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

12 *[Additional counsel listed on following page]*

13 **UNITED STATES DISTRICT COURT**  
14 **EASTERN DISTRICT OF CALIFORNIA**

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

18 Plaintiffs,

19 v.

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

22 Defendants.

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

*Assigned to the Hon. Anthony W. Ishii*

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

Date: March 16, 2020

Time: 1:30 p.m.

Judge: Hon. Anthony W. Ishii

Courtroom: 2

Complaint Filed: June 6, 2018

Removed: July 12, 2018

Trial Date: None Set

1 I, DAVID MARA, declare as follows:

- 2 1. I am President of Mara Law Firm, PC and counsel of record for Plaintiffs and the putative  
3 class in this matter. I am duly admitted to practice before all the courts of the state of  
4 California. The following facts are within my personal knowledge and, if called to testify, I  
5 could and would competently testify thereto.
- 6 2. A true and correct copy of the *fully executed* Stipulation re: Settlement of Class and  
7 Representative Action (i.e. Settlement Agreement) is attached hereto as **Exhibit A**. This  
8 exhibit has been signed by all Parties and their counsel. At the time of filing the  
9 preliminary approval motion, Defense-side signatures had not yet been provided to  
10 Plaintiff's Counsel.
- 11 3. A true and correct copy of the Notice to Class Members re: Pendency of a Class Action  
12 and Notice of Hearing on Proposed Settlement (i.e. Class Notice) is attached herein as  
13 Exhibit 1 to Exhibit A.

14  
15 I hereby declare under penalty of perjury under the laws of the United States of America  
16 that the foregoing is true and correct.

17  
18 Dated: February 4, 2020

By: Jamie Serb  
Jamie Serb, Esq.

# **EXHIBIT A**

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13 Attorneys for Defendant  
NCI GROUP, INC.  
14

15 UNITED STATES DISTRICT COURT

16 FOR THE EASTERN DISTRICT OF CALIFORNIA

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

19 Plaintiffs,

20 vs.

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

23 Defendants.  
24  
25  
26  
27  
28

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 1.26 "Preliminary Approval Order" shall mean an order to be executed and  
27 filed by the Court preliminarily approving of this Settlement.  
28

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28               2.     **The Settlement.**

              2.1    ***Taxes.***

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

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

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

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

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

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

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

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

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

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

3                   2.4     ***Preliminary Approval.***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 **2.9 Releases.**

10 **2.9.1 Settlement Class Members.** Upon the Effective Date, each of the  
11 Settlement Class Members shall be deemed to have, and by operation of the Judgment shall have,  
12 fully, finally, and forever released, relinquished and discharged the Defendant Releasees from the  
13 Released Claims.

14 **2.9.2 Plaintiff/Class Representative Only.** In addition, upon the Effective  
15 Date, the Class Representative agrees to and shall be deemed to have, and by operation of the  
16 Judgment shall have, fully, finally, and forever released, relinquished and discharged the  
17 Defendant Releasees from the Released Claims and the Unknown Claims. The Class  
18 Representative agrees that California Labor Code section 2804 does not hinder or limit the  
19 preclusive effect of the Judgment on the Released Claims.

20 **2.10 Costs, Attorney Fees and Enhancement Award.**

21 **2.10.1 Attorneys' Fees and Litigation Expenses.** Class Counsel shall be  
22 entitled, subject to the approval of the Court and the occurrence of the Effective Date, to recover  
23 their reasonable litigation costs, associated expenses and attorney fees pursuant to California law.  
24 These costs, fees, and expenses shall be paid out of the MSA. Subject to Court approval and the  
25 occurrence of the Effective Date, Class Counsel may apply for a total attorney fee award not to  
26 exceed, \$150,000.00 (which is 25% of the MSA) for all attorneys' fees and actual litigation  
27 expenses not to exceed \$30,000.  
28

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

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

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

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

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

8 **2.11 Settlement Administration Costs.**

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

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

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

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

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

7           2.12 ***PAGA Payment.***

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

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

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

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

24           2.14 ***Miscellaneous Provisions.***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 DATED:

5 \_\_\_\_\_  
6 ARTURO GONZALEZ  
7 Plaintiff and Class Representative

8 DATED:

9 \_\_\_\_\_  
10 Authorized Agent for NCI Group, Inc.  
11 Name:  
12 Title:

13 APPROVED AS TO FORM:

14 DATED:

15 \_\_\_\_\_  
16 DAVID MARA  
17 JAMIE SERB  
18 Attorneys for Plaintiff Gonzalez/Class Counsel

19 DATED:

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

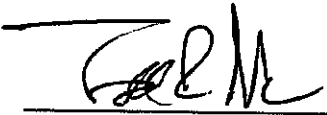
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1  
2 IN WITNESS WHEREOF, the parties hereto have caused the Stipulation to be  
3 executed, and this Stipulation is AGREED TO.

4 DATED: 1/24/2020

  
ARTURO GONZALEZ  
Plaintiff and Class Representative

6  
7  
8 DATED: 2/3/2020

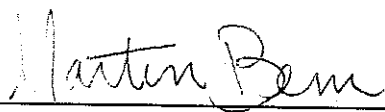
  
Authorized Agent for NCI Group, Inc. *A.?*  
Name: *Todd R. Moore*  
Title: *VP: General Counsel*

11 APPROVED AS TO FORM:

12  
13  
14 DATED: 1/28/20

  
DAVID MARA  
JAMIE SERB  
Attorneys for Plaintiff Gonzalez/Class Counsel

17  
18 DATED: 2/3/2020

  
MARTIN BERN *by cflr*  
Attorney for Defendant NCI Group, Inc.

# **EXHIBIT 1**

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

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

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

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

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

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

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

**WHAT INFORMATION IS IN THIS NOTICE:**

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

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

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

2. **What Is This Case About?**

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

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

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

3. **Am I A Class Member?**

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

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

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

**1. Settlement Administrator**

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

-2-

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

## 2. Class Counsel

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

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

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

## 3. The Court

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

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

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

## 5. *What Are My Options?*

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

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

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

- Case 1:18-cv-00946-AMW-SKO Document 1-3 Filed 02/04/20 Page 45 of 48
- **OPT OUT:** If you do not wish to participate as a Class Member, you may file a "Request for Exclusion" which will remove you from the Class and this Action. If the Court grants final approval of the Settlement, you will not receive a payment and you will not give up the right to sue Defendant and the Released Parties for the Released Claims as defined below. Do not opt out if you wish to receive benefits pursuant to this Settlement.
  - **OBJECT:** You may file a legal objection to the proposed Settlement. If you would like to object, you may not opt out of this case.

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

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

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

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

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

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

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

#### **8. How Do I Change My Address?**

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

If the proposed settlement is approved by the Court, a Final Judgment will be entered by the Court. All Class Members who do not opt out of the Settlement will be bound by the Court's Final Judgment and will release NCI and the Defendant Releasees<sup>1</sup> from the Released Claims. The Released Claims are as follows:

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

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

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

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

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

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

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

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

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

##### **A. How Is My Settlement Payment Calculated?**

After deducting the above-referenced amounts, the remaining NSA will be proportionately distributed amongst all Settlement Class Members<sup>2</sup>. Each Settlement Class Member will receive a proportionate share of the Net Settlement Amount that is equal to the Work Week Value multiplied by the Settlement Class Member’s number of Qualifying Work Weeks. The “Work Week Value” is determined by dividing the NSA by the total number of Qualifying Work Weeks for all Settlement Class Members. A “Qualifying Work Week” is any calendar week (i.e. seven consecutive days from Monday to Sunday) during the Class Period in which the Settlement Class Member worked for NCI at least one day in the calendar week. Therefore, the value of each Class Member’s Individual Settlement Payment ties directly to the number of weeks that he or she worked for NCI in California.

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

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<sup>2</sup> Settlement Class Members are Class Members who have not requested exclusion from the Settlement.

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

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

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

### **C. How Will My Settlement Payment Be Taxed?**

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

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

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

It is strongly recommended that upon receipt of your payment, you immediately cash it or cash it before the 180-day void date shown on each check. If any checks remain uncashed or not deposited by the expiration of the 180-day void date, the Settlement Administrator will pay the funds represented by such un-redeemed checks to a *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.