

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

GARY D. VOIGT, Individually and on
Behalf of All Others Similarly Situated
and Derivatively on Behalf of Nominal
Defendant NCI BUILDING SYSTEMS,
INC.,

Plaintiff,

v.

JAMES S. METCALF, DONALD R.
RILEY, NATHAN K. SLEEPER,
WILLIAM R. VANARSDALE,
JONATHAN L. ZREBIEC, KATHLEEN
J. AFFELDT, JAMES G. BERGES,
LAWRENCE J. KREMER, CLAYTON,
DUBILIER & RICE FUND VIII, L.P.,
and CLAYTON, DUBILIER & RICE,
LLC,

Defendants,

and

NCI BUILDING SYSTEMS, INC., a
Delaware corporation,

Nominal Defendant.

C.A. No. 2018-0828-JTL

STIPULATION OF COMPROMISE AND SETTLEMENT

This Stipulation of Compromise and Settlement (the “Stipulation”) is made and entered into as of August 25, 2021. The parties to this Stipulation (each a “Party” and, collectively, the “Parties”), by and through their undersigned attorneys, have reached an agreement for the settlement of the above-captioned matter styled *Voigt v. Metcalf, et al.*, filed in the Court of Chancery of the State of Delaware (the “Court”), C.A. No. 2018-0828-JTL (the “Action”) on the terms set forth below (the

“Settlement”) and subject to Court approval pursuant to Court of Chancery Rules 23 and 23.1. This Stipulation is intended to fully, finally, and forever resolve, discharge, and settle all claims asserted in the Action and all claims relating to the transactions challenged in the Action, except any claims any Defendant, any Dismissed Director, or NCI may have against any of their respective insurers, co-insurers or reinsurers, to the extent such claims are not otherwise released pursuant to other documentation.

The Parties to this Stipulation are:

1. Lead Plaintiff Gary D. Voigt (“Voigt” or “Plaintiff”), a stockholder of NCI Building Systems, Inc. (“NCI” or the “Company,” n/k/a Cornerstone Building Brands, Inc.), derivatively on behalf of NCI pursuant to Court of Chancery Rule 23.1 and on behalf of himself and the Class (as defined below) pursuant to Court of Chancery Rule 23;
2. Nominal defendant NCI, a Delaware corporation;
3. Clayton, Dubilier & Rice Fund VIII, L.P. (“CD&R Fund VIII”);
4. Clayton, Dubilier & Rice LLC (“CD&R LLC,” and together with CD&R Fund VIII, the “CD&R Entity Defendants”);
5. Kathleen J. Affeldt, James G. Berges, Lawrence J. Kremer, James S. Metcalf, Donald R. Riley, Nathan K. Sleeper, Jonathan L. Zrebiec, and William VanArsdale (the “Director”);

Defendants,” and together with CD&R Fund VIII, and CD&R LLC, “Defendants”); and

6. George L. Ball, Gary L. Forbes, John J. Holland, and George Martinez (the “Dismissed Directors”).

WHEREAS,

I. Summary of the Action

A. CD&R Fund VIII acquired a majority stake in NCI in 2009, and subsequently reduced its stake over the following years. By mid-December 2017, CD&R Fund VIII held just under 35% of NCI’s outstanding stock.

B. On January 31, 2018, CD&R Fund X and Golden Gate Capital announced that they would acquire and combine Ply Gem Holdings, Inc. and Atrium Windows & Doors, Inc. (as combined, “New Ply Gem”). The New Ply Gem transaction closed on April 16, 2018.

1. On July 17, 2018, a Special Committee of the NCI board of directors (the “Board”) recommended, and then the full NCI board (other than Messrs. Berges, Sleeper, VanArsdale, and Zrebiec, who recused themselves from the vote) approved a transaction pursuant to which New Ply Gem would merge with and into NCI, and the New Ply Gem interests issued and outstanding would be converted into the right to receive 58,709,067 shares of NCI common stock

(collectively, the “Transaction”), so as to effect the negotiated sharing ratio in the combined company of 53% to NCI’s stockholders and 47% to New Ply Gem’s stockholders.

2. On August 28, 2018, Plaintiff made a demand pursuant to 8 *Del. C.* § 220 to inspect certain NCI books and records, including board and Special Committee meeting minutes regarding the Transaction and director questionnaires, which documents NCI subsequently produced to Plaintiff.

C. On November 14, 2018, Plaintiff filed a complaint (the “Initial Complaint”) in the Court, naming as defendants CD&R Fund VIII, CD&R LLC, and the Director Defendants, derivatively on behalf of NCI and on behalf of himself and a Class of NCI stockholders. The Initial Complaint asserted claims for breach of fiduciary duty against the Director Defendants, CD&R Fund VIII, and CD&R LLC and alleged that CD&R Fund VIII and CD&R LLC were unjustly enriched by the Transaction. Specifically, the Initial Complaint alleged, among other things, that the CD&R Entity Defendants were a controlling stockholder of NCI and that the Director Defendants and the CD&R Entity Defendants caused NCI to enter into the Transaction through an unfair process and at an unfair price. The Initial Complaint further alleged, in the alternative, that the Transaction constituted a change of control of NCI.

D. On November 16, 2018, the Transaction closed.

E. On February 15, 2019, Defendants moved to dismiss the Initial Complaint, arguing among other things that CD&R was not a controlling stockholder and that the Transaction did not constitute a change of control (the “Motions to Dismiss”).

F. On April 11, 2019, Plaintiff filed an amended complaint (the “Amended Complaint”), which, among other things, added the Dismissed Directors as defendants and included additional allegations in support of Plaintiff’s claims.

G. On February 10, 2020, the Court dismissed the claims against the Dismissed Directors but otherwise denied the Motions to Dismiss the Action.

H. Following the Court’s ruling on the Motions to Dismiss, Plaintiff propounded his first requests for the production of documents to Defendants and his first set of interrogatories directed to Defendants. In addition, Plaintiff served subpoenas on 11 third parties.

I. In response to Plaintiff’s discovery requests propounded to the Defendants, Plaintiff received 189,199 documents or 1,968,537 pages of documents, and in response to the subpoenas directed to third parties, Plaintiff received 81,005 documents or 443,482 pages of documents. In total, Plaintiff’s counsel received approximately 2,412,019 pages of documents.

J. Plaintiff’s Counsel also deposed 12 fact witnesses.

K. On June 8, 2020, Defendants propounded their first request for the production of documents directed to Plaintiff, to which Plaintiff responded on July 8, 2020, and produced documents in response thereto beginning on November 6, 2020.

L. Beginning on or around July 22, 2020, the Parties exchanged multiple correspondence concerning Plaintiff's responses to discovery requests in the Action.

M. On February 5, 2021, on stipulation of the Parties, the Court entered an order certifying the Class pursuant to Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2), appointing Voigt as representative of the Class, and Andrews & Springer LLC and Friedman Oster & Tejtel PLLC as class counsel.

N. On February 19, 2021, Plaintiff propounded his second set of interrogatories directed to the Director Defendants and NCI.

O. Beginning on or around March 23, 2021, the Parties exchanged multiple correspondence concerning Defendants' privilege logs, responses to interrogatory requests, and text messages produced in the Action.

P. In connection with efforts to settle this Action, the Parties, along with the Insurers (as defined below), engaged in extensive discussions, including an all-day mediation session with former United States District Court Judge Layn Phillips, which was held on April 28, 2021. The mediation session did not result in

an agreement, and over the course of the following month, the Parties, along with the Insurers, continued to engage in numerous discussions through the mediator, ultimately reaching an agreement in principle in late May 2021.

Q. The Parties believe that the Settlement is in the best interests of the Parties, NCI, the Class, and NCI's current stockholders and that the Settlement confers substantial benefits upon NCI, the Class, and NCI's current stockholders and that the interests of the Parties, NCI, the Class, and NCI's current stockholders would best be served by settlement of the Action on the terms and conditions set forth herein.

II. Plaintiff's Claims and the Benefits of the Settlement

R. Plaintiff believes that the claims asserted in the Action have merit, but also believes that the Settlement set forth below provides substantial and immediate benefits for NCI, the Class, and NCI's current stockholders. In addition to these substantial benefits, Plaintiff and Plaintiff's Counsel have considered: (i) the attendant risks of continued litigation and the uncertainty of the outcome of the Action; (ii) the probability of success on the merits; (iii) the inherent problems of proof associated with, and possible defenses to, the claims asserted in the Action; (iv) the desirability of permitting the Settlement to be consummated according to its terms; (v) the expense and length of continued proceedings necessary to prosecute the Action against Defendants through trial and appeals; and (vi) the conclusion of

Plaintiff and Plaintiff's Counsel that the terms and conditions of the Stipulation are fair, reasonable, and adequate, and that it is in the best interests of NCI, the Class, and NCI's current stockholders to settle the Action on the terms set forth herein.

III. Defendants' Denials of Wrongdoing and Liability

S. Defendants deny any and all allegations of wrongdoing, liability, violations of law or damages arising out of or related to any of the conduct, statements, acts, or omissions alleged in the Action, and maintain that their conduct was at all times proper, in the best interests of NCI and its stockholders, and in compliance with applicable law. Defendants further deny any breach of fiduciary duties. The CD&R Entity Defendants deny that they were controlling stockholders and deny that they owed fiduciary duties to NCI or its stockholders. Defendants affirmatively assert that the Transaction was the best possible transaction for NCI and its stockholders, was entirely fair to NCI and to the unaffiliated stockholders, and has provided NCI and its stockholders with substantial benefits. Defendants also deny that NCI or its stockholders were harmed by any conduct of Defendants alleged in the Action or that could have been alleged therein. Each of Defendants asserts that, at all relevant times, they acted in good faith and in a manner they reasonably believed to be in the best interests of NCI and all of its stockholders.

T. Defendants, however, recognize the uncertainty and the risk inherent in any litigation, and the difficulties and substantial burdens, expense, and

length of time that may be necessary to defend this proceeding through the conclusion of trial, post-trial motions, and appeals. In particular, Defendants are cognizant of the burdens this litigation is imposing on them, NCI, the CD&R Entity Defendants, and those entities' respective managements, and the impact that continued litigation will have on their ability to continue focusing on value creation. Defendants wish to eliminate the uncertainty, risk, burden, and expense of further litigation, and to permit the operation of NCI and the CD&R Entity Defendants without further distraction and diversion of their personnel with respect to the Action. Defendants have therefore determined to settle the Action on the terms and conditions set forth in this Stipulation solely to put the Released Claims (as defined below) to rest, finally and forever, without in any way acknowledging any wrongdoing, fault, liability, or damages.

U. Nothing in this Stipulation shall be construed as any admission by Defendants of wrongdoing, fault, liability, or damages whatsoever.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, BY AND AMONG THE PARTIES TO THIS STIPULATION, subject to the approval of the Court pursuant to Court of Chancery Rules 23 and 23.1, that the Action shall be fully and finally compromised and settled, the Released Claims shall be released as against the Releasees (as defined below), and the Action shall be dismissed with

prejudice, upon and subject to the following terms and conditions of the Settlement, as follows:

I. DEFINITIONS

1.1. The “Class” means the class certified by the Court on February 5, 2021 of “All record holders and beneficial owners of Cornerstone Building Brands, Inc. f/k/a NCI Building Systems, Inc. common stock as of July 17, 2018, and their heirs, assigns, transferees, and successors-in-interest, in each case solely in their capacity as holders or owners of NCI common stock. Excluded from the Class are (i) James S. Metcalf, Donald R. Riley, Nathan K. Sleeper, William R. VanArsdale, Jonathan L. Zrebiec, Kathleen J. Affeldt, James G. Berges, Lawrence J. Kremer, Clayton, Dubilier & Rice Fund VIII, L.P., and Clayton, Dubilier & Rice, LLC, George Martinez, George L. Ball, Gary L. Forbes, and John J. Holland (collectively, the ‘Excluded Parties’ and each an ‘Excluded Party’); (ii) any of the Excluded Parties’ immediate family members, affiliates, parent companies, subsidiaries, legal representatives, heirs, estates, predecessors, successors, and assigns; and (iii) any entity in which any Excluded Party has or had a direct or indirect controlling interest.”

1.2. “Current Stockholders” means any Person or Persons (as defined below) who are record or beneficial owners of NCI common stock as of the close of business on the date of this Stipulation.

1.3. “Defendants’ Counsel” means Wachtell, Lipton, Rosen & Katz; Richards, Layton & Finger, P.A.; Debevoise & Plimpton LLP; and Morris, Nichols, Arsht, & Tunnell LLP.

1.4. “Defendants’ Releasees” means NCI, Defendants, and the Dismissed Directors, and their respective past, present, or future family members, spouses, heirs, trusts, trustees, executors, estates, administrators, beneficiaries, distributees, foundations, agents, employees, fiduciaries, partners, partnerships, general or limited partners or partnerships, joint ventures, member firms, limited liability companies, corporations, parents, subsidiaries, divisions, affiliates, associated entities, stockholders, principals, officers, directors, managing directors, members, managing members, managing agents, predecessors, predecessors-in-interest, successors, successors-in-interest, assigns, financial or investment advisors, advisors, consultants, investment bankers, entities providing any fairness opinion, underwriters, brokers, dealers, financing sources, lenders, commercial bankers, attorneys, personal or legal representatives, accountants, associates and insurers, co-insurers and re-insurers.

1.5. “Effective Date” means the date that the Judgment, which approves in all material respects the releases provided for in the Stipulation and dismisses the Action with prejudice, becomes Final (as defined below).

1.6. “Escrow” means the bank account referred to below and maintained by the Escrow Agent into which the Settlement Payment (as defined below) will be deposited and wherein the Settlement Fund (as defined below) will be held.

1.7. “Escrow Agent” means the escrow agent or agents identified in the Escrow Agreement (as defined below) governing the Escrow who shall be chosen by Plaintiff’s Counsel (as defined below).

1.8. “Escrow Agreement” means the agreement governing the Escrow.

1.9. “Final” means, with respect to any judgment or order, that (i) if no appeal is filed, the expiration date of the time for filing or noticing of any appeal of the judgment or order; or (ii) if there is an appeal from the judgment or order, the date of (a) final dismissal of all such appeals, or the final dismissal of any proceeding on certiorari or otherwise to review the judgment or order, or (b) the date the judgment or order is finally affirmed on an appeal, the expiration of the time to file a petition for a writ of certiorari or other form of review, or the denial of a writ of certiorari or other form of review of the judgment or order, and, if certiorari or other form of review is granted, the date of final affirmance of the judgment or order following review pursuant to that grant. However, any appeal or

proceeding seeking subsequent judicial review pertaining solely to an order issued with respect to attorneys' fees or expenses shall not in any way delay or preclude the Judgment from becoming Final.

1.10. "Insurers" means the issuers of relevant coverage policies for Defendants for the policy year that includes July 2018.

1.11. "Judgment" means the Order and Final Judgment to be entered by the Court dismissing this Action with prejudice, substantially in the form annexed hereto as Exhibit C.

1.12. "NCI's Counsel" means Ross Aronstam & Moritz LLP.

1.13. "Net Settlement Payment" means the Settlement Payment less the Escrow Expenses (as defined below) and the Fee Award (as defined below).

1.14. "Notice" means the Notice of Pendency and of Settlement of Action, substantially in the form annexed hereto as Exhibit B.

1.15. "Person" means a natural person, individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, association, joint venture, joint stock company, estate, legal representative, trust, unincorporated association, government, or any political subdivision or agency thereof, any business or legal entity, and any spouse, heir, legatee, executor, administrator, predecessor, successor, representative, or assign of any of the foregoing.

1.16. “Plaintiff’s Counsel” means Andrews & Springer LLC, Friedman Oster & Tejtel PLLC, and Kaskela Law LLC.

1.17. “Plaintiff’s Releasees” means Plaintiff, Plaintiff’s Counsel and their respective past and present family members, spouses, heirs, agents, predecessors and successors.

1.18. “Released Claims” means Released Plaintiff’s Claims (as defined below) and Released Defendants’ Claims (as defined below).

1.19. “Released Defendants’ Claims” means any and all manner of claims, demands, rights, liabilities, losses, obligations, duties, damages, costs, debts, expenses, interest, penalties, sanctions, fees, attorneys’ fees, actions, potential actions, causes of action, suits, agreements, judgments, decrees, matters, issues, and controversies of any kind, nature, or description whatsoever, whether known or unknown, disclosed or undisclosed, accrued or unaccrued, apparent or not apparent, foreseen or unforeseen, matured or not matured, suspected or unsuspected, liquidated or not liquidated, fixed or contingent, including Unknown Claims, whether based on state, local, foreign, federal, statutory, regulatory, common, or other law or rule (including claims within the exclusive jurisdiction of the federal courts), arising out of or relating to this litigation through the date of this Stipulation, including, without limitation, all actions taken by Plaintiff or Plaintiff’s Counsel in connection with the initiation and prosecution of this Action through the date of this

Stipulation. For the avoidance of doubt, the Released Defendants' Claims do not include (x) any claims relating to the enforcement of the Settlement or (y) any claims that any Defendant, any Dismissed Director, or NCI may have against any of their respective insurers, co-insurers, or reinsurers, to the extent such claims are not otherwise released pursuant to other documentation.

1.20. "Released Plaintiff's Claims" means any and all manner of claims, demands, rights, liabilities, losses, obligations, duties, damages, costs, debts, expenses, interest, penalties, sanctions, fees, attorneys' fees, actions, potential actions, causes of action, suits, agreements, judgments, decrees, matters, issues and controversies of any kind, nature, or description whatsoever, whether known or unknown, disclosed or undisclosed, accrued or unaccrued, apparent or not apparent, foreseen or unforeseen, matured or not matured, suspected or unsuspected, liquidated or not liquidated, fixed or contingent, including Unknown Claims, whether based on state, local, foreign, federal, statutory, regulatory, common, or other law or rule (including claims within the exclusive jurisdiction of the federal courts, such as, but not limited to, federal securities claims), that are, have been, could have been, could now be, or in the future could, can, or might be asserted, in the Action or in any other court, tribunal, or proceeding by Plaintiff, any other NCI stockholder, or any member of the Class, derivatively on behalf of NCI, or individually or as a member of the Class directly (in their capacities as current or

former NCI stockholders), or otherwise, or by NCI directly against any of the Defendants' Releasees, which, now or hereafter, are based upon, arise out of, relate in any way to, or involve, directly or indirectly, any of the actions, transactions, occurrences, statements, representations, misrepresentations, omissions, allegations, facts, practices, events, claims or any other matters, things or causes whatsoever, or any series thereof, that arise out of or relate in any way to the events, acts or negotiations related to the decision to combine NCI with New Ply Gem (including any disclosures related thereto), except for (x) any claims relating to the enforcement of the Settlement and (y) any claims that any Defendant, any Dismissed Director, or NCI may have against any of their respective insurers, co-insurers, or reinsurers, to the extent such claims are not otherwise released pursuant to other documentation.

1.21. "Releasees" means Plaintiff's Releasees and Defendants' Releasees.

1.22. "Releases" means the releases set forth in Section II.B below.

1.23. "Scheduling Order" means an order scheduling a hearing on the Stipulation and approving the form of Notice and method of giving notice, substantially in the form annexed hereto as Exhibit A.

1.24. "Settlement Hearing" means the hearing (or hearings) at which the Court will review and assess the adequacy, fairness, and reasonableness of the Settlement, and the appropriateness and amount of the award of attorneys' fees and

expenses and any requested incentive award to Plaintiff, to be awarded by the Court (as set forth in Sections IV-V, below).

1.25. “Unknown Claims” means any Released Plaintiff’s Claims that Plaintiff, the Class, NCI, or any other NCI stockholder does not know or suspect to exist in his, her, or its favor at the time of the release of the Defendants’ Releasees, and any Released Defendants’ Claims that any of Defendants or any of the other Defendants’ Releasees does not know or suspect to exist in his, her, or its favor at the time of the release of the Plaintiff’s Releasees, which, if known by him, her, or it, might have affected his, her, or its decision(s) with respect to the Settlement. With respect to any and all Released Plaintiff’s Claims and Released Defendants’ Claims, the Parties stipulate and agree that Plaintiff, the Class, NCI, and each of the Defendants shall expressly waive, and each of the other NCI stockholders and each of the other Defendants’ Releasees shall be deemed to have waived, and by operation of the Judgment shall have expressly waived, any and all provisions, rights, and benefits conferred by California Civil Code § 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

and any law of any state or territory of the United States, or principle of common law or foreign law, which is similar, comparable, or equivalent to California Civil

Code § 1542. Plaintiff, NCI, the Class, and each of the Defendants acknowledge, and each of the other NCI stockholders shall be deemed by operation of law to have acknowledged, that the foregoing waiver was separately bargained for and is a key element of the Settlement.

II. TERMS OF SETTLEMENT

A. Settlement Consideration

2.1. In connection with the Settlement and in consideration of the releases set forth herein, Defendants shall cause the Insurers to pay the total sum of one hundred million dollars (\$100,000,000) (the “Settlement Payment”) into Escrow (the “Settlement Fund”). The Settlement Payment shall be funded within thirty (30) days after (1) the Effective Date (the “Settlement Payment Date”), and (2) Plaintiff’s Counsel providing the Defendants with a W-9 and complete wire transfer information and payment instructions. Defendants shall bear no personal responsibility for any payment in connection with this Stipulation or the Settlement. The Net Settlement Payment shall be released from Escrow and paid to NCI in accordance with Section VII. The Company will not pay any cash dividend attributable to the Settlement Payment within eighteen (18) months after the Settlement Payment Date.

B. Releases

2.2. Upon entry of the Judgment, and subject to NCI’s receipt of the Net

Settlement Payment, NCI, Plaintiff, the Class and each and every other NCI stockholder, on behalf of themselves and any other person or entity who could assert any of the Released Plaintiff's Claims on their behalf, in such capacity only, shall have fully, finally, and forever released, settled, and discharged, and shall forever be enjoined from prosecuting, the Released Plaintiff's Claims against Defendants and any other Defendants' Releasees.

2.3. Upon entry of the Judgment, and subject to NCI's receipt of the Net Settlement Payment, Defendants, on behalf of themselves and any other person or entity who could assert any of the Released Defendants' Claims on their behalf, in such capacity only, shall have fully, finally, and forever released, settled, and discharged, and shall forever be enjoined from prosecuting, Defendants' Claims against Plaintiff's Releasees.

C. Dismissal of Action

2.4. Upon entry of the Judgment, the Action shall be dismissed with prejudice.

2.5. Plaintiff, Defendants, and NCI shall each bear his, her, or its own fees, costs, and expenses, except as expressly provided in this Stipulation, provided that nothing herein shall affect the NCI directors' claims for advancement or indemnity of their legal fees, costs and expenses incurred in connection with the Action and this Settlement, or any claims that any Defendant, any Dismissed Director, or NCI

may have against any of their respective insurers, co-insurers, or reinsurers, to the extent such claims are not otherwise released pursuant to other documentation.

III. PROCEDURE FOR APPROVAL

3.1. Immediately after execution of this Stipulation, the Parties shall jointly submit the Stipulation together with its related documents to the Court, and shall apply to the Court for entry of the Scheduling Order, in the form annexed hereto as Exhibit A.

3.2. In accordance with the Scheduling Order, NCI shall mail, or cause to be mailed, by first class U.S. mail or other mail service if mailed outside the U.S., postage prepaid, the Notice, substantially in the form attached hereto as Exhibit B, to Current Stockholders and all members of the Class at their last known address appearing in the stock transfer records maintained by or on behalf of NCI. All Current Stockholders and all members of the Class who are record holders of NCI common stock on behalf of beneficial owners shall be directed to forward the Notice promptly to the beneficial owners of those securities.

3.3. NCI shall pay any and all costs and expenses related to providing notice of the proposed Settlement (“Notice Costs”) regardless of whether the Court declines to approve the Settlement or the Effective Date otherwise fails to occur. In no event shall Plaintiff, any other NCI stockholder, Defendants, the Insurers, or any of their attorneys (including Plaintiff’s Counsel) be responsible for any Notice Costs.

3.4. The Parties and their attorneys agree to use their individual and collective best efforts to obtain Court approval of the Settlement. The Parties and their attorneys further agree to use their individual and collective best efforts to effect, take, or cause to be taken all actions, and to do, or cause to be done, all things reasonably necessary, proper, or advisable under applicable laws, regulations, and agreements to consummate and make effective, as promptly as practicable, the Settlement provided for hereunder and the dismissal of the Action with prejudice. The Parties and their attorneys agree to cooperate fully with one another in seeking the Court's approval of this Settlement and to use their best efforts to effect the consummation of the Settlement.

3.5. If the Settlement embodied in this Stipulation is approved by the Court, the Parties shall request that the Court enter the Judgment, substantially in the form attached hereto as Exhibit C.

IV. ATTORNEYS' FEES AND EXPENSES

4.1. Plaintiff's Counsel intend to petition the Court for an all-in award of attorneys' fees and litigation expenses, in an amount no greater than 23.5% of the Settlement Payment (the "Fee and Expense Application"), based on the substantial benefits provided to NCI, the Class, and NCI's stockholders from the Settlement and the prosecution of the Action.

4.2. Plaintiff also intends to petition the Court for an incentive award of up to \$5,000 to be paid to Plaintiff solely from the Fee Award (the “Incentive Award”). Any Fee Award (defined below) and/or the Incentive Award will be paid by the Escrow Agent from the Settlement Fund. Defendants and NCI agree that they will not object to or otherwise take any position on the Fee and Expense Application and/or Incentive Award so long as the Fee and Expense Application seeks an award no greater than 23.5% of the Settlement Payment and the Incentive Award seeks no greater than \$5,000 of the Fee Award. The Escrow Agent or its representative shall cause to be paid from the Settlement Fund to Plaintiff’s Counsel any attorneys’ fees and expenses that are awarded by the Court (the “Fee Award”). The Fee Award shall be paid from the Settlement Fund by the Escrow Agent or its representative to Plaintiff’s Counsel within ten (10) business days after the Settlement Payment Date.

4.3. If, after payment of the Fee Award, the Fee Award is reversed, vacated, or reduced by final non-appealable order, or the Settlement is terminated in accordance with the terms of this Stipulation, Plaintiff’s Counsel shall, within ten (10) business days after receiving from Defendants’ Counsel or from a court of appropriate jurisdiction notice of the termination of the Settlement or notice of any reduction of the Fee Award by final non-appealable order, return to NCI or the Escrow (if still in effect at the time) the difference between the attorneys’ fees and expenses awarded by the Court in the Fee Award on the one hand, and any attorneys’

fees and expenses ultimately and finally awarded on appeal, further proceedings on remand or otherwise on the other hand.

4.4. The Fee Award shall be the sole compensation for Plaintiff's Counsel in connection with the Action and the Settlement. Defendants' Releasees shall have no responsibility for or liability whatsoever with respect to the allocation of the Fee Award and/or the Incentive Award to Plaintiff's Counsel and Plaintiff.

4.5. Defendants shall not be liable for or obligated to pay any fees, expenses, costs, or disbursements, or to incur any expense on behalf of, any person or entity (including, without limitation, Plaintiff or Plaintiff's Counsel), directly or indirectly, in connection with the Action or the Settlement, except as expressly provided for in this Stipulation, provided that nothing herein shall affect the NCI directors' claims for advancement or indemnity for their legal fees, costs and expenses incurred in connection with the Action and this Settlement, or any claims that any Defendant, any Dismissed Director, or NCI may have against any of their respective insurers, co-insurers or reinsurers, to the extent such claims are not otherwise released pursuant to other documentation.

4.6. Neither Plaintiff nor Plaintiff's Counsel shall be liable for or obligated to pay any fees, expenses, costs, or disbursements to, or incur any expenses on behalf of, any person or entity (including, without limitation, Defendants, NCI, or their counsel), directly or indirectly, in connection with the Action or the Settlement.

4.7. This Stipulation, the Settlement, the Judgment, and whether the Judgment becomes Final, are not conditioned upon the approval of an award of attorneys' fees, costs, or expenses, either at all or in any particular amount, by the Court.

4.8. Plaintiff's Counsel warrants that no portion of any such award of attorneys' fees or expenses shall be paid to Plaintiff, except as may be approved by the Court.

V. STAY PENDING COURT APPROVAL

5.1. Pending Court approval of the Stipulation, the Parties agree to stay any and all proceedings in the Action other than those incident to the Settlement.

5.2. Except as necessary to pursue the Settlement and determine a Fee Award and/or Incentive Award, pending final determination of whether the Stipulation should be approved, all Parties to the Action (including Plaintiff, Defendants, and NCI) agree not to institute, commence, prosecute, continue, or in any way participate in, whether directly or indirectly, representatively, individually, derivatively on behalf of NCI, or in any other capacity, any action or other proceeding asserting any Released Claims.

5.3. Notwithstanding Paragraphs 5.1 and 5.2, nothing herein shall in any way impair or restrict the rights of any Party to defend this Stipulation or to otherwise

respond in the event any Person objects to the Stipulation, the proposed Judgment to be entered, and/or the Fee and Expense Application.

VI. EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION

6.1. Plaintiff and Defendants (provided they unanimously agree or if only certain Defendants are affected by the occurrence of any event set forth in clauses (ii) through (iv) below, provided that such Defendants as are affected agree) shall each have the right to terminate the Settlement and this Stipulation solely by providing written notice of their election to do so (“Termination Notice”) to the other parties to this Stipulation within thirty (30) calendar days of: (i) the Court’s declining to enter the Scheduling Order in any material respect; (ii) the Court’s refusal to approve this Stipulation or any part of it that materially affects any Party’s rights or obligations hereunder; (iii) the Court’s declining to enter the Judgment in any material respect; or (iv) the date upon which the Judgment is modified or reversed in any material respect by an appellate court. Neither a modification nor a reversal on appeal of the amount of fees, costs, and expenses awarded by the Court to Plaintiff’s Counsel shall be deemed a material modification of the Judgment or this Stipulation.

6.2. In the event that the Settlement is terminated pursuant to the terms of Paragraph 6.1 of this Stipulation or the Effective Date otherwise fails to occur for any other reason, then (i) the Settlement and this Stipulation (other than this Section

VI and Paragraph 3.3 above) shall be canceled and terminated; (ii) any judgment entered in the Action and any related orders entered by the Court shall in all events be treated as vacated, *nunc pro tunc*; (iii) the Releases provided under the Settlement shall be null and void; (iv) the fact of the Settlement shall not be admissible in any proceeding before any court or tribunal; (v) all proceedings in the Action shall revert to their status as of May 24, 2021, and no materials created by or received from another Party that were used in, obtained during, or related to settlement discussions shall be admissible for any purpose in any court or tribunal, or used, absent consent from the disclosing party, for any other purpose or in any other capacity, except to the extent that such materials are otherwise required to be produced during discovery in any other litigation; (vi) the Parties shall jointly petition the Court for a revised schedule for trial; (vii) the Parties shall proceed in all respects as if the Settlement and this Stipulation (other than this Section VI and Paragraph 3.3 above) had not been entered into by the Parties; and (viii) the Settlement Fund paid or due with respect to such amounts, less any escrow fees or costs actually incurred and paid or payable, shall be refunded directly to the Insurers who made payments pursuant to Paragraph 2.1 in an amount proportional to their contributions within five (5) business days after such cancellation or termination.

VII. THE SETTLEMENT FUND

7.1. The Settlement Fund shall be deemed to be in the custody of the Court and will remain subject to the jurisdiction of the Court until such time as it is distributed or returned pursuant to the terms of this Stipulation and/or further order of the Court. The Escrow Agent shall invest any funds in a non-interest bearing account.

7.2. The Settlement Fund is intended to be a “qualified settlement fund” within the meaning of Treasury Regulation § 1.468B-1, and the Parties shall so treat it, and Plaintiff’s Counsel, as administrators of the Escrow within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be responsible for filing any required tax returns for the Account and paying from the Account any taxes, including any interest or penalties thereon (the “Taxes”), owed with respect to the Escrow. In addition, Plaintiff’s Counsel and their agents, and the Parties, as required, shall do all things that are necessary or advisable to carry out the provisions of this Paragraph.

7.3. All Taxes arising with respect to the Settlement Fund and any expenses and costs incurred in connection with the payment of Taxes pursuant to this Paragraph (including, without limitation, expenses of tax attorneys and/or accountants and mailing, administration and distribution costs and expenses relating to the filing or the failure to file all necessary or advisable tax returns (the “Tax Expenses”)) shall be paid out of the Settlement Fund. None of NCI, Defendants, the

Released Parties or the Escrow Agent shall have any liability or responsibility for the Taxes or the Tax Expenses. Plaintiff's Counsel or their agents shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Fund, including, without limitation, the tax returns described in Treas. Reg. § 1.468B-2(k), and to the extent applicable, Treas. Reg. § 1.468B-2(l). All tax returns shall be consistent with the terms herein and in all events shall reflect that all Taxes shall be paid out of the Settlement Fund. Plaintiff's Counsel or their agents shall also timely pay any required Taxes and Tax Expenses out of the Settlement Fund, and are authorized to withdraw, without prior consent of Defendants or order of the Court, from the Escrow amounts necessary to pay Taxes and Tax Expenses. NCI and Defendants agree to timely provide to Plaintiff's Counsel the statement described in Treas. Reg. § 1.468B-3(e).

7.4. The Settlement Fund shall be applied as follows:

(a) To pay all costs and expenses incurred in connection with administering the Escrow, such as escrow fees, costs and taxes (the "Escrow Expenses");

(b) Subject to the approval of further order(s) of the Court, to pay to Plaintiff's Counsel the Fee Award and Plaintiff the Incentive Award; and

(c) To distribute the Net Settlement Payment to NCI, via wire transfer instructions provided by NCI, within ten (10) business days after the Settlement Payment Date.

VIII. NO ADMISSION OF LIABILITY

8.1. It is expressly understood and agreed that neither the Settlement nor any act or omission in connection therewith is intended or shall be deemed or argued to be evidence of or to constitute an admission or concession by: (a) Defendants, NCI, or any of the other Defendants' Releasees as to (i) the truth of any fact alleged by Plaintiff, (ii) the validity of any claims or other issues raised, or which might be or might have been raised, in the Action or in any other litigation, (iii) the deficiency of any defense that has been or could have been asserted in the Action or in any litigation, or (iv) any wrongdoing, fault, or liability of any kind by any of them, which each of them expressly denies; or (b) Plaintiff or any of the other Plaintiff's Releasees that any of their claims are without merit, that any of the Defendants or Defendants' Releasees had meritorious defenses, or that damages recoverable under the Amended Complaint would not have exceeded the Settlement Payment. Defendants and the Released Persons may file this Stipulation and/or Judgment in any action that has been or may be brought against them in order to support a claim or defense based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or

issue preclusion or similar defense or counterclaim or in connection with any insurance litigation.

IX. MISCELLANEOUS PROVISIONS

9.1. This Stipulation shall be deemed to have been mutually prepared by the Parties and shall not be construed against any of them by reason of authorship.

9.2. The Parties agree that in the event of any breach of this Stipulation, all of the Parties' rights and remedies at law, equity, or otherwise, are expressly reserved.

9.3. The Parties agree there will be no public announcements regarding this Settlement until NCI has announced or disclosed it or the Stipulation has been filed with the Court. To the extent permitted by law, all agreements made and orders entered during the course of the Action relating to the confidentiality of documents or information shall survive this Stipulation.

9.4. This Stipulation may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same document. Any signature to the Stipulation by means of facsimile or electronic scanning shall be treated in all manner and respects as an original signature and shall be considered to have the same binding legal effect as if it were the original signed version thereof and without any necessity for delivery of the originally signed signature pages in order for this to constitute a binding agreement.

9.5. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

9.6. Each counsel or other person executing this Stipulation on behalf of any Party warrants that he or she has the full authority to bind his or her principal to this Stipulation.

9.7. Plaintiff and Plaintiff's Counsel represent and warrant that none of Plaintiff's claims referred to in this Stipulation or that could have been alleged in the Action have been assigned, encumbered, or in any manner transferred in whole or in part.

9.8. This Stipulation shall not be modified or amended, nor shall any provision of this Stipulation be deemed waived, unless such modification, amendment, or waiver is in writing and executed by or on behalf of the Party or Parties against whom such modification, amendment, or waiver is sought to be enforced.

9.9. Any failure by any Party to insist upon the strict performance by any other Party of any of the provisions of this Stipulation shall not be deemed a waiver of any of the provisions hereof, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Stipulation to be performed by such other Party. Waiver by any Party of any breach of this Stipulation by any other Party shall not be deemed a

waiver of any other prior or subsequent breach of this Stipulation, and failure by any Party to assert any claim for breach of this Stipulation shall not be deemed to be a waiver as to that or any other breach and will not preclude any Party from seeking to remedy a breach and enforce the terms of this Stipulation. Each of the Defendants' respective obligations hereunder are several and not joint, and the breach or default by one Defendant shall not be imputed to, nor shall any Defendant have any liability or responsibility for, the obligations of any other Defendant herein.

9.10. This Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto.

9.11. Notwithstanding the entry of the Judgment, the Court shall retain jurisdiction with respect to the implementation, enforcement, and interpretation of the terms of the Stipulation, and all Parties submit to the jurisdiction of the Court for all matters relating to the administration, enforcement, and consummation of the Settlement and the implementation, enforcement, and interpretation of the Stipulation, including, without limitation, any matters relating to awards of attorneys' fees and expenses to Plaintiff's Counsel. Each Party (i) consents to personal jurisdiction in any such action (but no other action) brought in the Court; (ii) consents to service of process by registered mail upon such Party or such Party's agent; and (iii) waives any objection to venue in the Court and any claim that Delaware or the Court is an inconvenient forum.

9.12. The construction and interpretation of this Stipulation shall be governed by and construed in accordance with the laws of the State of Delaware and without regard to the laws that might otherwise govern under principles of conflicts of law applicable hereto.

9.13. Without further order of the Court, the Parties hereto may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

9.14. The following exhibits are annexed hereto and incorporated herein by reference:

- (a) Exhibit A: Scheduling Order With Respect to Notice and Settlement Hearing;
- (b) Exhibit B: Notice of Pendency and of Settlement of Action; and
- (c) Exhibit C: Final Order and Judgment.

IN WITNESS WHEREOF, IT IS HEREBY AGREED by the undersigned as of the date noted above.

[SIGNATURE PAGES FOLLOW]

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Dated: August 25, 2021