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7 **UNITED STATES DISTRICT COURT**
8 **EASTERN DISTRICT OF CALIFORNIA**
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10 ARTURO GONZALEZ on behalf of himself, all
11 others similarly situated, and on behalf of the
12 general public,

13 Plaintiffs,

14 v.

15 NCI GROUP, INC., dba NCI BUILDING
16 SYSTEMS; and DOES 1-100,

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

Assigned to the Hon. Anthony W. Ishii

**[PROPOSED] ORDER GRANTING
PLAINTIFF ARTURO GONZALEZ'S
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: January 23, 2023

Time: 1:30 p.m.

Judge: Hon. Anthony W. Ishii

Courtroom: 2

Action Filed: June 6, 2018

Action Removed: July 12, 2018

Trial Date: None Set

1 **I. RECITALS**

2 This matter came on for hearing on January 23, 2023, in Courtroom 2 of the above-captioned Court
3 on Plaintiff's Motion for Final Approval of Class Action Settlement in the class action (the "Action")
4 currently pending before this Court. Having received and considered the Amended Stipulation Regarding
5 Settlement of Class and Representative Action ("Amended Stipulation"), which together with the exhibits
6 annexed thereto, sets forth the terms and conditions for a proposed settlement and entry of judgment upon
7 the terms and conditions set forth therein, the supporting papers filed by the Parties, and the evidence and
8 argument received by the Court in conjunction with the Motion for Preliminary Approval of Class Action
9 Settlement, and the instant Motion for Final Approval of Class Action Settlement, the Court grants final
10 approval of the Settlement Agreement and HEREBY ORDERS AND MAKES THE FOLLOWING
11 DETERMINATIONS:

12 **II. FINDINGS**

13 After review and consideration of the Amended Stipulation (Dkt. No. 24-2) and Plaintiffs' Motion
14 for Final Approval of Class Action Settlement and the papers in support thereof, the Court hereby finds
15 and orders as follows:

16 1. Pursuant to the Order Granting Plaintiff's Renewed Motion for Preliminary Approval of
17 Class Action Settlement (Dkt. No. 28) ("Preliminary Approval Order"), a Notice of Class Action
18 Settlement ("Class Notice") was mailed to all 317 Class Members by first-class U.S. Mail on September
19 7, 2022.

20 2. The Court finds that distribution of the Class Notice in the manner set forth in the
21 Preliminary Approval Order and the Amended Stipulation constitutes the best notice practicable under the
22 circumstances, and constituted valid, due and sufficient notice to all Class Members, complying fully with
23 the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Constitution of the United States,
24 and any other applicable laws. The Class Notice procedure set forth in the Amended Stipulation provides
25 a means of notice reasonably calculated to apprise the Class Members of the pendency of the action and
26 the proposed settlement, and thereby meets the requirements of Rule 23(c)(2) of the Federal Rules of Civil
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1 Procedure, as well as due process under the United States Constitution, and any other applicable law, and
2 constitutes due and sufficient notice to all Class Members.

3 3. The Class Notice informed the Class Members of the terms of the Amended Stipulation,
4 of their right to submit objections, if any, and to appear in person or by counsel at the final approval
5 hearing and to be heard regarding approval of the settlement. The Class Notice informed the Class
6 Members of their right to request exclusion from the Class and the settlement. The Class Notice also
7 informed Class Members of the date set for the final approval hearing. Adequate periods of time were
8 provided by each of these procedures. No member of the Class filed a written objection to the proposed
9 settlement as part of this notice process or stated an intention to appear at the final approval hearing, and
10 only one Class Member requested exclusion from the Class and the settlement.

11 4. The Court finds and determines that the notice procedure afforded adequate protections to
12 Class Members and provides the basis for the Court to make an informed decision regarding approval of
13 the settlement based on the responses of Class Members. The Court finds and determines that the Class
14 Notice was the best notice practicable, which satisfied the requirements of law and due process.

15 5. Solely for the purpose of settlement in accordance with the Amended Stipulation, the Court
16 finds that the requirements of Rule 23 of the Federal Rules of Civil Procedure and other laws and rules
17 applicable to settlement approval of class actions have been satisfied, and the Court hereby certifies the
18 following Class and subclasses: All non-exempt current and former employees who worked for Defendant
19 NCI Group, Inc. as hourly warehouse workers, industrial workers, shipping checkers, distribution
20 employees, shipping clerks, packers, stackers, loaders, packaging clerks, machine operators, receiving
21 clerks, production workers, and all other similarly situated employees in California at any time during the
22 time period of June 6, 2014, through February 24, 2020.

23 Meal, Rest, and Unpaid Wages Subclass: This subclass includes all Class Members.

24 Waiting Time Penalties Subclass: This subclass includes all Class Members who worked
25 for Defendant at any time from June 6, 2015 through February 24, 2020, and who are no
26 longer employed by Defendant.

27 Wage Statement and PAGA Subclass: This subclass includes all Class Members who
28 worked for Defendant during the period of time from June 6, 2017 through February 24,

2020.

6. Pursuant to the Amended Stipulation, and for settlement purposes only, the Court further finds as to the Class that:

- a. The Class is so numerous that joinder of all members is impracticable;
- b. There are questions of law or fact common to the Class which predominate over the questions affecting only individual members;
- c. The claims of the Class Representative are typical of the claims of the Class that the Class Representative seeks to certify;
- d. The Class Representative, Plaintiff Arturo Gonzalez, will fairly and adequately protect the interests of the Class and is, therefore, appointed as the representative of the Class;
- e. Class Counsel, David Mara and Jill Vecchi of Mara Law Firm, PC, will fairly and adequately protect the interests of the Class and are qualified to represent the Class and are, therefore, appointed as attorneys for the Class for purposes of settlement; and
- f. Certification of the Class is superior to other available methods for fair and efficient adjudication of the controversy.

7. The Court finds that the settlement is fair when compared to the strength of Plaintiff's case, NCI Group, Inc.'s defenses, the risks involved in further litigation and maintaining class status throughout the litigation, and the amount offered in settlement.

8. The Court finds that the Parties conducted adequate investigation and research, and that their attorneys were able to reasonably evaluate their respective positions. The Court finds that the settlement was reached as a result of informed and non-collusive arm's-length negotiation.

9. The Court finds that Class Counsel has extensive experience acting as class counsel in complex class action cases and their view on the reasonableness of the settlement was therefore given its due weight. The Court further finds that the Class's reaction to the settlement – with no objections and only one request for exclusion – weighs in favor of granting final approval of the settlement.

1 10. The Amended Stipulation is not an admission by NCI Group, Inc., nor is this Order a
2 finding of the validity of any allegations or of any wrongdoing by NCI Group, Inc. Neither this Order,
3 the Amended Stipulation, nor any document referred to herein, nor any action taken to carry out the
4 settlement, shall be construed or deemed an admission of liability, culpability, negligence, or wrongdoing
5 on the part of NCI Group, Inc.

6 11. The Court finds and determines that the individual settlement shares to be paid to each
7 Settlement Class Member as provided for in the Amended Stipulation are fair and reasonable.

8 **III. ORDER**

9 IT IS HEREBY ORDERED as follows:

10 1. As defined in the Amended Stipulation, the Court directs the Settlement Administrator to
11 disburse the following out of the Maximum Settlement Amount (“MSA”):

12 a. Settlement Payments. The Court finds and determines that the Settlement Payments
13 provided for by the terms of the Amended Stipulation to be paid to Settlement Class
14 Members are fair and reasonable. The Court hereby grants final approval to and
15 orders the payment of those amounts be made to the Settlement Class Members in
16 accordance with the terms of the Amended Stipulation.

17 b. Class Counsel’s Fees and Cost Award. Pursuant to the terms of the Amended
18 Stipulation, and the authorities, evidence, and argument submitted by Class
19 Counsel, the Court finds and determines Class Counsel have conferred a benefit on
20 absent Settlement Class Members and, having expended efforts to secure a benefit
21 to the Class, are entitled to a fee. Accordingly, the Court hereby orders an award of
22 \$150,000 for attorneys’ fees and \$9,887.94 for litigation costs, to be paid out of the
23 Maximum Settlement Amount to Class Counsel, is fair and reasonable. The Court
24 does not find the attorney fee award of \$150,000 and costs of \$9,887.94 are a
25 disproportionate distribution of the Settlement under *In Re Bluetooth Product*
26 *Liability Case* (“*Bluetooth*”) (9th Cir. 2011) 654 F.3d 935. The Court also finds the
27 attorney fee award here is not unreasonable under *Bluetooth* because the Parties did
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not arrange for fees to revert to NCI Group, Inc. in the event the Court awarded less than requested. Therefore, the attorneys' fees and litigation costs are approved and ordered paid in accordance with the terms of the Amended Stipulation.

c. Enhancement Payment. The Court finds and determines the Enhancement Payment in the amount of \$5,000 to Plaintiff Arturo Gonzalez is fair and reasonable. The Court hereby orders the Enhancement Payment is finally approved and ordered paid in accordance with the terms of the Amended Stipulation.

d. Administration Costs. The Court finds and determines that the payment of the settlement Administration Costs in the amount of \$15,000, to be paid to Rust Consulting, Inc. out of the Maximum Settlement Amount, is fair and reasonable. The Court hereby orders the Settlement Administrator to make this payment to itself in accordance with the terms of the Amended Stipulation.

e. PAGA Payment. The Court finds that the PAGA Payment of \$60,000, of which \$45,000 is to be paid to the California Labor & Workforce Development Agency ("LWDA") out of the Maximum Settlement Amount, to be reasonable and appropriate. The remaining \$15,000 (25% of the PAGA Payment) shall be distributed in accordance with the Amended Stipulation. The Court hereby grants final approval to and orders that the PAGA Payment be paid pursuant to the terms and provisions set forth in the Amended Stipulation.

2. Neither NCI Group, Inc. nor any of the Released Parties shall have any further liability for costs, expenses, interest, attorneys' fees, or for any other charge, expense, or liability, except as provided for in the Amended Stipulation.

3. Nothing in this Order shall preclude any action to enforce the Parties' obligations pursuant to the Amended Stipulation or pursuant to this Order, including the requirement that NCI Group, Inc. make payments to Settlement Class Members in accordance with the Amended Stipulation.

4. By this Judgment, Plaintiff shall release, relinquish, and discharge, and each of the Settlement Class Members – which are Class Members who did not submit a valid request for exclusion

1 – shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released,
2 relinquished, and discharged all Released Claims, as defined in the Amended Stipulation.

3 5. The Court retains jurisdiction over the administration and effectuation of the settlement,
4 including, but not limited to, the ultimate disbursal of Class Counsel’s attorneys’ fees and costs and
5 Plaintiff’s Enhancement Payment, and any other issue related to this Settlement.

6 6. The Parties shall bear their own costs and attorneys’ fees except as otherwise provided by
7 the Settlement Agreement and this Order.

8 7. Final Judgment. The Court hereby enters final judgment in this case in accordance with the
9 terms of (1) the Amended Stipulation; (2) Order Granting Motion for Preliminary Approval of Class
10 Action Settlement; and (3) this Order. Upon entry of this Order and Final Judgment, the Action is hereby
11 dismissed with prejudice as against NCI Group, Inc. Without affecting the finality of this Order in any
12 way, the Court retains jurisdiction of all matters relating to the interpretation, administration,
13 implementation, effectuation, and enforcement of this Order and the Settlement.

14 **IT IS SO ORDERED.**

15 Date:

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Honorable Anthony W. Ishii
United States District Judge
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