

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

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

Plaintiff,

vs.

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

Defendants.

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

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF
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 Plaintiff's motion for an order preliminarily approving a class action settlement
2 and setting a settlement hearing pursuant to Federal Rule of Civil Procedure 23 came on for
3 hearing on or about March 16, 2020. The Court has considered the Stipulation Re: Settlement of
4 Class and Representative Action (and its exhibits), the submissions of counsel, and all other
5 papers filed in this action. The matter having been submitted and good cause appearing therefor,
6 the Court finds as follows:

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8 1. All defined terms contained herein shall have the same meanings as set
9 forth in the Stipulation Re: Settlement of Class and Representative Action executed by the
10 Settling Parties and filed with this Court (the "Stipulation");

11 2. The Class Representative and Defendant, through their counsel of record
12 in the Litigation, have reached an agreement to settle all claims in the Litigation;

13 3. Significant investigation and research have been conducted such that
14 counsel for the parties at this time are able to reasonably evaluate their respective positions.
15 Settlement at this time will avoid substantial costs, delay, and risks that would be presented by
16 further litigation. The proposed settlement has been reached as a result of serious, informed, and
17 non-collusive negotiations between the parties;

18 4. The Court conditionally finds that, for the purposes of approving this
19 settlement only, the proposed Class meets the requirements for certification under Rule 23 of the
20 Federal Rules of Civil Procedure: (a) the proposed Class is ascertainable and so numerous that
21 joinder of all members of the class is impracticable; (b) for purposes of effectuating this
22 settlement, there are questions of law or fact common to the proposed Class, and there is a well-
23 defined community of interest among members of the proposed Class with respect to the subject
24 matter of the Litigation; (c) the claims of the Class Representative are typical of the claims of the
25 members of the proposed Class; (d) the Class Representative has and will fairly and adequately
26 protect the interests of the Members of the Class; (e) for purposes of effectuating this settlement,
27 a class action is superior to other available methods for an efficient adjudication of this
28 controversy; and (f) the counsel of record for the Class Representative is qualified to serve as

1 counsel for the Class Representative in his own capacity as well as his representative capacity
2 and for the Class;

3 4. The parties also have presented to the Court for review a Stipulation Re:
4 Settlement of Class and Representative Action. The Court finds the Stipulation, incorporated
5 herein by this reference and made a part of this Order re Preliminary Approval except as
6 modified herein, is within the range of reasonableness and meets the requirements for
7 preliminary approval. It further appears to the Court on a preliminary basis that the proposed
8 payments are fair and reasonable to the Class Members when balanced against the probable
9 outcome of further litigation relating to liability and damages issues and potential appeals of
10 rulings and meets the requirements for preliminary approval;

11 5. The parties have also presented to the Court for review a plan to provide
12 notice to the proposed Class of the terms of the settlement and the options facing the Class
13 including, *inter alia*: to opt out of the class action, to be represented by counsel of their
14 choosing, to object to the settlement, and/or to remain in the Settlement Class and become a
15 Settlement Class Member. The notice will be mailed to all Class Members at their Last Known
16 Addresses with provisions for address verification. The notice plan proposed by the Settling
17 Parties is the best practical under the circumstances. The proposed notice, which is attached to
18 the Settlement Stipulation as Exhibit 1 and incorporated herein by reference, is made a part of
19 this Order of Preliminary Approval. The proposed notice fairly and adequately advises the Class
20 of the terms of the proposed settlement and the benefits available to the Class, as well as their
21 right to opt out and/or object, and the procedures for doing so. The proposed notice and mailing
22 procedures complies with all Constitutional requirements, including those of due process; and,

23 6. The proposed Claims Administrator, Rust Consulting, is an adequate
24 Administrator for notice purposes and processing of claims.

25 Good cause appearing therefor,

26 IT IS HEREBY ORDERED that:

27 1. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the
28 Stipulation of Settlement is preliminarily approved and the Class is provisionally certified;

- 1 2. Plaintiff Arturo Gonzalez is approved as Class Representative;
- 2 3. David Mara, Jamie Serb, and Nikki Trenner of Mara Law Firm, PC, are
- 3 appointed Class Counsel;
- 4 4. Rust Consulting is appointed as Settlement Administrator;
- 5 5. Notice of the proposed settlement, and the rights of Class Members,
- 6 including the right to opt out of the settlement, shall be given by mailing of the Notice to Class
- 7 Members Re: Pendency of a Class Action by first class, postage prepaid, to all Class Members
- 8 pursuant to the applicable provisions in the Stipulation. Defendant shall provide the Settlement
- 9 Administrator with the information necessary to conduct this mailing as set forth in the
- 10 Stipulation;
- 11 6. A hearing shall be held before this Court on _____ at
- 12 _____ **a.m./p.m.** to consider whether the settlement should be given final approval by
- 13 the Court:
- 14 (a) Written objections by Class Members to the proposed settlement will be
- 15 considered if received by the Settlement Administrator and Class Counsel on or before the
- 16 Notice Response Deadline;
- 17 (b) At the Final Approval Hearing, Class Members may be heard orally in
- 18 support of or in opposition to the settlement;
- 19 (c) Class Counsel and counsel for Defendant should be prepared at the
- 20 hearing to respond to objections filed by Class Members, and to provide other information as
- 21 appropriate, bearing on whether or not the settlement should be approved; and
- 22 (d) At the Final Approval Hearing, the Court shall consider any motions or
- 23 applications for attorney fees, costs and litigation expenses consistent with the Stipulation.
- 24 7. In the event that the Effective Date occurs, all Settlement Class Members
- 25 will be deemed to have forever released and discharged the Released Claims. In the event that
- 26 the Effective Date does not occur for any reason whatsoever, the Stipulation shall be deemed null
- 27 and void and shall have no effect whatsoever.
- 28 8. Pending further order of the Court, all proceedings in this matter except

9. The Court expressly reserves the right to adjourn or continue the Final Hearing without further notice to the Class.

DATED:

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