

Settlement Agreement

This Settlement Agreement ("this Agreement") is made and entered into this 18th day of September, 2015, by and among Give Us This Day, Inc. ("GUTD"), its named directors and officers Antoinette Wallace, Ruth Wallace, Anthony Perry, Ora Hart, and Mary E. Ayala (also known as Mary Holden) (collectively the "Individual Directors"), and the State of Oregon, Department of Justice by and through Ellen F. Rosenblum, Attorney General for the State of Oregon (collectively "DOJ").

Recitals

- A. GUTD is not represented by counsel. Anthony Perry is represented by Christopher A. Larsen of Pickett Dummigan LLP. Mary E. Ayala is represented by James R. Dowell of the Law Firm of James R. Dowell, LLC. Antoinette Wallace, Ruth Wallace, and Ora Hart are unrepresented individually. GUTD, Antoinette Wallace, Ruth Wallace, and Ora Hart have had a full and fair opportunity to retain counsel in this case.
- B. DOJ is represented by Assistant Attorneys General Heather L. Weigler, Timothy D. Smith, and Elizabeth Grant of the Oregon Department of Justice.
- C. DOJ alleges that the Individual Directors breached their fiduciary duties as officers and directors of GUTD. DOJ further alleges that GUTD has been damaged by those breaches and that the resulting loss of charitable assets exceeds \$2 million.
- D. The parties have concluded that the potential costs of litigation may exceed the potential benefits to the parties. The parties desire to compromise and settle all claims related to DOJ's investigation as set forth below.

Agreement

NOW, THEREFORE, for the mutual covenants and promises contained herein, the parties agree to be legally bound by the following terms and conditions:

- 1. **Global Settlement of Alleged Damages to GUTD.** Subject to the other relief described below, DOJ will agree to accept \$500,000.00 from GUTD's insurer in exchange for a release from any and all civil claims against GUTD and its officers and directors as specified in Paragraph 6 below.
- 2. **Dissolution of GUTD and Cooperation of Individual Directors.** The Individual Directors agree to take all necessary steps to dissolve GUTD in compliance with the Oregon Nonprofit Corporation Act, ORS Chapter 65 and any other applicable legal requirements. To the extent that the entity known as Give Us This Day Our Daily Bread, Inc. (GUTDODB) holds any assets, such assets will be returned to GUTD and GUTDODB will also dissolve. The Individual Directors also agree to cooperate with the fulfillment of the provisions of this Agreement. As part of the dissolution process:

- (a) **Cooperation in Dissolution.** GUTD agrees to cooperate with the Department of Human Services' efforts to find placements for children in the care of GUTD and further agrees to cooperate with the Department of Human Services' efforts to relicense its certified foster homes.
- (b) **Treatment of Assets.**
 - (i) Within 24 hours of this Agreement being fully executed, GUTD through the Individual Directors must remove Mary E. Ayala as a signatory on all GUTD accounts and appoint a new signatory.
 - (ii) As part of the dissolution, all GUTD income shall be deposited into a single bank account identified at the time this Agreement is fully-executed by GUTD and the Individual Directors. GUTD shall sign a Consent to the Release of Bank Records entitling DOJ to access any and all records related to that account.
 - (iii) Within 10 business days of entering into this Agreement, GUTD will notify DOJ of all liquid assets available to pay known creditors and its plan to liquidate all other assets.
 - (iv) GUTD shall not withdraw cash, in any form, from any of GUTD's accounts.
- (c) **Treatment of Creditors.**
 - (i) Except for expenditures necessary to meet the needs of the children in its care and to transition the children in its care or residing in its certified foster homes to other placements or to assist with the licensing or recertification of those homes, GUTD shall not transfer assets, including but not limited to the repayment of loans, without prior written consent of the DOJ.
 - (ii) Within 10 days of entering into this Agreement, GUTD will notify DOJ of the identity of its bona fide creditors, including the amount of all debts. GUTD will provide commercially acceptable documentary substantiation of those debts, and it will propose a plan to pay those creditors. For purposes of this Agreement, commercially acceptable documentary substantiation consists of documentation that was created at the time the obligation was incurred and that establishes the date, nature and business purpose of the debt, amount, and terms of repayment of the obligation.
 - (iii) GUTD may not treat Mary E. Ayala as a creditor with respect to the payment of back wages, loans, or other amounts allegedly owed to her. GUTD may not treat as a creditor any entity in which Mary E. Ayala holds an interest as a creditor, employee, owner, agent, successor or assign.

- (iv) GUTD may keep Mary E. Ayala as an employee until the company is dissolved and through her subsequent COBRA coverage period solely for the purpose of GUTD paying for her health insurance. GUTD shall only be obligated to Mary E. Ayala for her health insurance and not for any other current or back wages.
 - (v) DOJ reserves the right to reasonably object to any and all of GUTD's proposals to repay creditors. If such an objection is made by DOJ to a proposed payment within 20 business days of written notice being provided to DOJ, GUTD may not make the proposed payment. If no objection is received, GUTD may make the payment.
- (d) **Expenditures Other than to Creditors.**
- (i) Other than payments to bona fide creditors and to persons assisting in the dissolution of GUTD, GUTD may only make expenditures necessary to meet the needs of the children in its care and to transition the children in its care or residing in its certified foster homes to other placements or to assist with the licensing or recertification of those homes. GUTD will not pay creditors in connection with dissolution until such time as the children in its care have been placed in other facilities and it has taken reasonable and necessary steps to have its foster homes recertified or licensed through other providers. Any delays in recertification or licensing of foster homes not attributable to GUTD shall not prevent or delay GUTD from making payments to bona fide creditors.
 - (ii) For all expenditures made pursuant to this paragraph 2(d), GUTD must accurately record the expense, including the nature and business purpose of the expense, and maintain records in a manner that enables GUTD to substantiate, with documentary evidence, the accuracy of the expense and its purpose.
 - (iii) GUTD must immediately cease paying compensation to and may not otherwise transfer any other assets or interests to Mary E. Ayala, excepting the payment of health insurance and subsequent COBRA expenses.
 - (iv) At the time this Agreement is fully executed by GUTD and the Individual Directors, GUTD shall provide DOJ with a list of employees or contractors and identify each individual's compensation arrangement, including the amount being paid for Mary E. Ayala's health insurance. GUTD agrees to notify DOJ of any proposed material changes to the compensation arrangements reflected in the list described above in advance of making such changes. Any payments made after the date of this Agreement to employees or contractors will be reflected in the weekly written reports required under subparagraph 2(e) below.

- (e) **Weekly Written Reports.** As part of the dissolution, GUTD shall make weekly written reports to the DOJ regarding income and expenditures made in the ordinary course of business and, with these weekly written reports, GUTD shall provide ledgers and documentation to support expenditures made in the ordinary course with copies of bank statements on a monthly basis for all GUTD accounts.
- 3. **Oregon Nonprofit Involvement: Antoinette Wallace, Ruth Wallace, Anthony Perry, and Ora Hart.**
 - (a) **Prohibition on Board Service and Serving as an Oregon Charitable Fiduciary.** Antoinette Wallace, Ruth Wallace, Anthony Perry, and Ora Hart shall not act as an officer, director, trustee, key employee, manager, or controlling person, whether compensated or volunteer, ("Fiduciary Position") of any charitable organization operating, holding assets, or organized in the State of Oregon for a period of five (5) years from the date they sign this Agreement.
 - (b) **Exceptions.**
 - (i) Antoinette Wallace, Ruth Wallace, Anthony Perry, and Ora Hart will remain on the board of GUTD for the purpose of winding up the organization's affairs until the dissolution is completed.
 - (ii) Antoinette Wallace, Ruth Wallace, Anthony Perry, and Ora Hart agree that, at the expiration of the 5-year period set forth in paragraph (3)(a), if they desire to serve in a Fiduciary Position in Oregon they shall have taken steps to become better educated and informed about their fiduciary obligations as a member of a nonprofit board of directors, including by having a general familiarity with the DOJ document, "*Guide to Nonprofit Board Service.*"
 - (iii) Antoinette Wallace, Ruth Wallace, Anthony Perry, and Ora Hart for themselves each agree that prior to accepting or holding a Fiduciary Position with any Oregon charitable organization, they shall confirm that the organization holds tax exempt status with the IRS and is current on any reporting obligations to the IRS and DOJ.
 - (iv) Antoinette Wallace, Ruth Wallace, Anthony Perry, and Ora Hart for themselves each agree that, prior to accepting or holding a Fiduciary Position with any Oregon charitable organization; they shall provide at least 30 days' written notice to DOJ of their intention to undertake such service. Such notice shall include: (1) the name of the organization; (2) the party's proposed role therein; and (3) any compensation, if any, the party shall receive in the event they accept the position. For purposes of this Agreement, and as provided in ORS 65.001, payment solely for actual expenses in performing duties of the party as an officer or director, or a stipend that is paid only to compensate the average expenses the individual incurs over the course of a year, shall not be considered

compensation. Antoinette Wallace, Ruth Wallace, Anthony Perry, and Ora Hart also agree to provide a written sworn declaration demonstrating that they have fulfilled the training requirement in Paragraph 3(b)(ii), including by providing certificates of attendance or similar documentation fully identifying the any additional training they may have received. The party proposing to hold a Fiduciary Position shall also provide documentation establishing that the identified charity meets the qualifications set forth in Paragraph 3(b)(iii).

4. Nonprofit Involvement: Mary E. Ayala.

- (a) **Prohibition on Board Service and Serving as Charitable Fiduciary.** Mary E. Ayala shall not serve in a Fiduciary Position for any charitable organization operating, holding assets, or organized in the State of Oregon for a period of seven (7) years from the date she signs this Agreement. Immediately upon signing this Agreement, Mary E. Ayala agrees to resign as an officer, director, and key employee of GUTD and to refrain from interference with the dissolution process.
- (b) **Prohibition on handling funds directly received from the State of Oregon.** Mary E. Ayala must agree to refrain from accepting any compensated or volunteer position with any organization in Oregon, regardless of its corporate form, that permits or requires her to administer, manage, access, or otherwise control funds provided by the State of Oregon to that organization. She may, however, accept positions with organizations and businesses in Oregon that do not involve administering, managing, being a signatory for or otherwise controlling funds provided by the State of Oregon. Mary E. Ayala further agrees to provide written notice to DOJ in the event she accepts employment with any Oregon nonprofit organization for a period of 7 years from the date of this Agreement. Such notice will be provided within 30 days of accepting such employment and shall identify her employer, the amount of her compensation, and the nature of her employment.
- (c) **Exception.** Mary E. Ayala agrees that, at the expiration of the 7-year period set forth in paragraph (4)(a), she shall obtain at least 15 hours of training specifically related to nonprofit organizations provided by accredited educational institutions or by organizations that specialize in providing nonprofit training before accepting or holding a fiduciary position with any charitable organization operating, holding assets, or organized in the State of Oregon, and that she will also be subject to and comply with the conditions described in Paragraphs (3)(b)(ii), (iii) and (iv) above.

- 5. Enforcement of this Agreement.** DOJ may seek injunctive relief against any party to this Agreement to enforce any portion of this Agreement if DOJ determines that a particular party has breached any portion of this Agreement. In the event that DOJ determines that a party to this Agreement has violated the notice and approval provisions of Paragraphs 3 or 4 related to board service, DOJ may seek to specifically enforce this

Agreement by enjoining that party from serving in a Fiduciary Position in Oregon until the party complies with the provisions of Paragraph 3 and 4. The parties agree that the Court shall award reasonable attorney fees and costs to any prevailing party associated with any successful action for specific enforcement of this Agreement. The Court may only award reasonable attorney fees and costs to a defendant who prevails in an action under this section if the Court determines that the DOJ had no objectively reasonable basis for bringing the action. The remedies in this paragraph are in addition to, and not in lieu of, any other remedies or claims DOJ may have relating to such future conduct.

6. Mutual Release of Claims and Counterclaims.

- (a) **Release of Claims Related to Governance of Charitable Organization by DOJ.** Except as otherwise provided herein, in exchange for, and in consideration of, the covenants, terms, and conditions of this Agreement, DOJ hereby fully releases and discharges GUTD, the Individual Directors, and all GUTD's directors, officers and employees from any and all civil claims for violations of ORS chapter 128, ORS chapter 65, or the common law that DOJ has or had against them with respect to their role as charitable fiduciaries for GUTD arising prior to the date this Agreement is fully executed. This release only applies to claims belonging to DOJ in connection with its charitable oversight function. It does not release any claims, demands, actions or causes of action whatsoever belonging to any other agency, department or instrumentality of the State of Oregon. Likewise, this release does not bind any other federal, state, or local prosecution, administrative, or regulatory authority and does not apply to any claims other than those claims that could have been asserted in the name of the Attorney General in her capacity as regulator or overseer of charitable interests. DOJ also does not release any claims for criminal law violations. This release does not affect any claims DOJ may have against Mary E. Ayala with respect to her role as a fiduciary for any other charitable or nonprofit entity including specifically Alfred Yaun Child Care Center.
- (b) **Release of Claims by GUTD and the Individual Directors.** GUTD and the Individual Directors, their attorneys, or anyone acting on their behalves, agree to release and hold harmless DOJ, its officers, agencies, employees, and former employees, whether individually or in their official capacity, from any and all claims or counterclaims they have or had against DOJ related to the matter referenced in this Agreement and the investigation and litigation of their role, involvement in, or actions taken in connection with the operation of GUTD or otherwise related to their role as charitable fiduciaries.
- (c) **DHS Claims.** As of the date of this Agreement, there remain claims alleged by GUTD against the State of Oregon, Department of Human Services, for payment for services allegedly rendered by GUTD under multiple contracts with DHS prior to April 30, 2014 ("DHS Claims.") Nothing herein shall be construed to serve as a release by GUTD or the Individual Directors of the State of Oregon with respect to the DHS claims or any other claim for payment for services

rendered. Nothing in this Agreement shall be construed in any way as DOJ acknowledging that such claims exist or are meritorious.

7. Miscellaneous.

- (a) **No Admission of Wrongdoing or Fault.** This Agreement is made and entered into for purposes of settling and compromising disputed claims and is not and will not be construed or represented by any party as an admission of wrongdoing or fault of any sort by any party.
- (b) **Assumption of Risk.** In entering into this Agreement, each of the parties assumes the risk of any mistake of fact or law, and if any or all of the parties should subsequently discover that any understanding of the facts or the law was incorrect, none of the parties will be entitled to rescind or set aside this Agreement or any portion hereof.
- (c) **Independent Counsel.** The parties acknowledge that they have been represented or have had the opportunity to be represented by independent counsel in connection with the negotiation, preparation, and execution of this Agreement, they fully understand the terms of this Agreement, and they voluntarily agree to those terms for the purposes of making a full compromise of the subject matter of this Agreement. Accordingly, the rule that ambiguities in a contract will be construed against the drafter shall not apply to this Agreement.
- (d) **Modification.** This Agreement may not be amended or modified except as set forth herein or in writing signed by all parties.
- (e) **Severability.** If any provision of this Agreement, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Agreement, or the application of such provision to other persons or circumstances, will not be affected thereby.
- (f) **Binding Agreement.** This Agreement is binding upon the parties' successors, assigns, heirs, legal representatives, and personal representatives.
- (g) **Further Assurances.** The parties agree to execute, deliver, publish and record such further documents, instruments, and other agreements as are necessary to carry out the terms and purposes of this Agreement.
- (h) **Governing Law; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard for principles of conflict of laws. Any and all claims arising under or related to this Agreement or the underlying facts hereof, not otherwise limited in process by a provision of this Agreement, shall be brought and maintained solely in the Multnomah County Circuit Court of the State of Oregon except, if necessary, in the United States District Court for the District of Oregon. In no event shall this provision be

construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based upon the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court.

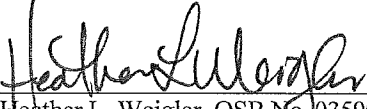
- (i) **Voluntary Agreement.** As evidenced by their signatures below, the parties hereby declare that they have read this Agreement and that it is fully understood and voluntarily accepted by them for the purpose of making a full, final and complete settlement, adjustment and compromise of any and all claims, including those arising out of the facts or matters described above, in whatever legal form or theory they might assert the same, whether disputed or otherwise, and in particular including, but not limited by, those matters which might have been asserted in a Complaint.
- (j) **Own Judgment and Advice.** As evidenced by their signatures below, the parties represent that they have relied on their own judgment and, if applicable, the advice of their own attorney in making this Agreement, and that no representations extraneous to this agreement have been made to them by DOJ or counsel for DOJ.
- (k) **Notice.** Notice under this Agreement may be provided as follows:
 - (i) To DOJ by first-class, regular mail addressed to Heather L. Weigler, Oregon Department of Justice, 1515 SW Fifth Avenue, Suite 410, Portland, OR 97201;
 - (ii) To GUTD by first-class, regular mail addressed to James R. Dowell, Law Firm of James R. Dowell, LLC, 2416 SW 5th Avenue, Ste. 200, Portland OR 97201;
 - (iii) To Mary E. Ayala by first-class, regular mail addressed to James R. Dowell, Law Firm of James R. Dowell, LLC, 2416 SW 5th Avenue, Ste. 200, Portland OR 97201;
 - (iv) To Anthony Perry by first-class, regular mail addressed to Christopher A. Larsen, Pickett Dummigan LLP, 900 American Bank Building, 621 SW Morrison Street, Portland, OR 97205;
 - (v) To Ora Hart by first-class, regular mail addressed to Ora Hart, 6911 Bethany Street, Shreveport, LA 71106;
 - (vi) To Antoinette Wallace by first-class, regular mail addressed to Antoinette Wallace, 3403 Pines Road, Shreveport, LA 71119; and
 - (vii) To Ruth Wallace by first-class, regular mail addressed to Ruth Wallace, PO Box 702, 3424 Freeman Road, Como MS 38619

- (l) **No Assignment.** The parties each represent and warrant that no person other than the signatories hereto had or has any interest in the matters referred to in this Agreement, that the parties have the sole right and exclusive authority to execute this Agreement, and that the parties have not sold, assigned, transferred, conveyed, or otherwise disposed of any claim, demand, or legal right that is the subject of this Agreement.
- (m) **Authority.** The parties warrant and represent that he/she/it is duly authorized and empowered to execute and deliver this Agreement, and this Agreement constitutes a valid and legally binding obligation of such party, enforceable against such party in accordance with its terms without further act or authorization. The parties further represent and warrant that the execution, delivery, and performance of this Agreement does not conflict with, violate, or result in the breach of any agreement, obligation, instrument, order, judgment, decree, law, or governmental regulation to which the party is subject.
- (n) **Final and Exclusive Agreement.** This Agreement contains the final and exclusive agreement and understanding of the parties with respect to the subject matter of it, and supersedes all prior and contemporaneous agreements, oral or written, except as set forth in this Agreement, there are no promises, representations, agreements or understandings, oral or written, among the Parties relating to the subject matter of this Agreement.
- (o) **Counterparts.** This Agreement shall become binding and enforceable only when signed as provided herein by all parties listed below. The Agreement may be executed in multiple counterparts, each of which shall be deemed an original agreement. Photocopies, facsimile copies, scanned copies, and electronically transmitted copies of the Agreement may be treated as an original.

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IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first written above.

**STATE OF OREGON, DEPARTMENT OF
JUSTICE, Acting by and through ELLEN F.
ROSENBLUM**

By: 
Heather L. Weigler, OSB No. 035900
Assistant Attorney General
Charitable Activities Section
Oregon Department of Justice

MARY E. AYALA

President and Board Director

ORA HART

Board Director

ANTHONY PERRY

Board Director

ANTOINETTE WALLACE

Chair of the Board of Directors

RUTH WALLACE

Board Director

GIVE US THIS DAY, INC.

By: _____

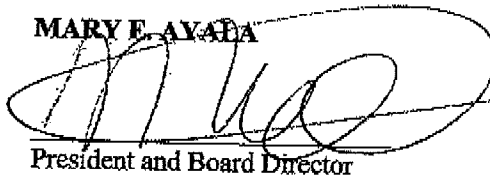
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Title: _____

**STATE OF OREGON, DEPARTMENT OF
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ROSENBLUM**

By: _____

Heather L. Weigler, OSB No. 035900
Assistant Attorney General
Charitable Activities Section
Oregon Department of Justice

MARY E. AYALA


President and Board Director

ANTOINETTE WALLACE_____
Chair of the Board of Directors**ORA HART**_____
Board Director**RUTH WALLACE**_____
Board Director**ANTHONY PERRY**_____
Board Director**GIVE US THIS DAY, INC.**

By: _____

Print Name: _____

Title: _____



Mary Holden
President/ED

**STATE OF OREGON, DEPARTMENT OF
JUSTICE, Acting by and through ELLEN F.
ROSENBLUM**

By: _____
Heather L. Weigler, OSB No. 035900
Assistant Attorney General
Charitable Activities Section
Oregon Department of Justice

MARY E. AYALA

President and Board Director

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Chair of the Board of Directors

ORA HART

Board Director

RUTH WALLACE

Board Director

ANTHONY PERRY

Board Director

GIVE US THIS DAY, INC.

By: _____

Print Name: _____

Title: _____

**STATE OF OREGON, DEPARTMENT OF
JUSTICE, Acting by and through ELLEN F.
ROSENBLUM**

By: _____

Heather L. Weigler, OSB No. 035900
Assistant Attorney General
Charitable Activities Section
Oregon Department of Justice

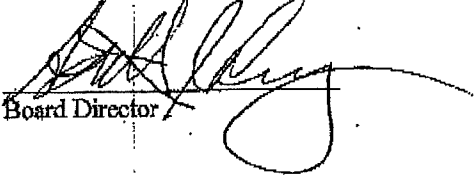
MARY E. AYALA

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ORA HART

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ANTHONY PERRY



Board Director

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Chair of the Board of Directors

RUTH WALLACE

Board Director

GIVE US THIS DAY, INC.

By: _____

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**STATE OF OREGON, DEPARTMENT OF
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By: _____

Heather L. Weigler, OSB No. 035900
Assistant Attorney General
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ANTOINETTE WALLACE

Antoinette Wallace

Chair of the Board of Directors

RUTH WALLACE

Ruth Wallace

Board Director

GIVE US THIS DAY, INC.

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Print Name: _____

Title: _____