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February 26, 2018

VIA EMAIL

Peter B. Robb, General Counsel
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570-0001

Re: ***McDonald's USA, LLC (McDonald's),*** **Cases 02-CA-093893, 04-CA-125567, *et al.***

Dear General Counsel Robb:

On behalf of the Charging Parties in the consolidated joint employer case against McDonald's USA, LLC ("McDonald's") and its franchisees, my co-counsel and I write to urge that you immediately suspend your current settlement discussions with those Respondents and resume the nearly completed ULP trial, in light of the Board's February 26, 2018 Order vacating and setting aside *Hy-Brand Industrial Contractors, Ltd.,* 365 NLRB No. 156 (Dec. 14, 2017), and reinstating the Board's joint employer standard as set forth in *Browning-Ferris Industries of California, Inc.,* 362 NLRB No. 186 (Aug. 27, 2015). *See Hy-Brand Industrial Contractors, Ltd.,* 366 NLRB No. 26 (Feb. 26, 2018), Slip Op. at 1 (emphasizing that *Hy-Brand's* attempted overruling of *Browning-Ferris* "is of no force or effect").

The McDonald's ULP trial in New York was very close to completion when the December 2017 *Hy-Brand* ruling issued. See ALJ Esposito's January 12, 2018 Order on Expert Testimony, Hearing Schedule and Presentation of Evidence at 1 ("McDonalds stated before the hearing adjourned on December 13, 2017 that it would have two additional witnesses to present on its direct case when the hearing resumes on January 22, 2018…."). Obviously, it was that improperly issued *Hy-Brand* decision that prompted the sudden initiation of "global" settlement discussions between McDonald's and the NLRB General Counsel, halting the ongoing trial just short of a completed record and an ALJ decision.

Thus, the General Counsel's January 17, 2018 motion to stay the McDonald's ULP trial expressly invoked the newly issued *Hy-Brand* decision as a key factor bearing on potential settlement (and requiring considerable time for analysis of its impact). And the ensuing settlement discussions with McDonald's were presumably based on the General Counsel's evaluation of the pending case under the (now inoperative) *Hy-Brand* joint-employer test.

Given the invalidation of *Hy-Brand*, and the resulting reaffirmation of *Browning-Ferris* as the authoritative Board precedent governing joint-employer determinations, the General Counsel should put further settlement discussions on hold at this time and promptly move to

resume and finish the ULP trial. This case will then be ready for a thoroughly reasoned decision applying the proper legal standard to a fully developed factual record. There can be no justification, we submit, for rushing to conclude a "fire-sale" settlement initiated under a discredited assumption that erroneously and unfairly discounted the strength of the General Counsel's litigating position.

At the very least, the General Counsel should suspend any further settlement discussions in the McDonald's case pending a full evaluation of this case under the *Browning-Ferris* joint employer standard.

Respectfully submitted,

s/Mary Joyce Carlson

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