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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 CLASS
ACTION SETTLEMENT**

Date: February 28, 2022
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. RECITALS**

2 Plaintiff's motion for an order preliminarily approving a class action settlement and
3 setting a settlement hearing pursuant to Federal Rule of Civil Procedure 23 came on for hearing
4 on or about February 28, 2022. This action is currently pending before this Court as a putative
5 class action. Plaintiff has applied to this Court for an order preliminarily approving the
6 settlement of the Action in accordance with the Amended Stipulation Re: Settlement of Class
7 and Representative Action (the "Stipulation"), which together with the exhibits annexed thereto,
8 sets forth the terms and conditions for a proposed settlement and entry of judgment upon the
9 terms and conditions set forth therein.

10 The Court has reviewed and considered Plaintiff's motion for preliminary approval of
11 class action settlement, the Amended Stipulation Re: Settlement of Class and Representative
12 Action (and its exhibits), the submissions of counsel, and all other papers filed in this action.

13 **II. FINDINGS**

14 After review and consideration of the Stipulation and Plaintiff's Motion for Preliminary
15 Approval and the papers in support thereof, the Court hereby finds and orders as follows:

16 1. All defined terms contained herein shall have the same meanings as set forth in
17 the Amended Stipulation Re: Settlement of Class and Representative Action executed by the
18 Settling Parties and filed with this Court.

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

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

26 4. The Court conditionally finds that, for the purposes of approving this settlement
27 only, the proposed Class meets the requirements for certification under Rule 23 of the Federal
28 Rules of Civil Procedure: (a) the proposed Class is ascertainable and so numerous that joinder of

1 all members of the class is impracticable; (b) for purposes of effectuating this settlement, there
2 are questions of law or fact common to the proposed Class, and there is a well-defined
3 community of interest among members of the proposed Class with respect to the subject matter
4 of the Litigation; (c) the claims of the Class Representative are typical of the claims of the
5 members of the proposed Class; (d) the Class Representative has and will fairly and adequately
6 protect the interests of the Members of the Class; (e) for purposes of effectuating this settlement,
7 a class action is superior to other available methods for an efficient adjudication of this
8 controversy; and (f) the counsel of record for the Class Representative is qualified to serve as
9 counsel for the Class Representative in his own capacity as well as his representative capacity
10 and for the Class.

11 5. The parties also have presented to the Court for review an Amended Stipulation
12 Re: Settlement of Class and Representative Action. The Court finds the Stipulation, incorporated
13 herein by this reference and made a part of this Order Granting Preliminary Approval of Class
14 Action Settlement except as modified herein, is within the range of reasonableness and meets the
15 requirements for preliminary approval. It further appears to the Court on a preliminary basis that
16 the proposed payments are fair and reasonable to the Class Members when balanced against the
17 probable outcome of further litigation relating to liability and damages issues and potential
18 appeals of rulings and meets the requirements for preliminary approval.

19 6. The parties have also presented to the Court for review a plan to provide notice to
20 the proposed Class of the terms of the settlement and the options facing the Class including, *inter*
21 *alia*: to opt out of the class action, to be represented by counsel of their choosing, to object to the
22 settlement, and/or to remain in the Settlement Class and become a Settlement Class Member.
23 The notice will be mailed to all Class Members at their Last Known Addresses with provisions
24 for address verification. The notice plan proposed by the Settling Parties is the best practical
25 under the circumstances. The proposed notice, which is attached to the Stipulation as Exhibit 1
26 and incorporated herein by reference, is made a part of this Order of Preliminary Approval. The
27 proposed notice is reasonably calculated to adequately apprise Class Members of: (i) the pending
28 lawsuit; (ii) the terms of the proposed Stipulation; and (iii) their rights, including the right to

1 either participate in the settlement, exclude themselves from the settlement, or object to the
2 settlement. Plaintiff's proposed plan for class notice and settlement administration is the best
3 notice practicable under the circumstances and is in full compliance with the Federal Rules of
4 Civil Procedure and the requirements of due process, and the Class Notice complies with the
5 Federal Rules of Civil Procedure and the requirements of due process, and is appropriate as part
6 of the proposed plan for notice to Class Members.

7 7. The Stipulation, and the obligations of the Parties as set forth therein, is fair,
8 reasonable, and is an adequate settlement of this case and is in the best interests of the Class in
9 light of the factual, legal, practical, and procedural considerations raised by this case.

10 8. Plaintiff does not have any conflicts that would preclude him from serving as
11 Class Representative, and his appointment comports with the requirements of due process.

12 9. Class Counsel do not have any conflicts that would preclude them from acting as
13 Class Counsel, and they meet the requirements of the Federal Rules of Civil Procedure for
14 appointment as Class Counsel and the requirements of due process.

15 10. The proposed Claims Administrator, Rust Consulting, is an adequate
16 Administrator for notice purposes and processing of claims.

17 **III. ORDER**

18 IT IS HEREBY ORDERED that:

19 1. The Court finds on a preliminary basis that the provisions of the Joint Stipulation,
20 filed with the Court as Exhibit 1 to the Declaration of David Mara, Esq., are fair, just,
21 reasonable, and adequate and, therefore, meet the requirements for preliminary approval.

22 2. The Court certifies, for settlement purposes only, the following class ("Class")
23 described in the Motion for Preliminary Approval:

24 All non-exempt current and former employees who worked for Defendant NCI
25 Group, Inc. as hourly warehouse workers, industrial workers, shipping checkers,
26 distribution employees, shipping clerks, packers, stackers, loaders, packaging
27 clerks, machine operators, receiving clerks, production workers, and all other
similarly situated employees in California at any time during the time period of
June 6, 2014 through February 24, 2020.

28 3. The Court finds, for settlement purposes only, the requirements of Federal Rule of

Civil Procedure 23(a) and Federal Rule of Civil Procedure 23(b)(3) are satisfied.

4. Plaintiff Arturo Gonzalez is approved as Class Representative.

5. David Mara and Jill Vecchi of Mara Law Firm, PC, are appointed Class Counsel.

6. Rust Consulting is appointed as Settlement Administrator.

7. Notice of the proposed settlement, and the rights of Class Members, including the right to opt out of the settlement, shall be given by mailing of the Notice to Class Members Re: Pendency of a Class Action by first class, postage prepaid, to all Class Members pursuant to the applicable provisions in the Stipulation. Defendant shall provide the Settlement Administrator with the information necessary to conduct this mailing as set forth in the Stipulation.

8. Each Class Member will have forty-five (45) days after the date on which the Settlement Administrator mails the Class Notice to object to or opt out of the settlement by following the procedures set forth in the Class Notice.

9. A hearing shall be held before this Court on _____, 2022 at _____ p.m. to consider whether the settlement should be given final approval by the Court.

(a) Written objections by Class Members to the proposed settlement will be considered if received by the Settlement Administrator and Class Counsel on or before the Notice Response Deadline.

(b) At the Final Approval Hearing, Class Members may be heard orally in support of or in opposition to the settlement;

(c) Class Counsel and counsel for Defendant should be prepared at the hearing to respond to objections filed by Class Members, and to provide other information as appropriate, bearing on whether or not the settlement should be approved; and

(d) At the Final Approval Hearing, the Court shall consider any motions or applications for attorney fees, costs and litigation expenses consistent with the Stipulation.

10. In the event that the Effective Date occurs, all Settlement Class Members will be deemed to have forever released and discharged the Released Claims. In the event that the Effective Date does not occur for any reason whatsoever, the Stipulation shall be deemed null

1 and void and shall have no effect whatsoever.

2 11. Pending further order of the Court, all proceedings in this matter except those
3 contemplated herein and in the Settlement Stipulation are stayed.

4 12. The Court expressly reserves the right to adjourn or continue the Final Approval
5 Hearing without further notice to the Class.

6 **IT IS SO ORDERED.**

7
8 DATED:

HON. ANTHONY W. ISHII
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA