

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE**

TIM DAVIS and NIKLAUS RYKER SCHLEUFER,
individually and on behalf of all others similarly
situated,

Plaintiffs,

v.

CHARTER FOODS, INC., CHARTER CENTRAL,
LLC, and CHARTER FOODS NORTH, LLC

Defendants.

Case No.: 2:20-cv-159

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

Subject to approval by the United States District Court for the Eastern District of Tennessee on the bases set forth below, this Class Action Settlement Agreement and Release (“Agreement”) is entered into by and between Tim Davis and Niklaus Ryker Schleufer (the “Named Plaintiffs”), individually and on behalf of the class defined below for settlement purposes, and Charter Foods, Inc., Charter Central, LLC, and Charter Foods North, LLC (“Charter Foods” or “Defendants”) (Charter Foods is referred to together with Named Plaintiffs as the “Parties”) in the matter captioned *Davis et al. v. Charter Foods, et al.*, United States District Court for the Eastern District of Tennessee, Case No. 2:20-cv-00159-CEA-CRW (“the Litigation”).

RECITALS

WHEREAS, Tim Davis and Niklaus Ryker Schleufer filed a Class and Collective Action Complaint in the United States District Court for the Eastern District of Tennessee on July 21, 2020, asserting claims against Charter Foods under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* (“FLSA”); the Pennsylvania Minimum Wage Act of 1968, 43 P.S. § 333.101, *et seq.*

(“PMWA”); and the Pennsylvania Wage Payment and Collection Law, 43 P.S. §§ 260.1, *et seq.* (“PWPCL”) for the alleged failure to pay overtime compensation to salaried Assistant Managers (also known as Assistant General Managers) (which shall be referred to for purposes of this settlement as “Assistant Managers” or “AMs”) who worked in any Charter Foods restaurant anywhere in the United States;

WHEREAS, the Parties completed several months of discovery directed at Named Plaintiffs’ motion for class and collective certification and notice pursuant to Federal Rule of Civil Procedure 23 and 29 U.S.C. §216(b), including the exchange of written discovery, production of documents and information, and depositions of Named Plaintiffs, one collective opt-in plaintiff, and Defendants’ Rule 30(b)(6) designee;

WHEREAS, on October 26, 2022, the Court granted certification of a class comprising certain AMs who worked for Defendants in Pennsylvania between July 21, 2017, and October 26, 2022;

WHEREAS, the Parties agreed to explore settlement and, on April 27, 2023, participated in a mediation conducted by experienced wage and hour mediator Carole Katz, as well as numerous subsequent discussions between counsel, following which the Parties reached an accord resulting in this Agreement;

WHEREAS, the purpose of this Agreement is to settle fully and finally all claims asserted in the Litigation and those claims that could have been asserted by all exempt Assistant Managers

employed between July 21, 2017 and January 1, 2020 which, based on the facts alleged in the pleadings in this Litigation, is the date on which Charter Foods remediated the alleged violation by reclassifying its Assistant Managers as non-exempt (the “Relevant Period”);

WHEREAS, Charter Foods denies all of the allegations made by Named Plaintiffs in the Litigation and denies that it is liable or owes damages to anyone with respect to the alleged facts or causes of action asserted in the Litigation. Nonetheless, without admitting or conceding any liability or damages whatsoever, Charter Foods has agreed to settle the Litigation on the terms and conditions set forth in this Agreement to avoid the burden and expense of continuing the Litigation; and

WHEREAS, Named Plaintiffs’ Counsel analyzed and evaluated the merits of the claims made against Charter Foods in the Litigation; conducted interviews with Named Plaintiffs and other AMs who opted into the litigation; served and responded to discovery requests; took and defended depositions; reviewed voluminous discovery documents; conducted damage calculations for the AMs; engaged in litigation for four years; and—based upon their analysis and evaluation of a number of factors, and recognizing the substantial risks of litigation, including the possibility that the Litigation, if not settled now, might not result in any recovery or might result in a recovery less favorable than that achieved through a settlement, and that any recovery would not occur for several years—Named Plaintiffs’ Counsel believe that the terms and conditions of this Agreement are fair, reasonable, and adequate and that this Agreement is in the best interests of Named Plaintiffs and the Class Members, as that term is defined below.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth in this Agreement, as well as the good and valuable consideration provided for herein, the Parties agree to a full and complete settlement of the Litigation on the following terms and conditions:

1. DEFINITIONS

The defined terms set forth in this Agreement have the meanings ascribed to them below.

- 1.1** “Agreement” means this agreement and all exhibits, which sets forth all material terms and conditions of the Settlement between the Parties, and which is subject to Court approval.
- 1.2** “Approval Order” means an order signed and entered by the Court, which approves this Agreement and dismisses the Litigation, in a form substantially similar to the Stipulation and Proposed Order of Dismissal, attached as Exhibit A.
- 1.3** “Charter Foods” means Charter Foods, Inc., Charter Central, LLC, and Charter Foods North, LLC.
- 1.4** “Check Cashing Period” means the time Named Plaintiffs and Class Members have to negotiate their Settlement Checks. This period starts on the day the Settlement Administrator issues the Settlement Checks and runs for the next 120 days, except that the period shall be extended for Class Members who report to the Settlement Administrator that their checks were lost, destroyed, or never received, in which case such individuals will have the longer of 30 days from the date of reissuance of their Settlement Checks or 120 days from the date of the initial issuance of the Settlement Check to negotiate their Settlement Checks.

- 1.5** “Class List” means a manipulable-electronic list (e.g., in Excel format) of all Class Members’ names, Last Known Addresses, personal e-mail addresses that are maintained in Charter Foods’ HRIS system, Social Security Numbers, and the dates and states of employment as an AM during the Relevant Period.
- 1.6** “Class Members” are the 159 exempt Assistant Managers identified in Exhibit C who either (1) were employed by Defendants in Pennsylvania between July 21, 2017 and January 1, 2020 and have not released their claims under the settlement in *Gallagher, et al. v. Charter Foods, Inc, et al* No. 2:20-cv-00049-RJC (W.D. Pa.), or (2) were employed by Defendants in a state other than Pennsylvania between July 21, 2017 and January 1, 2020, filed a consent to join form opting into the FLSA collective certified in this case and have not released their claims under the settlement in *Gallagher, et al. v. Charter Foods, Inc, et al* No. 2:20-cv-00049-RJC (W.D. Pa.).
- 1.7** “Court” means the United States District Court for the Eastern District of Tennessee.
- 1.8** “Defendants” means Charter Foods, Inc., Charter Central, LLC, and Charter Foods North, LLC.
- 1.9** “Defendants’ Counsel” means MacDonald, Illig, Jones & Britton LLP.
- 1.10** “Effective Date” means the date an order is entered by the Court granting final approval of the settlement in this Litigation.

- 1.11** “Eligible Workweeks” means weeks in which Named Plaintiffs and Class Members were employed by Defendants as exempt AMs during the Relevant Period. Workweeks during which Named Plaintiffs and Class Members were not employed by Defendants as AMs or were not classified as exempt are not considered Eligible Workweeks.
- 1.12** “Employer Payroll Taxes” means all taxes and withholdings arising out of or based upon the payment of employment/wage compensation in connection with this Agreement, including FICA, FUTA, SUTA, and Medicare obligations, and any other applicable payroll taxes. Employer Payroll Taxes shall be paid separately by Defendants and shall not be paid from the Gross Settlement Amount.
- 1.13** “Gross Settlement Amount” means Six Hundred Thousand Dollars and No Cents (\$600,000.00), which is the maximum amount that Charter Foods has agreed to pay to fully resolve and settle this Litigation.
- 1.14** “Individual Settlement Amount” or “Individual Settlement Amounts” means Named Plaintiffs’ and each Class Member’s proportionate share of the Net Settlement Amount calculated pursuant to ¶ 3.4 of this Agreement.
- 1.15** “Last Known Address” means the most recently recorded personal mailing address for a Class Member as shown in Defendants’ records.
- 1.16** “Litigation” means the litigation styled *Davis et al. v. Charter Foods, et al.*, which is proceeding in the United States District Court for the Eastern District of Tennessee, Case No. 2:20-cv-00159-CEA-CRW

- 1.17** “Named Plaintiffs” means Tim Davis and Niklaus Ryker Schleufer.
- 1.18** “Named Plaintiffs’ Counsel” means Stueve Siegel Hanson LLP, Weisberg Cummings, P.C. and Jennifer Morton Law, PLLC.
- 1.19** “Net Settlement Amount” means no less than Two Hundred Thousand Dollars and No Cents (\$200,000.00) allocated from the Gross Settlement Amount for the payment of Class Members’ claims. The amount of this Net Settlement Amount shall not be reduced by (i) Court-approved Settlement Administration fees and costs; (ii) Court-approved Plaintiffs’ Counsel’s attorneys’ fees and costs; (iii) Court-approved Service Awards to Named Plaintiffs; (iv) payments to the Settlement Administrator; or (v) any other basis.
- 1.20** “Participating Class Member” means each Class Member who timely negotiates and receives payment under the terms of this Agreement. Named Plaintiffs shall be considered Participating Class Members regardless of when they negotiate and receive payment under the terms of this Agreement.
- 1.21** “Parties” collectively means Named Plaintiffs and Charter Foods.
- 1.22** “Qualified Settlement Fund” or “QSF” means the account established by the Settlement Administrator from the Gross Settlement Amount paid by Defendants. The QSF will be controlled by the Settlement Administrator subject to the terms of this Agreement and the Court’s orders. Interest, if any, earned on any monies in the QSF will become part of the Net Settlement Amount.

- 1.23** “Releasees” means Defendants and their officers, directors, employees, agents, insurers, successors, predecessors, affiliates, parents, subsidiaries, attorneys, and other related entities.
- 1.24** “Released Claims” means all claims for unpaid wages, overtime, failure to pay timely wages, wage statement violations, and other compensation, fees/costs, liquidated damages, penalties, interest, and all other relief under the Fair Labor Standards Act, Pennsylvania Minimum Wage Act, and Pennsylvania Wage Payment and Collection Law, and all other state and local wage/hour and wage payment laws and common law theories arising or accruing while employed by Charter Foods as an exempt AM between July 21, 2017 and January 1, 2020, that they have or may have against Defendants, including its former and present officers, directors, employees, attorneys, insurers, benefit plans, predecessors, successors, parents, sponsors, related entities, subsidiaries, and affiliates.
- 1.25** “Relevant Period” for exempt AMs refers to the period between July 21, 2017, and January 1, 2020.
- 1.26** “Service Awards” means payments to the Named Plaintiffs as compensation for their services facilitating recovery for the Class.
- 1.27** “Settlement” means the settlement between the Parties embodied and contained in this Agreement.

1.28 “Settlement Administrator” means Analytics Consulting LLC, or an alternative qualified settlement administration firm mutually agreed to by Plaintiffs and Defendants.

1.29 “Settlement Check” means the check issued to Named Plaintiffs and each Class Member for his or her proportionate share of the Net Settlement Amount calculated in accordance with this Agreement.

1.30 “Settlement Notice” means the document entitled Notice of Settlement, to be approved by the Court in a form substantially similar to Exhibit B.

2. APPROVAL AND NOTICE TO CLASS MEMBERS

2.1 This Agreement is a binding agreement and contains all material agreed-upon terms for the Parties to seek a full and final settlement of the Litigation.

2.2 The Settlement Administrator

- i. The actions of the Settlement Administrator shall be governed by the terms of the Settlement Agreement. The Settlement Administrator will be responsible for the following tasks:
 - (a) researching and updating addresses through skip-traces (up to 2 times) and similar means;
 - (b) reporting on the status of the administration of the settlement to Named Plaintiffs’ Counsel and Defendants’ Counsel;

- (c) resolving any settlement payment dispute, in concert with the Named Plaintiffs' Counsel and Defendants' Counsel;
- (d) providing Named Plaintiffs' Counsel and Defendants' Counsel with all necessary data;
- (e) setting up, administering, and making payments from the QSF;
- (f) calculating the settlement allocation for Named Plaintiffs and each Class Member;
- (g) distributing settlement payments and withholding applicable payroll taxes, excluding the employer's share of taxes which shall be paid by Defendants, and remitting such funds to the appropriate taxing authorities, along with any associated tax reporting, return and filing requirements;
- (h) establishing a QSF account;
- (i) preparing, mailing, and emailing the Settlement Notice to Named Plaintiffs and Class Members;
- (j) retaining and providing a copy of Settlement Checks signed by the Participating Class Members to Named Plaintiffs' Counsel;

- (k) submitting any unclaimed portions of the Net Settlement Amount to the Boys and Girls Club of Dumplin Valley; and
 - (l) performing such additional duties as Named Plaintiffs' Counsel may direct.
- ii. All settlement administration costs will be paid from the Gross Settlement Amount and shall include all costs necessary to administer the Settlement.
- iii. The Settlement Administrator shall provide weekly reports to Named Plaintiffs' Counsel regarding the status of the mailing of the Settlement Notice and Checks, returned mailings for which it is unable to obtain corrected addresses, and other information related to the administration of the Settlement.
- iv. All disputes relating to the Settlement Administrator's performance of its duties shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Agreement until all payments and obligations contemplated by this Agreement have been fully carried out.
- v. Charter Foods agrees to provide to Named Plaintiffs' Counsel and the Settlement Administrator accurate information to the extent reasonably available and necessary to calculate the Individual Settlement Amounts, and to provide available information to assist

the Settlement Administrator in locating Class Members. Charter Foods' records shall be presumed accurate.

2.3 Settlement Notice and Distribution Process

- i. The Parties shall work cooperatively to provide the Class List to the Settlement Administrator on or before September 26, 2024.
- ii. Settlement Notices will be mailed via First Class United States Mail on or before October 10, 2024. The Settlement Notices will advise Class Members of the claims asserted in the Litigation and their estimated Individual Settlement Amounts. Settlement Notices shall also be sent via e-mail.
- iii. The Settlement Administrator shall take all reasonable steps to obtain the correct address for any Class Member for whom the Settlement Notice is returned by the post office as undeliverable, including using Social Security Numbers to obtain better address information and emailing Class Members about their current addresses, and shall attempt re-mailings. Charter Foods shall, where a Class Member is a current employee, provide the Settlement Administrator with available information necessary to locate any Class Member whose notice is returned as undeliverable. Any Settlement Notices returned as undeliverable shall be traced up to 2 times to obtain a new address and be re-mailed by First Class United States Mail.

iv. Any individual who wishes to exclude themselves from the Settlement must submit a written request for exclusion to the Settlement Administrator, which shall be submitted via regular mail or overnight mail, postmarked and verified no later than November 25, 2024. The written request for exclusion must:

- (a) Identify the case name of the Action;
- (b) Identify the name and address of the individual seeking exclusion from the Settlement;
- (c) Be personally signed by the individual seeking exclusion;
- (d) Include a statement clearly indicating the individual's intent to be excluded from the Settlement; and
- (e) Request exclusion only for that one individual whose personal signature appears on the request.

v. Any individual who submits a valid and timely request for exclusion in the manner described herein shall not: (i) be bound by any orders or judgments entered in connection with the Settlement; (ii) be entitled to any relief under, or be affected by, the Agreement; (iii) gain any rights by virtue of the Agreement; or (iv) be entitled to object to any aspect of the Settlement.

- vi. Any Settlement Class Member who wishes to object to the Settlement must submit a written objection to the Court on or before November 25, 2024. The written objection must include:
- (a) The case name and number of the Action;
 - (b) The name, address, and telephone number of the objecting Settlement Class Member and, if represented by counsel, of his/her counsel;
 - (c) A statement of whether the objection applies only to the objector, to a specific subset of the class, or to the entire class;
 - (d) Information identifying the objector as a Settlement Class Member, including proof that the objector is a member of the Settlement Class (e.g., copy of the objector's settlement notice or a statement explaining why the objector believes he or she is a Settlement Class Member);
 - (e) A statement of the specific grounds for the objection; and
 - (f) A statement of whether the objecting Settlement Class Member intends to appear at the Final Approval Hearing, and if so, whether personally or through counsel.
- vii. Any Settlement Class Member who fails to object to the Settlement in the manner described in this Agreement, the Preliminary Approval Order, and

in the notice provided pursuant to the Notice Plan shall be deemed to have waived any such objection, shall not be permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and shall be precluded from seeking any review of the Settlement or the terms of this Agreement by appeal or any other means.

viii. The processing of payment to Class Members shall be in accordance with the following procedures.

(a) To be timely, a Class Member must sign their Settlement Check and submit for payment within one hundred and twenty (120) days from issuance.

(b) By signing their Settlement Check and receiving payment the Class Member will be deemed a Participating Class Member. If a Class Member does not sign their Settlement Check and receive payment, their Individual Settlement Amount shall be transmitted by the Settlement Administrator to the Boys and Girls Club of Dumplin Valley, and corresponding payroll taxes paid in advance by Charter Foods shall be refunded to Defendants' Counsel by the Settlement Administrator.

(c) The Settlement Administrator is solely responsible for sending the Settlement Notice and Claim Form to Class Members. The Settlement Administrator, the Parties, Named Plaintiffs' Counsel,

and Defendants' Counsel shall not engage in any other supplemental notice process.

3. SETTLEMENT TERMS

3.1 Settlement Payments

- i. Charter Foods will deposit the Gross Settlement Amount into a QSF established by the Settlement Administrator within ten (10) days after the Effective Date.
- ii. Within seven (7) days of the receipt of the Settlement Amount into the QSF, the Settlement Administrator will distribute funds from the QSF by making the following payments:
 - (a) Paying Named Plaintiffs' Counsel's Court-approved attorneys' fees and costs as described in Section 3.2;
 - (b) Paying the Court-approved Service Awards as described in Section 3.3; and
 - (c) Paying the costs of the Settlement Administrator.
- iii. The Settlement Administrator will mail the Settlement Notices, including the Settlement Checks, to Class Members, as described in Section 3.4, within twenty-one (21) days after the Effective Date.
- iv. Any portion of the Net Settlement Amount that is not claimed by Class Members under this Agreement shall be transmitted by the Settlement

Administrator to the Boys and Girls Club of Dumplin Valley, and corresponding payroll taxes paid in advance by Charter Foods shall be refunded to Defendants' Counsel by the Settlement Administrator.

3.2 Settlement Amounts Payable as Attorneys' Fees and Costs

- i. In their Approval Motion, Named Plaintiffs' Counsel will ask the Court to approve payments of no more than \$400,000.00 of the Gross Settlement Amount as an award of attorneys' fees and reimbursement of reasonable costs and expenses, Service Awards to Named Plaintiffs, and expenses to be paid to the Settlement Administrator. These amounts shall constitute full satisfaction of any claim for attorneys' fees or costs, and Named Plaintiffs agree that they shall not seek, nor be entitled to, any additional attorneys' fees or costs. The Net Settlement Amount of no less than \$200,000.00 shall remain available for payment of Class Members' claims, and shall not be reduced by (i) Court-approved Settlement Administration fees and costs; (ii) Court-approved Plaintiffs' Counsel's attorneys' fees and costs; (iii) Court-approved Service Awards to Named Plaintiffs; (iv) payments to the Settlement Administrator; or (v) any other basis.
- ii. The substance of Named Plaintiffs' Counsel's application for attorneys' fees and costs is to be considered separately from the Court's consideration of the fairness, reasonableness, adequacy, and good faith of the Settlement and this Agreement. The outcome of any proceeding related to Named Plaintiffs' Counsel's application for attorneys' fees and costs shall not

terminate this Agreement or otherwise affect the Court's ruling on the Approval Motion. In the event that the Court (or any appellate court) awards less than the requested amounts, only the awarded amounts shall be paid and shall constitute full satisfaction of the obligations of this section and full payment hereunder. Any money requested for attorneys' fees or costs that are not approved by the Court shall become part of the Net Settlement Amount.

3.3 Service Awards to Plaintiffs

- i. In the Approval Motion, Named Plaintiffs' Counsel will apply for Service Awards to be paid from the Gross Settlement Amount to Named Plaintiffs in amounts not to exceed \$7,500.00 to Named Plaintiff Tim Davis and \$7,500.00 to Named Plaintiff Niklaus Ryker Schleufer.
- ii. These Service Awards and any requirements for obtaining any such payment are separate and apart from, and in addition to, potential recovery from the Net Settlement Amount as a Class Member. The application for Service Awards is to be considered separately from the Court's consideration of the fairness, reasonableness, adequacy, and good faith of the Settlement and this Agreement. The outcome of the Court's ruling on the application for a Service Award shall not terminate this Agreement or otherwise affect the Court's ruling on the approval of this Settlement Agreement. Any Service Award money not approved by the Court shall become part of the Net Settlement Amount.

3.4 Distribution of Payments to Participating Class Members

- i. Payments to Participating Class Members will be made from the Net Settlement Amount. The estimated Individual Settlement Amount for Named Plaintiffs and each Class Member will be determined by the Settlement Administrator pursuant to the following formula based on Charter Foods' records, which shall be presumed to be accurate:
 - (a) Named Plaintiffs and each Class Member shall be designated a minimum gross recovery of two hundred and fifty dollars (\$250.00);
 - (b) Named Plaintiffs and each Class Member shall then be assigned one point for each Eligible Workweek.
 - (c) To calculate Named Plaintiffs' and each Class Member's proportionate Individual Settlement Amount:
 1. Add all points together to obtain the "Denominator";
 2. Divide the number of points for Named Plaintiffs and each Class Member by the Denominator to obtain the "Portion of the Net Settlement Amount" for Named Plaintiffs and each Class Member;
 3. Multiply Named Plaintiffs' and each Class Member's Portion of the Net Settlement Amount by the Net Settlement Amount, and then add \$250.00 (representing the minimum

gross recovery) to determine the Individual Settlement Amount for Named Plaintiffs and each Class Member.

- ii. All Class Members shall be sent a Settlement Notice and Settlement Check. An allonge appended to the Settlement Checks will include a statement providing that “I understand that by cashing, depositing, or otherwise negotiating this check I am participating in the settlement of the case of *Tim Davis et al. v. Charter Foods, Inc., et al* (Case No. 2:20-cv-00159-CEA-CRW) and, in doing so, I expressly agree to be bound by the Settlement Agreement and release of claims in that case. I acknowledge and agree that on behalf of myself and my heirs, representatives, successors, assigns, and attorneys, I am releasing all claims for unpaid wages, overtime, failure to pay timely wages, wage statement violations, and other compensation, fees/costs, liquidated damages, penalties, interest, and all other relief under the Fair Labor Standards Act, Pennsylvania Minimum Wage Act, and Pennsylvania Wage Payment and Collection Law, as well as wage and hour claims under all other federal, state, and local laws based on the facts alleged in Plaintiffs’ Complaint accruing while employed as an exempt AM (as defined in the Settlement Agreement) at any point between July 21, 2017 and January 1, 2020 that I have or may have against Charter Foods, Inc., Charter Central, LLC, and Charter Foods North, LLC, including its former and present officers, directors, employees, attorneys, insurers, benefit plans, predecessors, successors, parents, sponsors, related entities, subsidiaries,

and affiliates.” Similar language shall be included in the Settlement Notices.

- iii. The Settlement Administrator’s calculations, subject to review and approval by Named Plaintiffs’ Counsel, regarding the Individual Settlement Amounts from the Net Settlement Amount will be final and binding.
- iv. The Settlement Administrator shall use reasonable efforts to make an additional mailing to Class Members whose Settlement Notices and Settlement Checks are returned because of incorrect addresses. Such efforts shall include: (a) obtaining correct addresses as described in Section 2.2(i); (b) using Social Security Numbers to obtain better address information; and/or (c) attempting to reach these individuals by phone and/or e-mail.
- v. Class Members will have one hundred and twenty (120) days to sign and negotiate their Settlement Checks as defined in Section 1.4, “Check Cashing Period”, except that the period shall be extended for Class Members who report to the Settlement Administrator that their checks were lost, destroyed, or never received, in which case such individuals will have the longer of 30 days from the date of reissuance of their checks or 120 days from the date of the original issuance of the checks. Any Settlement Checks not submitted for payment within the applicable time period shall be transmitted by the settlement administrator to the Boys and Girls Club of Dumplin Valley. The settlement administrator will provide notice of transmittal of any unclaimed funds to counsel for the Parties.

vi. Tax Characterization of Payments.

- (a) For tax purposes, 50% of the payment from the Net Settlement Amount to Class Members, pursuant to this Agreement, shall be treated as back wages and 50% of such payment shall be treated as interest, any applicable penalties, liquidated damages, and other non-wage relief.
- (b) Payments treated as back wages shall be made net of (1) all applicable employment taxes, including, without limitation, federal, state and local income tax withholding and (2) the employee share of the FICA tax. Payments treated as back wages shall be reported to the Internal Revenue Service (“IRS”) and the payee under the payee’s name and Social Security Number on an IRS Form W-2. Payments treated as Service Awards, interest, and/or liquidated damages shall be made without withholding and shall be reported to the IRS and the payee, to the extent required by law, under the payee’s name and Social Security Number on an IRS Form 1099. The Settlement Administrator shall be responsible for determining the appropriate number of exemptions to be used in calculating payroll tax and withholding, deciding the appropriate tax rate, issuing the checks and Service Awards, and issuing IRS Forms W-2 and 1099. Payments of attorneys’ fees and costs pursuant to Section 3.2 shall be made without withholding and be reported to the IRS and to each of Named Plaintiffs’ Counsel payees under the

payee's name and taxpayer identification number, which each such payee shall provide for this purpose, on an IRS Form 1099.

- (c) The employee portion of all applicable income and payroll taxes will be the sole responsibility of the individual Participating Class Member receiving a Settlement Check and/or Service Award. Charter Foods' share of payroll taxes shall be paid separately and not from the Gross Settlement Amount. The Parties make no representations, and it is understood and agreed that the Parties have made no representations, as to the taxability of any portions of the settlement payments to any Class Members, the payment of any costs or award of attorneys' fees, or any payments to the Named Plaintiffs. The Settlement Notice will advise Class Members to seek their own tax advice prior to acting in response to the Settlement Notice. Neither Named Plaintiffs' Counsel nor Defendants' Counsel intend anything contained in this Agreement to constitute legal advice regarding the taxability of any amount paid hereunder, nor will it be relied upon as such.

- (d) None of the amounts paid to Named Plaintiffs or Participating Class Members shall create any credit for, be included in, or otherwise affect the calculation or the accrual of any employee benefits in any plans, programs, agreements, or policies sponsored, maintained, or contributed to by Charter Foods, including for purposes of any bonus of any kind.

- (e) Any funds remaining in the QSF shall be donated *cy pres* to the Boys and Girls Club of Dumplin Valley.

4. RELEASE OF CLAIMS

- 4.1** All Participating Class Members, on behalf of themselves and each of their heirs, representatives, successors, assigns, and attorneys, shall be deemed to release and forever discharge all claims for unpaid wages, overtime, failure to pay timely wages, wage statement violations, and other compensation, fees/costs, liquidated damages, penalties, interest, and all other relief under the Fair Labor Standards Act, Pennsylvania Minimum Wage Act, and Pennsylvania Wage Payment and Collection Law , as well as wage and hour claims under all other federal, state, and local laws arising from their employment by Charter Foods as an exempt AM between July 21, 2017 and January 1, 2020 based on the predicate facts alleged in the pleadings in this Litigation, that they have or may have against Defendants, including its former and present officers, directors, employees, attorneys, insurers, benefit plans, predecessors, successors, parents, sponsors, related entities, subsidiaries, and affiliates. The claims being released are referred to in this Agreement as “Released Claims.”

- 4.2** Any Class Member, other than Named Plaintiffs, who requests exclusion will not be bound by any release of claims and their portion of the Net Settlement Amount will not be payable to them.

5. PARTIES' AUTHORITY

5.1 The undersigned signatories represent that they are fully authorized to enter into this Agreement and to bind the Parties to the terms and conditions.

6. MUTUAL COOPERATION

6.1 The Parties agree to reasonably cooperate with each other and to take all steps necessary and appropriate to obtain the Court's approval of this Agreement and all of its terms and to effectuate the terms of this Agreement, including, but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Agreement.

7. NOTICES

7.1 Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed as follows:

To Named Plaintiffs and/or Class Members:

George A. Hanson
Caleb J. Wagner
STUEVE SIEGEL HANSON LLP
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To Defendants:

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Jamie R. Schumacher
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100 State Street, Suite 700
Erie, Pennsylvania 16507-1459
Telephone: (814) 870-7602
Fax: (814) 454-4647
mmccullough@mijb.com
jschumacher@mijb.com

8. NO ADMISSION OF LIABILITY

8.1 Charter Foods denies all allegations made by Named Plaintiffs in the Litigation and denies that it is liable or owes damages to anyone with respect to the alleged facts or causes of action asserted in the Litigation. Nothing herein will be deemed or used as an admission that a class or collective should be certified for any purposes other than for settlement. Nonetheless, without admitting or conceding any liability or damages whatsoever, Charter Foods has agreed to settle the Litigation on the terms and conditions set forth in this Agreement to avoid the burden, expense, and

uncertainty of continuing the Litigation. The Parties further agree that neither Party shall be deemed to have prevailed on the merits.

9. COUNSEL'S USE OF NON-PUBLIC INFORMATION

9.1 Counsel for the Parties agree to maintain as confidential and not publish or disseminate any information about the Litigation that is not public information.

10. INTERPRETATION AND ENFORCEMENT/MISCELLANEOUS TERMS

10.1 Further Acts. Each party, upon the request of any other party, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this Agreement.

10.2 No Assignment. Named Plaintiffs represent and warrant that they have not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any portion thereof or interest therein, including, but not limited to, any interest in the Litigation, or any related action, and any attempt to do so shall be of no force or effect.

10.3 Entire Agreement. This Agreement constitutes the entire agreement between the Parties regarding the subject matter contained herein, and all prior and contemporaneous negotiations and understandings between the Parties shall be deemed merged into this Agreement.

10.4 Binding Effect. This Agreement shall be binding upon the Parties and, with respect to Charter Foods, its affiliates, parents, subsidiaries, predecessors, successors,

employees, and agents; and, with respect to Named Plaintiffs and Participating Class Members, their spouses, children, representatives, heirs, administrators, executors, beneficiaries, conservators, attorneys, and assigns.

- 10.5** Arms' Length Transaction; Materiality of Terms. The Parties have negotiated all the terms and conditions of this Agreement at arms' length. All terms and conditions of this Agreement in the exact form set forth in this Agreement are material to this Agreement and have been relied upon by the Parties in entering into this Agreement, unless otherwise expressly stated.
- 10.6** Captions. The captions or headings of the sections and paragraphs of this Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Agreement.
- 10.7** Construction. The determination of the terms and conditions of this Agreement has been by mutual agreement of the Parties. Each party participated jointly in the drafting of this Agreement, and therefore, the terms and conditions of this Agreement are not intended to be, and shall not be, construed against any party by virtue of draftsmanship.
- 10.8** Governing Law. This Agreement shall in all respects be interpreted, enforced, and governed by and under the laws of the Commonwealth of Pennsylvania, without regard to choice of law principles, except to the extent that the law of the United States governs any matter set forth herein, in which case such federal law shall govern.

- 10.9** Continuing Jurisdiction. The Court shall retain jurisdiction over the interpretation and implementation of this Agreement, as well as any and all matters arising out of or related to the interpretation or implementation of this Agreement and of the Settlement contemplated thereby.
- 10.10** Waivers, etc. to Be in Writing. No waiver, modification, or amendment of the terms of this Agreement, whether purportedly made before or after the Court’s approval of this Agreement, shall be valid or binding unless in writing, signed by or on behalf of all Parties, and then only to the extent set forth in such written waiver, modification, or amendment, with any required Court approval. Any failure by any party to insist upon the strict performance by the other party of any of the provisions of this Agreement shall not be deemed a waiver of future performance of the same provisions or of any of the other provisions of this Agreement, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.
- 10.11** Counterparts. The Parties may execute this Agreement in counterparts, and execution in counterparts shall have the same force and effect as if all Parties had signed the same original instrument.
- 10.12** Facsimile, E-mail, and Electronic Signatures. This Agreement may be executed in counterparts, each of which shall be deemed as an original but all of which shall constitute one and the same instrument. Signature pages may be executed by “wet” signature (i.e., using pen and paper) or electronic signature (e.g., using DocuSign). The executed signature pages may be delivered using facsimile or electronic means,

including pdf or similar file type transmitted via email, cloud-based server, or e-signature technology.

10.13 Signatories. This Agreement is valid and binding if signed by Charter Foods' authorized representative and the Named Plaintiffs.

WE AGREE TO THESE TERMS.

DATED: _____

**CHARTER FOODS, INC.
CHARTER CENTRAL, LLC
CHARTER FOODS NORTH, LLC**

By: _____

DATED: _____

TIM DAVIS

DATED: _____

NIKLAUS RYKER SCHLEUFER
