



FILED
ALAMEDA COUNTY

JAN 25 2018

CLERK OF THE SUPERIOR COURT

By *[Signature]* Deputy

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9 Attorneys for Plaintiffs

10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF ALAMEDA
12 CIVIL UNLIMITED

13 VULFRANO PEREZ and JAMES
14 MERCADO, Individually and On Behalf of
15 All Other Similarly Situated Employees,

16 Plaintiffs,

17 vs.

18 U.S. INSTALLATION GROUP, INC. and
19 HOME DEPOT U.S.A., INC., AND DOES
20 1 THROUGH 100, INCLUSIVE,

21 Defendants.

CASE NO. RG15774021

~~PROPOSED~~ **SECOND AMENDED
ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT, APPROVING FORM OF
NOTICE TO THE CLASS, CERTIFYING
THE SETTLEMENT CLASS, AND
SETTING FINAL APPROVAL
HEARING**

**Assigned for all purposes to:
Honorable Winifred Y. Smith**

Complaint filed: June 12, 2015

JAN 18 2018

FAXED

1 The motion of Plaintiffs VULFRANO PEREZ (“Perez”) and JAMES MERCADO
2 (“Mercado”) for an order preliminarily approving the settlement of this action, approving the
3 form of notice to the class, and setting a final approval hearing came on for hearing in
4 Department 21 of this Court on September 29, 2017.

5 Having read the motion, the memoranda and the declarations filed by the parties
6 (including the supplemental Declaration filed herewith), and having heard argument of counsel,
7 this Court finds that the proposed settlement appears fair, reasonable and adequate, and that a
8 hearing should be held after notice to the Plaintiff Class of the proposed settlement to determine
9 if the Settlement Agreement and settlement are fair, reasonable, and adequate and if a Settlement
10 Approval Order and Final Judgment should be entered in this action based upon the Settlement
11 Agreement;

12 **IT IS THEREFORE ORDERED THAT:**

- 13 1. The Settlement Agreement and the settlement contained therein are preliminarily
14 approved as fair, reasonable and adequate.
- 15 2. The Class, as defined below, is certified for the purposes of settlement:
16 all persons who performed work as flooring installers or flooring installation
17 helpers in California for or on behalf of one or more of the Defendants, at any
18 time during the period commencing June 12, 2011 through the date of this order.
- 19 3. Phoenix Settlement Administrators is authorized as the Settlement Administrator for the
20 purposes of this settlement.
- 21 4. Robert S. Arns, Jonathan E. Davis, Kevin M. Osborne, and Julie C. Erickson of The Arns
22 Law Firm, are designated counsel for the Settlement Class.
- 23 5. Plaintiffs Perez and Mercado are designated class representatives for the Settlement
24 Class.
- 25 6. The Court approves, as to form and content, the Class Notice attached hereto as **Exhibit**
26 **1**. The Class Notice meets the requirements of Code of Civil Procedure § 382, California
27 Rules of Court rule 3.766, and due process.

1 7. The Class Administrator shall, as soon as practicable, but no later than **January 31, 2018**
2 days following the signing of this Order, cause the Class Notice to be mailed by first
3 class mail to all known members of the Plaintiff Class certified by this Court in this
4 action to the most recent address in Defendants' business records for each known
5 member of the Plaintiff Class. Plaintiffs are directed to file with the Court, and serve
6 upon Defendants' Counsel, prior to the Final Hearing, a declaration confirming such
7 mailings. The mailing of the Class Notices directed in this Order constitute the best
8 notice practicable under the circumstances and sufficient notice to all members of the
9 Plaintiff Class.

10 8. The costs and expenses of printing and mailing the Class Notices shall be paid from the
11 fund established by Defendant pursuant to the Settlement Agreement. Only with court
12 approval may settlement funds be disbursed to the settlement administrator.

13 9. A hearing (the "Final Hearing") shall be held on **April 9, 2018**, at 11:00 a.m., at Alameda
14 County Superior Court, 1221 Oak Street, Oakland, California, as set forth in the Class
15 Notice, to determine whether the proposed settlement of this action is fair, reasonable and
16 adequate and should be finally approved. The Court will also consider at the final
17 approval hearing whether applications for Plaintiffs' attorney fees and expenses and
18 incentive awards to the representative Plaintiffs should be granted and, if so, in what
19 amounts.

20 10. Plaintiffs' briefs and supporting papers in support of the proposed settlement, and
21 application for an award of fees and expenses to be filed with the Court 7 days prior to
22 the Final Hearing. After the Final Hearing, the Court may enter a Settlement Approval
23 Order and Final Judgment in accordance with the Settlement Agreement that will
24 adjudicate the rights of all class members.

25 11. Any member of the Plaintiff Class who has not timely elected to be excluded from the
26 Plaintiff Class, and who objects to approval of the proposed settlement, including any
27 application for attorney fees and expenses and incentive awards to the named Plaintiffs,
28

1 may elect to appear at the Final Hearing in person or through counsel to show cause why
2 the proposed settlement should not be approved as fair, reasonable and adequate.

3 12. Objections to the settlement shall be heard, and any papers or briefs submitted in support
4 of said objections shall be considered by the Court only if, on or before 60 days from
5 class notice mailing said objectors(s) submit to the Clerk of the Superior Court written
6 notice of their intention to object, together with supporting papers stating specifically the
7 factual basis and legal grounds of the objection, and serve copies thereof together with
8 proof of service on or before said date upon each of the following counsel:

9	CLASS COUNSEL	DEFENDANT'S COUNSEL
10		
11	Robert S. Arns	Chris Mead
12	The Arns Law Firm	Cooper, White & Cooper LLP
13	515 Folsom St., 3 rd Floor	201 California St., 17th Floor
	San Francisco, CA 94109	San Francisco, CA 94111
	Tel: (415) 495-7800	Telephone: (415) 433-1900

14 The objections must state the name and number of the action. No Plaintiff Class member
15 shall be entitled to be heard and no objection shall be considered unless these
16 requirements are satisfied.

17 13. Any Plaintiff Class member who does not make an objection to the settlement in the
18 manner provided herein shall be deemed to have waived any such objection by appeal,
19 collateral attack or otherwise.

20 14. All discovery and other pretrial proceedings in this action are stayed and suspended until
21 further order of this Court, except such actions as may be necessary to implement the
22 Settlement Agreement and this Order.

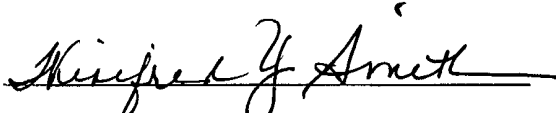
23 15. In the event that the proposed settlement as provided in the Settlement Agreement is not
24 approved by the Court, or for any reason the parties fail to obtain a Settlement Approval
25 Order and Final Judgment as contemplated in the Settlement Agreement, or the
26 Settlement Agreement is terminated pursuant to its terms, the Settlement Agreement and
27 all orders entered in connection therewith shall become null and void and of no further
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force and effect, and shall not be used or referred to for any purpose whatsoever. In such event, the Settlement Agreement and all negotiations and proceedings relating thereto shall be withdrawn without prejudice as to the rights of any and all parties thereto.

IT IS SO ORDERED

Dated JAN 25 2018, 2018


Honorable Winifred Y. Smith

NOTICE OF CLASS ACTION SETTLEMENT

A State Court authorized this notice. This is not a solicitation from a lawyer.

YOU HAVE BEEN IDENTIFIED AS SOMEONE WHO WORKED FOR NATIONAL FLOORING INSTALLERS, INC. ("NFI") IN CALIFORNIA AND PERFORMED FLOORING INSTALLATION WORK IN A NON-EXEMPT POSITION BETWEEN JUNE 12, 2011 AND [PRELIMINARY APPROVAL DATE].

A settlement has been reached in a class action lawsuit involving money owed to current and former employees as well as other claims. NFI's records show you were employed by them at some point between June 12, 2011 and [P.A.D.] Your legal rights are affected whether you act or do not act.

Read this notice carefully.

A. DESCRIPTION OF THE CLASS ACTION:

On June 12, 2015, former employees Vulfrano Perez and James Mercado filed a class action lawsuit against NFI, its parent company U.S. Installation Group, and Home Depot. The lawsuit claimed the defendants violated California laws by failing to reimburse business and travel expenses, pay wages and overtime, provide meal and rest breaks, provide accurate records of hours and pay, and related damages and penalties. U.S. Installation Group never appeared in the case and Home Depot was dismissed from the case. NFI, while denying all the allegations against it, remained in the case.

The judge in this case has not made any rulings on the Plaintiffs' claims. Both sides recognize, however, there are risks, expenses and business disruption if the lawsuit continues.

YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT	
DO NOTHING AND REMAIN IN THE CLASS	If you do not respond to this notice, you will receive benefits in the form of a check. You will also give up your rights to sue NFI about any of the claims in this case. If you wish to update your address or dispute the number of weeks you worked for NFI, please complete the INFORMATION FORM included with this notice.
EXCLUDE YOURSELF FROM THE SETTLEMENT	If you do not want to be in the class, you can opt out by (deadline). You will get no benefits from the Settlement, but you will keep your rights to sue NFI on your own for claims in this case.
OBJECT	If you think there is something wrong with the settlement, you can write a letter to the Court by (deadline) with your objection. If you object, you will remain in the class and may still receive a settlement payment.

The court has also appointed the lawyers for Vulfrano Perez and James Mercado as "Class Counsel" to represent Class Members affected by the Settlement. They are:

Robert Arns, Jonathan Davis, Kevin Osborne, & Julie Erickson
The Arns Law Firm
515 Folsom St. 3rd Floor, San Francisco, CA 94105
Telephone: 415.495.7800

Class Counsel will be representing the interest of all members of the settlement class. You may, however, retain your own counsel, at your own expense, if wish to do so.

B. SUMMARY OF PROPOSED SETTLEMENT TERMS:

The full Settlement Agreement is available at [insert website]. Subject to the Judge's approval, a summary of the terms of the Settlement include:

1. Class Settlement Amount:

NFI will pay \$525,000 (Five Hundred Twenty-Five Thousand Dollars) into a settlement fund. This fund will pay the following:

- (1) Payment to all of the approximately 423 Class Members who do not opt-out of the settlement;
- (2) The Settlement Administrator's costs in an amount not to exceed \$15,000 (Fifteen Thousand Dollars);
- (3) Class Counsel costs paid to litigate the case, estimated to be \$20,000 (Twenty Thousand Dollars);
- (4) Awards of \$12,500 (Twelve Thousand Five Hundred Dollars) to Vulfrano Perez and \$12,500 (Twelve Thousand Five Hundred Dollars) to James Mercado to compensate them for the time, work, and risks they undertook when they brought this lawsuit;
- (5) Attorneys' fees for the Plaintiffs' attorneys, the Arns Law Firm, not to exceed \$147,000 (One Hundred Forty-Seven Thousand Dollars);
- (6) Any employer-side payroll taxes; and
- (7) A payment of \$15,000 (Fifteen Thousand Dollars) to resolve claims under California's Private Attorney General Act, 25% of which will be issued to the Class Members and 75% of which will be issued to the California Labor and Workforce Development Agency.

2. Distribution Formula:

To calculate each Class Member's share of the Settlement, the Settlement Administrator will review NFI's employment records from June 12, 2011 to [p.a.d.]. The share for each Class Member will be the total number of weeks he or she worked during this time divided by the total number of weeks all the class members worked during this time.

The Settlement Administrator will subtract the attorneys' fees and costs, settlement administration costs, incentive award to the named plaintiffs, employment taxes, and the amount to be paid to California Labor and Workforce Development Agency from the total \$525,000 settlement fund. Then the 423 Class Members will share the remaining amount based on the formula above.

The portion of your recovery that will be counted as wages for tax purposes depends on whether you worked as an installer or as a helper. For installers, 30% of what each Class Member receives will be counted as W-2 wages, and the other 70% will represent penalties and interest that will be paid without withholdings. For helpers, 60% of what each Class Member receives will be counted as W-2 wages, and the other 40% will represent penalties and interest that will be paid without withholdings. An IRS Form W-2 will be issued for the wage portion and an IRS Form 1099 will be issued for the interest and penalties portion.

NOTE: Nothing in this Notice or the Settlement is intended to constitute tax advice. You should consult your tax advisor for any tax issues pertaining to this Settlement.

3. Other Key Terms of the Settlement:

The Settlement Agreement includes a number of important details and is available in its entirety online, as described in Section G, "For More Information," below.

Most importantly, the Settlement releases any claims for interest on money that NFI may owe to those Class Members who remain in the Settlement.

4. Action Required To Receive Your Share of the Settlement:

You do not need to do anything in order to participate in the Settlement. If, however, you move or otherwise change your mailing address, you should contact the settlement administrator and inform them of the change. Their contact information is listed below.

5. Payments:

The terms of the Settlement require NFI to make five monthly installment payments to the Settlement Administrator, beginning after preliminary approval of the settlement by the judge. The Settlement Administrator will send you a check in the mail within approximately five months of approval and another within

Questions? Contact the Settlement Administrator, Phoenix Settlement Administration toll free at 888.613.5553
Or by mail at 4590 MacArthur, Suite 500, Newport Beach, CA 92660

approximately nine months of approval. You must cash any settlement check within 90 days of the date mailed or it will expire. If you do not cash your check, the funds will be returned to the Settlement Administrator and will be reissued to the other Class Members in a second round of checks. Please contact the Settlement Administrator at the phone number below if you don't receive your checks, if you fail to cash your checks on time, or if you change your mailing address.

C. TO REQUEST EXCLUSION FROM THE SETTLEMENT AGREEMENT:

If you want to be excluded from the Settlement (also referred to as "opt-out"), you must mail a letter to the Settlement Administrator to request to "opt-out." The Settlement Administrator's mailing address is:

Settlement Administrator
Phoenix Settlement Administration
4590 MacArthur, Suite 500
Newport Beach, CA 92660
Telephone: 888.613.5553

Your "opt-out" request letter can be as simple as "I do not want to be a part of the settlement." To be considered timely, your "opt-out" request letter must include your full name, mailing address, telephone number, last four digits of your social security number (for identity verification purposes only), signature, and be mailed by First-Class U.S. Mail to the Settlement Administrator, postmarked on or before [DATE].

If you send a timely and valid "opt-out" request, you will no longer be a member of the Class, and you will not receive any money from the Settlement, or be able to object to the terms of the Settlement. However, if you do timely "opt-out," you will not be bound by the terms of the Settlement and may pursue any claims you may have against NFI, at your own expense.

D. TO OBJECT TO THE SETTLEMENT:

If you believe the Settlement is unfair or inadequate in any respect, but you do not opt out, you must object to the Settlement by mailing a written objection stating the specific grounds of your objection with the Alameda County Superior Court, 1221 Oak Street, Oakland, CA 94612, Attn: Dept. 21, and by mailing a copy of your objection to Class Counsel and the Settlement Administrator at the above listed addresses.

All objections must be signed and include your full name, mailing address, telephone number, last four digits of your social security number (for identity verification purposes only), and the case name and case number. The objections must state the basis for the objection and must identify exhibits and/or witnesses, if any, that you intend to present at the final approval hearing. All objections must be mailed to the Court, and postmarked to Class Counsel and the Settlement Administrator on or before [DATE].

You do not need to attend the final approval hearing for your objection to be considered. If, however, you wish to appear and speak at the final approval hearing, you must include notice of your intention to appear and speak in your objection.

E. RELEASE OF LIABILITY:

If you participate in this settlement, either by doing nothing and remaining in the class or by objecting to the settlement, you will release NFI from the legal claims that are involved in this case.

Specifically, you will release NFI from the following types of claims:

- Claims for unreimbursed business or travel expenses
- Claims for unpaid wages and overtime wages
- Claims for falling to receive meal periods and rest breaks
- Claims for compensation in place of missed meal and rest breaks
- Claims for failure to pay all wages owed upon termination
- Claims for inaccurate wage statements
- Claims for record keeping violations

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- Claims for requiring you to sign false time statements
- Unfair competition claims
- Claims for fraud and intentional misrepresentation
- Any penalties, taxes, interest, or attorneys' fees that relate to the claims listed above

This also applies whether you know or suspect you have a right to bring these claims or not.

However, by participating in this settlement, you do not waive claims you may have for other issues, such as claims for workers' compensation benefits.

F. FINAL APPROVAL HEARING ON PROPOSED SETTLEMENT:

The Final Approval hearing on the fairness and adequacy of the proposed Settlement will be held on _____, 2017 at _____, in the Alameda County Superior Court, 1221 Oak Street, Oakland, California 94612, in Dept. 21. The Final Approval hearing may be continued without further notice.

It is not necessary for you to appear at this hearing. You may appear at the hearing, either in person or through an attorney at your own expense, provided you notify the Court in your objection of your intent to do so.

G. FOR MORE INFORMATION:

If you wish to obtain more information about the case or if you would like to see the documents that relate to the settlement, including the Complaint, all papers filed in relation to the motion for preliminary approval of the settlement, all papers filed in relation to final approval of the settlement, the Plaintiffs' attorney's request for fees, and other important documents in this case, you can download them free of charge from <http://www.arnslaw.com/nfi-settlement>.

Alternatively, for a small fee, all of the pleadings and other records in this litigation, including the Settlement Agreement, may be examined online on the Alameda County Superior Court's website, known as 'DomainWeb,' at <https://publicrecords.alameda.courts.ca.gov/PRS/>. After arriving at the website, click the 'Search By Case Number' link, then enter RG15774021 as the case number and click 'SEARCH.' Images of every document in the case may be viewed (for a charge) through the 'Register of Actions' tab. You may also view every document filed in the case free of charge by using one of the computer terminal kiosks available at each courthouse location that has a facility for civil filings.

**IF YOU HAVE QUESTIONS ABOUT THIS NOTICE,
PLEASE CALL THE SETTLEMENT ADMINISTRATOR AT (888) 613-5553**

DO NOT CALL THE COURT

Questions? Contact the Settlement Administrator, Phoenix Settlement Administration toll free at 888.613.5553
Or by mail at 4590 MacArthur, Suite 500, Newport Beach, CA 92660

INFORMATION FORM

[Class Member Name]
[Mailing Address 1]
[Mailing Address 2]
[City, State, ZIP]

OUR RECORDS INDICATE THAT YOU WERE EMPLOYED BY NATIONAL FLOORING INSTALLATIONS, INC. ("NFI"), A SUBSIDIARY OF U.S. INSTALLATIONS GROUP, INC. ("USIG") FOR SOME PERIOD BETWEEN JUNE 12, 2011 TO [p.a.d].

YOU DO NOT NEED TO RETURN THIS CLAIM INFORMATION FORM TO RECEIVE A SETTLEMENT AWARD.

RETURN THIS FORM ONLY IF:

1. YOU DISAGREE WITH NFI'S RECORDS ABOUT THE NUMBER OF YOUR WORKWEEKS WITH NFI AS STATED BELOW

OR

2. YOU WISH TO UPDATE YOUR ADDRESS

Workweeks for NFI from June 12, 2011 TO [p.a.d]: [# of Weeks]

If you believe the number of eligible workweeks listed above is incorrect, please enter the number of eligible workweeks you believe you worked for NFI in California performing flooring installation work in a non-exempt position from June 12, 2011 TO [p.a.d]: ____ workweeks.

If Your Address Has Changed, Insert Any Name or Address Corrections Below:

Mailing Address _____
Mailing Address _____
City, State, ZIP _____

Unless you dispute the number of workweeks listed above, or wish to change your address, you **DO NOT** need to return this Information Form.

Your Settlement Award will be based on the number of weeks you worked for NFI in the State of California and performed shotcrete work in a non-exempt position between the time period of June 12, 2011 to [p.a.d] (the "Class Period").

If you disagree with the number of workweeks listed above, you must fill-out the bottom portion of this information form and mail back along with any documentation you have to support your claim of a different number of eligible workweeks. This information form and your documentation must be mailed directly to the Settlement Administrator, Phoenix Settlement Administration, 4590 MacArthur, Suite 500 Newport Beach, CA 92660 postmarked on or before [date].

X _____
(Sign your name)

(Date you signed this document)

(Print your Full Name)

(Social Security Number)
[FOR IDENTITY VERIFICATION PURPOSES ONLY]

Questions? Contact the Settlement Administrator, Phoenix Settlement Administration toll free at 888.613.5553
Or by mail at 4590 MacArthur, Suite 500, Newport Beach, CA 92660