

United States District Court
Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JAMES OUTLEY II,
Plaintiff,
v.
TURNER CONTRACTING, INC., A
INDIANA CORPORATION,
Defendant.

Case No. 17-CV-03465-LHK

**ORDER GRANTING MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Re: Dkt. No. 48

WHEREAS, Plaintiff James Outley II (“Plaintiff”) has applied to this Court for an Order preliminarily approving the Settlement of this Action in accordance with a Joint Stipulation of Settlement and Release of Claims (“Settlement Agreement”), which sets forth the terms and conditions for a proposed Settlement; and

WHEREAS, the Court has read and carefully considered Plaintiff’s Motion For Preliminary Approval of Class Action Settlement, the supporting Memorandum of Points and Authorities, the Declaration of Marcus J. Bradley filed in support thereof, and in recognition of the Court’s duty to make a preliminary determination as to the reasonableness of this proposed class action Settlement, and if preliminarily determined to be reasonable, to ensure proper notice is provided to all Class Members in accordance with due process requirements and to set a Final Approval Hearing to consider the fairness,

1 adequacy and reasonableness of the proposed Settlement, **THE COURT HEREBY MAKES THE**
2 **FOLLOWING DETERMINATIONS AND ORDERS:**

3 1. This Order incorporates by reference the definitions in the Settlement Agreement
4 and all terms defined therein shall have the same meaning in this Order as set forth in the
5 Settlement Agreement.

6 2. It appears to the Court on a preliminary basis that the Settlement is fair, adequate
7 and reasonable. Indeed, the Court recognizes the significant value of the monetary recovery
8 provided to all Class Members and finds that such recovery is fair, adequate and reasonable when
9 balanced against further litigation related to liability and damages issues. It further appears that
10 extensive and costly investigation, formal and informal discovery, research and litigation have
11 been conducted such that Class Counsel and Defense Counsel are able to reasonably evaluate their
12 respective positions at this time. It further appears to the Court that the proposed Settlement, at
13 this time, will avoid substantial additional costs by all Parties, as well as avoid the risks and delay
14 inherent to further prosecution of the Action. It also appears that the Settlement has been reached
15 as the result of intensive, serious and non-collusive, arms-length negotiations. Thus, the Court
16 finds on a preliminary basis that the Settlement Agreement appears to be within the range of
17 reasonableness of a settlement that could ultimately be given final approval by this Court.
18 Accordingly, the Motion for Preliminary Approval of Class Action Settlement is hereby
19 **GRANTED.**

20 3. For purposes of this Settlement only, the Court hereby conditionally certifies the
21 Settlement Class, defined as: all non-exempt employees who were employed by Defendant in
22 California at any time between June 14, 2013 and July 6, 2018 (date of preliminary approval of the
23 Settlement Agreement). Should for whatever reason the Settlement not become final, the fact that
24 the Parties were willing to stipulate to certification of the Settlement Class shall have no bearing
25 on, nor be admissible in connection with, the issue of whether a class should be certified in a non-
26 settlement context.

United States District Court
Northern District of California

1 4. For Settlement purposes only, the Court hereby appoints Plaintiff James Outley II
2 as the class representative.

3 5. For Settlement purposes only, the Court hereby appoints Marcus J. Bradley and
4 Kiley L. Grombacher of Bradley/Grombacher LLP as Class Counsel.

5 6. The Court hereby appoints CPT Group, Inc. as the Settlement Administrator to
6 administer the Settlement of this matter as more specifically set forth in the Settlement Agreement.

7 7. The Court approves, as to form and content, the Notice of Settlement as amended
8 (“Amended Notice of Settlement”), which is attached as a redlined version as Exhibit 1 to this
9 Order and as a clean version incorporating all changes as Exhibit 2 to this Order. The Court finds
10 that the Amended Notice of Settlement fairly and adequately advises Class Members of the terms
11 of the proposed Settlement and the benefits available to Class Members thereunder. The Court
12 further finds that the Amended Notice of Settlement advises of the pendency of the Action, of the
13 proposed Settlement, of Class Members’ right to receive their share of the Settlement, of the scope
14 and effect of the Settlement’s Released Claims, of Class Members’ rights and obligations relating
15 to the prospective relief provided through the Settlement, of the preliminary Court approval of the
16 proposed Settlement, exclusion and objection timing and procedures, of the date of the Final
17 Approval Hearing, and of the right to file documentation in support of or in opposition to the
18 Settlement and to appear in connection with the Final Approval Hearing. Thus, the Court finds
19 that the Amended Notice of Settlement clearly comports with all constitutional requirements,
20 including those of due process. The Court further finds that the mailing of the Amended Notice of
21 Settlement to the last known address of Class Members as specifically described within the
22 Settlement Agreement, with measures taken for verification of addresses, as set forth therein,
23 constitutes an effective method of notifying Class Members of their rights with respect to the
24 Action and this Settlement.

25 8. No later than twenty (20) calendar days after the entry of the Preliminary Approval
26 Order, Defendant shall transmit to the Settlement Administrator, in a readable, ready to use
27 electronic Excel format spreadsheet, the Class Information for each Class Member, including: full

United States District Court
Northern District of California

1 name; most recent known mailing address and telephone number; Social Security Number; dates
2 of employment; and any other information needed to calculate the Individual Settlement Payments
3 for each Participating Settlement Class Member.

4 9. No later than thirty (30) calendar days after entry of the Preliminary Approval
5 Order, (the "Notice Date"), the Settlement Administrator shall mail the Amended Notice of
6 Settlement to all Class Members, using the most current mailing address information available.

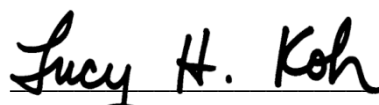
7 10. The Final Approval Hearing shall be held at November 1, 2018 at 1:30 p.m., in the
8 San Jose Courthouse, Courtroom 8 - 4th Floor, located at 280 South 1st Street, San Jose, CA
9 95113, to consider the fairness, adequacy and reasonableness of the proposed Settlement and Class
10 Counsel's requests for (a) the PAGA Award; (b) Plaintiff's Service Awards; (c) the Class Counsel
11 Fees Award; (d) the Class Counsel Costs Award; and (e) Settlement Administration Costs. All
12 briefs and materials in support of the Final Approval Order shall be filed with this Court on or
13 before October 2, 2018. The only exception is for Class Counsel's motion for attorneys' fees,
14 which must be filed on the same day on which the Settlement Administrator mails the Amended
15 Notice of Settlement to all Class Members.

16 11. Pending further orders of this Court, all proceedings in this matter except those
17 contemplated in this Preliminary Approval Order and in the Settlement Agreement are stayed.

18 12. The Court reserves the right to continue the Final Approval Hearing without further
19 notice to Class Members.

20 **IT IS SO ORDERED.**

21
22 Dated: July 6, 2018

23 
24 _____
25 LUCY H. KOH
26 United States District Judge
27
28