as undeliverable, and (3) the Class Data contains
8 no last known email address for the Class Member or the Settlement Administrator receives a
9 "bounce back" notification in response to its emailed Class Notice, the Class Notice will be
10 deemed to have been delivered upon the second mailing of the Class Notice to the Last Known
11 Address.

12 **2.5.14 Weekly Status Reports.** The Settlement Administrator shall provide a
13 weekly status report to the Parties. As part of its weekly status report, the Settlement
14 Administrator will inform Class Counsel and Defendant's Counsel of the number of Class
15 Notices mailed and emailed, the number of Class Notices returned as undeliverable and re-
16 mailed, the number of Class Notices deemed delivered via email only, the number of Class
17 Notices deemed finally undeliverable via mail and mail resulting in a deemed opt-out, the number
18 of opt-outs and objections, and the number of open and resolved data disputes.

19 **2.6 Responses to the Class Notice and Motion for Final Approval.**

20 **2.6.1** Class Members have the option to participate in this Lawsuit at their
21 own expense by obtaining their own attorney(s). Class Members who choose this option will be
22 responsible for any attorney fees or costs incurred as a result of this election. The Class Notice
23 will advise Class Members of this option.

24 **2.6.2 Objections to Settlement.** Class Members may also object to the
25 Stipulation by submitting written objections to the Settlement Administrator no later than the
26 Notice Response Deadline. The Class Notice will advise Class Members of this option. The
27 Settlement Administrator shall provide any such objections to Class Counsel and Defendant's
28 counsel immediately upon receipt, and file the objection with the Court. If the Settlement

1 Administrator is unable to file the objection, it will notify counsel for the Settling Parties and
2 Defendant's counsel will file the objection with the Court.

3 **2.6.3 Format of Objection.** Any objections shall state: (a) the case name (e.g.
4 *Arturo Gonzalez v. NCI Group, Inc. dba NCI Building Systems*) and case number (1:18-cv-
5 00948-AWI-SKO); (b) the objecting person's or his/her attorney's full name, address, and
6 telephone number; (c) the words "Notice of Objection" or "Formal Objection;" (d) describe, in
7 clear and concise terms, the legal and factual arguments supporting the objection; (e) list
8 identifying witness(es) the objector may call to testify at the Final Approval Hearing; (f) provide
9 true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval
10 Hearing; and (g) state whether the objection applies only to the objector, to a specific subset of
11 the Class, or to the entire Class. Any objection must comply with the Federal Rules of Civil
12 Procedure Rule 23(e)(5).

13 **2.6.4 Notice of Intent to Appear in Support of Objection.** Class Members
14 who timely submit valid objections to the settlement may (though are not required to) appear at
15 the Final Approval Hearing, either in person or through the objector's own counsel. The Class
16 Notice will request that the objector notify the Parties of the objector's intent to appear at the
17 Final Approval Hearing by mailing or filing a Notice of Intent to Appear with the Court by the
18 Response Deadline.

19 **2.6.5 Class Member Address Changes.** Class Members who, for future
20 reference and mailings from the Court or Settlement Administrator, if any, wish to change the
21 name or address listed on the envelope in which the Class Notice was first mailed to them, may
22 do so by contacting the Settlement Administrator at the toll-free telephone number or mailing
23 address provided on the Class Notice.

24 **2.6.6 Requests for Exclusion ("Opt Out").** Class Members may request
25 exclusion from or "opt out" of the Settlement Class. The Class Notice will provide that Class
26 Members who wish to exclude themselves from the Settlement must mail to the Settlement
27 Administrator a written request for exclusion by the Response Deadline.

28

1 **2.6.7 Format of Request for Exclusion.** The written request for exclusion
2 must: (a) state the Class Member's name, address, telephone number, and last four numbers of
3 their social security number or employee identification number; (b) state the Class Member's
4 intention to exclude themselves from or opt-out of the settlement (*e.g.* "I want to exclude myself
5 from this settlement. I also understand that I retain all rights to sue the Defendant for the claims
6 asserted in this lawsuit."); (c) be addressed to the Settlement Administrator; (d) be signed by the
7 Class Member or his or her lawful representative; and (e) be postmarked no later than the
8 Response Deadline. If a fully completed and properly executed Request for Exclusion is not
9 received by the Settlement Administrator from a Class Member postmarked on or before the
10 Response Deadline, then that Class Member will be deemed to have forever waived his or her
11 right to opt out of the Settlement Class and will become Settlement Class Members. Those
12 portions of the Maximum Settlement Amount for Settlement Class Members attributable to Class
13 Members who submit valid Requests for Exclusion shall become part of the Net Settlement
14 Amount, distributable to Settlement Class Members.

15 **2.6.8 Effect of "Opt Out."** Any Class Member who returns a timely, valid,
16 and executed request for exclusion will not participate in or be bound by the settlement and
17 subsequent judgment and will not receive a Settlement Payment. The Class Member who elects
18 to opt out shall have no further role in the Litigation, and for all purposes they shall be regarded
19 as if they never were a party to this Litigation, and thus they shall not be entitled to any benefit as
20 a result of this Litigation, nor be allowed to object to this Stipulation.

21 **2.6.9 Failure to "Opt Out."** Class Members who do not opt out of the
22 Settlement Class, as described in this Stipulation, shall be deemed Settlement Class Members and
23 shall be subject to the Judgment regardless of whether they ultimately negotiate their settlement
24 checks.

25 **2.6.10 Class Member Disputes.** The Class Notice shall contain, in the
26 appropriate space, his or her estimated individualized Settlement Payment. Class Members are
27 not required to submit any form in order to receive their Settlement Payments as Settlement Class
28 Members. If a Class Member wishes to dispute this information and seek a larger Settlement

1 Payment, the Class Member must submit to the Settlement Administrator, in advance of the
2 Response Deadline, a signed dispute explaining the reasons for such a dispute, and any
3 supporting documents. In the absence of such documentation, the Class Database will be
4 controlling. No dispute will be valid if postmarked after the Response Deadline. Counsel for the
5 Settling Parties shall meet and confer on all such disputes following the Notice Response
6 Deadline in an effort to resolve them. If any disputes remain unresolved following this meet and
7 confer effort, the Settling Parties shall seek the guidance of the Settlement Administrator and
8 resolve the matter on the basis of this guidance. If no compromise is reached, the dispute can be
9 presented to the Court for resolution. In any such dispute, the Defendant's records shall be
10 entitled to presumptive weight.

11 **2.6.11 Settlement Administrator's Report.** No later than five (5) business
12 days after the Response Deadline, the Settlement Administrator will provide Counsel for the
13 Settling Parties with a complete and accurate accounting of the number of Class Notices mailed
14 and emailed to Class Members, the number of Class Notices returned as undeliverable and re-
15 mailed, the number of Class Notices deemed delivered via email only, the number of Class
16 Notices deemed finally undeliverable via mail and mail resulting in a deemed opt-out, the number
17 of valid and invalid opt-outs, the number of objections, and the number of open and resolved data
18 disputes

19 **2.6.12 Settlement Administrator's Declaration.** No later than fourteen (14)
20 calendar days after the Response Deadline or at the request of the Parties, whichever comes first,
21 the Settlement Administrator will provide the Parties with a declaration of due diligence setting
22 forth its compliance with its obligations under this Stipulation. The declaration from the
23 Settlement Administrator will be filed with the Court by Class Counsel at the time the final
24 approval motion is filed. Before the Final Approval Hearing, the Settlement Administrator will
25 supplement its declaration of due diligence if any material changes occur from the date of the
26 filing of its prior declaration.

27 **2.6.13 No Solicitation of Objections or Requests for Exclusion.** Neither the
28 Parties nor their respective counsel will solicit or otherwise encourage directly or indirectly any

1 Class Member to object to the settlement, request exclusion from the settlement, or appeal from
2 the Judgment.

3 **2.7 Final Approval, Judgment, and Appeals.**

4 **2.7.1 Final Approval.** Class Counsel will file unopposed motions and
5 memorandums in support thereof for Final Approval of the settlement and the following
6 payments in accord with the terms of the Stipulation: (a) Attorneys' Fees, (b) Litigation
7 Expenses, (c) Administrative Costs, (d) Enhancement Payment, and (e) the PAGA Payment.
8 Class Counsel will also move the Court for an order of Final Approval (and associated entry of
9 Judgment) releasing and barring any Released Claims of the Settlement Class Members. The
10 Settling Parties shall take all reasonable efforts to secure entry of the Order of Final Approval and
11 Judgment. The Class Representative shall submit the Judgment in this matter to the LWDA
12 within ten (10) days after entry of the Judgment.

13 **2.7.2 Denial or Appeal of Final Approval.** If the Court does not grant Final
14 Approval of this settlement, or if the Court's Final Approval of the settlement is reversed or
15 materially modified on appellate review, then this Stipulation shall be void *ab initio*, and
16 Defendant shall have no obligation to make any payments under the Stipulation, except that
17 Defendant agrees to be solely responsible for paying any fees owing to the Settlement
18 Administrator as a result of this Stipulation. An award by the Court of a lesser amount than
19 sought by Plaintiff and Class Counsel for the Enhancement Award, Attorneys' Fees, or Litigation
20 Expenses will not constitute a material modification to the settlement within the meaning of this
21 paragraph.

22 **2.7.3 Proposed Order and Judgment.** Upon Final Approval of the
23 settlement, the Settling Parties shall present to the Court an agreed upon proposed Final Approval
24 Order, approving of the settlement and entering Judgment in accordance therewith. After entry of
25 Judgment, the Court shall have continuing jurisdiction over the Litigation for purposes of: (1)
26 enforcing this Stipulation; (2) addressing settlement administration matters; and (3) addressing
27 such post-Judgment matters as may be appropriate under Court rules and applicable law.
28

1 2.7.4 **Waiver of Right to Appeal.** Provided that the Judgment is consistent
 2 with the terms and conditions of this Stipulation, the Parties and their respective counsel waive
 3 any and all rights to appeal from the Judgment, including but not limited to, all rights to any post-
 4 judgment proceeding and appellate proceeding, such as a motion to vacate or set aside judgment,
 5 and any extraordinary writ, and the Judgment will become non-appealable at the time it is
 6 entered. The waiver of appeal does not include any waiver of the right to oppose any appeal,
 7 appellate proceeding, or post-judgment proceeding. For avoidance of doubt, this provision does
 8 not restrict any party's right to oppose any appeal filed by any Class Members, in the event that a
 9 Class Member timely objected to the settlement and ultimately appeals the Judgment.

10 2.7.5 **Vacating, Reversing, or Modifying Judgment on Appeal.** If, after a
 11 notice of appeal, the reviewing court vacates, reverses, or modifies the Judgment such that there
 12 is a material modification of the settlement, and that court's decision is not completely reversed
 13 and the Judgment is not fully affirmed on review by a higher court, then this Stipulation will
 14 become null and void and the Settling Parties will have no further obligations under it. A material
 15 modification would include, but not necessarily be limited to, any alteration of the Maximum
 16 Settlement Amount, an alteration in the calculation of the Net Settlement Amount, and any
 17 change to the calculation of the Class Members' individual Settlement Payments.

18 2.8 ***Funding and Disbursement of Settlement.***

19 2.8.1 **Funding the Settlement.** Defendant shall wire to the Settlement
 20 Administrator the Maximum Settlement Amount within five (5) business days of the Effective
 21 Date.

22 2.8.2 **Disbursement of Settlement.** Within fifteen (15) business days after the
 23 Effective Date, the Settlement Administrator shall disburse: (1) the Net Settlement Amount to be
 24 paid to Settlement Class Members; (2) the Attorneys' Fees and Litigation Expenses, as approved
 25 by the Court, to Class Counsel; (3) the Enhancement Payment, as approved by the Court, to the
 26 Class Representative; (4) the Administration Costs, as approved by the Court, to the Settlement
 27 Administrator; and (5) the PAGA Payment, as approved by the Court, to the LWDA and
 28

1 Settlement Class Members. Following disbursement, the Settlement Administrator shall provide
2 counsel for the Settling Parties with a written confirmation of the disbursement mailing.

3 **2.8.3 Class Member Checks.** The Settlement Administrator shall issue to
4 each Settlement Class Member one check payable to the Settlement Class Member from the
5 qualified settlement account (administered by the Settlement Administrator but funded by
6 Defendant) for the Settlement Payment, less applicable taxes and withholdings. The Settlement
7 Administrator shall mail this check(s) to each Settlement Class Member at his or her Last Known
8 Address, or Updated Address if obtained.

9 **2.8.4 Uncashed Checks and Reminder Postcard.** Checks issued to
10 Settlement Class Members pursuant to this Agreement shall remain negotiable for a period of one
11 hundred eighty (180) days from the date of mailing. If any checks are not redeemed or deposited
12 within ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder
13 postcard indicating that unless the check is redeemed or deposited before the expiration date, it
14 will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced.

15 **2.8.5 Cy Pres.** If any checks remain uncashed or not deposited by the
16 expiration of the one hundred eighty (180) day period during which settlement checks are
17 negotiable, the Settlement Administrator shall distribute all funds associated with any checks that
18 are not properly or timely negotiated, along with interest accrued thereon (if any), to Legal Aid
19 At Work. Settlement Class Members who fail to negotiate their settlement checks in a timely
20 fashion shall remain subject to the terms of the Judgment.

21 **2.8.6 Post-Distribution Accounting and Settlement Administrator's Final**
22 **Report.** Within ten (10) business days after the disbursement of all funds, the Settlement
23 Administrator will serve on counsel for the Settling Parties a declaration providing a final report
24 on the disbursements of all funds. This declaration will include an easy to read chart, which will
25 provide the following information: (1) the total MSA; (2) the total number of Settlement Class
26 Members; (3) the total number of Class Members to whom the notice was sent and not returned
27 as undeliverable; (4) the number and percentage of opt-outs from the settlement; (5) the number
28 and percentage of objections; (6) the average and median recovery per Settlement Class

Members; (7) the largest and smallest amounts paid to Settlement Class Members; (8) the methods of notice and the methods of payment to Settlement Class Members; (9) the administrative costs; (10) the attorneys' fees and costs; (11) the attorneys' fees in terms of percentage of the MSA. Within twenty-one (21) calendar days after the MSA has been distributed, the Parties shall file this Post-Distribution Accounting with the Court and the Settlement Administrator will post the Post-Distribution Accounting on the settlement website for Class Members to access. The Settlement Administrator will provide any supplemental declaration required by the Court.

2.9 Releases.

2.9.1 Settlement Class Members. Upon the Effective Date, each of the Settlement Class Members shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished and discharged the Defendant Releasees from the Released Claims.

2.9.2 Plaintiff/Class Representative Only. In addition, upon the Effective Date, the Class Representative agrees to and shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished and discharged the Defendant Releasees from the Released Claims and the Unknown Claims. The Class Representative agrees that California Labor Code section 2804 does not hinder or limit the preclusive effect of the Judgment on the Released Claims.

2.10 Costs, Attorney Fees and Enhancement Award.

2.10.1 Attorneys' Fees and Litigation Expenses. Class Counsel shall be entitled, subject to the approval of the Court and the occurrence of the Effective Date, to recover their reasonable litigation costs, associated expenses and attorney fees pursuant to California law. These costs, fees, and expenses shall be paid out of the MSA. Subject to Court approval and the occurrence of the Effective Date, Class Counsel may apply for a total attorney fee award not to exceed, \$150,000.00 (which is 25% of the MSA) for all attorneys' fees and actual litigation expenses not to exceed \$30,000.

1 2.10.2 Class Counsel and the Class Representative will not seek to recover any
2 other fees, costs or expenses incurred in this Litigation. The Class Representative and Class
3 Counsel agree that they shall be responsible for seeking and justifying their fee and cost awards
4 to the Court, and they agree to submit the necessary materials to justify the requested award along
5 with the motion for final approval of the Stipulation. Defendant will not oppose an award that is
6 consistent with this Paragraph. Upon request, Class Counsel shall provide the Settlement
7 Administrator with a Form W-9(s) for reporting purposes and written allocation instructions, if
8 any, regarding the payee(s). Other than any reporting of this fee payment as required by this
9 Stipulation or law, which Defendant shall make, Class Counsel and the Class Representative shall
10 be responsible for the reporting and payment of any federal, state and/or local income or other
11 form of tax on any payment made pursuant to this paragraph. The payment awarded and made
12 pursuant to this paragraph shall constitute full satisfaction of any claim for fees or costs or any
13 other expenses, and the Class Representative and Class Counsel, on behalf of themselves and all
14 Settlement Class Members, agree that they shall neither seek nor be entitled to any additional
15 attorney fees or costs under any theory nor shall they seek an award in excess of the amount
16 specified herein.

17 2.10.3 **Enhancement Payment.** In addition to his Settlement Payment as a
18 Settlement Class Member, and subject to the Court's approval and occurrence of the Effective
19 Date, the Class Representative will receive an Enhancement Payment, subject to the Court's
20 approval, in an amount not to exceed \$5,000. This Enhancement Payment will be paid out of the
21 MSA. The Class Representative and Class Counsel agree that they shall be responsible for
22 seeking and justifying this Enhancement Payment to the Court, and they agree to submit the
23 necessary materials to justify the requested Enhancement Payment along with the motion for final
24 approval of the Stipulation. Defendant will not oppose an award that is consistent with this
25 Paragraph.

26 2.10.4 The Enhancement Payment shall be compensation and consideration for
27 the Class Representative's efforts as the class representative in the Litigation and benefits
28 conferred upon the Class and State of California. Defendant shall report to the Internal Revenue

1 Service the payment as non-wage income to the Class Representative in the year of payment.
2 This reporting shall be done via a Form 1099, and the Class Representative agrees to take full
3 responsibility for the payment of any outstanding taxes due.

4 2.10.5 Unless otherwise expressly provided, Defendant shall have no
5 responsibility for, and no liability whatsoever with respect to, the allocation among the Class
6 Representative, Class Counsel and/or any other Person who may assert some claim thereto, of
7 any award or payment issued or made in the Litigation or pursuant to this Stipulation.

8 2.11 ***Settlement Administration Costs.***

9 2.11.1 The fees and expenses reasonably incurred by the Settlement
10 Administrator as a result of procedures and processes expressly required by this Stipulation shall
11 be paid out of the MSA, in an amount not to exceed \$15,000. The Class Representative and Class
12 Counsel shall have no responsibility for such fees or expenses.

13 2.11.2 The actions of the Settlement Administrator shall be governed by the
14 terms of this Stipulation. Defendant and Class Counsel may provide relevant information needed
15 by the Settlement Administrator pursuant to this Stipulation and engage in related
16 communications with the Settlement Administrator without notice or copies to Class Counsel,
17 any Class Members or the Court. Defendant may make payment to the Settlement Administrator
18 for its services and engage in related communications with the Settlement Administrator without
19 notice or copies to Class Counsel, any Class Members, or the Court. Defendant and Class
20 Counsel may provide logistical instructions to the Settlement Administrator with regard to actions
21 required by this Stipulation and engage in related communications with the Settlement
22 Administrator without notice or copies to Class Counsel, any Class Members, or the Court. This
23 provision shall not preclude Class Counsel from communicating with the Settlement
24 Administrator in any way.

25 2.11.3 The Settlement Administrator must communicate to counsel for the
26 Settling Parties any action that may cause delay in completing any of its duties, including but not
27 limited to, disseminating the Class Notice, providing a declaration of due diligence, and
28 disbursing the payments required under this Stipulation. The Settlement Administrator must also

1 communicate to counsel for the Settling Parties, the nature of any Class Member disputes and
2 their resolution or lack thereof.

3 2.11.4 In the event that any of the Settling Parties take the position that the
4 Settlement Administrator has not acted in accordance with the terms of the Stipulation, that
5 party's counsel shall meet and confer with counsel for the other Settling Parties prior to raising
6 any such issue with the Court.

7 2.12 ***PAGA Payment.***

8 2.12.1 As part of this settlement, and subject to Court approval, the Settling
9 Parties allocate \$60,000 of the MSA to satisfy PAGA penalties as alleged in the operative
10 complaint. Seventy-five percent (75% or \$45,000) of the PAGA Payment shall be paid to the
11 LWDA and twenty-five percent (25% or \$15,000) of the PAGA Payment shall be part of the
12 NSA distributed to Settlement Class Members.

13 2.13 ***Termination of Settlement.***

14 2.13.1 In the event that the settlement set forth in this Stipulation shall not be
15 approved in its entirety by the Court, or in the event that the Effective Date does not occur, any of
16 the Settling Parties shall have the option to void the settlement, and in such case, no payments
17 shall be made by Defendant to anyone in accordance with the terms of this Stipulation (except
18 that Defendant agrees to be solely responsible for paying any fees owing to the Settlement
19 Administrator as a result of its efforts pursuant to this Stipulation), and this Stipulation shall be
20 deemed null and void with no effect on the Lawsuit whatsoever.

21 2.13.2 In the event that ten (10) percent or more of the Class Members opt out
22 of the Settlement Class by submitting Opt Outs pursuant to this Stipulation, Defendant shall have
23 the option to terminate and void this settlement and this Stipulation.

24 2.14 ***Miscellaneous Provisions.***

25 2.14.1 The Settlement Administrator shall act in accordance with the
26 Stipulation and the settlement contained therein or further orders of the Court.

1 2.14.2 The only Class Members entitled to any payment under this Stipulation
2 and the associated Judgment are Settlement Class Members, and they shall be entitled to their
3 respective Settlement Payments only.

4 2.14.3 Except for the cy pres provisions specifically set forth in this Stipulation,
5 this Stipulation shall not require payment by Defendant to any third parties, other than as
6 specifically set forth in the Stipulation. Any finding to the contrary will be grounds for Defendant
7 to void the settlement.

8 2.14.4 In the event that the Stipulation is not substantially approved by the
9 Court or the settlement set forth in the Stipulation is terminated, canceled, declared void or fails
10 to become effective in accordance with its terms, or if the Judgment does not become Final, or to
11 the extent cancelation is otherwise provided for in this Stipulation, the Settling Parties shall
12 resume the Litigation at that time as if no Stipulation had been entered. In such event, the terms
13 and provisions of the Stipulation shall have no further force and effect with respect to the Settling
14 Parties and shall not be used in this Litigation or in any other proceeding for any purpose, and
15 any Judgment or order entered by the Court in accordance with the terms of the Stipulation shall
16 be treated as vacated, *nunc pro tunc*. Notwithstanding any other provision of this Stipulation, no
17 order of the Court or modification or reversal on appeal of any order of the Court concerning the
18 amount of any attorney fees to be paid by Defendant to Class Counsel shall by itself constitute
19 grounds for cancelation or termination of the Stipulation or grounds for limiting any other
20 provision of the Judgment, provided that Defendant shall never be required to pay in excess of
21 the MSA (with the exception of Defendant's obligation to pay employer taxes as the Class
22 Members' current or former employer). It is agreed that no order of the Court, including any
23 order concerning attorney fees, may alter the MSA.

24 2.14.5 Unless otherwise ordered by the Court, in the event the Stipulation shall
25 be terminated, canceled, declared void or fails to become effective in accordance with its terms,
26 or if the Judgment is reversed on appeal, within twenty (20) business days after written
27 notification of such event, Defendant and Class Counsel shall notify each other of this event in
28 writing.

1 2.14.6 The Settling Parties: (a) acknowledge that it is their intent to
2 consummate this agreement; (b) agree to cooperate to effectuate and implement all terms and
3 conditions of the Stipulation and to exercise their best efforts to accomplish the foregoing terms
4 and conditions of the Stipulation; and (c) agree to seek and to attempt to obtain Court approval
5 for the Stipulation.

6 2.14.7 The Settling Parties hereby agree that there is a good faith dispute as to
7 liability in this case. The Stipulation compromises claims that were contested and the subject of a
8 good faith dispute, and it shall not be deemed an admission by any of the Settling Parties as to the
9 merits of any claim or defense. The Settling Parties agree that the amounts paid in Settlement and
10 the other terms of the settlement were negotiated at arm's length and in good faith with sufficient
11 information by the Settling Parties and reflect a settlement that was reached voluntarily after
12 consultation with competent legal counsel.

13 2.14.8 The Settling Parties agree that the Response Deadline shall not be
14 extended, and no untimely submissions or claims will be honored, unless the Parties agree to
15 make an exception. Notwithstanding the foregoing, a Class Member will be allowed to extend the
16 Response Deadline for him or herself if and only if he or she can make a showing of legal
17 incapacity during the Notice Period.

18 2.14.9 Neither the Stipulation nor the settlement, nor any act performed or
19 document executed pursuant to, or in furtherance of, the Stipulation or the settlement: (a) is or
20 may be deemed to be or may be used as an admission by Defendant Releasees of the validity of
21 any Released Claim; or (b) may be used as an admission of any fault or omission by the
22 Defendant Releasees, or any of them, in any civil, criminal or administrative proceeding in any
23 court, administrative agency or other tribunal. The Settling Parties agree that all alleged liability
24 is disputed in good faith.

25 2.14.10 All of the exhibits to the Stipulation are material and integral parts
26 hereof and are fully incorporated herein by this reference.

27 2.14.11 The Stipulation may be amended or modified only by a written
28 instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest.

1 2.14.12 The Stipulation constitutes the entire agreement among the Settling
2 Parties hereto and no representations, warranties or inducements have been made to any party
3 concerning the Stipulation or its exhibits other than the representations, warranties and covenants
4 contained and memorialized in such documents. This Stipulation supersedes and completely
5 replaces any previous agreements, oral or written, among the Settling Parties. Except as
6 otherwise provided herein, each party shall bear its own costs.

7 2.14.13 Class Counsel, on behalf of the Class, are expressly authorized by the
8 Class Representative to take all appropriate action required or permitted to be taken by the Class
9 pursuant to the Stipulation to effect its terms and also are expressly authorized to enter into any
10 modifications or amendments to the Stipulation on behalf of the Class which they deem
11 appropriate.

12 2.14.14 Each counsel or other Person executing the Stipulation or any of its
13 exhibits on behalf of any party hereto hereby warrants that such Person has full and express
14 authority to do so.

15 2.14.15 The Stipulation may be executed in one or more counterparts. All
16 executed counterparts and each of them shall be deemed to be one and the same instrument. A
17 complete set of executed counterparts shall be filed with the Court.

18 2.14.16 The Stipulation shall be binding upon, and inure to the benefit of, the
19 successors and assigns of the parties hereto, however, this Stipulation is not designed to and does
20 not create any third party beneficiaries unless otherwise specifically provided herein.

21 2.14.17 The Court shall retain jurisdiction with respect to implementation and
22 enforcement of the terms of the Stipulation, and all parties hereto submit to the jurisdiction of the
23 Court for purposes of implementing and enforcing the settlement embodied in the Stipulation.

24 2.14.18 The Stipulation and the exhibits hereto shall be considered to have been
25 negotiated, executed and delivered, and to have been wholly performed, in the State of California,
26 and the rights and obligations of the parties to the Stipulation shall be construed and enforced in
27 accordance with, and governed by, the internal, substantive laws of the State of California
28 without giving effect to that State's choice of law principles.

1 2.14.19 The language of all parts of this Stipulation shall in all cases be
2 construed as a whole, according to its fair meaning, and not strictly for or against either party.
3 No party shall be deemed the drafter of this Stipulation. The parties acknowledge that the terms
4 of the Stipulation are contractual and are the product of negotiations between the parties and their
5 counsel. Each party and that party's counsel cooperated in the drafting and preparation of the
6 Stipulation. In any construction to be made of the Stipulation, the Stipulation shall not be
7 construed against any party and the canon of contract interpretation set forth in California Civil
8 Code section 1654 shall not be applied.

9 2.14.20 **No Publicity.** Prior to the submission of the settlement agreement to the
10 Court for preliminary approval, neither Class Representative nor Class Counsel shall
11 communicate any terms of this settlement to any third parties. Following the submission for
12 preliminary approval and thereafter, Class Representative and Class Counsel shall not publicize
13 the settlement in this action or the terms thereof via (a) press releases, (b) Internet postings, or (c)
14 other mass media efforts. This shall not prohibit Class Counsel from discussing this case or any
15 aspect of this settlement with any Class Representative, any Class Member (absent or otherwise)
16 in this case, or any court or opposing counsel; also, this shall not prohibit Class Counsel from in
17 any way disclosing their mere status as counsel in the case or making objective and truthful
18 reference to the case or its settlement and any attorneys' fee award in any future pleading in
19 another litigation.

20 2.14.21 **CAFA Notice.** Defendant agrees to take all reasonable steps to comply
21 with the requirements of the Class Action Fairness Act of 2005, including the notice
22 requirements. It is the intent of the parties that the Judgment be binding on all Settlement Class
23 Members. No more than 10 days after this Stipulation and the joint motion for preliminary
24 approval of this Stipulation is filed, Defendant shall provide notice to the Attorney General of the
25 United States, the California State Attorney General, and any others entities or agencies that
26 Defendant deems appropriate. Said notice shall be mailed, and can be in paper or an electronic or
27 disc format, and shall include to the extent then available and feasible: (1) the operative
28 complaint in the Litigation; (2) the notice of motion and motion for preliminary approval of the

1 settlement, which shall include the proposed final approval hearing date; (3) the Class Notice; (4)
2 this Stipulation; (5) the Stipulation and/or notice of motion and motion for preliminary approval
3 of the settlement, which shall confirm that there are no additional agreements among the Settling
4 Parties not reflected in the Stipulation; (6) this Stipulation, which shall include the proposed
5 Judgment; and (7) the names of each Class Member and (a) a description of the calculation of the
6 Settlement Payments; and/or (b) each Class Member's projected number of Qualifying Work
7 Weeks. The Class Representative and Class Counsel shall not receive a copy of this notice but
8 may receive upon request a proof of service listing the entities on whom Defendant served the
9 notice. Prior to the Preliminary Approval Hearing, Defendant will file a declaration with the
10 Court stating its efforts to comply with the requirements under CAF. The Settling Parties agree,
11 and the Court will confirm by granting approval for this settlement, that this notice shall be
12 sufficient to satisfy the terms of 28 U.S.C. § 1715, and that subject to the occurrence of the
13 Effective Date, this Stipulation and the associated Judgment shall be binding on all Settlement
14 Class Members.

15 [SIGNATURES ON NEXT PAGE]
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2 IN WITNESS WHEREOF, the parties hereto have caused the Stipulation to be
3 executed, and this Stipulation is AGREED TO.

4 DATED: 1/24/2020



ARTURO GONZALEZ
Plaintiff and Class Representative

7
8 DATED:

Authorized Agent for NCI Group, Inc.
Name:
Title:

11 APPROVED AS TO FORM:

13
14 DATED: 1/28/20



DAVID MARA
JAMIE SERB
Attorneys for Plaintiff Gonzalez/Class Counsel

18 DATED:

MARTIN BERN
Attorney for Defendant NCI Group, Inc.

EXHIBIT 1

**NOTICE TO CLASS MEMBERS RE: PENDENCY OF A CLASS ACTION
AND NOTICE OF HEARING ON PROPOSED SETTLEMENT**

**YOU MAY BE ENTITLED TO MONEY UNDER THE PROPOSED CLASS ACTION SETTLEMENT.
PLEASE READ THIS NOTICE CAREFULLY; IT INFORMS YOU ABOUT YOUR LEGAL RIGHTS.**

*A court authorized this notice. This is not a solicitation.
This is not a lawsuit against you and you are not being sued.
However, your legal rights are affected by whether you act or don't act.*

TO: All non-exempt current and former employees who worked for Defendant NCI Group, Inc. as hourly warehouse workers, industrial workers, shipping checkers, distribution employees, shipping clerks, packers, stackers, loaders, packaging clerks, machine operators, receiving clerks, production workers, and all other similarly situated employees in California from June 6, 2014 through February 24, 2020 (“Class Members”).

The United States District Court, Eastern District of California (“Court”) has granted preliminary approval to a proposed settlement (“Settlement”) of the above-captioned action (“Class Action”). Because your rights may be affected by this Settlement, it is important that you read this Notice to Class Members re: Pendency of a Class Action and Notice of Hearing on Proposed Settlement (“Notice”) carefully. Most importantly, this Notice will advise you of how you can obtain your money under the Settlement or how you can decide to not take part in the Settlement and preserve your rights against NCI Group, Inc. (“NCI”).

The Settlement provides \$600,000 to resolve this Class Action alleging that NCI violated California law by failing to pay all wages due, including all overtime and double time hours at the applicable premium rates of pay; failing to pay all applicable minimum wage; failing to compensate for all hours worked; failing to provide meal and rest periods or pay additional sums of money in lieu thereof; and failing to furnish accurate and compliant wage and hour statements and to pay all wages due at termination of employment.

The Court has not made any ruling that NCI violated the law, and NCI disputes all claims made in the Class Action. The purpose of this Notice is to inform you of the pending Settlement and your rights and options under the Settlement.

WHAT INFORMATION IS IN THIS NOTICE:

1. Why Have I Received This Notice?	Page 1
2. What Is This Case About?	Page 2
3. Am I a Class Member?	Page 2
4. Where Can I Get Additional Information About the Lawsuit and the Proposed Settlement?	Page 2
5. What Are My Options?	Page 3
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7. How Do I Object to the Settlement?	Page 4
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9. How Does This Settlement Affect My Rights?	Page 4
10. What are the Terms of the Settlement and How Much Can I Expect to Receive?	Page 5

1. Why Have I Received This Notice?

NCI's records indicate that you may be a Class Member. The settlement will resolve all Class Members' Released Claims, as described below, from June 6, 2014 through February 24, 2020 (the "Class Period"). This Notice is meant to provide you with basic information about the case and to advise you of your options to participate in the Settlement, exclude yourself from the Settlement, or object to the Settlement.

A Preliminary Approval Hearing was held on date of final approval hearing, in the United States District Court, Eastern District of California. The Court conditionally certified the Class for settlement purposes only and directed that you receive this Notice. The Court will hold a Final Approval Hearing concerning the proposed settlement on date of final approval hearing, 2020 at time in Courtroom 2 before Judge Anthony W. Ishii, located at Robert E. Coyle United States Courthouse, 2500 Tulare Street, Eighth Floor, Fresno, California 93271.

2. What Is This Case About?

The action entitled *Arturo Gonzalez v. NCI Group, Inc.*, Case No. 1:18-cv-00948-AWI-SKO, was commenced by Mr. Gonzalez on June 6, 2018 in the Merced County Superior Court. NCI removed the action to federal court, and the action is currently pending in the United States District Court, Eastern District of California.

This Settlement resolves claims that you should have been paid all wages due, including all overtime and double time hours at the applicable premium rates of pay, all applicable minimum wage, and compensation for all hours worked, provided meal and rest periods or paid additional sums of money in lieu thereof, furnished accurate and compliant paystubs, and paid all wages due at termination of employment.

The Court has not determined whether any laws have been violated, nor has it decided in favor of Mr. Gonzalez or NCI; instead, both sides agreed to resolve the lawsuit with no decision or admission of who is right or wrong. By agreeing to resolve the lawsuit, all parties avoid the risks and cost of a trial.

3. Am I A Class Member?

You are a Class Member if you worked for NCI in California as an hourly warehouse worker, industrial worker, shipping checker, distribution employee, shipping clerk, packer, stacker, loader, packaging clerk, machine operator, receiving clerk, production worker, or similar position at any time between June 6, 2014 through February 24, 2020. **Based upon NCI's records, you are a Class Member and you may participate in this Settlement.**

4. Where Can I Get Additional Information About the Lawsuit and the Proposed Settlement?

This Notice does not contain all of the terms of the proposed Settlement or all of the details of these proceedings. There are multiple ways to get more information about this lawsuit and the proposed Settlement:

1. Settlement Administrator

Class Members who have questions about this Notice, the Settlement, or related issues can contact the Settlement Administrator or review the website for this Settlement:

-2-

Questions? Call the Settlement Administrator toll free at [phone number] or view website at [http://www.\[insert\].com](http://www.[insert].com)

2. Class Counsel

The Court has decided that Mara Law Firm, PC is qualified to represent you and all other Class Members simultaneously. You may also direct any questions you have about this lawsuit or the proposed Settlement to Class Counsel:

MARA LAW FIRM, PC
David Mara
Jamie Serb
2650 Camino Del Rio North, Suite 205
San Diego, CA 92108
Telephone: (619) 234-2833
Facsimile: (619) 234-4048

You do not need to hire your own attorney because Class Counsel is working on your behalf. But, if you want your own attorney, you may hire one at your own cost.

3. The Court

The pleadings and other records in this litigation, including the Settlement Agreement, may be examined online for a fee through the United States Public Access to Court Electronic Records, <http://www.pacer.gov>.

You may also inspect the files (including the full settlement agreement) at the Office of the Court Clerk located at the United States District Court for the Eastern District of California, Robert E. Coyle Courthouse, 2500 Tulare Street, Eighth Floor, Fresno, CA 93721

PLEASE DO NOT TELEPHONE THE COURT FOR INFORMATION REGARDING THIS SETTLEMENT PROCESS.

5. *What Are My Options?*

The purpose of this Notice is to inform you of the proposed Settlement and of your options. Each option has its consequences, which you should understand before making your decision. Your rights regarding each option, and the steps you must take to select each option, are summarized below and explained in more detail in this Notice.

Important Note: NCI will not retaliate against you for participating or not participating in this Settlement.

- **DO NOTHING:** If you do nothing and the Court grants final approval of the Settlement, you will become part of this lawsuit and may receive a payment from the Settlement. You will be bound to the release of the Released Claims as defined in the Settlement Agreement and the Final Judgment. You will also give up your right to pursue the Released Claims as defined below.

- Case 1:18-cv-00949-AWL-SAC Document 18-1 Filed 02/03/20 Page 56 of 56
- **OPT OUT:** If you do not wish to participate in a Class, you may "opt out," which will remove you from the Class and this Action. If the Court grants final approval of the Settlement, you will not receive a payment and you will not give up the right to sue Defendant and the Released Parties for the Released Claims as defined below. Do not opt out if you wish to receive benefits pursuant to this Settlement.
 - **OBJECT:** You may file a legal objection to the proposed Settlement. If you would like to object, you may not opt out of this case.

The procedures for opting out and objecting are set forth below in the following sections.

6. *How Do I Opt Out Or Exclude Myself From This Settlement?*

If you do not want to take part in the Settlement, you must mail a written Request for Exclusion to the Settlement Administrator. The written request for exclusion must: (a) state your name, address, telephone number, and last four numbers of your social security number or employee identification number; (b) state your intention to exclude yourself from or opt out of the Settlement (e.g. "I want to exclude myself from this settlement. I also understand that I retain all rights to sue NCI for the claims asserted in the lawsuit."); (c) be addressed to the Settlement Administrator at [address]; (d) be signed by you or your lawful representative; and (e) be postmarked no later than [the Response Deadline].

The Final Judgment entered, following approval of the Settlement by the Court, will bind all Class Members who do not request exclusion from the Settlement.

7. *How Do I Object To The Settlement?*

If you are a Class Member who does not opt out of the Settlement, you may object to the Settlement, personally or through an attorney, by submitting your objection in writing, signed, dated, and mailed to the Settlement Administrator postmarked no later than [the Response Deadline]. The objection must state: (a) your full name, address, and telephone number; (b) the words "Notice of Objection" or "Formal Objection;" (c) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (d) list identifying witness(es) the objector may call to testify at the Final Approval hearing; and (e) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval hearing. The objection will not be valid if it objects only to the appropriateness of the Class Action or its merits.

Class Members who object may appear at the Final Approval Hearing, either in person or through the objector's own counsel. If the Court rejects the objection he/she will receive a payment if appropriate under the Settlement and will be bound by the terms of the Settlement.

8. *How Do I Change My Address?*

If you wish to change your address or make any corrections to your name or address, please contact the Settlement Administrator at [phone number] or [address].

If the proposed settlement is approved by the Court, a Final Judgment will be entered by the Court. All Class Members who do not opt out of the Settlement will be bound by the Court's Final Judgment and will release NCI and the Defendant Releasees¹ from the Released Claims. The Released Claims are as follows:

Released Claims: Class Members who do not opt out of the settlement will release all claims, demands, rights, liabilities and causes of action of every nature and description whatsoever including without limitation statutory, constitutional, contractual or common law claims, whether known or unknown, against the Defendant Releasees, or any of them, for any type of relief arising out of any Settlement Class Member's employment with Defendant, based on the facts alleged in the Complaint, that accrued during the Class Period for alleged or actual (i) failure to compensate for all hours worked; (ii) failure to pay regular and/or premium wages at the proper hourly rates for all hours worked; (iii) failure to comply with payroll or wage record-keeping documentation or wage statement itemization requirements; (iv) failure to provide sufficient meal and/or rest periods or pay additional sums of money in lieu thereof; (v) failure to timely pay wages due at termination or otherwise; (vi) failure to furnish accurate wage statements; (vii) failure to pay minimum wages; (viii) unfair business practices relating to or arising out of the previous claims; and (ix) to the extent not covered above, any claims pled in or reasonably arising out of the facts alleged in the operative complaint in the Litigation. Released Claims include (1) claims for penalties or any other remedies under any statute or regulation or other provision of law, based on the facts alleged in the Complaint, including without limitation claims under California Labor Code sections 201-204, 216, 225.5, 226, 226.3, 226.7, 500, 510, 512, 558, 1174, 1174.5, 1197, 1198, California Labor Code section 1194, *et seq.*, California Labor Code section 2698 *et seq.*, California Business and Professions Code section 17200 *et seq.*, any applicable California Industrial Welfare Commission Wage Order; (2) claims, based on the facts alleged in the Complaint, for injunctive relief, restitution, disgorgement, accounting, declaratory relief or other equitable relief; (3) any and all claims, based on the facts alleged in the Complaint, for interest, costs, or attorney fees, including without limitation claims under California Labor Code sections 218.5, 1194 & 2698 *et seq.* and California Code of Civil Procedure section 1021.5; (4) and, to the extent not covered above, any and all claims arising from the facts alleged in the Complaint in the Litigation.

The Released Claims include any Unknown Claims which the Plaintiff or any Settlement Class Member does not know or suspect to exist in his or her favor at the time of the entry of the Judgment, and which, if known by him or her might have affected his or her settlement with and release of the Defendant Releasees or might have affected his or her decision not to object to this settlement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date, the Plaintiff shall expressly and each of the Settlement Class Members shall be deemed to have, and by operation of the Judgment shall have, waived the provisions, rights and benefits of California Civil Code section 1542, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

¹ "Defendant Releasees" mean Defendant NCI Group, Inc. and all of its employees, agents, and affiliates, including without limitation parents and subsidiaries, predecessors, successors, divisions, investors, joint ventures and assigns, any benefit plan maintained by any of them and the trustees, fiduciaries, and administrators of any such plan, and each and all of these entities' past or present directors, officers, employees, agents, partners, members, principals, agents, underwriters, insurers, co-insurers, re-insurers, shareholders, attorneys, accountants or auditors, banks or investment banks, associates, and personal or legal representatives.

The Plaintiff and each Settlement Class Member may hereafter discover facts in addition to or different from those which he or she now knows or believes to be true with respect to the subject matter of the Released Claims, but the Class Representative and each Settlement Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which then exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Plaintiff acknowledges, and the Settlement Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the settlement of which this release is a part.

For the sake of clarity, the Settling Parties agree that the “Unknown Claims” include only those claims that meet the definition of Released Claims and do not include claims that do not meet the definition of Released Claims. As such, for example, “Unknown Claims” do not include claims for any relief for wrongful termination, unlawful harassment, Workers’ Compensation, or other claims that do not arise from the facts alleged in the Complaint.

10. What are the Terms of the Settlement and How Much Can I Expect to Receive?

Under this Agreement, Defendant will pay \$600,000.00 (“Maximum Settlement Amount” or “MSA”).

The “Net Settlement Amount” or “NSA” means the portion of the MSA, available for distribution to Class Members after the deduction of (1) Payment to Plaintiff in an amount up to \$5,000 for prosecution of the Class Action and risks undertaken for the payment of attorneys’ fees and costs; (2) the Settlement Administration Costs to the Settlement Administrator in an amount not to exceed \$15,000; (4) payment to Class Counsel in an amount not to exceed \$150,000 (25% of the MSA) for attorneys’ fees and an amount not to exceed \$30,000 for litigation expenses; and (5) payment to the California Labor and Workforce Development Agency for its share of PAGA penalties in an amount of \$45,000 (75% of \$60,000 allotted to settle PAGA penalties). All of these payments are subject to court approval. NCI’s portion of payroll taxes will be paid by NCI separate and apart from the MSA.

A. How Is My Settlement Payment Calculated?

After deducting the above-referenced amounts, the remaining NSA will be proportionately distributed amongst all Settlement Class Members². Each Settlement Class Member will receive a proportionate share of the Net Settlement Amount that is equal to the Work Week Value multiplied by the Settlement Class Member’s number of Qualifying Work Weeks. The “Work Week Value” is determined by dividing the NSA by the total number of Qualifying Work Weeks for all Settlement Class Members. A “Qualifying Work Week” is any calendar week (i.e. seven consecutive days from Monday to Sunday) during the Class Period in which the Settlement Class Member worked for NCI at least one day in the calendar week. Therefore, the value of each Class Member’s Individual Settlement Payment ties directly to the number of weeks that he or she worked for NCI in California.

Although your exact payment cannot be precisely calculated until after the time during which individuals may object or seek exclusion from the Settlement concludes, based upon the calculation above, your approximate

² Settlement Class Members are Class Members who have not requested exclusion from the Settlement.

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payment is as follows: \$[] less taxes. This is based on the Class data which shows you were employed by NCI for [] weeks during the Class Period.

B. What Do I Do If The Number Of Weeks I Worked Is Wrong?

If you disagree with the number of weeks you worked as stated in this Notice, you must notify the Settlement Administrator at [address] and provide a statement of the number of total weeks you worked while employed with NCI during the Class Period, supported by written documentation. You must postmark this information by [Response Deadline] and it must be received by the Settlement Administrator within three business days of the deadline.

The Settlement Administrator will investigate the challenge, request information from NCI as necessary and make the final determination of whether any additional amount is owed to you. NCI's records regarding the number of weeks you worked will be presumed to be correct and your challenge will be denied if you do not provide written proof of the number of weeks you worked.

C. How Will My Settlement Payment Be Taxed?

Your settlement payment will be apportioned as 25% wages and 75% as non-wages (penalties and interest). The amounts paid as wages shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported on IRS W-2 forms. Each Settlement Class Member is solely responsible for determining the tax consequences of payments made pursuant to this Settlement and for paying taxes, if any, which are determined to be owed by such Settlement Class Member on such payments (including penalties and interest related thereto) by any taxing authority, whether state, local, or federal. The amounts paid as penalties and interest shall be subject to all authorized and required withholdings (other than the tax withholdings customarily made from employees' wages) and shall be reported on IRS 1099 forms.

NCI's payroll tax obligations will be paid separately by NCI.

D. What Will Happen To My Settlement Payment If I Do Not Cash My Check?

It is strongly recommended that upon receipt of your payment, you immediately cash it or cash it before the 180-day void date shown on each check. If any checks remain uncashed or not deposited by the expiration of the 180-day void date, the Settlement Administrator will pay the funds represented by such un-redeemed checks to a *cy pres*, Legal Aid at Work, a non-profit legal services organization. Legal Aid at Work's Wage Protection Program represents low-wage workers who are the victims of wage violations. The wage claims made by Legal Aid at Work's clients are often the same type of claims made in wage-and-hour class actions brought by workers under the federal Fair Labor Standards Act and under California wage-and-hour laws.