

**EXHIBIT 1**

**SETTLEMENT AGREEMENT**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

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In re:	)	
	)	Chapter 11
BUFFETS, LLC, <i>et al.</i> ,	)	
	)	Case No. 16-50557-rbk
	)	
Debtors	)	(Jointly Administered)

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**SETTLEMENT AGREEMENT AS TO PRE-PETITION, NON-PRIORITY,  
UNSECURED CLAIMS ARISING UNDER THE FAIR LABOR STANDARDS ACT.**

This SETTLEMENT AGREEMENT (the “**Agreement**”) is entered into as of the date last written below, by and between the Unsecured Creditors’ Trustee (as further defined hereinafter) (“**Trustee**”) and the FLSA Claimants (as further defined hereinafter, and collectively with the Trustee, the “**Parties**”)

WHEREAS, the FLSA Claimants (defined below) are current and/or former employees of Buffets, LLC and its wholly owned subsidiaries (collectively, the “**Debtors**”)<sup>1</sup>, or of an affiliated payroll company, who work and/or worked as tipped-employee servers at restaurants owned and operated by various of the Debtors;

WHEREAS, on October 17, 2013, Lynn Walter, Lynn Brown, and Kathlene Abston, each a server employee of the Debtors and represented by the law firm of Getman, Sweeney & Dunn, PLLC (“**FLSA Counsel**”), filed an action in the United States District Court of Minnesota, Case No. 13-cv-02860-PAM-SER, asserting claims against the Debtors for unpaid wages under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (the “**FLSA**”) and applicable state wage and

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<sup>1</sup> The Debtors, along with the last four digits of each Debtor’s federal tax identification number, are:

Buffets, LLC (2294); Hometown Buffet, Inc. (3002); OCB Restaurant Company, LLC (7607); OCB Purchasing, Co. (7610); Ryan’s Restaurant Group, LLC (7895); Fire Mountain Restaurants, LLC (8003); and Tahoe Joe’s, Inc. (7129). The address of the Debtors is 120 Chula Vista Drive, Hollywood Park, Texas 78232.

hour laws; and on November 1, 2014, such action was transferred to the United States District Court of South Carolina, Greenville Division, Case No. 6:13-cv-02995-JMC (the “**South Carolina Action**”); and on June 25, 2015, the court in the South Carolina Action granted conditional certification of the South Carolina Action as a collective action and directed that notice of the South Carolina Action be sent to current and former server employees of the Debtors;

WHEREAS, on March 7, 2016 (the “**Petition Date**”), prior to notice of the South Carolina Action being sent to current and former server employees, the Debtors filed voluntary petitions for relief under Chapter 11, resulting in Chapter 11 bankruptcy cases jointly-administered under case number 16-50557 (the “**Bankruptcy Cases**”) which are pending before the United States Bankruptcy Court for the Western District of Texas, San Antonio Division (the “**Bankruptcy Court**”);

WHEREAS, pursuant to order of the Bankruptcy Court entered on January 31, 2017 [Bankruptcy Doc. No. 2126], notice consistent in scope and substance with that ordered by the court in the South Carolina Action was sent to current and former server employees of the Debtors: (a) advising such individuals of their rights to assert claims arising under the FLSA and applicable state wage laws in the Bankruptcy Cases by filing individual proofs of claim, and (b) setting deadlines for the filing of proofs of claim asserting claims for unpaid wages arising under the FLSA and other wage and hour laws;

WHEREAS, FLSA Counsel filed in the Bankruptcy Cases individual proofs of claim asserting claims for unpaid wages and other relief under the FLSA and applicable state wage and hour laws (the “**FLSA Claims**”) on behalf of approximately 1,600 current and former server

employees of the Debtors (collectively, the “**FLSA Claimants**”, and each an “**FLSA Claimant**”);

WHEREAS, the proofs of claim filed by FLSA Counsel on behalf of the FLSA Claimants seek, without limitation, allowance of claims entitled to priority (the “**Priority FLSA Claims**”) pursuant to 11 U.S.C. § 507(a) or other provisions of the United States Bankruptcy Code (the “**Bankruptcy Code**”);

WHEREAS, on April 27, 2017, the Bankruptcy Court entered its *Findings of Fact, Conclusions of Law and Order Confirming Chapter 11 Plan* [Bankruptcy Doc. No. 2576] (the “**Confirmation Order**”) confirming the Debtors’ *Second Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Bankruptcy Doc. No. 2573] (the “**Plan**”)<sup>2</sup>;

WHEREAS, the Effective Date of the Plan occurred on May 18, 2017;

WHEREAS, pursuant to the Plan and the Unsecured Creditors’ Trust Agreement (the “**Trust Agreement**”) incorporated therein, certain assets were transferred to an Unsecured Creditors’ Trust (the “**Trust**”), established for the purpose of making distributions in accordance with the terms of the Plan to holders of allowed Class 4 General Unsecured Claims and Class 5 Convenience Claims;

WHEREAS, pursuant to the Plan, META Advisors LLC was appointed as Unsecured Creditors’ Trustee (the “**Trustee**”) to administer the Trust;

WHEREAS, pursuant to Article VII. Section H. of the Plan, the Trustee has the exclusive right, among other things, to settle, in the Trustee’s sole discretion and without Bankruptcy Court approval, disputed pre-petition non-priority general unsecured claims for which treatment under Class 4 General Unsecured Claims and/or Class 5 Convenience Claims is sought;

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<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings set forth in the Plan.

WHEREAS, pursuant to Article VII. Section D.1. of the Plan, VVII., the Trustee has the right and power, in its discretion, to compromise and settle disputed pre-petition, non-priority, unsecured claims in exchange for, without limitation, immediate cash payments not exceeding the estimated percentage amount of projected distributions to holders of allowed general unsecured claims;

WHEREAS, listed on “**Exhibit A**” attached hereto are those FLSA Claims<sup>3</sup> which, as of the date of this Agreement, meet all of the following criteria: (1) has not previously been disallowed by the Bankruptcy Court, (2) arose prior to the Petition Date, (3) is not a Priority FLSA Claim, (4) exceeds \$7,500 in asserted amount and the FLSA Claimant did not opt on his or her Plan ballot for treatment as a Class 5 Convenience Claim in the amount of \$7,500, and, (5) to the extent constituting an allowed claim, is entitled to participate in *pro rata* distributions from the Trust as a Class 4 General Unsecured Claim under the Plan (collectively, the “**FLSA General Unsecured Claims**”);

WHEREAS, as set forth on **Exhibit A**, the FLSA General Unsecured Claims total 608 in number and \$17,175,405.76 in combined asserted amount;

WHEREAS, listed on “**Exhibit B**” attached hereto are those FLSA Claims which, as of the date of this Agreement, meet all of the following criteria: (1) has not previously been disallowed by the Bankruptcy Court, (2) arose prior to the Petition Date, (3) is not a Priority FLSA Claim, (4) is asserted in an amount equal to or less than \$7,500 or the FLSA Claimant opted on his or her Plan ballot for treatment as a Class 5 Convenience Claim asserted in the amount of \$7,500, and (5) to the extent constituting an allowed claim, is entitled to participate in

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<sup>3</sup> Each of the claims listed on the Exhibits to this Agreement is identified by a bankruptcy “claim number”. The referenced claim numbers are those assigned in the official claims register maintained by Donlin, Recano & Company (“**Donlin Recano**”) pursuant to the Bankruptcy Court’s Order Authorizing Retention and Appointment of Donlin, Recano & Company, Inc. [Bankruptcy Doc. No. 58]

distributions from the Trust as a Class 5 Convenience Claim under the Plan (collectively, the “**FLSA Convenience Claims**”); and together with the FLSA General Unsecured Claims, for purposes of Trust distributions, the “**Allowed FLSA Claims**”, and each an Allowed “**FLSA Claim**”; and the holders of such Allowed FLSA Claims, the “**Allowed FLSA Claimants**”, and each an “**Allowed FLSA Claimant**”);

WHEREAS, as set forth on **Exhibit B**, the FLSA Convenience Claims total 198 in number and \$667,370.62 combined asserted amount;

WHEREAS, the Trustee has disputed the validity of each of the FLSA General Unsecured Claims and each of the FLSA Convenience Claims to the extent asserted and contends that such claims should not be allowed or should not be allowed in full; and

WHEREAS, given, among other factors, the anticipated litigation costs associated with adjudicating formal objections to each of the numerous remaining disputed Allowed FLSA Claims, the risks of adverse judgment(s), and the projected level of anticipated *pro rata* distributions from the Trust to holders of allowed Class 4 Claims and allowed Class 5 Claims, the Parties believe compromise and settlement concerning allowance of the Allowed FLSA Claims and distributions from the Trust on account of these disputed claims is in the best interests of all parties in interest in the Bankruptcy Cases;

NOW, THEREFORE, in consideration of the foregoing premises and the representations and mutual covenants set forth hereinafter, as well as other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties accept this Agreement in compromise and settlement of disputed claims and agree as follows, subject to entry of an order by the Bankruptcy Court approving this Agreement:

**1. Acknowledgement of Premises.**

The Parties agree that the premises set forth above are true and correct to the best of their knowledge, information and belief.

**2. FLSA Claims Administrator.**

- a. In order to, among other things, facilitate and administer distributions to holders of the Allowed FLSA Claims pursuant to the Plan and the compromise and settlement set forth in this Agreement, FLSA Counsel shall retain on behalf of the Allowed FLSA Claimants a claims disbursement administrator reasonably acceptable to the Trustee (the “**FLSA Claims Administrator**”).
- b. Any and all distributions and disbursements from the Trust on account of the Allowed FLSA Claims shall be paid directly to the FLSA Claims Administrator.
- c. The FLSA Claims Administrator shall:
  - (i) be solely responsible for making any and all payments and/or distributions to holders of the Allowed FLSA Claims pursuant to this Agreement and/or the Plan;
  - (ii) create a QSF within the meaning of Treasury Regulation § 1.468B-1, *et seq.*;
  - (iii) maintain an 800 number for calls about the lawsuit and settlement, which shall go live on the date the FLSA Claims Administrator mails any payments to Allowed FLSA Claimants and shall continue to be live until nine (9) months after any such payments are made;
  - (iv) calculate, withhold, and pay from distributions and disbursements received from the Trust any and all payroll taxes, withholding taxes, any other taxes, and any expenses associated with making any payments to holders of the

Allowed FLSA Claims or otherwise with administering any funds disbursed or paid to the FLSA Claims Administrator by the Trustee;

- (v) be solely responsible for payment of any fees or expense reimbursements owed to FLSA Counsel, the FLSA Claims Administrator, and/or any professionals or other contractors retained by the FLSA Claims Administrator (which shall be made exclusively from funds to be paid by the Trust pursuant to subparagraphs 3.a. and 3.b. of this Agreement);
- (vi) gather any and all information required in association with making distributions or disbursements to holders of the Allowed FLSA Claims;
- (vii) prepare and file any and all tax forms and/or returns, including, without limitation, required to be prepared or filed by an FLSA Claimant's employer, associated with payment of any amounts to any FLSA Claimant, whether for unpaid wages or otherwise;
- (viii) be solely responsible for compliance with any and all applicable laws in connection with discharging any duties as FLSA Claims Administrator;
- (ix) prepare and provide such reports and/or information concerning any of the foregoing as may be reasonably requested by the Trustee;
- (x) follow up on returned checks through skip tracing and reasonable efforts to locate all Allowed FLSA Claimants; and
- (xi) send any funds from uncashed checks to the applicable state department of unclaimed funds in the name of the non-cashing FLSA Claimant, to be handled in accordance with the applicable state law for unclaimed funds.



- d. The FLSA Claims Administrator shall act as agent for the Allowed FLSA Claimants, and not the Trustee. The Trustee shall have no liability whatsoever for any act or omission on the part of the FLSA Claims Administrator. Any and all liabilities and obligations of the Trustee and/or the Trust to the Allowed FLSA Claimants, or any of them, shall be fully discharged in consideration of and upon payment from the Trust to the FLSA Claims Administrator of the amounts set forth in paragraph 3. of this Agreement.

**3. Payments from the Trust to the FLSA Claims Administrator in Full and Final Satisfaction of the FLSA Claims.**

In full and final satisfaction of any and all rights of the Allowed FLSA Claimants to distributions from the Trust and/or claims against the Trust on account of any FLSA Claims, and in consideration of all of the provisions of this Agreement, each of which forms a material part of the consideration for this Agreement and the payments contemplated herein, the Trustee shall cause the Trust to make the following payments from Trust Assets (as defined in the Plan) to the FLSA Claims Administrator:

- a. Upon the Trustee making a distribution to holders of allowed Class 5 Convenience Claims under the Plan, and as part of such distribution, the Trustee shall pay to the FLSA Claims Administrator an amount equal to the combined distributions payable pursuant to the Plan on account of all of the FLSA Convenience Claims, which shall be calculated pursuant to the terms of Article III. Section E.1. of the Plan<sup>4</sup> and using

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<sup>4</sup> Article III. Section E.1. of the Plan provides:

Each holder of an Allowed Convenience Claim shall receive, in full and final satisfaction of such Claim, either a distribution in Cash equal to ten percent (10%) of such holder's Allowed Convenience Claim or such holder's *pro rata* share of a maximum combined distribution in the amount of \$425,000 to be funded out of the Unsecured Creditors' Trust proceeds to holders Convenience Claims, whichever is less, on the Initial Distribution

- as the allowed claim amount for each such FLSA Convenience Claim the corresponding “Reduced Claim Amount” set forth on **Exhibit B** attached to this Agreement.
- b. Upon the Trustee making a distribution to holders of Class 4 General Unsecured Claims under the Plan, and as part of such distribution, the Trustee shall pay to the FLSA Claims Administrator an amount equal to the combined portion of such distribution payable pursuant to the Plan on account of all of the FLSA General Unsecured Claims, which shall be calculated pursuant to the terms of Article III. Section D.1. of the Plan and using as the allowed amount for each such FLSA General Unsecured Claim the corresponding “Reduced Claim Amount” set forth on **Exhibit A** attached to this Agreement.
- c. The Trustee shall cause the Trust to pay the FLSA Claims Administrator up to and no more than **\$30,000.00** for fees and expenses of the FLSA Claims Administrator. Any amounts owed to the FLSA Claims Administrator in excess of **\$30,000.00** shall be paid from funds received by the FLSA Claims Administrator pursuant to subparagraphs 3.a. and/or 3.b. of this Agreement and the Trust shall have no liability or obligation with respect thereto.
- d. The Trustee shall cause the Trust to pay the FLSA Claims Administrator additional amounts equaling **2.55%** (*i.e.*, **7.65%** of one third) of the amounts to be paid to the FLSA Claims Administrator pursuant to subparagraphs 3.a. and 3.b. of this Agreement (the “**Employer Share of Payroll Taxes Payment**”). The Employer

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Date for the Unsecured Creditors' Trust. Any portion of the \$425,000 remaining after distributions on account of Class 5 Claims shall be applied to fund distributions on account of Class 4 Claims.

Share of Payroll Taxes Payment is to be made from the Trust to the FLSA Claims Administrator in consideration of assumption by the FLSA Claimants and the FLSA Claims Administrator of all responsibility for payment to appropriate taxing authorities of any employers' share of employment-related or payroll taxes to be paid and/or associated with payments or disbursements by the FLSA Claims Administrator to holders of the FLSA Claims. Any such tax liability of the Debtors, the Trust or the Debtors' bankruptcy estates exceeding the Employer Share of Payroll Taxes Payment shall be paid from funds received by the FLSA Claims Administrator pursuant to subparagraphs 3.a. and/or 3.b. of this Agreement and the Trust shall have no liability or obligation with respect thereto.

The Trust and Trustee shall have no liability or obligation to pay or reimburse any amounts, and no obligations or liabilities, to the FLSA Claims Administrator or the FLSA Claimants, except as set forth in this paragraph 3.

**4. Allocation of Settlement Funds.**

The Parties agree, as among themselves, that settlement funds paid by the Trust pursuant to subparagraphs 3. a. and/or 3. b. above shall be allocated as follows:

- a. one third shall be allocated for fees and expenses of FLSA Counsel (and reported by the FLSA Claims Administrator directly to FLSA Counsel on an IRS Form 1099);
- b. half of the amounts remaining after payment of the fees and expenses of FLSA Counsel shall be attributable to claims for liquidated damages arising under the FLSA (and reported by the FLSA Claims Administrator to Allowed FLSA Claimants on an IRS Form 1099); and

- c. and any amounts remaining, after application of subparagraphs 4.a. and 4.b. above and taking into account funds needed for payment of any otherwise unfunded employer share of any employment-related or payroll taxes shall be attributable to unpaid wages (and reported by the FLSA Claims Administrator to Allowed FLSA Claimants on an IRS Form W-2).

The failure of any taxing authority, governmental unit, or other third party to acquiesce to or agree with the foregoing allocations shall have no effect on the enforceability of any other terms of this Agreement.

**5. Distributions and/or Disbursements by the FLSA Claims Administrator.**

The FLSA Claims Administrator shall be authorized to make and shall make the following distributions and/or disbursements from settlement funds received from the Trust:

- a. payment of the FLSA Claims Administrator's fees and reimbursement of expenses, which shall be limited to not more than **\$30,000.00**;
- b. payment of any and all payroll and withholding taxes (including, without limitation, any employers' contribution or share) and/or other taxes arising from or associated with any distributions to Allowed FLSA Claimants, with any such payment to be made first from amounts received from the Trust pursuant to subparagraph 3.d. above;
- c. payment to FLSA Counsel for its fees and expenses, which shall be one third of any amounts received from the Trust pursuant to subparagraphs 3.a. and 3.b. above;
- d. payment to the holder of each FLSA Convenience Claim of his or her *pro rata* share, based on the "Reduced Claim Amount" for each such claim as set forth on **Exhibit B**, of amounts received pursuant to subparagraph 3.a. above, after taking into account

- any amounts withheld or deducted for payroll taxes, withholding taxes, other taxes, fees of and expense reimbursements due FLSA Counsel, and/or other expenses; and
- e. payment to the holder of each FLSA General Unsecured Claim of his or her *pro rata* share, based on the “Reduced Claim Amount” for each such claim as set forth on **Exhibit A**, of amounts received pursuant to subparagraph 3.b. above after taking into account any amounts withheld or deducted for payroll taxes, withholding taxes, other taxes, fees of and expenses due FLSA Counsel, and/or other expenses.

All checks issued by the FLSA Claims Administrator pursuant to this Agreement shall be valid for nine (9) months from the date of the final distribution pursuant to paragraph 3.b. Nine (9) months and seven (7) calendar days after the final distribution pursuant to paragraph 4.b., the FLSA Claims Administrator shall transfer any amounts attributable to uncashed checks remaining in the QSF to the appropriate state department of unclaimed funds. The Trust and the Trustee shall have no liability or obligation to any party with respect to or arising from any act or omission of the FLSA Claims Administrator.

**6. No Other Claims.**

Upon approval of this Agreement by the Bankruptcy Court, the Allowed FLSA Claimants shall have no remaining non-priority, pre-petition claims of any kind (including, without any limitation whatsoever, claims for unpaid wages, attorneys’ fees, and statutory liquidated damages) against the Debtors or their bankruptcy estates, and shall have no rights whatsoever to receive distributions from the Trust. Any and all rights of the Allowed FLSA Claimants pursuant to the Plan to participate in distributions from the Trust are hereby expressly waived and are replaced by, and satisfied in full in exchange for, payments to be made by the Trust to the FLSA Claims Administrator pursuant to paragraph 3. of this Agreement.

7. **General Release of Trust and Trustee.**

- a. In exchange for the payments to be made by the Trust to the FLSA Claims Administrator pursuant to paragraph 3. of this Agreement, the Allowed FLSA Claimants and their representatives, successors, and assigns, (the “**Releasing Parties**”) completely release and forever discharge the Trust, the Trustee, and their past, present, and future employees, subsidiaries, principals, administrators, agents, representatives, employers, attorneys, consultants, predecessors, successors, and assigns (the “**Released Parties**”) from any and all past, present, or future claims, demands, obligations, liens, costs, expenses, actions or causes of action of any whatsoever kind, whether arising by statute, common law, administrative act, or other authority, whether seeking monetary, equitable, administrative, or other relief arising out of any and all facts or circumstances whatsoever, including, without limitation, any claims which have been or could have been asserted in the Bankruptcy Case or the South Carolina Action.
- b. The Releasing Parties understand and agree that this Agreement specifically includes the release and discharge of any and all claims against the Released Parties, whether known or unknown to the Releasing Parties upon acceptance and execution of this Agreement, including, but not limited to, any and all claims for known and unknown, anticipated and unanticipated, and expected and unexpected consequences of any damages arising out of any and all facts or circumstances whatsoever or which could

have been asserted in connection with the Bankruptcy Case or the South Carolina Action.

**8. Indemnification.**

Except for the payments specified in paragraph 3. of this Agreement, the Releasing Parties agree to indemnify and hold harmless the Released Parties from liability for any and all claims related to the Allowed FLSA Claims, the South Carolina Action, distributions from the Trust to FLSA Claims Administrator, and/or acts or omissions of the FLSA Claims Agent, made by any person, firm, corporation, or governmental or non-governmental entity of any kind against any of the Released Parties, whether as a result of claims made by the Allowed FLSA Claimants, distributions from the Trust to FLSA Claims Administrator, and/or distributions made by the FLSA Claims Administrator, including but not limited to, any liability for claims of negligence, breach of contract, misrepresentation, fraud, actionable conduct of any kind, subrogation of claims or liens.

**9. General Representations, Warranties and Covenants.**

- a. The FLSA Claimants through their counsel (*i.e.*, FLSA Counsel) represent and agree that they have investigated to their satisfaction all claims, facts, circumstances, and allegations arising out of the matters which are the subject of the FLSA Claims and the South Carolina Action, and that each of the FLSA Claimants knowingly and voluntarily agrees to assume the risk that his/her decision to enter into this Agreement has, or may have been, materially affected by claims or facts, circumstances or allegations which, for any reason, including but not limited to, the ignorance, mistake, inadvertence, neglect, negligence, fraud, fraudulent inducement, or intentional misconduct of any party or non-party or any attorney, consultant, representative, or

- agent of any party or non-party, they erroneously believe to be true, or they do not know of or have reason to know, in accepting and executing this Agreement.
- b. The FLSA Claimants through their counsel further represent and agree that no promise or inducement has been offered, made, or accepted by anyone in connection with this Agreement except for the mutual covenants expressly set forth in this Agreement, and that they have accepted and entered into this Agreement without reliance upon any statements, claims, or representations made by the Released Parties, except for the payments provided in paragraph 3. of this Agreement.
- c. The FLSA Claimants through their counsel further agree that this Agreement reflects a compromise of disputed claims against the Debtors and with respect to distributions from the Trust and the Debtors' bankruptcy estates, and that neither the fact that this Agreement exists nor the payments specified in paragraph 3. of this Agreement shall constitute, or shall be construed by FLSA Claimants or anyone else, as an admission of fault or determination of liability on the part of the Debtors, the Trust or the Debtors' bankruptcy estates, who have at all times denied and continue to deny liability to the FLSA Claimants, and the Trustee intends merely to promote efficient and cost-effective administration of the Trust through this Agreement.
- d. FLSA Counsel represents that it is unaware of any person, firm, corporation or governmental or non-governmental entity of any kind that has ever had, or now has, any interest in the claims released and discharged by this Agreement or that any of the FLSA Claimants have sold, encumbered, assigned, transferred, conveyed, or otherwise disposed of any of the claims released and discharged by this Agreement.



- e. FLSA Counsel also represents that it is unaware of any person, firm, corporation, or governmental or non-governmental entity of any kind that has asserted any right to proceed by way of subrogation or otherwise against the Trust or the Debtors' bankruptcy estates or any other released party in connection with the matters which are the subject of the FLSA Claims or the South Carolina Action; of any person, firm corporation, governmental or non-governmental entity of any kind other than FLSA Counsel has asserted any right to share in the payments specified in paragraph 3. of this Agreement.
- f. The FLSA Claimants understand and agree that the Released Parties have not made any representations to the FLSA Claimants regarding the tax consequences of this Agreement.

**10. Treatment of Priority FLSA Claims Reclassified as General Unsecured Claims**

The FLSA Claimants represent and warrant to the Trustee that “**Exhibit C**” attached to this Agreement is a complete and accurate list of the Priority FLSA Claims and amounts asserted as priority claims prior to the filing deadline (hereinafter, the “**Priority FLSA Claims**”, and each a “**Priority FLSA Claim**”). Notwithstanding the provisions of paragraph 6 of this Agreement, if (and to the extent that):

- (a) after notice to the Trustee, reasonable opportunity to object, and hearing, Priority FLSA Claims are reclassified as non-priority prepetition unsecured claims by order of the Bankruptcy Court entered within one year after the date of this Agreement (a “**Reclassification Order**”), or
- (b) following entry of a Reclassification Order holding that some or all categories (*i.e.*, back wages, attorneys' fees, or liquidated damages) of the Priority

FLSA Claims are not entitled to priority treatment, the FLSA Claimants file a stipulation of record in the Bankruptcy Cases, within one year after the date of this Agreement, that such categories of the Priority FLSA Claims set forth on **Exhibit C** attached hereto are not entitled to priority treatment and are to be treated as general unsecured claims (such categories, together with any Priority FLSA Claims reclassified by Order as set forth in subparagraph (a) above, are referred to hereinafter as the “**Reclassified FLSA Claims**”),

then Reclassified FLSA Claims resulting from such reclassification (whether by order or stipulation as contemplated above) shall be deemed to be FLSA General Unsecured Claims, with the result being that the settlement payments under subparagraph 3.b. of this Agreement shall be adjusted to account for such Reclassified FLSA Claims. Although the Reclassified FLSA Claims may exceed the amount pled in any particular category of the Priority FLSA Claims, in no case shall the Reclassified FLSA Claims exceed the Priority FLSA Claims in aggregate, *i.e.*, \$2,229,068.96. In all other respects the settlement amounts, any and all releases, covenants, and obligations of the parties shall be unaffected by any such reclassification of any of the FLSA Claims. For purposes of adjusting the settlement payment(s) to be made under subparagraph 3.b., the “Reduced Claim Amount” for each such Reclassified FLSA Claim shall be forty percent (40%) of the amount currently asserted as a priority claim that is subsequently reclassified as set forth above.

For the avoidance of doubt, the Parties hereby stipulate and agree that any portion of the Priority FLSA Claims which is reclassified as a pre-petition non-priority general unsecured claim by an order of the Bankruptcy Court or by stipulation of record as contemplated above, in either case, entered after the expiration of one year from the date of this Agreement: (a) shall not

increase the amount of any settlement payments under this Agreement and (b) shall not entitle the holder thereof to participate in any distributions from the Trust. Any Reclassified FLSA Claims which result from orders or stipulations reclassifying claims entered or filed of record more than one year following the date of this Agreement are waived as to the Trust by virtue of and as consideration for this Agreement.

**11. Exclusion for Wholly Unrelated, Timely Filed Proofs of Claim**

The provisions of paragraphs 6. (No Other Claims), 8. (General Release of Trust and Trustee) and 9. (Indemnification) of this Agreement shall not affect an FLSA Claimant's right, if any, to participate in distributions from the Trust based on an allowed Class 4 General Unsecured Claim that is both (a) not a claim arising under the FLSA or state wage and hour laws and (b) set forth in a separate proof of claim that was timely filed in the Bankruptcy Cases.

**12. General Provisions.**

- a. This Agreement shall bind and inure to the benefit of the Trust, the Trustee, and the Allowed FLSA Claimants, including but not limited to the executors, administrators, personal representatives, heirs, successors, and assigns of each of those parties.
- b. The Parties agree that this Agreement is executed without reliance upon any statement or representation by any other party or agent, and this Agreement constitutes the entire agreement concerning settlement of the matters described in the Agreement.
- c. This Agreement shall be construed and interpreted in accordance with the laws of the State of Texas in effect on the date of this Agreement.

- d. This Agreement may be executed simultaneously in counterparts and each such counterpart shall be deemed an original, all of which counterparts together shall constitute one and the same instrument.
- e. This Agreement shall inure to the benefit of and shall be binding upon the Parties hereto and their respective successors and assigns.
- f. The Bankruptcy Court shall have exclusive jurisdiction over any issues or disputes arising out of this Agreement.
- g. The undersigned FLSA Counsel warrants that it has the authority to settle any and all claims on behalf of the Allowed FLSA Claimants.
- h. The effectiveness of this Agreement is expressly conditioned upon its approval by order of the Bankruptcy Court. Upon execution of this Agreement by the Parties, the Parties shall file a joint motion with the Bankruptcy Court, substantially the form attached hereto as “**Exhibit D**”, seeking approval of this Agreement and entry of an order substantially in the form attached thereto.

*[signatures on next page]*

It is so agreed by the Parties, by and through their undersigned authorized representatives, this 14th day of November, 2018.

**ALLOWED FLSA CLAIMANTS:**

GETMAN; SWEENEY & DUNN, PLLC

By:   
Michael J.D. Sweeney, Esq.

*Attorneys and authorized representatives for the FLSA Claimants*

**UNSECURED CREDITORS' TRUSTEE:**

META Advisors LLC

By:   
James S. Carr, Managing Director