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6 Attorneys for Arturo Gonzalez,
on behalf of himself, all others similarly situated,
7 and on behalf of the general public

8
9 **UNITED STATES DISTRICT COURT**
EASTERN DISTRICT OF CALIFORNIA

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

12 Plaintiffs,

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

16 Defendants.
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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 FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: January 23, 2023
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 Plaintiff 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. NCI manufactures and markets metal building systems and components for the
7 nonresidential construction industry. To carry out its business, NCI employs warehouse
8 workers. This lawsuit alleges that NCI violated various California wage and hour laws
9 applicable to NCI's warehouse workers.
- 10 3. Plaintiff filed this matter in Merced County Superior Court on June 6, 2018. NCI filed an
11 Answer on July 12, 2018 and removed this matter on July 12, 2018.
- 12 4. Plaintiff propounded special interrogatories and demands for production of documents to
13 which NCI responded. NCI produced hundreds of documents including employee
14 handbooks and policy manuals, earning statements, personnel files, break logs, job
15 descriptions and work tasks. NCI also produced tens of thousands of lines of time
16 records—the majority of which were produced in a raw electronic format which had to be
17 analyzed and interpreted. NCI also propounded written discovery to which Plaintiff
18 responded.
- 19 5. The Parties attended a mediation on November 19, 2019 and engaged in extensive arm's-
20 length negotiations mediated by retired Superior Court Judge and well-respected mediator,
21 Honorable Joan M. Lewis (Ret). As a result of meditation, the Parties signed a Term Sheet
22 Settlement Agreement and negotiated and finalized a Stipulation Regarding Settlement of
23 Class and Representative Action. On February 3, 2020, Plaintiff filed a motion for
24 preliminary approval. (ECF Dkt. No. 18). The Court issued an Order on Plaintiff's Motion
25 for Preliminary Approval of Class Action Settlement (ECF Dkt. No. 21) on August 6,
26 2020. Thereafter, the Parties revised the terms of the settlement and entered into an
27 Amended Stipulation Regarding Settlement of Class and Representative Action, which is
28 now before the Court for final approval. The Parties Amended Stipulation Regarding

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Settlement of Class and Representative Action is attached hereto as **Exhibit 1**.

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

Dated: December 14, 2022

By: David Mara
David Mara, Esq.

Exhibit 1

1 DAVID MARA, Esq., Bar No. 230498
JILL VECCHI, Esq., Bar No. 299333
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6 and on behalf of the general public

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12 Attorneys for Defendant
NCI GROUP, INC.
13

14 UNITED STATES DISTRICT COURT
15
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.
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Case No. 1:18-cv-00948-AWI-SKO

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

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

5 **I. The Conditional Nature of This Stipulation.**

6 This Stipulation re: Settlement, including all associated exhibits or attachments,
7 (herein "Stipulation") is made for the sole purpose of attempting to consummate settlement of this
8 action on a class-wide and representative basis. Defendant denies all of the claims as to liability,
9 damages, penalties, and restitution as well as the class representative allegations asserted in the
10 Litigation. This Stipulation and the settlement it evidences are made in compromise of disputed
11 claims. Because this is a class action, this settlement must receive preliminary and final approval
12 from the Court. Accordingly, Defendant enters into this Stipulation and associated settlement on a
13 conditional basis. In the event that the Court does not execute and file the Order Granting Final
14 Approval of Settlement, or in the event that the Court does not enter the Judgment, or in the event
15 that the associated Judgment does not become Final for any reason, this Stipulation shall be
16 deemed null and void *ab initio*, it shall be of no force or effect whatsoever, it shall not be referred
17 to or utilized for any purpose whatsoever, and the negotiation, terms and entry of it shall remain
18 subject to the provisions of Federal Rule of Evidence 408 and California Evidence Code sections
19 1119 and 1152.

20 Defendant has agreed to resolve this Litigation via this Stipulation, but to the extent
21 this Stipulation is deemed void or does not take effect for any reason, Defendant does not waive,
22 but rather expressly reserves, all rights to challenge all such claims and allegations in the
23 Litigation upon all procedural and factual grounds, including without limitation the ability to
24 challenge class and/or representative treatment on any grounds or to assert any and all defenses or
25 privileges. The Class Representative and Class Counsel agree that Defendant retains and reserves
26 these rights, and they agree not to take a position to the contrary; specifically, the Class
27 Representative and Class Counsel waive, and agree not to argue or present, any argument that
28 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 “Adjusted Shift Multiplier” shall be, as to each Settlement Class
22 Member, the Settlement Class Member’s Last Known Pay Rate multiplied by 0.1. For example, if
23 a Settlement Class Member’s Last Known Pay Rate is \$17.50, the Adjusted Shift Multiplier is
24 1.75.

25 1.2 “Administration Costs” means the fees and costs incurred by the
26 Settlement Administrator to administer this Settlement, which shall not exceed \$15,000. All
27 Administration Costs shall be paid from the Maximum Settlement Amount. If the Court awards
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1 less than the amount requested, any amount not awarded will become part of the Net Settlement
2 Amount for distribution to Settlement Class Members.

3 1.3 “Attorney Fees” means the amount not to exceed 25% of the Maximum
4 Settlement Amount (\$150,000), finally approved by the Court and awarded to Class Counsel. The
5 Attorney Fees shall be paid from the Maximum Settlement Amount and will not be opposed by
6 Defendant. If the Court awards less than the amount requested, any amount not awarded will
7 become part of the Net Settlement Amount for distribution to Settlement Class Members.

8 1.4 “Class” means all non-exempt current and former employees who
9 worked for Defendant NCI Group, Inc. as hourly warehouse workers, industrial workers, shipping
10 checkers, distribution employees, shipping clerks, packers, stackers, loaders, packaging clerks,
11 machine operators, receiving clerks, production workers, and all other similarly situated
12 employees in California at any time during the Class Period. The parties understand and agree
13 that this Class will consist of approximately 274 Class Members, who worked approximately
14 34,722 Total Pay Periods and 170,321 Total Shifts. The Class shall be split into three subclasses:

15 1.4.1 The “Meal, Rest, and Unpaid Wages Subclass”
16 includes all Class Members.

17 1.4.2 The “Waiting Time Penalties Subclass” includes all
18 Class Members who worked for Defendant at any time from June 6, 2015 through
19 February 24, 2020, and who are no longer employed by Defendant.

20 1.4.3 The “Wage Statement and PAGA Subclass” includes
21 all Class Members who worked for Defendant at any time from June 6, 2017 through
22 February 24, 2020.

23 1.5 “Class Counsel” or “Plaintiff’s Counsel” means David Mara and Jill
24 Vecchi of Mara Law Firm PC.

25 1.6 “Class Member” and “Subclass Member” mean an individual who is a
26 member of the Class or any Subclass, respectively, as defined above.

27 1.7 “Class Notice” means a notice and associated forms entitled “Notice To
28 Class Members Re: Pendency of a Class Action and Notice of Hearing On Proposed Settlement”

1 to be approved by the Court, substantially in the form attached hereto as **Exhibit 1**. Prior to
2 mailing, the Notice may be re-formatted by the Settlement Administrator, and any such re-
3 formatting shall be subject to approval by Class Counsel and counsel for Defendant.

4 1.8 “Class Period” means the period from June 6, 2014 through February
5 24, 2020.

6 1.9 “Class Representative” or “Plaintiff” means Arturo Gonzalez.

7 1.10 “Complaint” means the First Amended Complaint in the Litigation.

8 1.11 “Court” means the United States District Court for the Eastern District
9 of California.

10 1.12 “Defendant Releasees” mean Defendant NCI Group, Inc. and all of its
11 employees, agents, and affiliates, including without limitation parents and subsidiaries,
12 predecessors, successors, divisions, investors, joint ventures and assigns, any benefit plan
13 maintained by any of them and the trustees, fiduciaries, and administrators of any such plan, and
14 each and all of these entities’ past or present directors, officers, employees, agents, partners,
15 members, principals, agents, underwriters, insurers, co-insurers, re-insurers, shareholders,
16 attorneys, accountants or auditors, banks or investment banks, associates, and personal or legal
17 representatives.

18 1.13 “Effective Date” means the date on which the Judgment becomes final
19 and can no longer be appealed or otherwise disturbed because one of the following has occurred:
20 (i) the final affirmance on an appeal of the Judgment; (ii) the final dismissal with prejudice of any
21 appeal from the Judgment; or (iii) if there are no objectors and no plaintiffs in intervention at the
22 time the court grants final approval of the settlement and enters the Judgment, the date the Court
23 grants final approval and enters Judgment. Any proceeding or order or any appeal or petition for a
24 writ pertaining solely to Class Counsel’s application for or award of attorneys’ fees shall not, by
25 itself, in any way delay or preclude the Judgment from becoming Final.

26 1.14 “Employer Payroll Taxes” means the payroll taxes and associated
27 payments customarily borne by the employer when making standard wage payments to
28 employees, *i.e.*, the employer share of the payroll taxes. Defendant shall pay its portion of payroll

1 taxes as the Settlement Class Members' current or former employer separate and apart from the
2 Maximum Settlement Amount.

3 1.15 "Enhancement Payment" means the amount the Court awards to
4 Plaintiff, which will not exceed \$5,000. This payment shall be paid from the Maximum Settlement
5 Amount and will not be opposed by Defendant and is being offered in consideration for the
6 Plaintiff's actions in conferring benefits upon the Class and State of California, the time and effort
7 he put into pursuing this litigation, and reasonable fears of being blacklisted for future
8 employment.

9 1.16 "Final Approval Hearing" means a hearing set by the Court for the
10 purpose of: (i) determining the fairness, adequacy and reasonableness of the Stipulation and
11 associated settlement pursuant to class action procedures and requirements; and (ii) entering
12 Judgment.

13 1.17 "Final Approval Order" shall mean an order to be entered by the Court,
14 granting final approval of this Stipulation, the form of which will be mutually agreed upon by the
15 Settling Parties.

16 1.18 "Judgment" means the judgment to be rendered by the Court pursuant to
17 this Stipulation.

18 1.19 "LWDA" means the California Labor and Workforce Development
19 Agency.

20 1.20 "Last Known Address" means the most recently recorded mailing
21 address for a Class Member as contained in the personnel records maintained by Defendant.

22 1.21 "Last Known Pay Rate" shall mean, as to each Settlement Class
23 Member, the Settlement Class Member's last known rate of pay while employed by Defendant.

24 1.22 "Litigation" or "Lawsuit" shall mean the lawsuit brought by Plaintiff
25 entitled *Arturo Gonzalez v. NCI Group, Inc. dba NCI Building Systems*, Eastern District of
26 California Case No. 1:18-cv-00948-AWI-SKO.

27 1.23 "Litigation Expenses" means the amount that the Court orders
28 Defendant to pay Class Counsel for payment of actual litigation costs, which shall not exceed

1 \$30,000. The Litigation Expenses will be paid from the Maximum Settlement Amount and will
2 not be opposed by Defendant. The Litigation Expenses are subject to Court Approval. If the Court
3 awards less than the amount requested, any amount not awarded will become part of the Net
4 Settlement Amount for distribution to Settlement Class Members.

5 1.24 “Maximum Settlement Amount” or “MSA” shall mean the maximum
6 total amount that can be paid by Defendant pursuant to this Stipulation, only upon occurrence of
7 the Effective Date. It is agreed that the Maximum Settlement Amount is \$600,000, and it is further
8 agreed that pursuant to the terms of this Stipulation, Defendant will not under any circumstances
9 pay more than the Maximum Settlement Amount. (For avoidance of doubt, this section does not
10 invalidate section 1.14, which requires Defendant to pay payroll taxes as Settlement Class
11 Members’ current or former employer on the wage portions of Settlement Class Members’
12 Settlement Payments separate and apart from the Maximum Settlement Amount.) The Maximum
13 Settlement Amount shall cover all expenses associated with the settlement, which shall be the
14 following, and only the following, items: (1) the Settlement Payments to Settlement Class
15 Members; (2) Attorney Fees to Class Counsel, in an amount not to exceed \$150,000; (3) Litigation
16 Expenses to Class Counsel, in an amount not to exceed \$30,000; (4) the Enhancement Payment to
17 the Class Representative, in an amount not to exceed \$5,000; (5) Administration Costs to the
18 Settlement Administrator in an amount not to exceed \$15,000; and (6) the PAGA Payment to the
19 LWDA and to Wage Statement and PAGA Subclass Members for resolution of claims under
20 California Labor Code section 2698 *et seq.*, which shall be \$60,000 (75% or \$45,000 to the
21 LWDA and 25% or \$15,000 to Wage Statement and PAGA Subclass Members).

22 1.25 “Meal, Rest, and Unpaid Wages Individual Adjusted Shifts” shall mean,
23 as to each Meal, Rest, and Unpaid Wages Subclass Member, the Meal, Rest, and Unpaid Wages
24 Subclass Member’s number of actual shifts worked for Defendant during the Class Period
25 multiplied by the Meal, Rest, and Unpaid Wages Subclass Member’s Adjusted Shift Multiplier.

26 1.26 “Meal, Rest, and Unpaid Wages Shift Value” shall mean the number
27 which is the quotient of the Meal, Rest, and Unpaid Wages Payout Fund divided by the Total
28 Adjusted Meal, Rest, and Unpaid Wages Shifts.

1.27 “Net Settlement Amount” or “NSA” shall mean the difference of the MSA minus the amounts awarded by the Court for Attorney Fees, Litigation Expenses, the Enhancement Payment, Administration Costs, and the PAGA Payment. If the Court does not approve and/or reduces the amounts of the requested attorneys’ fees and costs, enhancement award, or administration fees, then the amount of any such reduction will become part of the NSA. The NSA shall be divided into three payout funds:

1.27.1 Meal, Rest, and Unpaid Wages Payout Fund: This fund shall comprise eighty-three percent (83%) of the NSA.

1.27.2 Waiting Time Penalties Payout Fund: This fund shall comprise seven percent (7%) of the NSA.

1.27.3 Wage Statement Payout Fund: This fund shall comprise ten percent (10%) of the NSA.

1.28 “NCI,” “Defendant,” or “NCI Group, Inc.” mean NCI Group, Inc., the defendant in the Litigation.

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

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

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

1.32 “PAGA Payment” means the \$60,000 of the MSA allocated to satisfy the PAGA claim as alleged in the Complaint. The PAGA Payment includes:

1.32.1 The “LWDA Payment,” which is seventy-five percent (75%) of the PAGA Payment (\$45,000), and which shall be paid to the LWDA.

1.32.2 The “PAGA Payout Fund,” which is twenty-five percent (25%) of the PAGA Payment, and which shall be distributed to the Wage Statement and PAGA Subclass.

1.33 “Pay Period Value” shall be the number which is the quotient of the Wage Statement Payout Fund and PAGA Payout Fund divided by the Total Pay Periods.

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

1.35 “Qualifying Pay Periods” shall mean, as to each Wage Statement and PAGA Subclass Member, the number of pay periods such Wage Statement and PAGA Subclass Member worked for Defendant from June 6, 2017 through February 24, 2020.

1.36 “Released Claims” shall collectively mean all claims, including without limitations “Unknown Claims” as defined in Paragraph 1.48 hereof, 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 Complaint. 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

1 1194, *et seq.*, California Labor Code section 2698 *et seq.*, California Business and Professions
2 Code section 17200 *et seq.*, any applicable California Industrial Welfare Commission Wage
3 Order; (2) claims, based on the facts alleged in the Complaint, for injunctive relief, restitution,
4 disgorgement, accounting, declaratory relief or other equitable relief; (3) any and all claims, based
5 on the facts alleged in the Complaint, for interest, costs, or attorney fees, including without
6 limitation claims under California Labor Code sections 218.5, 1194 & 2698 *et seq.* and California
7 Code of Civil Procedure section 1021.5; (4) and, to the extent not covered above, any and all
8 claims arising from the facts alleged in the Complaint in the Litigation.

9 1.37 “Response Deadline” means the deadline for all Class Members to
10 respond to the Class Notice, which shall be forty-five (45) days after the Class Notice is initially
11 mailed.

12 1.38 “Settlement Administrator” means Rust Consulting, Inc., the third-party
13 settlement administration firm.

14 1.39 “Settlement Class” means the collective group of all Settlement Class
15 Members.

16 1.40 “Settlement Class Member” means a Class Member who has not
17 submitted a valid Request for Exclusion.

18 1.41 “Settlement Payment” means, as to each Settlement Class Member, the
19 total amount due to such Settlement Class Member, which shall be the sum of: (1) the Meal, Rest,
20 and Unpaid Wages Shift Value multiplied by that Settlement Class Member’s number of Meal,
21 Rest, and Unpaid Wages Individual Adjusted Shifts; (2) the Waiting Time Penalties Shift Value
22 multiplied by that Settlement Class Member’s number of Waiting Time Penalties Individual
23 Adjusted Shifts, if any such shifts were worked; and (3) the Pay Period Value multiplied by that
24 Settlement Class Member’s number of Qualifying Pay Periods, if any such pay periods were
25 worked.

26 1.42 “Settling Parties” means Defendant and Class Representative on behalf
27 of himself and all Members of the Settlement Class.

1 1.43 “Stipulation” means this Stipulation Re: Settlement of Class and
2 Representative Action and all of its attachments and exhibits, which the Settling Parties
3 understand and agree sets forth all material terms and conditions of the settlement between them.

4 1.44 “Total Adjusted Meal, Rest, and Unpaid Wages Shifts” shall mean the
5 total number of all Meal, Rest, and Unpaid Wages Subclass Members’ Individual Adjusted Shifts.

6 1.45 “Total Adjusted Waiting Time Penalties Shifts” shall mean the total
7 number of all Waiting Time Penalties Subclass Members’ Individual Adjusted Shifts.

8 1.46 “Total Pay Periods” means the total number of all Qualifying Pay
9 Periods of all Wage Statement and PAGA Subclass Members.

10 1.47 “Total Shifts” means the total number of shifts worked by all Class
11 Members during the Class Period.

12 1.48 “Unknown Claims” means any Released Claims which the Class
13 Representative or any Settlement Class Member does not know or suspect to exist in his or her
14 favor at the time of the entry of the Judgment, and which, if known by him or her might have
15 affected his or her settlement with and release of the Defendant Releasees or might have affected
16 his or her decision not to object to this settlement. With respect to any and all Released Claims,
17 the Settling Parties stipulate and agree that, upon the Effective Date, the Class Representative shall
18 expressly and each of the Settlement Class Members shall be deemed to have, and by operation of
19 the Judgment shall have, waived the provisions, rights and benefits of California Civil Code
20 section 1542, which provides:

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

24 The Class Representative and each Settlement Class Member may hereafter discover facts in
25 addition to or different from those which he or she now knows or believes to be true with respect
26 to the subject matter of the Released Claims, but the Class Representative and each Settlement
27 Class Member, upon the Effective Date, shall be deemed to have, and by operation of the
28 Judgment shall have, fully, finally, and forever settled and released any and all Released Claims,

1 known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not
2 concealed or hidden, which then exist, or heretofore have existed upon any theory of law or equity
3 now existing or coming into existence in the future, including, but not limited to, conduct which is
4 negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard
5 to the subsequent discovery or existence of such different or additional facts. The Class
6 Representative acknowledges, and the Settlement Class Members shall be deemed by operation of
7 the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a
8 key element of the settlement of which this release is a part.

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

14 1.49 "Updated Address" means a mailing address that was updated via a
15 Reasonable Address Verification Measure, or Secondary Address Verification Measure or via an
16 updated mailing address provided by the United States Postal Service or a Class Member.

17 1.50 "Wage Statement and PAGA Payout Fund" is the sum of the Wage
18 Statement Payout Fund and the PAGA Payout Fund.

19 1.51 "Waiting Time Penalties Individual Adjusted Shifts" shall be, as to each
20 Waiting Time Penalties Subclass Member, the product of (1) the number of actual shifts worked
21 for Defendant by the Waiting Time Penalties Subclass Member during the period of time from
22 June 6, 2015 through February 24, 2020 up to a maximum of 30 shifts, and (2) the Waiting Time
23 Penalties Subclass Member's Adjusted Shift Multiplier.

24 1.52 "Waiting Time Penalties Shift Value" means the number which is the
25 quotient of the Waiting Time Penalties Payout Fund divided by the Total Adjusted Waiting Time
26 Penalties Shifts.

27 2. **The Settlement.**

28 2.1 ***Taxes.***

1 2.1.1 Defendant, through the Settlement Administrator, and
2 according to the terms, conditions and procedures set forth in this Stipulation, shall
3 pay each Settlement Class Member his or her Settlement Payment. Each Settlement
4 Class Member's portion of the Meal, Rest, and Unpaid Wages Payout Fund will be
5 apportioned as 90% wages and 10% interest. Each Settlement Class Member's portion
6 of the Waiting Time Penalties Payout Fund and Wage Statement and PAGA Payout
7 Fund will be apportioned as 100% penalties and interest. The amounts paid as wages
8 shall be subject to all tax withholdings customarily made from an employee's wages
9 and all other authorized and required withholdings customarily made from an
10 employee's wages and shall be reported on IRS Form W-2. The amounts paid as
11 penalties and interest shall be subject to all authorized and required withholdings
12 customarily made from employees' wages other than tax withholdings and shall be
13 reported on IRS Form 1099.

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

1 2.2 ***No Effect on Employee Benefits.***

2 2.2.1 The Enhancement Payment and Settlement Payments paid to
3 Plaintiff and Settlement Class Members shall not be deemed to be pensionable
4 earnings and shall not have any effect on the eligibility for, or calculation of, any of
5 the employee benefits (*e.g.*, vacation, holiday pay, retirement plans, etc.) of Plaintiff
6 or the Settlement Class Members. Defendant will not, unless otherwise required by
7 law, make from the Settlement Payments any additional deductions, withholdings or
8 payments, including without limitation, medical or other insurance payments or
9 premiums, employee 401(k) contributions or matching employer contributions, wage
10 garnishments, or charity withholdings.

11 2.3 ***PAGA Notice and the First Amended Complaint***

12 2.3.1 The Class Representative agrees to take all reasonable steps
13 to comply with the notice requirements of California Labor Code section 2699(*I*). At
14 the time of filing the Preliminary Approval Motion, the Class Representative shall
15 provide notice of the settlement set forth in this Stipulation to the LWDA through that
16 agency's Internet portal, and the Settling Parties agree that the release of PAGA
17 claims contained herein is binding.

18 2.3.2 The Settling Parties confirm their agreement that the deadline
19 for Defendant's response to the First Amended Complaint will not occur until and
20 unless this Stipulation is terminated, canceled, declared void or fails to become
21 effective in accordance with its terms, or if the Judgment does not become final, on a
22 date to be agreed by the Settling Parties or, if they cannot agree, to be set by the Court.

23 2.4 ***Preliminary Approval.***

24 2.4.1 The Plaintiff, through his counsel of record, shall move for
25 preliminary approval of this Stipulation pursuant to Rule 23 of the Federal Rules of
26 Civil Procedure and file this Stipulation with the Court. Plaintiff's Counsel will
27 provide Defendant's Counsel with an advance copy of the preliminary approval
28 motion and chance to comment prior to filing. Via this submission, the Plaintiff shall

1 request that the Court conditionally certify the Class, preliminarily approve the
2 settlement, order the Class Notice be disseminated pursuant to this Stipulation, enter
3 the Preliminary Approval Order, and schedule the Final Approval Hearing.

4 2.4.2 The Class Representative shall file a renewed motion for
5 preliminary approval in November 2021 and shall notice the motion for the first
6 available hearing.

7 2.4.3 If the Court enters the Preliminary Approval Order, then at
8 the resulting Final Approval Hearing, the Settling Parties, through their counsel of
9 record, shall address any written objections from Class Members or any concerns
10 from Class Members who attend the Final Approval Hearing as well as any concerns
11 of the Court, and shall and hereby do, unless provided otherwise in this Stipulation,
12 stipulate to final approval of this Stipulation and entry of the Judgment by the Court.

13 2.5 ***Notice to Class Members.***

14 2.5.1 After the Court enters its Preliminary Approval Order, every
15 Class Member will be provided with the Class Notice in accordance with the
16 procedures set forth herein.

17 2.5.2 **Website.** The Settlement Administrator shall maintain a
18 static website for this settlement that will contain this Stipulation, the Preliminary
19 Approval Motion, the Class Notice, the motion for approval of Attorney Fees, and the
20 motion for final approval of the settlement, and any other document deemed
21 appropriate by the Court. The URL of this website will be stated on the Class Notice.

22 2.5.3 **Class Database.** Within seven (7) business days after entry
23 of the Preliminary Approval Order, Defendant shall deliver to the Settlement
24 Administrator an electronic database ("Class Database"), which will list for each Class
25 Member: (1) first and last name; (2) Last Known Address; (3) social security number,
26 if known; (4) hire and termination dates; (5) last known email address, if known; (6)
27 the total number of shifts, if any, worked for Defendant during the Class Period; (7)
28 the total number of shifts, if any, worked for Defendant during the time period of June

1 6, 2015 through February 24, 2020; (8) Qualifying Pay Periods; and (9) Last Known
2 Pay Rate. By approving this settlement, the Court will be deemed to have authorized
3 Defendant to provide the Settlement Administrator with the social security numbers of
4 the Class Members. If any or all of this information is unavailable to Defendant,
5 Defendant will so inform Plaintiff's Counsel and the Parties will make their best
6 efforts to reconstruct or otherwise agree upon how to proceed with the unavailable
7 information. The Settlement Administrator will conduct a skip trace for the address of
8 all Class Members who are former employees of Defendant. The Class Database shall
9 be based on Defendant's payroll, personnel, and other business records. The
10 Settlement Administrator shall maintain the Class Database and all data contained
11 within the Class Database as private and confidential.

12 **2.5.4 Confirmation Prior to Notice Mailing.** The Settlement
13 Administrator shall inform Class Counsel that the total of the Settlement Payments is,
14 or is not, equal to the maximum amount for payments to Settlement Class Members.
15 For avoidance of doubt, the total of the Settlement Payments and the maximum
16 amount for payments to Settlement Class Members will not be provided to the Class
17 Representative or Class Counsel, unless agreed upon by the Parties. The Settlement
18 Administrator shall also provide a formatted Class Notice, after entry of the
19 Preliminary Approval Order and before the mailing of the Class Notice, seeking the
20 Parties' approval of the Class Notice prior to mailing.

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

27 **2.5.6 Notice Contents.** The Class Notice shall include instructions
28 on how to submit a Request for Exclusion or object to the settlement. The mailing

1 enclosing the Class Notice will not contain any other materials, and no other materials
2 will be sent to any Class Member unless by the Settlement Administrator or Class
3 Counsel in response to a submission or inquiry from a Class Member in response to
4 the Class Notice. The Class Notice and its envelope or covering shall be marked to
5 denote the return address of the Settlement Administrator stated on the Class Notice.

6 **2.5.7 Updated Addresses Prior to Notice Mailing.** Prior to
7 mailing the Class Notice to each Class Member, the Settlement Administrator shall
8 conduct a search for Updated Addresses for all Class Members using the National
9 Change of Address Database, maintained by the United States Postal Service to
10 review the accuracy of the last mailing address known by Defendant, and, if possible,
11 update Class Members' mailing addresses. To the extent this process yields an
12 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
14 subsequent mailings in particular.

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

20 **2.5.9 Undeliverable – Efforts to Find Updated Address.** In the
21 event a Class Notice is returned to the Settlement Administrator by the United States
22 Postal Service as undeliverable, *i.e.*, the envelope is marked "Return to Sender," the
23 Settlement Administrator shall conduct a Secondary Address Verification Measure
24 within five (5) days to attempt to ascertain a current address of the particular Class
25 Member in question to locate an Updated Address. A "Secondary Address
26 Verification Measure" is an effort to ascertain the specific Class Member's address
27 through the use of a standard skip trace procedure (such as Lexis/Nexis Accrunit). If
28 this effort does not result in an Updated Address, the Settlement Administrator will

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

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

20 **2.5.11 Undeliverable – Forwarding Address Provided.** In the
21 event a Class Notice is returned to the Settlement Administrator by the United States
22 Postal Service with a forwarding address for the recipient, the Settlement
23 Administrator shall re-mail the Class Notice to such forwarding address within five
24 (5) days of receiving such information, and the Class Notice will be deemed to have
25 been delivered upon such second mailing. If the Class Notice is not returned as
26 undeliverable upon such second mailing, the forwarding address shall be deemed the
27 Last Known Address for purposes of this Stipulation and for subsequent mailings in
28 particular.

1 2.5.12 **Undeliverable – No Updated Address Found.** In the event
2 a Class Notice is returned to the Settlement Administrator by the United States Postal
3 Service as undeliverable because the address of the recipient is no longer valid, *i.e.*,
4 the envelope is marked “Return to Sender,” and the Settlement Administrator
5 conducts a Secondary Address Verification Measure that does not result in an Updated
6 Address, Class Counsel is unable to find a better address using IDI or TLOxp, and the
7 Settlement Administrator did not receive a “bounce back” notification in response to
8 the email it sent to the Class Member’s last known email address, then the Class
9 Notice will be deemed delivered to the Class Member.

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

20 2.5.14 **Weekly Status Reports.** The Settlement Administrator shall
21 provide a weekly status report to the Parties. As part of its weekly status report, the
22 Settlement Administrator will inform Class Counsel and Defendant’s Counsel of the
23 number of Class Notices mailed and emailed, the number of Class Notices returned as
24 undeliverable and re-mailed, the number of Class Notices deemed delivered via email
25 only, the number of Class Notices deemed delivered after a second mailing, the
26 number of opt-outs and objections, and the number of open and resolved data
27 disputes.

28 2.6 ***Responses to the Class Notice and Motion for Final Approval.***

1 2.6.1 Class Members have the option to participate in this
2 Litigation at their own expense by obtaining their own attorney(s). Class Members
3 who choose this option will be responsible for any attorney fees or costs incurred as a
4 result of this election. The Class Notice will advise Class Members of this option.

5 2.6.2 **Objections to Settlement.** Class Members may also object to
6 the Stipulation by submitting written objections to the Settlement Administrator no
7 later than the Notice Response Deadline. The Class Notice will advise Class Members
8 of this option. The Settlement Administrator shall provide any such objections to
9 Class Counsel and Defendant's counsel immediately upon receipt, and file the
10 objection with the Court. If the Settlement Administrator is unable to file the
11 objection, it will notify counsel for the Settling Parties and Defendant's counsel will
12 file the objection with the Court.

13 2.6.3 **Format of Objection.** Any objections shall: (a) state the case
14 name (e.g. *Arturo Gonzalez v. NCI Group, Inc. dba NCI Building Systems*) and case
15 number (1:18-cv-00948-AWI-SKO); (b) state the objecting person's or his/her
16 attorney's full name, address, and telephone number; (c) state the words "Notice of
17 Objection" or "Formal Objection;" (d) describe, in clear and concise terms, the legal
18 and factual arguments supporting the objection; (e) list identifying witness(es), if any,
19 the objector may call to testify at the Final Approval Hearing; (f) provide true and
20 correct copies of any exhibit(s) the objector intends to offer at the Final Approval
21 Hearing; and (g) state whether the objection applies only to the objector, to a specific
22 subset of the Class, or to the entire Class. Any objection must comply with the Federal
23 Rules of Civil Procedure Rule 23(e)(5).

24 2.6.4 **Notice of Intent to Appear in Support of Objection.**
25 Settlement Class Members who timely submit valid objections to the settlement may
26 (though are not required to) appear at the Final Approval Hearing, either in person or
27 through the objector's own counsel. The Class Notice will request that the objector
28 notify the Parties of the objector's intent to appear at the Final Approval Hearing by

1 mailing or filing a Notice of Intent to Appear with the Court by the Response
2 Deadline.

3 **2.6.5 Class Member Address Changes.** Class Members who, for
4 future reference and mailings from the Court or Settlement Administrator, if any, wish
5 to change the name or address listed on the envelope in which the Class Notice was
6 first mailed to them, may do so by contacting the Settlement Administrator at the toll-
7 free telephone number or mailing address provided on the Class Notice.

8 **2.6.6 Requests for Exclusion (“Opt Out”).** Class Members may
9 request exclusion from or “opt out” of the Settlement Class. The Class Notice will
10 provide that Class Members who wish to exclude themselves from the Settlement
11 must mail to the Settlement Administrator a written Request for Exclusion by the
12 Response Deadline.

13 **2.6.7 Format of Request for Exclusion.** A Request for Exclusion
14 must be in writing and must: (a) state the Class Member’s name, address, telephone
15 number, and last four numbers of their social security number or employee
16 identification number; (b) state the Class Member’s intention to exclude themselves
17 from or opt-out of the settlement (*e.g.* “I want to exclude myself from this settlement.
18 I also understand that I retain all rights to sue the Defendant for the claims asserted in
19 this lawsuit.”); (c) be addressed to the Settlement Administrator; (d) be signed by the
20 Class Member or his or her lawful representative; and (e) be postmarked no later than
21 the Response Deadline. If no fully completed and properly executed Request for
22 Exclusion is received by the Settlement Administrator from a Class Member
23 postmarked on or before the Response Deadline, then that Class Member will be
24 deemed to have forever waived his or her right to opt out of the Settlement Class and
25 will become Settlement Class Members. Those portions of the Maximum Settlement
26 Amount for Settlement Class Members attributable to Class Members who submit
27 valid Requests for Exclusion shall become part of the Net Settlement Amount,
28 distributable to Settlement Class Members.

1 2.6.8 **Effect of “Opt Out.”** Any Class Member who returns a
2 timely, valid, and executed Request for Exclusion will not participate in or be bound
3 by the settlement and subsequent judgment and will not receive a Settlement Payment.
4 The Class Member who elects to opt out shall have no further role in the Litigation,
5 and for all purposes they shall be regarded as if they never were a party to this
6 Litigation, and thus they shall not be entitled to any benefit as a result of this
7 Litigation, nor be allowed to object to this Stipulation.

8 2.6.9 **Failure to “Opt Out.”** Class Members who do not opt out of
9 the Settlement Class, as described in this Stipulation, shall be deemed Settlement
10 Class Members and shall be subject to the Judgment regardless of whether they
11 ultimately negotiate their settlement checks.

12 2.6.10 **Class Member Disputes.** The Class Notice shall contain
13 each Class Member’s estimated individualized Settlement Payment based on the
14 information in the Class Database. Class Members are not required to submit any form
15 in order to receive their Settlement Payments as Settlement Class Members. If a Class
16 Member wishes to dispute such estimated Settlement Payment, the Class Member
17 must submit to the Settlement Administrator, in advance of the Response Deadline, a
18 signed dispute explaining the reasons for such a dispute, and any supporting
19 documents. In the absence of such documentation, the Class Database will be
20 controlling. No dispute will be valid if postmarked after the Response Deadline.
21 Counsel for the Settling Parties shall meet and confer on all such disputes following
22 the Notice Response Deadline in an effort to resolve them. If any disputes remain
23 unresolved following this meet and confer effort, the Settling Parties shall seek the
24 guidance of the Settlement Administrator and resolve the matter on the basis of this
25 guidance. If no compromise is reached, the dispute can be presented to the Court for
26 resolution. In any such dispute, the Defendant’s records shall be entitled to
27 presumptive weight.

1 **2.6.11 Settlement Administrator's Report.** No later than five (5)
2 business days after the Response Deadline, the Settlement Administrator will provide
3 Counsel for the Settling Parties with a complete and accurate accounting of the
4 number of Class Notices mailed and emailed to Class Members, the number of Class
5 Notices returned as undeliverable and re-mailed, the number of Class Notices deemed
6 delivered via email only, the number of Class Notices deemed delivered following a
7 second mailing of the Class Notice, the number of valid and invalid opt-outs, the
8 number of objections, and the number of open and resolved data disputes.

9 **2.6.12 Settlement Administrator's Declaration.** No later than
10 fourteen (14) calendar days after the Response Deadline or at the request of the
11 Parties, whichever comes first, the Settlement Administrator will provide the Parties
12 with a declaration of due diligence setting forth its compliance with its obligations
13 under this Stipulation. The declaration from the Settlement Administrator will be filed
14 with the Court by Class Counsel at the time the final approval motion is filed. Before
15 the Final Approval Hearing, the Settlement Administrator will supplement its
16 declaration of due diligence if any material changes occur from the date of the filing
17 of its prior declaration.

18 **2.6.13 No Solicitation of Objections or Requests for Exclusion.**
19 Neither the Parties nor their respective counsel will solicit or otherwise encourage
20 directly or indirectly any Class Member to object to the settlement, request exclusion
21 from the settlement, or appeal from the Judgment.

22 **2.7 Final Approval, Judgment, and Appeals.**

23 **2.7.1 Final Approval.** Class Counsel will file motions and
24 memorandums in support thereof for Final Approval of the settlement and the
25 following payments in accord with the terms of the Stipulation: (a) Attorney Fees, (b)
26 Litigation Expenses, (c) Administrative Costs, (d) Enhancement Payment, and (e) the
27 PAGA Payment. Class Counsel will provide Defendant with drafts of such motions
28 and memorandums for review and comment a reasonable time before filing, and

1 Defendant will not oppose a final approval motion that is consistent with the terms of
2 this Stipulation. Class Counsel will also move the Court for an order of Final
3 Approval (and associated entry of Judgment) releasing and barring any Released
4 Claims of the Settlement Class Members. The Settling Parties shall take all reasonable
5 efforts to secure entry of the Order of Final Approval and Judgment. The Class
6 Representative shall submit the Judgment in this matter to the LWDA within ten (10)
7 days after entry of the Judgment.

8 **2.7.2 Denial or Appeal of Final Approval.** If the Court does not
9 grant Final Approval of this settlement, or if the Court's Final Approval of the
10 settlement is reversed or materially modified on appellate review, then this Stipulation
11 shall be void *ab initio*, and Defendant shall have no obligation to make any payments
12 under the Stipulation, except that Defendant agrees to be solely responsible for paying
13 any fees owing to the Settlement Administrator as a result of this Stipulation. An
14 award by the Court of a lesser amount than sought by Plaintiff and Class Counsel for
15 the Enhancement Award, Attorney Fees, or Litigation Expenses will not constitute a
16 material modification to the settlement within the meaning of this paragraph.

17 **2.7.3 Proposed Order and Judgment.** The motion for final
18 approval shall present to the Court an agreed upon proposed Final Approval Order,
19 approving of the settlement and entering Judgment in accordance therewith. After
20 entry of Judgment, the Court shall have continuing jurisdiction over the Litigation for
21 purposes of: (1) enforcing this Stipulation; (2) addressing settlement administration
22 matters; and (3) addressing such post-Judgment matters as may be appropriate under
23 Court rules and applicable law.

24 **2.7.4 Waiver of Right to Appeal.** Provided that the Judgment is
25 consistent with the terms and conditions of this Stipulation, the Parties and their
26 respective counsel waive any and all rights to appeal from the Judgment, including but
27 not limited to, all rights to any post-judgment proceeding and appellate proceeding,
28 such as a motion to vacate or set aside judgment, and any extraordinary writ, and the

Judgment will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceeding, or post-judgment proceeding. For avoidance of doubt, this provision does not restrict any party's right to oppose any appeal filed by any Class Member.

2.7.5 Vacating, Reversing, or Modifying Judgment on Appeal.

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

2.8 Funding and Disbursement of Settlement.

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

2.8.2 Disbursement of Settlement. Within fifteen (15) business days after the Effective Date, the Settlement Administrator shall disburse: (1) the Net Settlement Amount to be paid to Settlement Class Members; (2) the Attorney Fees and Litigation Expenses, as approved by the Court, to Class Counsel; (3) the Enhancement Payment, as approved by the Court, to the Class Representative; (4) the Administration Costs, as approved by the Court, to the Settlement Administrator; and (5) the PAGA Payment, as approved by the Court, to the LWDA and Wage Statement and PAGA Subclass Members. Following disbursement, the Settlement Administrator shall provide counsel for the Settling Parties with a written confirmation of the disbursement mailing.

1 2.8.3 **Class Member Checks.** The Settlement Administrator shall
2 issue to each Settlement Class Member one check payable to the Settlement Class
3 Member from the qualified settlement account (administered by the Settlement
4 Administrator but funded by Defendant) for the Settlement Payment, less applicable
5 taxes and withholdings. The Settlement Administrator shall mail this check to each
6 Settlement Class Member's Last Known Address.

7 2.8.4 **Uncashed Checks and Reminder Postcard.** Checks issued
8 to Settlement Class Members pursuant to this Agreement shall remain negotiable for a
9 period of one hundred eighty (180) days from the date of mailing. If any checks are
10 not redeemed or deposited within ninety (90) calendar days after mailing, the
11 Settlement Administrator will send a reminder postcard indicating that unless the
12 check is redeemed or deposited before the expiration date, it will expire and become
13 non-negotiable, and offer to replace the check if it was lost or misplaced.

14 2.8.5 **Cy Pres.** If any checks remain uncashed or not deposited by
15 the expiration of the one hundred eighty (180) day period during which settlement
16 checks are negotiable, the Settlement Administrator shall distribute all funds
17 associated with any checks that are not properly or timely negotiated, along with
18 interest accrued thereon (if any), to Legal Aid At Work. Settlement Class Members
19 who fail to negotiate their settlement checks in a timely fashion shall remain subject to
20 the terms of the Judgment.

21 2.8.6 **Post-Distribution Accounting and Settlement**
22 **Administrator's Final Report.** Within ten (10) business days after the distribution
23 provided for in paragraph 2.8.2 above, the Settlement Administrator will serve on
24 counsel for the Settling Parties a declaration providing a final report on the
25 disbursements of all funds. This declaration will include an easy to read chart, which
26 will provide the following information: (1) the total MSA; (2) the total number of
27 Settlement Class Members; (3) the total number of Class Members to whom the notice
28 was sent and not returned as undeliverable; (4) the number and percentage of opt-outs

1 from the settlement; (5) the number and percentage of objections; (6) the average and
2 median recovery per Settlement Class Members; (7) the largest and smallest amounts
3 paid to Settlement Class Members; (8) the methods of notice and the methods of
4 payment to Settlement Class Members; (9) the administrative costs; (10) the
5 attorneys' fees and costs; (11) the attorneys' fees in terms of percentage of the MSA.
6 Within twenty-one (21) calendar days after the MSA has been distributed, the Parties
7 shall file this Post-Distribution Accounting with the Court and the Settlement
8 Administrator will post the Post-Distribution Accounting on the settlement website for
9 Class Members to access. The Settlement Administrator will provide any
10 supplemental declaration required by the Court.

11 **2.9 Releases.**

12 **2.9.1 Settlement Class Members.** Upon the Effective Date, each
13 of the Settlement Class Members shall be deemed to have, and by operation of the
14 Judgment shall have, fully, finally, and forever released, relinquished and discharged
15 the Defendant Releasees from the Released Claims and the Unknown Claims.

16 **2.9.2 Plaintiff/Class Representative Only.** In addition, upon the
17 Effective Date, the Class Representative agrees to and shall be deemed to have, and by
18 operation of the Judgment shall have, fully, finally, and forever released, relinquished
19 and discharged the Defendant Releasees from the Released Claims and the Unknown
20 Claims. The Class Representative agrees that California Labor Code section 2804
21 does not hinder or limit the preclusive effect of the Judgment on the Released Claims.

22 **2.10 Costs, Attorney Fees and Enhancement Award.**

23 **2.10.1 Attorneys' Fees and Litigation Expenses.** Class Counsel
24 shall be entitled, subject to the approval of the Court and the occurrence of the
25 Effective Date, to recover their reasonable litigation costs, associated expenses and
26 attorney fees pursuant to California law. These costs, fees, and expenses shall be paid
27 out of the MSA. Subject to Court approval and the occurrence of the Effective Date,
28 Class Counsel may apply for a total attorney fee award not to exceed, \$150,000.00

1 (which is 25% of the MSA) for all attorneys' fees and actual litigation expenses not to
2 exceed \$30,000.

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

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

1 motion for final approval of the Stipulation. Defendant will not oppose an award that
2 is consistent with this Paragraph.

3 2.10.4 The Enhancement Payment shall be compensation and
4 consideration for the Class Representative's efforts as the class representative in the
5 Litigation and benefits conferred upon the Class and State of California. Defendant
6 shall report to the Internal Revenue Service the payment as non-wage income to the
7 Class Representative in the year of payment. This reporting shall be done via a Form
8 1099, and the Class Representative agrees to take full responsibility for the payment
9 of any outstanding taxes due.

10 2.10.5 Unless otherwise expressly provided, Defendant shall have
11 no responsibility for, and no liability whatsoever with respect to, the allocation among
12 the Class Representative, Class Counsel and/or any other Person who may assert some
13 claim thereto, of any award or payment issued or made in the Litigation or pursuant to
14 this Stipulation.

15 2.11 ***Settlement Administration Costs.***

16 2.11.1 The fees and expenses reasonably incurred by the Settlement
17 Administrator as a result of procedures and processes expressly required by this
18 Stipulation shall be paid out of the MSA, in an amount not to exceed \$15,000. The
19 Class Representative and Class Counsel shall have no responsibility for such fees or
20 expenses.

21 2.11.2 The actions of the Settlement Administrator shall be
22 governed by the terms of this Stipulation. Defendant and Class Counsel may provide
23 relevant information needed by the Settlement Administrator pursuant to this
24 Stipulation and engage in related communications with the Settlement Administrator
25 without notice or copies to Class Counsel, any Class Members or the Court.
26 Defendant may make payment to the Settlement Administrator for its services and
27 engage in related communications with the Settlement Administrator without notice or
28 copies to Class Counsel, any Class Members, or the Court. Defendant and Class

1 Counsel may provide logistical instructions to the Settlement Administrator with
2 regard to actions required by this Stipulation and engage in related communications
3 with the Settlement Administrator without notice or copies to Class Counsel, any
4 Class Members, or the Court. This provision shall not preclude Class Counsel from
5 communicating with the Settlement Administrator in any way.

6 2.11.3 The Settlement Administrator must communicate to counsel
7 for the Settling Parties any action that may cause delay in completing any of its duties,
8 including but not limited to, disseminating the Class Notice, providing a declaration of
9 due diligence, and disbursing the payments required under this Stipulation. The
10 Settlement Administrator must also communicate to counsel for the Settling Parties,
11 the nature of any Class Member disputes and their resolution or lack thereof.

12 2.11.4 In the event that any of the Settling Parties take the position
13 that the Settlement Administrator has not acted in accordance with the terms of the
14 Stipulation, that party's counsel shall meet and confer with counsel for the other
15 Settling Parties prior to raising any such issue with the Court.

16 2.12 ***PAGA Payment.***

17 2.12.1 As part of this settlement, and subject to Court approval, the
18 Settling Parties allocate \$60,000 of the MSA to satisfy the PAGA Payment. Seventy-
19 five percent (75% or \$45,000) of the PAGA Payment shall be paid to the LWDA and
20 twenty-five percent (25% or \$15,000) of the PAGA Payment shall be part of the Wage
21 Statement and PAGA Payout Fund distributed to Wage Statement and PAGA
22 Subclass Members.

23 2.13 ***Termination of Settlement.***

24 2.13.1 In the event that the settlement set forth in this Stipulation
25 shall not be approved in its entirety by the Court, or in the event that the Effective
26 Date does not occur, any of the Settling Parties shall have the option to void the
27 settlement, and in such case, no payments shall be made by Defendant to anyone in
28 accordance with the terms of this Stipulation (except that Defendant agrees to be

1 solely responsible for paying any fees owing to the Settlement Administrator as a
2 result of its efforts pursuant to this Stipulation), and this Stipulation shall be deemed
3 null and void with no effect on the Lawsuit whatsoever.

4 2.13.2 In the event that ten (10) percent or more of the Class
5 Members opt out of the Settlement Class by submitting Opt Outs pursuant to this
6 Stipulation, Defendant shall have the option to terminate and void this settlement and
7 this Stipulation.

8 2.14 ***Miscellaneous Provisions.***

9 2.14.1 The Settlement Administrator shall act in accordance with the
10 Stipulation and the settlement contained therein or further orders of the Court.

11 2.14.2 The only Class Members entitled to any payment under this
12 Stipulation and the associated Judgment are Settlement Class Members, and they shall
13 be entitled to their respective Settlement Payments only.

14 2.14.3 This Stipulation shall not require payment by Defendant to
15 any third parties, other than as specifically set forth in the Stipulation. Any finding to
16 the contrary will be grounds for Defendant to void the settlement.

17 2.14.4 In the event that the Stipulation is not substantially approved
18 by the Court or the settlement set forth in the Stipulation is terminated, canceled,
19 declared void or fails to become effective in accordance with its terms, or if the
20 Judgment does not become Final, or to the extent cancelation is otherwise provided
21 for in this Stipulation, the Settling Parties shall resume the Litigation at that time as if
22 no Stipulation had been entered. In such event, the terms and provisions of the
23 Stipulation shall have no further force and effect with respect to the Settling Parties
24 and shall not be used in this Litigation or in any other proceeding for any purpose, and
25 any Judgment or order entered by the Court in accordance with the terms of the
26 Stipulation shall be treated as vacated, *nunc pro tunc*. Notwithstanding any other
27 provision of this Stipulation, no order of the Court or modification or reversal on
28 appeal of any order of the Court concerning the amount of any attorney fees to be paid

1 by Defendant to Class Counsel shall by itself constitute grounds for cancelation or
2 termination of the Stipulation or grounds for limiting any other provision of the
3 Judgment, provided that Defendant shall never be required to pay in excess of the
4 MSA (with the exception of Defendant's obligation to pay employer taxes as the Class
5 Members' current or former employer). It is agreed that no order of the Court,
6 including any order concerning attorney fees, may alter the MSA.

7 2.14.5 Unless otherwise ordered by the Court, in the event the
8 Stipulation shall be terminated, canceled, declared void or fails to become effective in
9 accordance with its terms, or if the Judgment is reversed on appeal, within twenty (20)
10 business days after written notification of such event, Defendant and Class Counsel
11 shall notify each other of this event in writing.

12 2.14.6 The Settling Parties: (a) acknowledge that it is their intent to
13 consummate this agreement; (b) agree to cooperate to effectuate and implement all
14 terms and conditions of the Stipulation and to exercise their best efforts to accomplish
15 the foregoing terms and conditions of the Stipulation; and (c) agree to seek and to
16 attempt to obtain Court approval for the Stipulation.

17 2.14.7 The Settling Parties hereby agree that there is a good faith
18 dispute as to liability in this case. The Stipulation compromises claims that were
19 contested and the subject of a good faith dispute, and it shall not be deemed an
20 admission by any of the Settling Parties as to the merits of any claim or defense. The
21 Settling Parties agree that the amounts paid in Settlement and the other terms of the
22 settlement were negotiated at arm's length and in good faith with sufficient
23 information by the Settling Parties and reflect a settlement that was reached
24 voluntarily after consultation with competent legal counsel.

25 2.14.8 The Settling Parties agree that the Response Deadline shall
26 not be extended, and no untimely submissions or claims will be honored, unless the
27 Parties agree to make an exception. Notwithstanding the foregoing, if a Class Member
28 can make a showing of legal incapacity during the Notice Period, the parties will meet

1 and confer regarding amendments to appropriate deadlines, including the Response
2 Deadline, to permit such Class Member to exercise rights provided for in this
3 Stipulation.

4 2.14.9 Neither the Stipulation nor the settlement, nor any act
5 performed or document executed pursuant to, or in furtherance of, the Stipulation or
6 the settlement: (a) is or may be deemed to be or may be used as an admission by
7 Defendant Releasees of the validity of any Released Claim; or (b) may be used as an
8 admission of any fault or omission by the Defendant Releasees, or any of them, in any
9 civil, criminal or administrative proceeding in any court, administrative agency or
10 other tribunal. The Settling Parties agree that all alleged liability is disputed in good
11 faith.

12 2.14.10 All of the exhibits to the Stipulation are material and integral
13 parts hereof and are fully incorporated herein by this reference.

14 2.14.11 The Stipulation may be amended or modified only by a
15 written instrument signed by or on behalf of all Settling Parties or their respective
16 successors-in-interest.

17 2.14.12 The Stipulation constitutes the entire agreement among the
18 Settling Parties hereto and no representations, warranties or inducements have been
19 made to any party concerning the Stipulation or its exhibits other than the
20 representations, warranties and covenants contained and memorialized in such
21 documents. This Stipulation supersedes and completely replaces any previous
22 agreements, oral or written, among the Settling Parties. Except as otherwise provided
23 herein, each party shall bear its own costs.

24 2.14.13 Class Counsel, on behalf of the Class, are expressly
25 authorized by the Class Representative to take all appropriate action required or
26 permitted to be taken by the Class pursuant to the Stipulation to effect its terms and
27 also are expressly authorized to enter into any modifications or amendments to the
28 Stipulation on behalf of the Class which they deem appropriate.

1 2.14.14 Each counsel or other Person executing the Stipulation or any
2 of its exhibits on behalf of any party hereto hereby warrants that such Person has full
3 and express authority to do so.

4 2.14.15 The Stipulation may be executed in one or more counterparts.
5 All executed counterparts and each of them shall be deemed to be one and the same
6 instrument. A complete set of executed counterparts shall be filed with the Court.

7 2.14.16 The Stipulation shall be binding upon, and inure to the
8 benefit of, the successors and assigns of the parties hereto, however, this Stipulation is
9 not designed to and does not create any third party beneficiaries unless otherwise
10 specifically provided herein.

11 2.14.17 The Court shall retain jurisdiction with respect to
12 implementation and enforcement of the terms of the Stipulation, and all parties hereto
13 submit to the jurisdiction of the Court for purposes of implementing and enforcing the
14 settlement embodied in the Stipulation.

15 2.14.18 The Stipulation and the exhibits hereto shall be considered to
16 have been negotiated, executed and delivered, and to have been wholly performed, in
17 the State of California, and the rights and obligations of the parties to the Stipulation
18 shall be construed and enforced in accordance with, and governed by, the internal,
19 substantive laws of the State of California without giving effect to that State's choice
20 of law principles.

21 2.14.19 The language of all parts of this Stipulation shall in all cases
22 be construed as a whole, according to its fair meaning, and not strictly for or against
23 either party. No party shall be deemed the drafter of this Stipulation. The parties
24 acknowledge that the terms of the Stipulation are contractual and are the product of
25 negotiations between the parties and their counsel. Each party and that party's counsel
26 cooperated in the drafting and preparation of the Stipulation. In any construction to be
27 made of the Stipulation, the Stipulation shall not be construed against any party and
28

1 the canon of contract interpretation set forth in California Civil Code section 1654
2 shall not be applied.

3 2.14.20 **No Publicity.** Prior to the submission of the settlement
4 agreement to the Court for preliminary approval, neither Class Representative nor
5 Class Counsel shall communicate any terms of this settlement to any third parties.
6 Following the submission for preliminary approval and thereafter, Class
7 Representative and Class Counsel shall not publicize the settlement in this action or
8 the terms thereof via (a) press releases, (b) Internet postings, or (c) other mass media
9 efforts. This shall not prohibit Class Counsel from discussing this case or any aspect
10 of this settlement with any Class Representative, any Class Member (absent or
11 otherwise) in this case, or any court or opposing counsel; also, this shall not prohibit
12 Class Counsel from in any way disclosing their mere status as counsel in the case or
13 making objective and truthful reference to the case or its settlement and any attorneys'
14 fee award in any future pleading in another litigation.

15 2.14.21 **CAFA Notice.** Defendant agrees to take all reasonable steps
16 to comply with the requirements of the Class Action Fairness Act of 2005, including
17 the notice requirements. It is the intent of the parties that the Judgment be binding on
18 all Settlement Class Members. No more than 10 days after this Stipulation and the
19 joint motion for preliminary approval of this Stipulation is filed, Defendant shall
20 provide notice to the Attorney General of the United States, the California State
21 Attorney General, and any others entities or agencies that Defendant deems
22 appropriate. Said notice shall be mailed, and can be in paper or an electronic or disc
23 format, and shall include to the extent then available and feasible: (1) the Complaint;
24 (2) the notice of motion and motion for preliminary approval of the settlement, which
25 shall include the proposed final approval hearing date; (3) the Class Notice; (4) this
26 Stipulation; (5) the Stipulation and/or notice of motion and motion for preliminary
27 approval of the settlement, which shall confirm that there are no additional agreements
28 among the Settling Parties not reflected in the Stipulation; (6) this Stipulation, which

1 shall include the proposed Judgment; and (7) the names of each Class Member and (8)
2 each Class Member's projected number of Qualifying Pay Periods and Total Shifts.
3 The Class Representative and Class Counsel shall not receive a copy of this notice but
4 may receive upon request a proof of service listing the entities on whom Defendant
5 served the notice. Prior to the Preliminary Approval Hearing, Defendant will file a
6 declaration with the Court stating its efforts to comply with the requirements under
7 CAFA. The Settling Parties agree, and the Court will confirm by granting approval for
8 this settlement, that this notice shall be sufficient to satisfy the terms of 28 U.S.C.
9 § 1715, and that subject to the occurrence of the Effective Date, this Stipulation and
10 the associated Judgment shall be binding on all Settlement Class Members.

11 [SIGNATURES ON NEXT PAGE]
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1
2 IN WITNESS WHEREOF, the parties hereto have caused the Stipulation to be
3 executed, and this Stipulation is AGREED TO.

4 DATED: 12/15/2021 | 11:05:22 AM PST

DocuSigned by:


ARTURO GONZALEZ

Plaintiff and Class Representative

7
8 DATED:

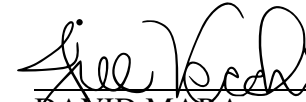
Authorized Agent for NCI Group, Inc.

Name:

Title:

11 APPROVED AS TO FORM:

13
14 DATED:


DAVID MARA
JILL VECCHI

Attorneys for Plaintiff Gonzalez/Class Counsel

18 DATED:

MARTIN BERN

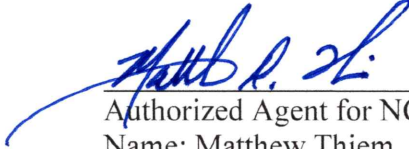
Attorney for Defendant NCI Group, Inc.

1
2 IN WITNESS WHEREOF, the parties hereto have caused the Stipulation to be
3 executed, and this Stipulation is AGREED TO.

4 DATED:

5 ARTURO GONZALEZ
6 Plaintiff and Class Representative

7
8 DATED: December 14, 2021

9 
10 Authorized Agent for NCI Group, Inc.
11 Name: Matthew Thiem
12 Title: Vice President, Legal

13
14 APPROVED AS TO FORM:

15 DATED:

16 DAVID MARA
17 JILL VECCHI
18 Attorneys for Plaintiff Gonzalez/Class Counsel

19 DATED:

20 MARTIN BERN
21 Attorney for Defendant NCI Group, Inc.

1
2 IN WITNESS WHEREOF, the parties hereto have caused the Stipulation to be
3 executed, and this Stipulation is AGREED TO.

4 DATED:

5 _____
ARTURO GONZALEZ
6 Plaintiff and Class Representative

7
8 DATED:

9 _____
Authorized Agent for NCI Group, Inc.
10 Name: Matthew Thiem
11 Title: Vice President, Legal

12 APPROVED AS TO FORM:

13
14 DATED:

15 _____
DAVID MARA
16 JILL VECCHI
Attorneys for Plaintiff Gonzalez/Class Counsel

17
18 DATED: December 14, 2021

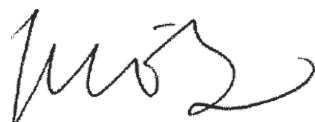
19 _____
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MARTIN BERN
21 Attorney for Defendant NCI Group, Inc.
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Exhibit 1

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF CALIFORNIA

Arturo Gonzalez v. NCI Group, Inc.

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

**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 2
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 3
5. What Are My Options?	Page 4
6. How Do I Opt Out or Exclude Myself From This Settlement?.....	Page 4
7. How Do I Object to the Settlement?	Page 4
8. How Do I Change my Address?	Page 5
9. How Does This Settlement Affect My Rights?	Page 5
10. What are the Terms of the Settlement and How Much Can I Expect to Receive?.....	Page 6

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 preliminary 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**, 2022 at 1:30 p.m. 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.**

The Class is comprised of three subclasses:

- The "Meal, Rest, and Unpaid Wages Subclass" includes all Class Members.
- The "Waiting Time Penalties Subclass" includes all Class Members who worked for Defendant at any time from June 6, 2015 through February 24, 2020, and who are no longer employed by Defendant.
- The "Wage Statement and PAGA Subclass" includes all Class Members who worked for Defendant at any time from June 6, 2017 through February 24, 2020.

Based on the records from your employment with NCI, you may be a part of one or more subclasses.

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:

Rust Consulting, Inc.
Re: NCI Class Action Settlement
P.O. Box [REDACTED], Minneapolis, MN 55440-9407
Telephone: [phone number]
Website: [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
dmara@maralawfirm.com
Jill Vecchi
jvecchi@maralawfirm.com
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.
- **OPT OUT:** If you do not want to participate as a Class Member, 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: (a) state your full name, address, and telephone number; (b) state 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].

9. *How Does This Settlement Affect My Rights? What are the Released Claims?*

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

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.

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.

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 allocated to Plaintiff’s claims brought pursuant to the PAGA in an amount of \$60,000. 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.

The NSA will be split into three payout funds:

- The Meal, Rest, and Unpaid Wages Payout Fund will be comprised of 83% of the NSA and will be available for distribution to Meal, Rest, and Unpaid Wages Subclass Members.
- The Waiting Time Penalties Payout Fund will be comprised of 7% of the NSA and will be available for distribution to Waiting Time Penalties Subclass Members.
- The Wage Statement Payout Fund will be comprised of 10% of the NSA and will be available for distribution to Wage Statement and PAGA Subclass Members. In addition to this portion of the NSA, 25% of the PAGA Payment will also be available for distribution to Wage Statement and PAGA Subclass Members.

A. How Is My Settlement Payment Calculated?

After deducting the above-referenced amounts, the remaining NSA will be proportionately distributed amongst all Settlement Class Members.² Settlement Class Members will receive a settlement payment based upon their inclusion in the subclasses listed above, the number of shifts they worked, and their most recent hourly rate while working for NCI. To account for variations in the hourly rates received by Settlement Class Members, each Settlement Class Member will have the number of shifts they worked for NCI adjusted to account for their rate of pay. Specifically, each Settlement Class Member's shifts will be increased by their last known rate of pay multiplied by 0.1. For example, if a Settlement Class Member's the last known pay rate is \$17.50, the number of shifts they worked would be multiplied by 1.75.

In addition, Wage Statement and PAGA Subclass Members will receive a proportionate share of the Wage Statement and PAGA Payout Fund that is equal to the Pay Period Value multiplied by the Settlement Class Member's number of Qualifying Pay Periods. The "Pay Period Value" is determined by dividing the Wage Statement and PAGA Payout Fund by the total number of Qualifying Pay Periods for all Wage Statement and PAGA Subclass Members. A "Qualifying Pay Period" is any pay period from June 6, 2017 through February 24, 2020 in which the Wage Statement and PAGA Subclass Member worked for NCI at least one day in the calendar week. Therefore, the value of each Wage Statement and PAGA Subclass Member's Individual Settlement Payment ties directly to the number of weeks that he or she worked for NCI in California.

Based on NCI's records, you are a member of the [redacted] Subclass(es). 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 payment is as follows: \$ [redacted], less taxes. This is based on the Class data which shows you were employed by NCI for [redacted] shifts during the Class Period at a most recent hourly rate of \$ _____, and you worked ____ Qualifying Pay Periods.

B. What Do I Do If The Number Of Shifts or Pay Periods I Worked Is Wrong?

If you disagree with the number of shifts or pay periods you worked as stated in this Notice, you must notify the Settlement Administrator at [address] and provide a statement of the number of total shifts and pay periods 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.

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

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 shifts or pay periods 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 shifts or pay periods you worked.

C. How Will My Settlement Payment Be Taxed?

Each Settlement Class Member's portion of the Meal, Rest, and Unpaid Wages Payout Fund will be apportioned as 90% wages and 10% interest. Each Settlement Class Member's portion of the Waiting Time Penalties Payout Fund and Wage Statement and PAGA Payout Fund will be apportioned as 100% 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 *cypres*, 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.