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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

JAMES OUTLEY II, an individual, on his  
own behalf and on behalf of all others  
similarly situated,

Plaintiffs,

v.

TURNER CONTRACTING, INC., an  
Indiana corporation

Defendants.

**CASE NO. 5:17-cv-03465-LHK**

**JOINT STIPULATION OF SETTLEMENT  
AND RELEASE OF CLAIMS**

1 This Joint Stipulation of Settlement and Release of Claims, which includes the Recitals  
2 and all Exhibits attached hereto (collectively, the “Agreement”), is entered into by and between  
3 Plaintiff (as hereinafter defined), the Settlement Class Members that Plaintiff seeks to represent  
4 (as hereinafter defined), and Plaintiff’s Counsel (as hereinafter defined), on the one hand, and  
5 Defendant (as hereinafter defined), on the other hand.

6 **RECITALS**

7 **WHEREAS**, on June 14, 2017, James Outley II, on behalf of himself and all other non-  
8 exempt employees of Defendant Turner Contracting, Inc. (“Turner Contracting”) who worked in  
9 California at any time between June 14, 2013 and the present, filed this action against Defendant  
10 in the United States District Court for the Northern District of California, Case Number 5:17-cv-  
11 03465-LHK alleging causes of action for (1) violation of Labor Code Sections 200, 226.7 and  
12 512; (2) violation of Labor Code Sections 1194 and 510; (3) violation of Labor Code Sections  
13 551 and 552; (4) violation of Labor Code Sections 558,1194,1197 and 1198; (5) violation of  
14 Labor Code Section 226; (6) violation of Labor Code Sections 201-203; (7) unfair business  
15 practices based on the foregoing, in violation of Business & Professions Code Section 17200;  
16 and (8) violation of the Fair Labor Standards Act.

17 **WHEREAS**, Defendant denied and continues to deny all of the allegations made by  
18 Plaintiff in the Action (as hereinafter defined) and has denied and continues to deny that it is  
19 liable or owes damages or other compensation or remedies to anyone with respect to the alleged  
20 facts or causes of action asserted in the Action. Defendant denies any liability or wrongdoing of  
21 any kind in connection with Plaintiff’s claims, and contends that, during all relevant times, it  
22 provided employees with meal and rest breaks as required by California law, has paid its  
23 employees all wages, overtime wages earned, maintained all required records, provided accurate  
24 wage statements, and complied in all other respects with California and federal law.  
25 Nonetheless, without admitting or conceding any liability or damages whatsoever, and without  
26 admitting that class certification is appropriate except for settlement purposes alone, Defendant  
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1 has agreed to settle the Action on the terms and conditions set forth in this Agreement, to avoid  
2 the burden, expense, and uncertainty of continuing with litigation of the Action.

3       **WHEREAS**, Plaintiff’s Counsel investigated the claims against Defendant in the Action,  
4 which investigation included an analysis of any and all applicable defenses. The investigation  
5 also included, *inter alia*, the exchange of information pursuant to informal discovery methods  
6 and a full-day mediation with mediator Mark Rudy. Based on the foregoing investigation and  
7 evaluation, Plaintiff’s Counsel is of the opinion that the terms set forth in this Agreement are fair,  
8 reasonable, adequate, and in the best interests of the Settlement Class Members. This Agreement  
9 was reached after extensive arm’s-length negotiations, and it was negotiated in light of all known  
10 facts and circumstances, including the risks of significant delay and uncertainty associated with  
11 litigation, various defenses asserted by Defendant, and numerous potential appellate issues.

12       **WHEREAS**, on February 20, 2018, the Parties participated in a day-long mediation of  
13 the Action before well-known and respected mediator, Mark Rudy.

14       **WHEREAS**, Plaintiff represents that he will file, prior to submission of this Agreement  
15 to the Court, a First Amended Complaint that, in addition to the claims outlined above, includes  
16 claims under the Private Attorney General Act (“PAGA”) and the Fair Credit Reporting Act  
17 (“FCRA”). Defendant will stipulate to the filing of the First Amended Complaint.

18       **NOW THEREFORE**, in consideration of the mutual covenants and promises set forth in  
19 this Agreement, as well as the good and valuable consideration provided for herein, the adequacy  
20 of which is hereby acknowledged, the Parties hereto agree to a full and complete settlement of  
21 the Action on the following terms and conditions.

22       **1. DEFINITIONS**

23       The defined terms set forth herein shall have the meanings ascribed to them below.

24       **1.1.**    “**Action**” means the case titled *James Outley II v. Turner Contracting, Inc.*,  
25 United States District Court for the Northern District of California, Case Number 5:17-cv-03465-  
26 LHK, including all operative Complaints filed therein.

1           **1.2. “Attorneys’ Fees and Costs Award”** means the attorneys’ fees and costs  
2 payment from the Gross Settlement Value and considering the \$99,972 in prior payments made  
3 to class members, approved by the Court for Plaintiff’s fees and costs associated with the  
4 litigation and resolution of the Action, including, but not limited to, fees and costs associated  
5 with documenting the settlement, preparing any notices required as part of the settlement or by  
6 Court order (excluding the third-party Settlement Administration Costs which are separately  
7 identified and paid as described in Paragraph 1.22 below), securing the Court’s approval of the  
8 settlement, assisting with administering the settlement, and obtaining entry of the Final Judgment  
9 terminating the Action. Plaintiff’s Counsel shall request attorneys’ fees not to exceed 30% of the  
10 Gross Settlement Value and \$99,972 in prior payments made to class members and shall seek  
11 costs not to exceed \$30,000.

12           **1.3. “Class Representative Service Award”** means the amount to be paid to Plaintiff  
13 James Outley II as set forth in this Agreement from the Gross Settlement Value in addition to  
14 any Individual Settlement Payment, subject to Court approval, in recognition of Plaintiff’s efforts  
15 and work in prosecuting the Action on behalf of Settlement Class Members. Plaintiff’s Counsel  
16 may request a Service Award for Plaintiff James Outley II not to exceed \$15,000 (provided that  
17 Outley executes a general release of all known and unknown claims and agrees not to Opt Out of  
18 or object to the settlement). Any portion of the Class Representative Service Award not  
19 approved by the Court shall remain part of the Class Settlement Fund for distribution to the  
20 Settlement Class Members.

21           **1.4. “Class Settlement Fund”** means an account created by the Settlement  
22 Administrator and funded by Defendant with a deposit of the Gross Settlement Value.

23           **1.5. “Court”** means the United States District Court for the Northern District of  
24 California, or any other court taking jurisdiction of the Action.

25           **1.6. “Defendant”** means Turner Contracting.

26           **1.7. “Defendant’s Counsel”** refers to Nassiri & Jung LLP. For purposes of providing  
27 any notices required under this Agreement, Defendant’s Counsel shall refer to Kassra P. Nassiri  
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1 and Andrew R. Kislik, Nassiri & Jung, 47 Kearney Street, Suite 700, San Francisco, California  
2 94108.

3 **1.8. “Effective Date of Agreement.** The Effective Date of the Settlement Agreement  
4 shall be the later of (a) the Court’s final approval of the Settlement Agreement, if no objections  
5 have been filed, (b) the time of appeal has expired if an objection has been filed and no appeal  
6 was filed, (c) or the final resolution of any appeal that has been filed.

7 **1.9. “Fairness Hearing” or “Final Approval”** means the hearing on Plaintiff’s motion  
8 for final approval of the settlement.

9 **1.10. “Final Judgment”** means the Final Judgment entered by the Court consistent  
10 with this Agreement.

11 **1.11. “Gross Settlement Value”** means the entire settlement amount of One Million  
12 Two Hundred Thousand Dollars (\$1,200,000) to be paid by Defendant pursuant to this  
13 Agreement. The \$1,200,000 Gross Settlement Value is fully inclusive of all Individual  
14 Settlement Payments to Participating Settlement Class Members, the Class Representative  
15 Service Award, Settlement Administration Costs to be paid to the Settlement Administrator, the  
16 Attorneys’ Fees and Costs Award, and the PAGA payment to the LWDA. Prior payments by  
17 Defendant to class members in connection with Releases or unpaid overtime, which currently  
18 total approximately \$99,972 will reduce, dollar for dollar, the amount payable to such class  
19 members from the settlement fund, without regard to whether the recipient signed a Release, but  
20 will not reduce the maximum settlement amount stated above. The Gross Settlement Value has  
21 been agreed to by Plaintiff and Defendant based upon the aggregation of the agreed-upon  
22 settlement value of all Settlement Class Member claims.

23 **1.12. “Individual Settlement Payment”** means each Settlement Class Member’s share  
24 of the Net Settlement Value, which share shall be determined pursuant to the following method:  
25 The Net Settlement Value (as defined below) shall be apportioned to employees based on the  
26 weeks of employment of each Participating Settlement Class Member during the Settlement  
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1 Class Period in proportion to the total number of weeks of employment of all Participating  
2 Settlement Class Members during the Settlement Class Period.

3 **1.13. “Net Settlement Value”** means the portion of the Gross Settlement Value  
4 remaining after deductions for approved Class Representative Service Award, Settlement  
5 Administration Costs, the Attorneys’ Fees and Costs Awards and the PAGA payment to the  
6 LWDA.

7 **1.14. “Non-Participating Class Members” or “Opt-Outs”** means all Settlement Class  
8 Members who execute and timely deliver valid requests to be excluded from the Settlement. The  
9 Settlement Shares of all Non-Participating Class Members shall be paid, after Final Approval, to  
10 the Participating Settlement Class Members, as defined in this Settlement and according to the  
11 formula set forth in this Settlement. Settlement Class Members who choose to be excluded from  
12 the Settlement will not receive any payment under the settlement. They also will not be bound  
13 by the terms of this Settlement Agreement, including the release of claims.

14 **1.15. “Notice Packet”** means the Notice of Proposed Class Action Settlement,  
15 substantially in the form attached as Exhibit 1.

16 **1.16. “Order Granting Preliminary Approval”** means the Order entered by the Court  
17 preliminarily approving, *inter alia*, the terms and conditions of this Agreement, the manner and  
18 timing of providing notice to the Settlement Class Members, and the time period for opt-outs and  
19 objections.

20 **1.17. “Participating Settlement Class Members”** refers to and includes all Settlement  
21 Class Members, excluding Reginald Sutton, who have not timely submitted a valid request to be  
22 excluded from the Settlement.

23 **1.18. “Parties”** means Plaintiff, the Settlement Class Members and Defendant,  
24 collectively.

25 **1.19. “Plaintiff”** refers to the named Plaintiff in the Complaint, James Outley II.

26 **1.20. “Plaintiff’s Counsel”** is Marcus J. Bradley and Kiley L. Grombacher of Bradley/  
27 Grombacher LLP.

1           **1.21. “Settlement,” “Settlement Agreement” or “Agreement”** means this stipulation  
2 and agreement to settle all of the claims asserted in the Action.

3           **1.22. “Settlement Administration Costs”** means the costs payable from the Gross  
4 Settlement Value to the Settlement Administrator for administering this settlement, including,  
5 but not limited to, printing, distributing, and tracking Notice Packets, tax reporting, making tax  
6 payments, providing required 1099 and W-2 forms, distributing the Individual Settlement  
7 Payments, Class Representative Service Award, Attorneys’ Fees and Costs Award, and the  
8 PAGA payment to the LWDA, and providing necessary reports and declarations, as requested by  
9 the Parties, including weekly reports on the number of Settlement Class Members who have  
10 timely submitted Opt Out requests, and on whether any Settlement Class Member submitted a  
11 challenge to the information in their Notice Packet. The Settlement Administration Costs shall  
12 be paid from the Gross Settlement Value, including, if necessary, any such costs in excess of the  
13 amount estimated by the Settlement Administrator.

14           **1.23. “Settlement Administrator”** means any third-party class action settlement  
15 administrator chosen by the Parties and subsequently approved by the Court for the purposes of  
16 administering this settlement. The Parties have chosen CPT Group to act as the Settlement  
17 Administrator. The Parties each represent that they do not have any financial interest in the  
18 Settlement Administrator or otherwise have a relationship with the Settlement Administrator that  
19 could create a conflict of interest.

20           **1.24. “Settlement Checks”** means the checks sent by the Settlement Administrator to  
21 Participating Settlement Class Members. Two checks will be sent. One check will be for  
22 settlement of the California state law claims. The other check shall be for settlement of the  
23 FLSA claims and will contain a release of the FLSA claims on the back of the check with an  
24 acknowledgement that the Participating Settlement Class Member is opting into the FLSA  
25 settlement.

26           **1.25. “Settlement Class Members”** refers to all non-exempt employees who were  
27 employed by Defendant in California at any time between June 14, 2013 and preliminary  
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1 approval of the Settlement Agreement. A member of the Settlement Class is referred to in this  
2 Agreement and in the Notice of Proposed Class Action Settlement as a “Settlement Class  
3 Member” or “Class Member.”

4 **1.26. “Settlement Class List”** means a list of Settlement Class Members that  
5 Defendant will compile and provide to the Settlement Administrator within 20 days after  
6 preliminary approval of this settlement. The Settlement Class List shall be formatted in  
7 Microsoft Office Excel and include each Settlement Class Member’s full name; most recent  
8 known mailing address and telephone number; Social Security Number; dates of employment;  
9 and any other information needed to calculate the Individual Settlement Payments for each  
10 Participating Settlement Class Member.

11 **1.27. “Settlement Class Period”** means and refers to the period from June 14, 2013  
12 through preliminary approval of the Settlement Agreement.

13 **1.28. “Workweeks”** means the weeks of employment recorded in Defendant’s records  
14 for each Settlement Class Member during the period from June 14, 2013 through preliminary  
15 approval of the Settlement Agreement.

## 16 **2. APPROVAL AND CLASS NOTICE**

17 **2.1. Preliminary Approval Hearing.** Within 30 days of full execution of this  
18 Agreement, Plaintiff shall submit to the Court a Motion for an Order Granting Preliminary  
19 Approval of Class Action Settlement (“Plaintiff’s Motion”). Plaintiff’s Motion shall request the  
20 entry of an Order Granting Preliminary Approval, which will, among other things: (i)  
21 provisionally certify the Settlement Class for settlement purposes only; (ii) preliminarily approve  
22 the proposed settlement; (iii) set a date for the Fairness Hearing; and (iv) provide for the Notice  
23 Packet to be sent to all Settlement Class Members as specified herein. To the extent that  
24 Plaintiff’s Motion is consistent with the terms of this Agreement, and does not seek relief  
25 inconsistent with this Agreement, Plaintiff’s Motion shall be unopposed by Defendant.  
26 Defendant reserves the right to address any factual assertions that are not contained in this  
27 Agreement.



1           If a mutually-agreed class settlement is not approved, the Action will proceed as if no  
2 settlement has been attempted, unless the Parties jointly agree to seek reconsideration of the  
3 ruling or seek Court approval of a renegotiated settlement, and Defendant retains the right to  
4 contest whether any aspect of the Action should be maintained as a class action and to contest  
5 the merits of the claims being asserted by Plaintiff in the Action.

6           **2.2. Notice Procedures.**

7           **(A) Settlement Class List.** Within 20 calendar days after entry of the Order  
8 Granting Preliminary Approval, Defendant shall provide the Settlement Class List to the  
9 Settlement Administrator.

10           **(B) Notice by First-Class U.S. Mail.** Within thirty (30) calendar days after  
11 entry of the Order Granting Preliminary Approval, or a later date approved by the Court upon  
12 good cause shown, the Settlement Administrator shall send a Notice Packet to all Settlement  
13 Class Members via First-Class U.S. Mail, using the most current, known mailing addresses for  
14 each Settlement Class Member.

15           **(C) Confirmation of Addresses in the Settlement Class List.** Prior to  
16 mailing the Notice Packets, the Settlement Administrator will search the National Change of  
17 Address Database and update the Settlement Class List to reflect any identifiable address changes.  
18 Any Notice Packets returned to the Settlement Administrator as undeliverable on or before the  
19 deadline for postmarking Opt Outs shall be sent promptly via First-Class U.S. Mail to the  
20 forwarding address affixed thereto, and the Settlement Administrator shall indicate the date of  
21 such re-mailing on the Notice Packet. If no forwarding address is provided, the Settlement  
22 Administrator shall promptly attempt to determine the correct address using a single skip-trace or  
23 other search using the name, address and/or Social Security Number of the Settlement Class  
24 Member involved, and it shall then perform a single re-mailing. If after performing a skip-trace  
25 search, the Notice Packet is still returned to the Settlement Administrator as undeliverable, that  
26 Settlement Class Member will be deemed a Participating Settlement Class Member. Those  
27 Settlement Class Members who receive a re-mailed Notice Packet shall have their deadline for  
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1 postmarking an Opt Out or objecting to the settlement extended by fifteen (15) calendar days  
2 from the date of re-mailing or until the original deadline for postmarking an Opt Out, whichever  
3 is later. There is no obligation to attempt to locate Settlement Class Members after the Opt Out  
4 deadline set forth in the Notice Packet.

5 **2.3. No Claims-Made Process.** Class Members shall not be required to submit a  
6 claim form in order to receive an Individual Settlement Payment. Each Settlement Class  
7 Member shall automatically receive checks for their Individual Settlement Payment unless they  
8 Opt Out.

9 **(A) Notice Packets.** All Settlement Class Members will be mailed a Notice  
10 Packet. Each Notice Packet will provide, among other things: (1) information regarding the  
11 nature of the Action; (2) a summary of the substance of the settlement; (3) the class definition; (4)  
12 the formulae for calculating Individual Settlement Payments; (5) the dates the Settlement Class  
13 Member was employed by Defendant as a non-exempt employee during the Settlement Class  
14 Period; (6) instructions on how Settlement Class Members may Opt Out of the Settlement; (7) the  
15 procedure for objecting to the settlement; (8) the deadline by which Settlement Class Members  
16 must postmark an objection to the settlement; (9) notice that the Settlement Class Members will  
17 permanently forego their right to pursue any and all of their released claims against Defendant  
18 unless they Opt Out of the settlement; (10) notice of how to claim the FLSA portion of their  
19 Individual Settlement Payments; and (11) notice that Class Members will automatically receive  
20 checks for their Individual Settlement Payment unless they timely Opt Out.

21 **(B) Disputed Information in Notice Packets.** If a Settlement Class Member  
22 disputes any information in his or her Notice Packet, the Settlement Class Member may produce  
23 evidence to the Settlement Administrator substantiating his or her assertion. Defendant's records  
24 will be presumed determinative absent evidence which rebuts those records, but the Settlement  
25 Administrator shall evaluate the evidence submitted by the Settlement Class Member and  
26 Defendant's records and make the final decisions as to which data should be applied. Any  
27 evidence supporting the Settlement Class Member's dispute of any of the information in his/her  
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1 Notice Packet must be submitted no later than 30 calendar days after the Notice Packet is first  
2 mailed.

3           **2.4. Opt-Out Procedures.** Any Settlement Class Member who wants to opt out of the  
4 settlement must sign and mail a written Opt-Out request postmarked no later than 30 calendar  
5 days after the Notice Packet is first mailed, or pursuant to Section 2.2 (C) above, whichever is  
6 later. The written Opt-Out request must (a) contain the name, address, and telephone number of  
7 the Settlement Class Member opting out; (b) state that he or she requests exclusion from the  
8 class and does not wish to participate in the settlement; (c) be addressed to the Settlement  
9 Administrator at the address indicated in the Notice Packet; (d) be postmarked on or before the  
10 deadline set forth above; and (e) be signed by the Settlement Class Member opting out. The  
11 Notice Packet shall provide these instructions to all Settlement Class Members who want to Opt  
12 Out of the Settlement. The share of the Settlement apportioned to any Settlement Class Member  
13 who opts out shall be paid to the Participating Settlement Class Members as defined and  
14 according to the formula in this Agreement.

15           **(A)** In the event of any dispute, the date of the postmark on the return-mailing  
16 envelope shall be the exclusive means to determine whether an Opt-Out request has been timely  
17 submitted.

18           **(B)** A Settlement Class Member who does not submit a timely and valid Opt  
19 Out shall be deemed a Participating Class Member and shall be bound by all terms of this  
20 Settlement and any Final Judgment entered by the Court if the Court grants final approval of the  
21 Settlement.

22           **(C)** All Opt-Out requests will be submitted to the Settlement Administrator,  
23 who shall, within 10 days after the deadline for submitting an Opt-Out request, including any  
24 extensions for re-mailed Notice Packets, certify jointly to Plaintiff's Counsel and Defendant's  
25 Counsel the total number of Settlement Class Members who have Opted Out (excluded  
26 themselves) from the Settlement.

1           **2.5. Effectuating FLSA Opt-In Release.** To effectuate an FLSA release, one of the  
2 two settlement checks sent to Participating Settlement Class Members will contain language  
3 expressing a consent to opt into an FLSA collective action. The Settlement Administrator will  
4 file a copy of the written consents with the Court in connection with the motion for final  
5 approval.

6           **2.6. Revocation of Agreement by Defendant.** If five percent (5%) or more of the  
7 Settlement Class Members Opt Out, Defendant may, at its sole discretion, void this Agreement,  
8 and all actions taken in furtherance of it will be thereby null and void.

9           **(A)** Defendant must exercise this right to void this Agreement by filing with  
10 the Court a Notice of Withdrawal From Settlement within 15 business days after expiration of the  
11 opt-out period.

12           **(B)** If Defendant files a timely Notice of Withdrawal, the Action will proceed  
13 as if no settlement had been attempted. In that event, the Court will enter an order voiding the  
14 Order Granting Preliminary Approval and Defendant will retain the right to contest whether any  
15 aspect of the Action should be maintained as a class action and to contest the merits of the claims  
16 being asserted by Plaintiff in the Action.

17           **2.7. Objection Procedures.** Settlement Class Members who want to present  
18 objections to the proposed settlement at the Fairness Hearing must first do so in writing. The  
19 objection must set forth the factual and legal bases for the objection. To be considered, any  
20 objections pertaining solely to Plaintiff's Counsel's fees and cost application must be filed with  
21 the Court and served on the Parties no later than 30 days after Plaintiff's Counsel files the fee  
22 application. Objections to any other aspect of the settlement must be served and filed by the date  
23 specified in the Notice Packet. Objections must be mailed to the Court only via First-Class U.S.  
24 Mail, postage prepaid, and be postmarked by the date specified in the Notice Packet, which shall  
25 be 30 calendar days after the initial mailing of the Notice Packet. All objections will be scanned  
26 into the electronic case docket and the parties will receive electronic notices of filing. Settlement  
27 Class Members who opt out are not entitled to file objections. An objector has the right to  
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1 appear at the Fairness Hearing either in person or through counsel. An objector who wants to  
2 appear at the Fairness Hearing should state his or her intention to do so at the time he or she  
3 submits his or her written objections. An objector may withdraw his or her objections at any  
4 time. No Settlement Class Member may appear at the Fairness Hearing to object to the terms of  
5 the Settlement unless he or she has filed a timely objection that complies with the procedures  
6 provided above. A Settlement Class Member who submits an objection remains bound by this  
7 Agreement.

8 **2.8. Motion for Final Approval.** Not later than 30 calendar days before the Fairness  
9 Hearing, or such other time as the Court may require, Plaintiff will submit a motion for final  
10 approval of the Settlement.

11 At the Fairness Hearing, the Parties will request that the Court, among other things, (a)  
12 grant final certification of the Settlement Class for purposes of settlement; (b) enter Final  
13 Judgment in accordance with this Agreement and without further fees or costs to any party  
14 except as expressly set forth in this Agreement; (c) approve the Settlement as fair, reasonable,  
15 adequate, and binding on all Participating Settlement Class Members who have not timely  
16 submitted a valid Opt-Out request; (d) enter an order as to Plaintiff's Counsel's request for  
17 attorneys' fees and costs; (e) enter an order approving a Class Representative Service Award;  
18 and (f) enter an order permanently enjoining all Participating Settlement Class Members from  
19 pursuing and/or seeking to reopen claims that have been released by this Agreement. After entry  
20 of the Final Judgment, the Court shall have continuing jurisdiction solely for purposes of  
21 addressing: (i) the interpretation and enforcement of the terms of the Agreement, (ii) settlement  
22 administration matters, and (iii) such post-Final Judgment matters as may be appropriate under  
23 court rules or as set forth in this Agreement.

24 **2.9. Effect of Failure to Grant Final Approval.** In the event the Court fails to enter  
25 Final Judgment in accordance with this Agreement, or such Final Judgment does not become  
26 Final as defined herein, the Parties shall proceed as follows: The Action will resume unless the  
27 Parties jointly agree to (1) seek reconsideration or appellate review of the decision denying entry  
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1 of Final Judgment, or (2) attempt to renegotiate the settlement and seek Court approval of the  
2 renegotiated settlement. In the event any reconsideration and/or appellate review is denied, or a  
3 mutually agreed settlement is not approved, the Action will proceed as if no settlement has been  
4 attempted. In that event, the Court will enter an order voiding the Order Granting Preliminary  
5 Approval and Defendant will retain the right to contest whether any aspect of the Action should  
6 be maintained as a class action and to contest the merits of the claims being asserted by Plaintiff  
7 in the Action.

### 8 **3. SETTLEMENT PROCEEDS**

#### 9 **3.1. Gross Settlement Value.**

10 (A) Defendant agrees to pay the Gross Settlement Value to the Settlement  
11 Administrator no later than 15 calendar days after the Effective Date. The Administrator will  
12 disburse the funds within 30 calendar days of the Effective date in accord with the terms of this  
13 Settlement.

14 (B) Plaintiff, the Participating Settlement Class Members, and Plaintiff's  
15 Counsel shall not seek any further compensation or consideration from Defendant and/or any  
16 other Releasee in connection with the Action or any claims encompassed and released by this  
17 Settlement.

#### 18 **3.2. Settlement Amounts Payable as Attorneys' Fees and Costs.**

19 Plaintiff's Counsel shall request a fee award from the Court of up to 30% of the Gross  
20 Settlement Value of \$1,200,000 plus the \$99,972 in prior payments made to class members as  
21 well as costs not to exceed \$30,000. Defendant does not intend to oppose such a fee and cost  
22 application. Defendant shall have no additional liability for attorneys' fees and costs in  
23 connection with the Action. The fees and costs to be paid pursuant to this Agreement are  
24 included in, and shall be paid by Defendant from, the Gross Settlement Value, and they will be  
25 paid to Plaintiff's Counsel by the Settlement Administrator no later than 30 calendar days after  
26 the Effective Date. Within 10 calendar days after the Effective Date, Plaintiff's Counsel shall  
27 transmit instructions to the Settlement Administrator as to how the Attorneys' Fees and Costs  
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1 Award shall be paid. Plaintiff's Counsel agrees that they are responsible for allocating this  
2 portion of the Gross Settlement Value among themselves and any other counsel for Plaintiff or  
3 Settlement Class Members. In the event an attorneys' lien is asserted relating to this Agreement  
4 or any portion of the Gross Settlement Value, Defendant shall tender the Gross Settlement Value  
5 to the Court and shall thereafter be released from any attorneys' lien claim.

6 (A) Plaintiff's Counsel shall be solely and legally responsible for paying all  
7 applicable taxes on their respective Attorneys' Fees and Costs Award payment and shall  
8 indemnify and hold harmless Defendant from any claim or liability for taxes, penalties, or interest  
9 arising as a result of the payment. The Settlement Administrator shall issue an Internal Revenue  
10 Service ("IRS") Form 1099 to Plaintiff's Counsel for their Attorneys' Fees and Costs Award  
11 payment.

12 (B) The substance of Plaintiff's Counsel's application for attorneys' fees and  
13 costs is not part of this Agreement and is to be considered separately from the Court's  
14 consideration of the fairness, reasonableness, adequacy, and good faith of the settlement. The  
15 outcome of any proceeding related to Plaintiff's Counsel's application for attorneys' fees and  
16 costs shall not terminate this Agreement or otherwise affect the Court's ruling on the motion for  
17 final approval.

18 (C) If Plaintiff's Counsel's application for attorneys' fees and costs is denied,  
19 in whole or in part, Plaintiff's Counsel has the right to appeal such denial. In case of such an  
20 appeal, the amount requested by Plaintiff's Counsel for attorney's fees (up to 30% of the Gross  
21 Settlement Value and the prior payments of \$99,972 to class members), plus the amount sought  
22 by Plaintiff's Counsel for costs, shall be held aside pending such appeal. The balance of the  
23 Gross Settlement Value will be distributed to the Participating Settlement Class Members, the  
24 Settlement Administrator, the LWDA and for the Class Representative Service Award in  
25 accordance with the provisions of this Agreement. If Plaintiff's Counsel's application for  
26 attorneys' fees and costs is denied on appeal, in whole or in part, the portion of the requested  
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1 attorneys' fees and costs denied to Plaintiff's Counsel shall be paid to the Participating Settlement  
2 Class Members.

3 **3.3. Class Representative Service Award.**

4 (A) Plaintiff shall apply to the Court for a Class Representative Service Award  
5 of \$15,000 for James Outley II.

6 (B) The Class Representative Service Award shall be in addition to James  
7 Outley II's Individual Settlement Payment.

8 (C) No later than 30 days after the Effective Date, the Settlement  
9 Administrator will release to Plaintiff the Class Representative Service Award approved by the  
10 Court. The Settlement Administrator shall issue an IRS Form 1099 to the Plaintiff for his Class  
11 Representative Service Award. Plaintiff shall be solely and legally responsible for paying any  
12 and all applicable taxes on his Class Representative Service Award, and shall indemnify and hold  
13 harmless Defendant from any claim or liability for taxes, penalties, or interest arising as a result  
14 of the payments.

15 (D) A condition precedent to Plaintiff receiving the Class Representative  
16 Service Award will be his execution of a general release of all known and unknown claims, along  
17 with his agreement not to Opt Out of, or object, to the Settlement.

18 **3.4. Payment to LWDA.** The Parties agree that \$10,000 of the Gross Settlement  
19 Value is allocated to settle PAGA claims. 75% of the \$10,000 shall be paid to the California  
20 Labor & Workforce Development Agency ("LWDA") and the remaining 25% shall be part of  
21 the Net Settlement Value distributed to Settlement Class Members. Plaintiff's counsel shall be  
22 responsible for notifying the LWDA of this settlement within 5 business days after filing the  
23 motion for preliminary approval.

24 **3.5. Settlement Administration Costs.** The Settlement Administrator shall be paid  
25 the Settlement Administration Costs from the Gross Settlement Value. The Settlement  
26 Administration Costs are estimated to be not greater than \$18,000. An IRS Form 1099 shall be  
27 issued to the Settlement Administrator.



1                   **(A) Certification of Completion.** Upon completion of administration of the  
2 settlement, the Settlement Administrator shall provide written certification of such completion to  
3 the Court and counsel for all Parties.

4                   **(B) Minimization of Administrative Costs.** The Parties agree to cooperate  
5 in the settlement administration process and to make all reasonable efforts to control and  
6 minimize the costs and expenses incurred in administration of the Settlement.

7                   **3.6. Distribution to Participating Settlement Class Members.**

8                   **(A)** Payments made to Plaintiff and/or Participating Settlement Class Members  
9 under the Settlement shall not be considered as a payment of overtime, salary, wages and/or  
10 compensation to any Participating Settlement Class Member under the terms of any applicable  
11 benefit plan or for any purpose except for tax purposes, as provided in this Agreement. The  
12 receipt of payments under the terms of this Settlement shall not affect any Settlement Class  
13 Member's participation in, eligibility for, or vesting in, the amount of any past or future  
14 contribution to, or level of benefits under any applicable benefit plan. Any amounts paid will not  
15 impact or modify any previously credited hours of service or compensation taken into account  
16 under any employee benefit plan sponsored or contributed to by Defendant.

17                   For purposes of this Settlement, "benefit plan" means each and every "employee benefit  
18 plan" as defined in 29 U.S.C. § 1002(3), and, even if not thereby included, any bonus, pension,  
19 stock option, stock purchase, stock appreciation, welfare, profit sharing, retirement, disability,  
20 vacation, severance, hospitalization, insurance, incentive, deferred compensation, or any other  
21 similar benefit plan, practice, program, or policy.

22                   **(B)** Payments to Settlement Class Members shall be calculated as follows:

23                   **(1) Net Settlement Value.** The Net Settlement Value is what remains  
24 after deducting from the Gross Settlement Value the Attorneys' Fees and Costs Award, Class  
25 Representative Service Award, Settlement Administration Costs and the PAGA payment to the  
26 LWDA. The Net Settlement Value shall be calculated and distributed to Participating Settlement  
27 Class Members pursuant to the method described in the next paragraph.

1                                   **(2) Calculation of Individual Settlement Payments.** The Net  
2 Settlement Value shall be apportioned among Settlement Class Members based on the Settlement  
3 Class Member's number of Workweeks (as defined in paragraph 1.28). The Settlement  
4 Administrator will calculate the Workweeks to calculate the Individual Settlement Payments.

5                                   **(3) Two Checks.** Participating Settlement Class Members shall  
6 receive two checks. One check will be for payment of the California state law claims asserted in  
7 the Action. The second check shall be for payment of the FLSA claims asserted in the Action,  
8 and shall include the following language on the back:

9                                   “By endorsing or otherwise negotiating this check, I acknowledge  
10 that I read, understood, and agree to the terms set forth in the  
11 Notice of Class Action Settlement and I consent to join in the Fair  
12 Labor Standards Act (“FLSA”) portion of the [Action], elect to  
participate in the settlement of the FLSA claims, and agree to  
release all of my FLSA claims that are covered by the Settlement.”

13                                   **(C) Resolution of Disputes Concerning Individual Settlement Payments.**  
14 Should any questions arise regarding the determination of eligibility for, or the amounts of, any  
15 Individual Settlement Payments under the terms of this Agreement that are not otherwise resolved  
16 by the Settlement Administrator, Plaintiff's Counsel and Defendant's Counsel shall meet and  
17 confer in an attempt to reach an agreement. If Plaintiff's Counsel and Defendant's Counsel  
18 cannot agree, the Settlement Administrator shall make the final determination, and that  
19 determination shall be conclusive, final and binding.

20                                   **(D)** The distribution of payments under this Agreement shall be made to  
21 Participating Settlement Class Members no later than 30 calendar days after the Effective Date;  
22 no payment of any portion of the Gross Settlement Value shall be made prior to the Effective  
23 Date. Checks will be sent to Participating Settlement Class Members by First-Class U.S. Mail.

24                                   **(E)** In no case will any part of the Gross Settlement Value revert to Defendant.  
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1           **3.7. Provisions Governing Share of Settlement Class Members Who Opt Out, Un-**  
2 **Cashed Checks and Requests for Replacement Checks.**

3           **(A) Share of Those Who Opt Out.** The Settlement Share of Settlement Class  
4 Members who timely Opt Out shall be paid to the Participating Settlement Class Members  
5 pursuant to the formula set forth in this Agreement.

6           **(B) Un-cashed Checks.** Any checks issued to Settlement Class Members  
7 shall be negotiable for at least 180 calendar days. The proceeds from any uncashed checks will be  
8 paid to the Industrial Relations Unpaid Wage Fund after the expiration of the 180-day period and  
9 stop-payment orders shall issue regarding the uncashed checks. Regardless of whether the checks  
10 are cashed, this Agreement will be binding on every Settlement Class Member who does not  
11 timely Opt Out.

12           **(C) Replacement Checks.** If any Settlement Class Member requests issuance  
13 of a replacement check, the request must be received within 120 days of issuance of the initial  
14 check. Any request for a replacement check must be made by written declaration, under penalty  
15 of perjury, that the initially-issued check was lost, stolen or destroyed. However, any replacement  
16 checks that are issued will only be issued after the 180-day negotiability period on initially-issued  
17 checks has passed and after an additional 60-day hold period has passed to ensure that negotiation  
18 of an initial check is not in process at a financial institution. A replacement check will be issued  
19 only one time for any particular Settlement Class Member. To avoid the risk of any such double  
20 payment, the Settlement Administrator will put a stop payment on any checks to be reissued  
21 before reissuing the checks.

22           **3.8. Allocation and Tax Considerations.**

23           **(A)** All Individual Settlement Payments shall be allocated as follows: 90%  
24 percent of the payments to Settlement Class Members are for settlement of non-FLSA claims, and  
25 10% of the payments to Settlement Class Members are for settlement of FLSA claims.

26           Regarding the payments for non-FLSA claims: 15 percent is apportioned for settlement  
27 of unpaid wage claims, and 85 percent is apportioned to interest and penalties.

1           Regarding the payment for FLSA claims: 15 percent is apportioned for settlement of  
2 wage claims, and 85 percent is apportioned to interest and liquidated damages.

3           Payments treated as wages shall be made net of all applicable required withholding taxes,  
4 including, without limitation, federal, state and local income tax withholding and the employee  
5 share of the FICA, SUTA and FUTA taxes, and shall be reported to the IRS and the payee under  
6 the payee's name and Social Security Number on an IRS Form W-2. Payments treated as  
7 interest, penalties and/or liquidated damages shall be made without withholding and shall be  
8 reported to the IRS and the payee, to the extent required by law, under the payee's name and  
9 Social Security Number on an IRS Form 1099.

10           **(B)**     The employer's portion of all payroll and unemployment taxes imposed by  
11 applicable law shall be paid by Defendant to the Settlement Administrator in addition to the Gross  
12 Settlement Value.

13           **(C)**     The Attorneys' Fees and Costs Award payment shall be made without  
14 withholding and reported to the IRS and the payees under the payees' name and taxpayer  
15 identification number, which the payees shall provide for this purpose, on an IRS Form 1099.

16           **(D)**     To the extent that a recipient of a payment pursuant to this Agreement  
17 (including Plaintiff, any individual Settlement Class Member or any of Plaintiff's Counsel) incurs  
18 any liability as a result of failing to pay all taxes, interest, fees, penalties, or assessments due on  
19 that recipient's respective share of the payments issued pursuant to this Agreement, the recipient  
20 so failing to pay such obligations will indemnify, defend, and hold Defendant harmless from and  
21 against any and all liability for such failure to pay such obligations, including liability in the form  
22 of taxes, interest, fees, assessments, or penalties, attorneys' fees, and other costs imposed upon  
23 Defendant for the recipient's failure to pay such obligations. Plaintiff, on behalf of each  
24 individual Settlement Class Member, acknowledges and agrees that Defendant is not giving any  
25 tax advice in connection with this Agreement or the payments to be made pursuant to this  
26 Agreement and he has not relied upon any advice from Defendant or Plaintiff's Counsel as to the  
27 taxability of the payments received pursuant to this Agreement.

1     **4.     RELEASES**

2             **4.1.     Release of Claims by Participating Class Members.**

3                     **(A)     Release and Cal. Civil Code Section 1542 Waiver.** Settlement Class

4 Members who do not opt out will be bound by the following release for all claims except the  
5 FLSA claim:

6                     By operation of the entry of the Final Approval Order and  
7 judgment, and except as to such rights or claims as may be created  
8 by this Agreement, each Class Member, and each of their  
9 respective executors, administrators, representatives, agents, heirs,  
10 successors, assigns, trustees, spouses, or guardians, will release  
11 Turner Contracting, Inc. -- and its current or former officers,  
12 directors, employees and agents (“Released Parties”) -- of and  
13 from any and all claims, rights, demands, charges, complaints,  
14 causes of action, obligations, or liabilities that were or could have  
15 been asserted in any version of the complaints filed in this Action  
16 and that are based on or arise out of the facts alleged in any version  
17 of the complaints filed in this Action, including those for (1)  
18 violation of Labor Code Section 226; (2) violation of Labor Code  
19 Sections 226.7 and 512; (3) violation of Labor Code Sections 1194  
20 and 510; (4) violation of Labor Code Section 227.3; (5) violation  
21 of Labor Code Section 203; (6) violation of Labor Code Sections  
22 204, 223 and 1197; (7) unfair competition or unfair business  
23 practices under the California Unfair Competition Law and  
California Business and Professions Code, Sections 17200 *et seq.*;  
and (8) failure to make proper disclosures in violation of the  
California Investigative Consumer Reporting Agencies Act arising  
at any time between June 14, 2013 and preliminary approval of  
the Settlement Agreement. This release also includes a release of  
all claims that were or could have been brought based on the facts  
asserted in any version of the complaints filed in the Action for  
violation, known or unknown, of any part of California Industrial  
Welfare Commission Wage Orders as well as a release of all  
claims under the California Private Attorney General Act of 2004  
(“PAGA”), California Labor Code Section 2698 *et seq.*, arising  
from any of the underlying claims that were or (based on the facts  
alleged) could have been asserted in any version of the complaints  
filed in the Action, including claims for restitution and other  
equitable relief, liquidated damages, punitive damages, waiting  
time penalties, and any other penalties of any nature whatsoever  
(collectively the “Class Released Claims”).

24                     The Parties’ intent in entering into this settlement is to release  
25 Defendant and the Released Parties from any and all claims that  
26 arise from the claims alleged in the Action, and preclude  
27 Defendant from owing any further monies (beyond the payments  
28 set forth in this Settlement) to Settlement Class Members based  
upon the claims made, or that could have been made, based upon  
the allegations contained in the Action. This release excludes the  
release of any claims not permitted to be released by law.

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2           **(B) FLSA Release.** Settlement Class Members who sign, cash or otherwise  
3 negotiate the FLSA Check, will be bound by the following release:

4           By operation of the entry of the Final Approval Order and  
5 judgment, and except as to such rights or claims as may be created  
6 by this Agreement, each Class Member, and each of their  
7 respective executors, administrators, representatives, agents, heirs,  
8 successors, assigns, trustees, spouses, or guardians, will release  
9 Turner Contracting and the Released Parties of and from any and  
10 all claims, rights, demands, charges, complaints, causes of action,  
obligations, or liability based on or arising out of the facts alleged  
in any version of the complaints filed in this Action, including  
those for failure to pay all wages, including overtime wages, under  
the Fair Labor Standards Act, 29 U.S.C. Sections 206, 207, and  
216 arising at any time between June 14, 2013 and preliminary  
approval of the Settlement Agreement.

11           **4.2. Additional Release by Plaintiff.** In addition to the above releases applicable to  
12 the Participating Class Members, Plaintiff also generally releases any and all claims against each  
13 of the Released Parties. This general release includes any and all claims arising from his  
14 employment relationship with Defendant, including, without limitation, claims for discrimination  
15 or harassment pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000 et  
16 seq. or the California Fair Employment and Housing Act, Cal. Gov't Code Section 12900 et seq.  
17 This general release by Plaintiff also includes a waiver of California Civil Code Section 1542.  
18 Plaintiff expressly waive all rights provided by California Civil Code Section 1542, or other  
19 similar statutes, that Plaintiff may have against each of the Released Parties. California Civil  
20 Code Section 1542 states:

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

25           **4.3. Release of Claims for Fees and Costs Relating to Settled Matters.** Plaintiff's  
26 Counsel and Plaintiff, on behalf of themselves and each individual Class Member, hereby  
27 irrevocably and unconditionally release, acquit, and forever discharge Defendant and the other  
28 Released Parties from any claim that they, or any of them, may have for attorneys' fees or costs

1 associated with the representation of Plaintiff and the Class Members, except for the attorneys'  
2 fees and costs sought pursuant to this Agreement. It is the Parties' understanding and agreement  
3 that any fee and cost payments approved by the Court in accordance with this Agreement will be  
4 the full, final, and complete payment of all attorneys' fees and costs associated with all claims  
5 settled in this Agreement.

6 **4.4. Non-Admission of Liability.** By entering into this Agreement, Defendant in no  
7 way admits any violation of law or any liability whatsoever to Plaintiff and/or the Settlement  
8 Class Members, individually or collectively, all such liability being expressly denied. Likewise,  
9 by entering into this Agreement, Defendant in no way admits to the suitability of this case for  
10 class action litigation other than for purposes of settlement. Rather, Defendant enters into this  
11 Agreement to avoid further protracted litigation and to resolve and settle all disputes with  
12 Plaintiff and the Settlement Class Members. The settlement of the Action, the negotiation and  
13 execution of this Agreement, and all acts performed or documents executed pursuant to or in  
14 furtherance of this Agreement: (a) are not, shall not be deemed to be, and may not be used as an  
15 admission or evidence of any wrongdoing or liability on the part of Defendant or of the truth of  
16 any of the factual allegations in any and all complaints filed in the Action; (b) are not, shall not  
17 be deemed to be, and may not be used as an admission or evidence of fault or omission on the  
18 part of Defendant in any civil, criminal, administrative, or arbitral proceeding; and (c) are not,  
19 shall not be deemed to be, and may not be used as an admission or evidence of the  
20 appropriateness of these or similar claims for class certification or administration other than for  
21 purposes of administering this Agreement. The Parties understand and agree that this Agreement  
22 and all exhibits thereto are settlement documents and shall be inadmissible for any purpose in  
23 any proceeding, except an action or proceeding to approve, interpret, or enforce the terms of this  
24 Agreement. The Parties agree, however, that to the extent permitted by law, this Agreement may  
25 be pleaded as a full and complete defense to, and may be used as the basis for an injunction  
26 against any action, suit or other proceeding that may be instituted, prosecuted or attempted in  
27 breach of this Agreement.

1     **5.     NO PRIOR ASSIGNMENTS OR UNDISCLOSED LIENS**

2             Plaintiff and Plaintiff’s Counsel represent and warrant that they have not assigned,  
3 transferred, conveyed, or otherwise disposed of, or purported to assign, transfer, convey, or  
4 otherwise dispose of any released claims or the Attorneys’ Fees and Costs Award to be paid  
5 pursuant to this Agreement. Plaintiff and Plaintiff’s Counsel further represent and warrant that  
6 there are not any liens or claims against any of the amounts being paid by Defendant as provided  
7 in this Agreement. Plaintiff and Plaintiff’s Counsel agree to defend, indemnify, and hold  
8 Defendant harmless from any liability, losses, claims, damages, costs, or expenses, including  
9 reasonable attorneys’ fees, resulting from a breach of these representations and/or from any lien  
10 or assignment.

11     **6.     MISCELLANEOUS**

12             **6.1.     Cooperation Between the Parties; Further Acts.** The Parties shall cooperate  
13 fully with each other and shall use their best efforts to obtain the Court’s approval of this  
14 Agreement and all of its terms. Each of the Parties, upon the request of any other Party, agrees  
15 to perform such further acts and to execute and deliver such other documents as are reasonably  
16 necessary to carry out the provisions of this Agreement.

17             **6.2.     Papers to Be Filed With the Court.** All papers to be filed with the Court by  
18 Defendant or Plaintiff’s Counsel in connection with this Agreement shall be submitted to the  
19 other Party within a reasonable time prior to filing. The other Party shall have no right to object  
20 to the papers unless they do not conform to the terms and conditions of this Agreement.

21             **6.3.     Entire Agreement.** This Agreement constitutes the entire agreement between the  
22 Parties with regard to the subject matter contained herein, and all prior and contemporaneous  
23 negotiations and understandings between the Parties shall be deemed merged into this  
24 Agreement.

25             **6.4.     Binding Effect.** This Agreement shall be binding upon the Parties and, with  
26 respect to Plaintiff and the Settlement Class Members, their spouses, children, representatives,  
27 heirs, administrators, executors, beneficiaries, conservators, attorneys and assigns.



1           **6.5. Arms'-Length Transaction; Materiality of Terms.** The Parties have negotiated  
2 all the terms and conditions of this Agreement at arms' length. All terms and conditions of this  
3 Agreement in the exact form set forth in this Agreement are material to this Agreement and have  
4 been relied upon by the Parties in entering into this Agreement.

5           **6.6. Captions.** The captions or headings of the sections and paragraphs of this  
6 Agreement have been inserted for convenience of reference only and shall have no effect upon  
7 the construction or interpretation of any part of this Agreement.

8           **6.7. Construction.** The determination of the terms and conditions of this Agreement  
9 has been by mutual agreement of the Parties. Each party participated jointly in the drafting of  
10 this Agreement, and therefore the terms and conditions of this Agreement are not intended to be,  
11 and shall not be, construed against any party by virtue of draftsmanship.

12           **6.8. Continuing Jurisdiction.** The Court shall retain jurisdiction over the  
13 implementation of this Agreement as well as any and all matters arising out of, or related to, the  
14 implementation of this Agreement and of the settlement contemplated thereby. The Court shall  
15 not have jurisdiction to modify the terms of the Agreement.

16           **6.9. Changes to Be in Writing.** No waiver, modification or amendment of the terms  
17 of this Agreement, whether purportedly made before or after the Court's approval of this  
18 Agreement, shall be valid or binding unless in writing, signed by or on behalf of all Parties and  
19 then only to the extent set forth in such written waiver, modification or amendment, subject to  
20 any required Court approval. Any failure by any Party to insist upon the strict performance by  
21 the other Party of any of the provisions of this Agreement shall not be deemed a waiver of future  
22 performance of the same provisions or of any of the other provisions of this Agreement, and such  
23 Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific  
24 performance of any and all of the provisions of this Agreement.

25           **6.10. When Agreement Becomes Effective; Counterparts.** This Agreement shall  
26 become effective upon its execution. The Parties may execute this Agreement in counterparts,  
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1 and execution in counterparts shall have the same force and effect as if Plaintiff and Defendant  
2 had signed the same instrument.

3 **6.11. Facsimile or Scanned Signatures.** Any Party may execute this Agreement by  
4 signing on the designated signature block below and transmitting that signature page via  
5 facsimile or as an attachment to an e-mail to counsel for the other Party. Any signature made  
6 and transmitted by facsimile or as an attachment to an e-mail for the purpose of executing this  
7 Agreement shall be deemed an original signature for purposes of this Agreement and shall be  
8 binding upon the Party whose counsel so transmits the signature page.

9 **6.12. Exhibits Incorporated by Reference.** The terms of this Agreement include the  
10 terms set forth in any attached Exhibit, which are incorporated by this reference as though fully  
11 set forth herein. Any Exhibit to this Agreement is an integral part of the Settlement.

12 **6.13. Interim Stay of Proceedings.** The Parties agree to refrain from further litigation  
13 of this matter, except such proceedings necessary to implement and obtain an order granting final  
14 approval of the terms of the Agreement. The Parties further agree that the mutual, voluntary  
15 cessation of litigation shall terminate if the motion for preliminary approval or the motion for  
16 final approval of the Agreement is denied by the Court.

17 **6.14. Governing Law.** All terms of this Agreement and Exhibits hereto shall be  
18 governed by and interpreted according to the laws of the State of California.

19 **6.15. Invalidity of Any Provision.** Before declaring any provision of this Agreement  
20 invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible  
21 consistent with applicable precedents so as to render all provisions of this Agreement valid and  
22 enforceable.

23 **6.16. Waiver of Right to Be Excluded and Object.** By signing this Agreement,  
24 Plaintiff agrees to be bound by the terms herein. For good and valuable consideration, Plaintiff  
25 further agrees that he shall not submit an Opt Out request and shall not object to any of the terms  
26 of this Agreement. Any such Opt Out request or objection by Plaintiff shall be void and of no  
27 force or effect. Efforts by Plaintiff to circumvent the terms of this paragraph shall be void and of  
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1 no force or effect. Plaintiff shall be issued an Individual Settlement Payment at the time the  
2 Settlement Administrator issues Individual Settlement Payments for other Participating  
3 Settlement Class Members. Plaintiff and Plaintiff's Counsel further represent and warrant that  
4 they have not and will not (a) attempt to void this Agreement in any way; or (b) solicit,  
5 encourage or assist in any fashion any effort by any entity or person to object to the settlement  
6 set forth in this Agreement or to Opt Out of the Settlement. When Plaintiff's Counsel fulfills  
7 their obligation to respond factually to Settlement Class Member questions about the settlement  
8 and what they must do to follow available options (including objecting or opting out), Plaintiff's  
9 Counsel will not be in violation of the prohibition on assistance.

10 **6.17. No Solicitation of Opt-Outs.** Defendant and Defendant's Counsel further  
11 represent and warrant that they have not and will not solicit, encourage or assist in any fashion  
12 any effort by any entity or person to object to the settlement set forth in this Agreement or to opt  
13 out of the Settlement Class.

14 **6.18. No Undue Publicity.** Neither Plaintiff nor Class Counsel shall cause to be  
15 publicized, directly or indirectly, any discussion resulting in or the existence of this Agreement  
16 or its terms in any type of mass media, including, but not limited to, speeches, press conferences,  
17 press releases, interviews, television or radio broadcasts, newspapers, website postings, messages  
18 on the Internet, Facebook, Twitter or any other social media. Breach of this provision shall  
19 entitle Defendant, in the exercise of its sole discretion, to nullify this Agreement and the  
20 Settlement Agreement at any time before the Effective Date. Should Plaintiff or Class Counsel  
21 at any time breach this provision, Plaintiff shall forfeit to Defendant the full amount of his  
22 Service Award. Without limitation by the foregoing, Defendant also may enforce this provision  
23 through an action for injunctive relief. Plaintiff waives any obligation by Defendant to file a  
24 bond in connection with any such action. After the Effective Date, Class Counsel may state on  
25 their website that the case has been settled and provide a short and plain description of the claims  
26 that were settled, subject to Defendant's approval. This provision does not apply to any  
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1 publications ordered by the Court. Class Counsel may also refer to this Settlement in court  
2 filings where prior experience is discussed.

3 **6.19. Integration Clause.** This Settlement Agreement contains the entire agreement  
4 between the Parties relating to the settlement, and all prior or contemporaneous agreements,  
5 understandings, representations, and statements, whether oral or written and whether by a party  
6 or such party's legal counsel, are merged herein. No rights hereunder may be waived except in  
7 writing.

8 **6.20. Disputes.** Any dispute between the Parties as to the remaining terms of the  
9 settlement agreement shall be decided by Mediator Mark Rudy, whose decision shall be final and  
10 binding on the Parties. The Plaintiff, on one side, and Defendant, on the other, will split equally  
11 any additional costs of the mediator associated with any dispute and all Parties will bear their  
12 own attorneys' fees and other costs incurred.

13 **6.21. Time Periods.** The time periods and dates provided in this Agreement with  
14 respect to giving of notices and hearings are subject to Court approval and modification by the  
15 Court or by written stipulation of Plaintiff's Counsel and Defendant's Counsel without further  
16 notice to the Settlement Class Members.

17 Dated: ~~June~~ <sup>July</sup> 2, 2018

TURNER CONTRACTING, INC.

18  
19 By: Steven L. Turner

20  
21 Dated: ~~June~~ <sup>July</sup> 2, 2018

NASSIRI & JUNG LLP

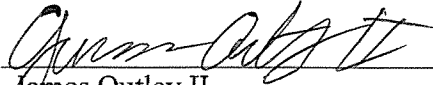
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23 By: Andrew R. Kislik

24 Kassra P. Nassiri, Esq.  
25 Andrew R. Kislik, Esq.  
26 Attorneys for Defendant  
27 Turner Contracting, Inc.  
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Dated: July 3, 2018

PLAINTIFF JAMES OUTLEY II

  
James Outley II

Dated: July \_\_, 2018

BRADLEY/GROMBACHER, LLP  
UNITED EMPLOYEES LAW GROUP PC

By: \_\_\_\_\_  
Marcus J. Bradley, Esq.  
Kiley L. Grombacher, Esq.  
Walter L. Haines, Esq.

Attorneys for Plaintiff James Outley II

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Dated: July \_\_, 2018

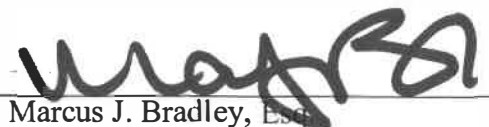
PLAINTIFF JAMES OUTLEY II

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James Outley II

Dated: July 2, 2018

BRADLEY/GROMBACHER, LLP  
UNITED EMPLOYEES LAW GROUP PC

By:   
\_\_\_\_\_  
Marcus J. Bradley, Esq.  
Kiley L. Grombacher, Esq.  
Walter L. Haines, Esq.

Attorneys for Plaintiff James Outley II