

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

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

**SETTLEMENT AGREEMENT AS TO THE ADMINISTRATIVE AND PRIORITY 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 Buffets, LLC, *et al.* (“**Buffets**”) and its affiliated reorganized debtors (collectively, the “**Reorganized Debtors**”) in the above-referenced chapter 11 cases (“**Chapter 11 Cases**”), and the Administrative and Priority FLSA Claimants (collectively referred to as the “**Parties**”),

WHEREAS, the Priority and Administrative FLSA Claimants (defined below) are current and/or former employees of Buffets, LLC and its wholly owned subsidiaries (collectively, the “**Debtors**”)¹, 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 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

¹ 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.

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 and administrative claims 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**”) and claims asserted as administrative claims (the “**Administrative 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> Pursuant to the Plan, the Reorganized Debtors (as defined in the Plan) assumed the responsibility for paying all Allowed Priority Claims and all Allowed Administrative Claims;

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

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, and (2) arose 180-days prior to the Petition Date, (3) is not a general unsecured claim, (4) is not an Administrative claim (collectively, the “**FLSA Priority Claims**” and the “**FLSA Priority Claimants**”);

WHEREAS, as set forth on **Exhibit A**, the FLSA Priority Claims total 463 in number and \$2,218,452.87 in combined asserted amount;

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

<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].

WHEREAS, listed on “**Exhibit B**” attached hereto are those FLSA Claims asserted as administrative claims in 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 during the pendency of the Bankruptcy proceeding until the Plan confirmation date (approximately March 7, 2016 – May 17, 2018), (3) is not a Priority FLSA Claim, and (4) is not a general unsecured claim (collectively, the “**FLSA Administrative Claims,**” and the “**FLSA Administrative Claimants**”).

WHEREAS, as set forth on **Exhibit B**, the FLSA Administrative Claims total 322 in number and \$1,776,989.76 in combined asserted amount;

WHEREAS, the Debtors has disputed the validity of each of the FLSA Priority Claims and each of the FLSA Administrative 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 FLSA Priority Claims and the FLSA Administrative Claims, the risks of adverse judgment(s), and the risks associated with the Debtors’ reorganization, the Parties believe compromise and settlement concerning allowance of the FLSA Priority Claims and FLSA Administrative 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. No Other Claims.**

Upon approval of this Agreement by the Bankruptcy Court, the FLSA Priority Claimants and FLSA Administrative Claimants shall have no remaining priority or administrative claims for wages (including, without any limitation whatsoever, claims for unpaid wages, attorneys’ fees, and statutory liquidated damages) against the Debtors or their bankruptcy estates, or the Reorganized Debtors.

**2. General Release of the Debtors and the Reorganized Debtors.**

In exchange for the payments to be made pursuant to paragraph 3. of this Agreement, the FLSA Priority Claimants and FLSA Administrative Claimants and their representatives, successors, and assigns, (the “**Releasing Parties**”) completely release and forever discharge the Debtors, the Reorganized Debtors and their past, present, and future employees, subsidiaries, principals, administrators, agents, representatives, employers, affiliates, managers, 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 for FLSA Priority Claims or FLSA Administrative Claims 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.

- a. The Releasing Parties understand and agree that this Agreement specifically includes the release and discharge of FLSA Priority Claims or FLSA Administrative 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.

**3. Settlement Payment Terms and Administration.**

- a. The Reorganized Debtors will pay the total sum of Eight Hundred Seventy-Five Thousand Dollars and Zero Cents (\$875,000.00) to resolve the Priority FLSA Claims and the Administrative FLSA Claims of the FLSA Claimants. Half of the payment, Four Hundred and Thirty-Seven Thousand Five Hundred Dollars and Zero Cents (\$437,500.00) will be made by July 15, 2019, and the other half, Four Hundred and Thirty-Seven Thousand Five Hundred Dollars and Zero Cents (\$437,500.00), will be made by March 31, 2020.
- b. The FLSA Counsel is solely responsible for allocating settlement payments to the FLSA Claimants. Payments to FLSA Claimants will be reported 50% on an IRS form 1099 and 50% on an IRS form W-2. Each party shall be responsible for their own tax obligations. The Reorganized Debtors will pay any payroll taxes required for the payments reported on a W-2. The allocation may include service payments to certain bellwether claimants. Any service payments will be reported 100% on an IRS form 1099. FLSA Counsel will provide the list of FLSA Claimants to be paid and the allocation amounts by June 15, 2019.
- c. Attorneys' fees of up to one-third of the settlement amount and costs will be paid from the settlement fund. Attorneys' fees and costs will be reported on an IRS form 1099 to FLSA Counsel.
- d. The Parties will administer the claims as follows:
  - i. The Reorganized Debtors will perform all tax accounting and reporting based on the allocations provided by the Plaintiffs, print the checks, and send the checks to FLSA Counsel for mailing. The Reorganized Debtors will provide the tax reporting documents, *i.e.*, W-2s and 1099s, by January 31 of the proceeding the year

from when the checks are issued. The Reorganized Debtors will provide a contact person at Buffets who the FLSA Administrative and Priority FLSA Claimants will be able to contact with any questions regarding the tax accounting.

- ii. The checks will remain valid for 180 days from the date they are issued.
  - iii. The Reorganized Debtors agree to submit sworn affidavits each of the first three months and the fifth month after the checks are issued listing all the checks printed and sent to FLSA Counsel and their amounts and indicating which checks have been cashed and which remain uncashed. Buffets provides partial social security numbers for any claimants who have not cashed their checks within 60 days of issuance.
  - iv. The Reorganized Debtors agree to cancel and reissue checks as necessary should an original check be lost, issued incorrectly, or result in some other issue that requires reprinting.
  - v. At the end of the final 180-day period that the checks remain valid, The Reorganized Debtors agree to issue a check in the amount of any uncashed check to a Cy Pres selected by FLSA Counsel subject to the Reorganized Debtors' approval.
- e. Separate from any settlement payment, the Reorganized Debtors will reimburse the FLSA Claimants \$2,000 representing half their share of Eric Galton's mediation fee for services related to the November 19, 2018 mediation.
- f. Until the Allowed Claims of the Priority FLSA Claimants and the Administrative FLSA Claimants have been paid in full, the Reorganized Debtors will not voluntarily (i) undertake secured debt other than in the ordinary course of their business ("permitted liens"), (ii) increase the management fee payable to FMP SA Management Group LLC to more than 5%, (iii) pay any dividends or distributions to equity holders other than to cover income tax obligations attributable to income generated by the Reorganized Debtors, (iv) except for certain tracts of real property that the Reorganized Debtors currently are attempting to sell which are excluded from this provision, without the consent of counsel to the FLSA claimants, sell or transfer any asset outside of the ordinary course of the Reorganized Debtors' business having a value in excess of \$50,000 (v) or make any distributions under the Debtor's Second Amended Plan of Reorganization under Chapter 11 of the Bankruptcy Code (the "Plan") to Holders of Subordinated Claims. Capitalized terms in this paragraph shall have the same meaning as terms are defined in the Plan.

**4. 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 Priority FLSA Claims and the Administrative FLSA Claims including the allocation of the settlement payments, and the South Carolina Action 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 Priority FLSA Claimants and the Administrative FLSA Claimants 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.

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

- a. The Priority FLSA Claimants and the Administrative 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 Administrative Claimants and FLSA Priority 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 Administrative Claimants and FLSA Priority 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 Administrative Claimants and FLSA Priority Claimants through their counsel further agree that this Agreement reflects a compromise of disputed claims against the Debtors, 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 Debtors' bankruptcy estates, or the Reorganized Debtors who have at all times denied and continue to deny liability to the FLSA Claimants, and the Debtors merely to promote efficient and cost-effective resolution of the FLSA Administrative Claims and FLSA Priority Claims 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 Priority Claimants and FLSA Administrative 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 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 Administrative Claimants and FLSA Priority Claimants understand and agree that the Released Parties have not made any representations to the FLSA Administrative Claimants and FLSA Priority Claimants regarding the tax consequences of this Agreement.

**6. General Provisions.**

- a. This Agreement shall bind and inure to the benefit of the Debtors, the Reorganized Debtors, the FLSA Priority Claimants, and the FLSA Administrative 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 FLSA Priority Claimants and the FLSA Administrative 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 C**”, seeking approval of this Agreement and entry of an order substantially in the form attached thereto.

It is so agreed by the Parties, by and through their undersigned authorized representatives,  
this \_\_\_\_ day of \_\_\_\_\_, 2019.

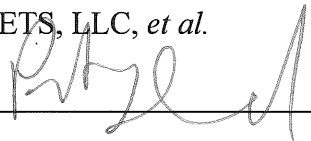
**FLSA PRIORITY CLAIMANTS, AND THE FLSA ADMINISTRATIVE CLAIMANTS:**

GETMAN, SWEENEY & DUNN, PLLC

By: \_\_\_\_\_  
Michael J.D. Sweeney, Esq.

*Attorneys and authorized representatives for the FLSA Priority Claimants and the FLSA Administrative Claimants*

**THE DEBTORS:**

BUFFETS, LLC, *et al.*  
By:  \_\_\_\_\_

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