

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

JONATHAN MCCANN
on behalf of himself
and all others similarly situated,

Plaintiff,

v.

SHIRLEY S. HILL, VERNON W. HILL, II
and INTERARCH, INC.,

Defendants,

and

INTERARCH, INC. PROFIT SHARING PLAN
AND TRUST,

Nominal Defendant

Case No. 20-06435

**CLASS ACTION
SETTLEMENT
AGREEMENT**

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INTRODUCTION

Subject to approval by the United States District Court for the District of New Jersey, this Class Action Settlement Agreement is made and entered into by and among Plaintiff, individually and on behalf of the Class, and Defendants Shirley S. Hill, Vernon W. Hill II, and InterArch, Inc. to settle claims against Defendants, subject to the terms and conditions below. All capitalized terms shall have the meaning ascribed them by Section I of this Agreement.

RECITALS

A. Plaintiff Jonathan McCann filed the original Complaint on May 27, 2020, docketed as Case No. 20-06435 in the United States District Court for the District of New Jersey, asserting claims on behalf of himself and a class of employee-participants of the InterArch, Inc. Profit Sharing Plan and their beneficiaries for alleged violations of ERISA.

B. Defendants answered the Amended Complaint on July 28, 2020 and also asserted various affirmative defenses.

C. On August 19, 2020, the Parties exchanged their Rule 26(a) Initial Disclosures.

D. On August 22, 2020, Plaintiff issued his First Request for Production of Documents.

E. At the Rule 16 conference with then-Magistrate Judge Joel Schneider, Magistrate Judge Schneider recommended and the Parties agreed to engage in settlement conference after Defendants produced certain discovery that Plaintiff's Counsel considered necessary to engage in informed settlement discussions.

F. Prior to engaging in settlement discussions, Plaintiff's Counsel requested on August 28, 2020 and Defendants produced certain discovery including (i) information about each participant's employment, dates of participation in the Plan, and account balances from October

31, 2017 through the Plan's termination in August 2020, (ii) contributions to the Plan and distributions to participants in the aggregate from October 31, 2010 through Plan's termination in August 2020, the Plan's investments, including specific contributions and distributions to participants from October 31, 2017 through Plan's termination in August 2020, (iv) the written instrument governing the Plan and other documents required to be disclosed pursuant to ERISA § 104(b)(4), and other documents about the Plan, (v) copies of releases from any plan participant, and (vi) copies of any insurance policies.

G. After receiving the discovery, Plaintiff and Defendants engaged in a Settlement Conference with then-Magistrate Judge Schneider on December 21, 2020, which was then followed by several subsequent status conferences regarding settlement. During those discussions, the Parties agreed to settle for an amount recommended by Magistrate Judge Schneider subject to reaching an agreement on other material, non-monetary, terms.

H. As the Parties had not reached agreement on the essential terms of a settlement, Plaintiff requested a Rule 16 conference and also issued requests for certain discovery.

I. On April 6, 2021, at the Rule 16 conference with Magistrate Judge Matthew J. Skahill, former Magistrate Judge Schneider's successor, the Parties agreed that further settlement discussions facilitated by Magistrate Judge Skahill might be useful.

J. Plaintiff and Defendants conducted arms-length negotiations at a mediation session with Magistrate Judge Skahill, on May 25, 2021 and again on June 22, 2021. During those settlement conferences, the Parties were able to reach agreement on the essential monetary and non-monetary terms and entered into a written Settlement In Principle on June 28, 2021.

K. Plaintiff's counsel have concluded that the terms of this Settlement are fair, reasonable, adequate and in the best interests of both the proposed Class and the Plan, and have agreed to settle the Action on the terms set forth herein.

L. Defendants deny the material allegations asserted in the Action, deny any wrongdoing or liability whatsoever and state that they are entering into the Settlement to avoid the cost, disruption, and uncertainty of litigation.

M. The Parties desire to promptly and fully resolve and settle with finality all of the claims on the terms set forth herein and subject to the approval of the Court.

I. DEFINITIONS

As used in this Agreement, the following terms have the following meanings, unless a section or subsection of this Agreement specifically provides otherwise. Capitalized terms used in this Agreement, but not defined in this Section I, will have the meaning ascribed to them elsewhere in this Agreement.

A. "Action" means the lawsuit entitled *Jonathan McCann, Plaintiff, v. Shirley S. Hill, Vernon W. Hill II, and InterArch, Inc., Defendants, and the InterArch, Inc. Profit Sharing Plan and Trust, Nominal Defendant*, docketed as Case No. 20-06435 in the United States District Court for the District of New Jersey.

B. "CAFA" means the Class Action Fairness Act.

C. "Cash Settlement Amount" means nine hundred fifty thousand dollars (\$950,000.00) paid by or on behalf of Defendants, other than the Nominal Defendant, the Plan.

D. "Class" means all participants in the InterArch, Inc. Profit Sharing Plan at any time between March 6, 2018 to the present (except those who terminated without vesting) and the beneficiaries of any such participants. Excluded from the Class are (1) Defendants, (2) any fiduciaries of the Plan, who are alleged to have engaged in prohibited transactions or breaches of

fiduciary duties, or who had decision-making or administrative authority relating to the administration, investment allocation, modification, funding, or interpretation of the Plan, (3) any beneficiaries of the foregoing as well as any members of their immediate families and (4) any of their successors, executors, or assigns.

E. “Class Counsel” means R. Joseph Barton of Block & Leviton LLP and Adam H. Garner of The Garner Firm Ltd.

F. “Class Member” means an individual who is a member of the Class.

G. “Class Notice” means a form of notice provided to the Class Members that complies with the requirements of this agreement, Fed. R. Civ. P. Rule 23, and is approved by the Court.

H. “Class Notice Packet” means the Class Notice and any other forms approved or directed by the Court.

I. “Class Representative” means Plaintiff.

J. “Complaint” means the Complaint (Dkt. 1).

K. “Court” means the United States District Court for the District of New Jersey.

L. “Defendants” mean Shirley S. Hill, Vernon W. Hill II, and InterArch, Inc.

M. “Defense Counsel” means the undersigned counsel for Defendants.

N. “Election Distribution Packet” means any necessary forms and information for a Class Member to elect to receive a distribution (including a rollover) from the Plan.

O. “Excluded Persons” means the following persons who are excluded from the Class: (1) Defendants; (2) any fiduciaries of the Plan, who are alleged to have engaged in prohibited transactions or breaches of fiduciary duties, or who had decision-making or administrative authority relating to the administration, investment allocation, modification,

funding, or interpretation of the Plan; (3) any beneficiaries of the foregoing as well as any members of their immediate families; and (4) any of their successors, executors, or assigns.

P. “ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

Q. “Escrow Account” means an account established by Class Counsel and the Defendants in the name of InterArch Profit Sharing Litigation Settlement Fund into which the Cash Settlement Amount has been paid.

R. “Expense Award” will have the meaning set forth in Section IX.1 of this Agreement.

S. “Fee Award” will have the meaning set forth in Section IX.1 of this Agreement.

T. “Final Approval Motion” means the motion to be filed by Class Counsel requesting that the Court grant final approval of the Settlement pursuant to Fed. R. Civ. P. 23(e).

U. “Final Order” means the Order and Final Judgment, substantially in the form of an Order described in Section XI.2 below.

V. “Independent Fiduciary” means the person(s) or entity hired by Defendants pursuant to Section XIV.

W. “Non-Appealable” means an order entered by the Court is no longer subject to appeal, which will occur when: (i) if no appeal is taken therefrom, on the date on which the time to appeal therefrom (including any extension of time) has expired; or (ii) if any appeal is taken therefrom, on the date on which all appeals therefrom, including any petitions for rehearing or re-argument, petitions for rehearing *en banc*, and petitions for writ of *certiorari* or any other writ, or any other form or review, have been finally disposed of, such that the time to appeal therefrom

(including any extension of time) has expired, in a manner resulting in an affirmance of the Final Order.

X. “Parties” or “Settling Parties” means collectively Plaintiff, individually and on behalf of the Class, and all Defendants collectively.

Y. “Party” refers to any of the Parties.

Z. “Plan of Allocation” means the plan for distribution of the proceeds of the Settlement Fund as proposed by Class Counsel to be approved by the Court.

AA. “Preliminary Approval Order” means the “Order Preliminarily Approving Settlement, Approving Form of Notice, and Setting Final Approval Hearing” in this Action, substantially in the form described in Section XI.1.

BB. “Plaintiff” means Jonathan McCann.

CC. “Plaintiff’s Counsel” means Block & Leviton LLP and The Garner Firm Ltd.

DD. “Plan Administrator” means the administrator of the InterArch, Inc. Profit Sharing Plan within the meaning of ERISA § 3(16)(A), 29 U.S.C. § 1002(16)(A).

EE. “InterArch” means InterArch, Inc.

FF. The “Plan” means the InterArch, Inc. Profit Sharing Plan.

GG. “Settled Claims” means the Settled Class Claims as well as other claims released pursuant to this Settlement provided in Section XVI.

HH. “Settled Class Claims” means the claims that the Class will release pursuant to this Settlement as provided in Section XVI.1.

II. “Settlement” means the settlement and compromise of this Action as provided for in this Settlement Agreement.

JJ. “Settlement Administrator” means any person appointed by the Court, who is to be responsible for, among other things, providing the Class Notice Packet to Class Members and/or assisting with the administration of the Settlement.

KK. “Settlement Agreement” means this Class Action Settlement Agreement and any accompanying Exhibits, including any subsequent amendments thereto and any Exhibits to such amendments.

LL. “Settlement Fund” means the Cash Settlement Amount plus any earnings and interest thereon, minus any Court-approved deductions and expenses.

MM. “Tax” or “Taxes” means any and all taxes, fees, levies, duties, tariffs, imposts, and other charges of any kind (together with any and all interest, penalties, additions to tax and additional amounts imposed with respect thereto) imposed by any governmental authority, including income tax and other taxes and charges on or regarding franchises, windfall or other profits, gross receipts, property, sales, use, capital stock, payroll, employment, social security, workers’ compensation, unemployment compensation, or net worth; taxes or other charges in the nature of excise, withholding, *ad valorem*, stamp, transfer, value added or gains taxes; license, registration, and documentation fees; and customs’ duties, tariffs, and similar charges.

NN. “Termination Notice” will have the meaning set forth in Section XVII.2 of this Settlement Agreement.

II. CLASS CERTIFICATION

1. **Motion.** Plaintiff will seek to certify Counts I-V on behalf of the Class pursuant to Rule 23(b)(1) and/or (2) and may alternatively seek to certify the Class pursuant to Rule 23(b)(3); however, the Parties have entered into a Confidential Supplemental Agreement (filed under Seal with the Court) that sets forth the conditions on which Defendants will have the option to terminate this Settlement in the event that the Court certifies Counts I, II, III or V under

Rule 23(b)(3) rather than Rule 23(b)(1) or (b)(2) and the number of valid requests for exclusion exceed the agreed-upon number and certain other conditions set forth in the Confidential Supplemental Agreement.

2. **Parties' Cooperation.** The Parties will cooperate and each use their best reasonable efforts to obtain certification of a mandatory settlement class under Rule 23(b)(1) and/or Rule 23 (b)(2), or alternatively, a Class pursuant to Rule 23(b)(3).

3. **Non-Opposition.** The Defendants will not object to or oppose certification of the Class at the Court or on any appeal concerning the approval of this Settlement.

III. CLASS NOTICE

1. **Provision of Class Notice.** Upon the date specified in the Court's Preliminary Approval Order, the Settlement Administrator, or in the event that no Settlement Administrator is utilized, Class Counsel will be responsible for providing Class Notice to the Class Members.

2. **Contents.** The Class Notice, in a form approved by the Court will contain: a brief description of the claims advanced by the Class; a summary of the terms of the Settlement Agreement; information on the attorneys' fees and costs sought by Class Counsel; a description of the proposed Plan of Allocation of the Settlement Fund to the Class; and will provide information about the Final Approval Hearing. Additionally, as part of the Class Notice or as an accompanying enclosure, the estimated settlement allocation for that Class Member (under Class Counsel's proposed Plan of Allocation) will also be provided.

3. **Method of Providing Class Notice.** Class Notice will be provided to each individual Class Member: (a) by mailing via first class U.S. Mail or to the extent that email is known and available, by email, and (b) by posting the Class Notice (and other documents filed in the litigation) on a dedicated website. Defendants will cooperate with Class Counsel to facilitate

providing Class Notice and other settlement-related communications by providing email and mailing addresses for all Class Members, to the extent such information is reasonably available in the records of Defendants.

4. **Additional Information Provided with the Class Notice.** Along with the Class Notice, every Class Member will be provided with any necessary information about how to request a distribution or rollover of his or her Settlement Fund from his/her Plan account. Any Class Member will be entitled to request and receive the necessary forms to elect a distribution of his or her share of the Settlement Fund. Any distributions from the Settlement Fund will be subject to the same rules as a distribution from the Plan except that any employee entitled to request a distribution from the Plan will not be charged a fee to receive the proceeds of this Settlement.

5. **Settlement Administrator.** To the extent that one of the Parties request appointment of and propose a qualified person to act as Settlement Administrator, a Settlement Administrator shall be appointed by the Court pursuant to Section VII.1 of this Agreement. The Parties and their counsel will reasonably cooperate with the Settlement Administrator to facilitate providing Notice and other settlement-related communications and administration.

6. **Undeliverable Notices.** In the event that a Class Notice is sent by email and returned as undeliverable, the Notice will be sent by U.S. Mail. In the event that a Class Notice sent by U.S. Mail is returned as undeliverable, the Settlement Administrator (or in the event that Notice is handled by Class Counsel, then Class Counsel) will make reasonable efforts to obtain a valid mailing address and promptly resend the Class Notice to the Class Member by U.S. Mail.

7. **Class Data.** Within 11 days after this Settlement Agreement is executed, Defendants will, to the extent not already disclosed, provide Class Counsel with the following contact information in electronic form for each Class Member, to the extent such information is reasonably available in Defendants' files: (1) name; (2) a street mailing address; (3) telephone number(s); (4) e-mail address(es); (5) Social Security number; (6) sufficient information identifying the beneficiary Class Member (including any persons who have a QDRO) for each participant Class Member, including any reasonably available information set forth in (1)-(5) with respect to that beneficiary Class Member. Defendants will also provide other information reasonably requested by Class Counsel or the Settlement Administrator.

8. **Class Notice Costs and Expenses.** The costs of Class Notice will be paid by Defendants in addition to the amounts paid into the Settlement Fund. In the event that a Settlement Administrator is appointed, Defendants will pay all of the fees and expenses of the Settlement Administrator in accordance with the terms of any agreement with the Settlement Administrator. In the event that no Settlement Administrator is appointed, Defendants will pay the out-of-pocket expenses of Class Counsel incurred with providing Class Notice to members of the Class (which is in addition to the amounts paid as part of the Expense Award), including the reasonable costs of mailing and related to a dedicated website, within 30 days of receipt of any invoice for such expenses (regardless of whether the Settlement is terminated). Any dispute about the expenses incurred by Class Counsel or the Settlement Administrator will be decided by the Court.

9. **Declaration Regarding Class Notice.** Within 30 days after the date on which Notice is required to be sent, the Settlement Administrator (or if Notice is sent by Class

Counsel, Class Counsel) will file a declaration with the Court confirming that the Notice and related information was sent in accordance with the Preliminary Approval Order.

IV. SETTLEMENT FUND

1. **Custody of Settlement Fund.** The Settlement Fund held in the Escrow Account will be deemed to be in the custody of the Court and will remain subject to the jurisdiction of the Court and will be administered in accordance with the terms of this Settlement Agreement and the Orders of the Court. Except as provided herein, the Settlement Fund will not be paid to the Class Members pursuant to the Plan of Allocation until the Final Order becomes Non-Appealable.

2. **Management of the Settlement Fund.** Until the Final Order becomes Non-Appealable or until the Settlement is terminated in accordance with this Agreement, the Settlement Fund will be held in the Escrow Account, for which an Escrow Agent will act pursuant to the terms of the Escrow Agreement or as ordered by the Court. After the Final Order becomes Non-Appealable, Class Counsel will have the sole right and duty to manage the Settlement Fund in compliance with the terms of the Final Order. After receipt of the proceeds of the Settlement Fund by the Plan, the Settlement Fund will be held, managed, and invested consistent with this Agreement and consistent with the fiduciary duties of the fiduciary of the Plan. Any earnings or interest earned by the Settlement Fund will become part of the Settlement Fund.

3. **Qualified Settlement Fund.** The Settlement Fund is intended by the Settling Parties to be a “qualified settlement fund” for federal income tax purposes under Treas. Reg. § 1.468B-1 at the earliest date possible.

V. DISTRIBUTIONS FROM THE SETTLEMENT FUND

1. **Expenses Before the Effective Date.** Until the Final Order becomes Non-Appealable or the Settlement is terminated in accordance with this Agreement, Class Counsel will be authorized to pay from the Settlement Fund upon notice to Defense Counsel (a) any actual or estimated taxes on any income earned on the Settlement Fund, and (b) all costs and expenses related to the preparation of such tax filings or payments. Any dispute regarding the reasonableness of any expense incurred, paid, or owing will be adjudicated by the Court, but in no event will such a dispute require Class Counsel to cause or allow the Settlement Fund to fail to file a tax return or make a tax payment in a timely manner.

2. **Attorneys' Fees and Expenses/Costs.** Pursuant to any deadline set by the Court, Class Counsel may file any motion with the Court requesting the payment of attorneys' fees, reimbursement of litigation expenses and costs out of the Settlement Fund. Any amounts so awarded by the Court will be paid from the Settlement Fund as directed by Class Counsel before Distribution to the Class.

3. **Tax Reserve After the Effective Date:** Upon the Final Order becoming Non-Appealable, Class Counsel will be authorized to establish a reserve out of the Settlement Fund to pay any Taxes that are or will be owed (but not yet due) and for expenses related to payment of Taxes or filing of tax returns or to the extent that there are costs of administration of the Settlement that Defendants have not paid (regardless of whether those are expenses that Defendants are obligated to pay under this Agreement).

4. **Distribution to Class Members.** After the Final Order becomes Non-Appealable, the Settlement Fund will be distributed to Class Members pursuant to the Court-approved Plan of Allocation through the Plan. The following payments will be made from the Settlement Fund prior to any distributions to Class Members: (a) any Taxes on the income or

earnings by the Settlement Fund, any tax-related expenses, and the creation of any reserve for future expenses (as described above); (b) any expenses incurred in connection with the administration of the Settlement Fund (to the extent that there are any under this Settlement); and (c) any award of attorneys' fees, reimbursement of any litigation expenses and costs to Class Counsel. After deduction of the foregoing, the Settlement Fund will be distributed to the Class Members in accordance with the Plan of Allocation, and in amounts to each individual Class Member as directed by the Class Counsel or the Settlement Administrator.

5. **Distributions of the Settlement to the Class.** Distributions to Class Members who are entitled to receive an allocation from the Settlement Fund through the Plan will be made as follows:

(a) As soon as practicable, but not later than 7 days after the Class Notice is sent, the Plan Administrator of the Plan will send each Class Member an Election Distribution Packet. A copy of the Election Distribution Packet will be provided to Class Counsel and to the Settlement Administrator to be posted on the settlement website. For all requests for distributions received within 90 days after this initial Election Distribution Packet is sent to Class Members, the Plan Administrator will make a distribution or rollover to that Class Member as directed by the election form within the later of: (i) 30 days of receiving the distribution or rollover instructions from the Class Member, or (ii) 30 days after the Plan has received amounts from the Settlement Fund and the Plan Administrator has received a direction from Class Counsel or the Settlement Administrator regarding the allocation of any portion of the net proceeds of the Settlement Fund to each Class Member.

(b) In the event that a Class Member fails to make an election to receive a distribution of their Settlement and a Class Member's proceeds from this Settlement cannot be distributed to the Class Member within 60 days after the Plan has received amounts from the Settlement Fund and the Plan Administrator has received a direction from Class Counsel or the Settlement Administrator, the Plan Administrator will establish an individual retirement account ("IRA") at Millennium Trust Company (or another institution approved by the Court) for the benefit of the Class Member and (i) transfer that Class Member's proceeds from the Settlement (i.e. an amount equal to the distribution of his/her Settlement) to the IRA, and (ii) direct that the assets held by the IRA be invested in a money market fund or similar investment with the primary purpose to preserve principal acceptable to Class Counsel (e.g. reasonable fees) or another investment directed by the Court. The amount transferred to the IRA shall be treated for all purposes of this Agreement the same as a distribution of a Class Member's Settlement to the Class Member, including the prohibition on expenses charged to Class Members.

6. Costs and Expenses Related to Settlement Administration and Distribution. Defendants will bear all costs of administration of the Settlement including any costs relating to administration and distribution of the Settlement Fund, including any expenses to prepare any tax filings related to the Settlement Fund and will pay such expenses no later than 30 days of receipt of any invoice for such expenses (regardless of whether the Settlement is terminated). Any dispute about the expenses incurred by Class Counsel or the Settlement Administrator will be decided by the Court. No fees, expenses, costs, or other charges that Defendants incur or for which Defendants are responsible will be charged to the Settlement

Fund, including the costs of CAFA Notice, or the costs of the Independent Fiduciary. To the extent that the administration or distribution of amounts from the Settlement Fund or the Plan to Class members involves any charges, such costs will be borne by Defendants.

7. **Restrictions on Administration and Distribution Expenses.** No fees, expenses, costs, or other charges will be imposed on Class Members to receive their proceeds from this Settlement at any time or otherwise related to administration of the Settlement, including any charges that would otherwise be imposed by the Plan on distributions or other administrative costs that would have been charged by the Plan (or any service provider) to any Class Member until the proceeds are distributed to that Class Member.

8. **Tax Liability.** The Settling Parties will not have any liability or responsibility for the payment of any Taxes incurred by or with respect to the Settlement Fund, and any such Taxes will be paid out of the Settlement Fund.

VI. PLAN OF ALLOCATION

1. **Proposed Plan of Allocation.** Class Counsel will propose and submit a Plan of Allocation to the Court as to the recommended method of determining and distributing the proceeds of the Settlement Fund (net of attorneys' fees and expenses) to members of the Class.

2. **Defendants' Limited Involvement.** Defendants shall have no responsibility for preparing or any right to provide input into and will take no position on the Plan of Allocation except to the extent that the Plan of Allocation would jeopardize the tax-qualified status of the Plan. To the extent that the Parties cannot resolve Defendants' concern about the Plan of Allocation's impact on the tax-qualified status of the Plan, Defendants will have the right to present their objections to the Court about the impact of the Plan of Allocation

on the tax-qualified status of the Plan within 14 days of Plaintiff filing the Preliminary Approval Motion.

3. **Modification of Plan of Allocation.** Class Counsel will have the unilateral ability to withdraw from the settlement if the Court materially modifies the Plan of Allocation. A material modification of the Plan of Allocation includes eliminating or reducing by more than seven and one-half percent (7.5%) the amount of any discount for participants who signed releases contemplated by Class Counsel's proposed Plan of Allocation.¹

4. **Class Members' Right to Demonstrate Membership and/or Submit Account Data.** Before the Final Approval Hearing and by a deadline to be established by the Court, any person who claims to meet the definition of a Class Member but who has not been identified as a Class Member in the data provided by Defendants will be entitled to demonstrate membership in the Class and any person claiming that the data provided by Defendants about a participant's account is erroneous will be entitled to demonstrate that such an error will impact the amount allocated to that participant under the Plan of Allocation. Such submissions will be used to determine whether a person qualifies as a Class Member for purpose of this Settlement, subject to Court approval, and to adjust amounts allocated to Class Members, subject to Court approval, under the Plan of Allocation, but such determinations will not have any other effect as to that person's rights under the Plan.

5. **Excluded Persons Prohibited from Receiving Settlement Funds.** None of the Excluded Persons will either directly or indirectly receive any of the proceeds from this

¹ By way of illustration, if the Plan of Allocation proposes to discount the claim of participants who signed by releases by 50% and the Court reduces the discount to only 40%, or increases it to 60% that would constitute a material modification; however, if the Court modifies the discount to 45% or increases the discount to 55%, that would not constitute a material modification.

Settlement. Defendants acknowledge that they will not receive any allocation of any amount from this Settlement. Any Defendants who were participants or beneficiaries in the Plan agree they shall not seek any amount from this Settlement. Any Defendants who were participants or beneficiaries in the Plan will obtain any authorization in writing from any beneficiary (including any spouse or former spouse) necessary for that Defendant (and their beneficiaries) to forego any amount from this Settlement so that that neither the Defendant nor any beneficiary will receive any amount from this Settlement.

6. **No Claim Based on Distribution in Accordance with the Plan of Allocation.** The Class and its members will not have any claim against, and will hold harmless, Plaintiff, the Plan, Defendants, counsel to any of the foregoing (including Class Counsel), the Settlement Administrator, or other individuals involved in the distribution under the Plan of Allocation, from any claim based on any distributions of the Settlement Fund made substantially in accordance with this Settlement Agreement, the Plan of Allocation, or as otherwise may be authorized by the Court.

VII. SETTLEMENT ADMINISTRATION

1. **Appointment of Settlement Administrator.** To the extent that one of the Parties request that a Settlement Administrator administer this Settlement and propose a qualified person to act as Settlement Administrator, any such Settlement Administrator will be approved and appointed by the Court to administer the Settlement and will report to Class Counsel and the Court. The Settlement Administrator will have experience providing notice to Class Members and administering settlements in employment or employee benefit class action settlements, and settlement funds. The Settlement Administrator shall not be any business with or in which any Party or their counsel (or the firm of such counsel) has any personal relationship or financial interest. To the extent that one of the Parties request appointment of and propose a qualified

Settlement Administrator, the Parties will jointly agree on Settlement Administrator to propose to the Court for appointment. In the event that the Parties cannot agree upon a proposed Settlement Administrator, Plaintiff and Defendants will each propose one candidate and the Settlement Administrator will be selected by the Court.

2. **Settlement Administrator's Responsibilities.** To the extent that there is a Settlement Administrator, the Settlement Administrator will undertake the following tasks to administer this Settlement consistent with the terms of this Settlement, the Plan of Allocation, and the Orders of the Court and such other procedures required by the Court or as directed by Class Counsel:

- a) Print and mail the Class Notice Packet to the Class Members in accordance with this Settlement Agreement and any order of the Court and undertake to trace and re-mail all undeliverable Class Notice Packets or other reasonable steps to locate missing Class Members;
- b) Provide any information on any new addresses to the Plan in order to facilitate the establishment of any new accounts for Class Members;
- c) Provide Class Counsel and Defense Counsel with copies of any objections to the Settlement (to the extent such objections are not filed with the Court) and copies of any requests for exclusions;
- d) Provide Class Counsel and Defense Counsel with any challenges to Defendants' data, including all information submitted in support of each challenge;
- e) Respond to questions from Class Members or refer Class Members to Class Counsel for responses;

f) Maintain and staff a toll-free phone number and a web site until at least six (6) months after distributions of the Settlement Fund have been made to Class Members;

g) File with the Court a declaration confirming compliance with the procedures approved by the Court for providing notice to the Class;

h) Determine for purposes of allocation of the Settlement Fund, subject to the approval by Class Counsel and the Court, whether any Class Members challenging their account data have sufficiently established the Defendants' data is erroneous and send notice of the determinations to those persons;

i) Instruct the Plan Administrator, consistent with the court-approved Plan of Allocation, as to how the Cash Settlement Amount is allocated among the Class and to the accounts of individual Class Members;

j) Monitor the Qualified Settlement Fund and file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including without limitations the returns described in Treas. Reg. Section 1.468B-2(k));

k) Any other responsibilities set forth in this Agreement and any other responsibilities agreed to by the Settling Parties related to administration of the Settlement and consistent with the orders of the Court or any other responsibilities ordered by the Court.

To the extent that no Settlement Administrator is appointed, such responsibilities will be undertaken by Class Counsel (except that no toll-free telephone number will be required).

3. **Plan Administrator.** The Plan Administrator will be responsible for distributing the settlement payments to the Class Members' accounts consistent with the Plan of Allocation and the directions from the Settlement Administrator or Class Counsel and then distributing the settlement payments to the Class Members. The Plan Administrator will comply with the instructions of the Settlement Administrator or Class Counsel regarding the amounts to allocate to Class Members so long as those instructions are consistent with the Plan of Allocation approved by the Court and other orders of the Court. Defendants will not take any actions to interfere with the Plan Administrator complying with those instructions unless the instructions contradict an express term in this Agreement.

4. **Prohibition on Assessment of Expenses to the Class.** The Class Members will not be charged or assessed any amount by Defendants, the Plan Administrator or the Plan (or its service providers) for any of the following: (1) payment of the Class Members' pro rata share of the Settlement Fund, (2) expenses related to administration or implementation of this Settlement, or (3) expenses incurred in allocating or distributing any amounts paid into the Plan or to the Class Members (or according to their distribution elections).

5. **Tax Treatment of the Plan.** To the extent consistent with the terms of this Settlement Agreement, the Court-approved Plan of Allocation and any order of the Court, the Parties will use their best efforts to ensure that the Settlement will not adversely affect the tax-qualified status of the Plan and that the distributions from the Settlement Amount paid to Class Members qualify for tax-deferred treatment. Defendants will be responsible for all costs associated with any steps that Defendants undertake to ensure (a) the tax favored treatment of the Settlement Payment into the Plan and (b) the continued tax qualification of the Plan with respect to the Settlement.

VIII. CASH SETTLEMENT FOR INDIVIDUAL CLAIM

1. **Payment of Cash Settlement for Individual Claim.** Within 7 days following the entry of Final Approval, Defendants shall pay five thousand dollars (\$5,000) to Plaintiff according to wiring instructions to be provided to Defense Counsel by Class Counsel, in consideration for the settlement of his individual claim brought under Count VI of the Complaint.

2. **Non-approval and Disclosure.** The payment of the cash settlement for Plaintiff's individual claim shall not be subject to Court approval, but will be disclosed to the Court and to the Class by way of the Class Notice.

3. **No Service Award.** Plaintiff shall not seek a class representative service award.

IX. PAYMENT OF FEES AND REIMBURSEMENT OF COSTS AND EXPENSES

1. **Attorneys' Fees and Expenses from the Settlement Fund.** Prior to the deadline for Class Members to object to the Settlement Agreement and by a date to be set by the Court, Class Counsel will be entitled to file any motion with the Court for an award from the Settlement Fund of: (a) attorneys' fees (the "Fee Award"), and (b) reimbursement of litigation costs and expenses (the "Expense Award"). Any Fee Award or Expense Award will be paid solely from the Settlement Fund and is subject to the Court's approval at the Final Approval Hearing.

2. **Defendants' Non-Opposition.** Defendants and their counsel will take no position regarding the application for or an award of the Fee Award or the Expense Award.

3. **Payment of Fees/Expenses to Class Counsel.** All amounts to be paid pursuant to this Section will be paid into an account designated by Class Counsel to be distributed and allocated among any Plaintiff's Counsel as directed by Class Counsel. Neither

Defendants nor their insurers will have any input as to the division of such fees and expenses among Plaintiff's Counsel.

4. **Timing of Payment of Attorneys' Fees and Reimbursement of Expenses.** In the event that the Court grants any Fee Award or Expense Award, disbursement of any Fee Award or Expense Award from the Settlement Fund may be made upon the Final Order becoming Non-Appealable. In the event that there is no appeal of the Final Approval of the Settlement, but an appeal solely of a Fee Award or an Expense Award, Class Counsel will be entitled to a disbursement from the Settlement Fund of such amount of attorneys' fees and/or such amount of expenses/costs as to which there is no appeal or the amount of which is not contested on appeal.

5. **Non-Materiality of Award of Attorneys' Fees and Reimbursement of Expenses to Settlement.** In the event that this Court refuses to award attorneys' fees, allow reimbursement of expenses/costs, in whole or in part, or any such award is rejected or modified on appeal, such rejection or modification will not constitute a material modification of this Settlement Agreement, will not void this Settlement Agreement, and will not provide a basis for any Party to withdraw from this Settlement Agreement.

6. **Defendants' Attorneys' Fees & Expenses.** Defendants will bear their own attorneys' fees, expenses, and costs. No amount of the attorneys' fees, expenses, or costs of this Litigation incurred by Defendants or the administration of this Settlement incurred by any of the Defendants or the Plan, or service providers thereto, will be paid by, or charged to, any amounts paid in this Settlement or, directly or indirectly, to any Class Member.

X. NO ADMISSION OF WRONGDOING OR INFIRMITY OF CLAIMS

1. This Settlement Agreement embodies a compromise of disputed claims and nothing in the Settlement Agreement will be interpreted or deemed to constitute any finding

of wrongdoing by Defendants or give rise to any inference of liability in this or any other proceeding. This Settlement Agreement will not be offered or received against Defendants as any admission by any such Party with respect to the truth of any fact alleged by Plaintiff or the validity of any claim that had been or could have been asserted in the Action or in any litigation or of any liability, negligence, fault, or wrongdoing of any such Party.

2. This Settlement Agreement is not, nor may it be deemed to be, nor may it be used as an admission of, or as evidence of any infirmity in the claims asserted by Plaintiff and Class Members.

3. This Settlement Agreement may be used in such proceedings as may be necessary to consummate or enforce this Settlement Agreement or the Final Order, and any Party may file this Settlement Agreement and/or the Final Order in any action that may be brought against it to support a claim, a defense, or a counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim, or in any action that may be brought to enforce any claim assigned pursuant to this Settlement Agreement.

Defendants may use and disclose this Settlement Agreement in connection with any proceeding involving any of their insurers or any governmental agency with respect to the Plan.

XI. APPROVAL

1. **Preliminary Approval Order.** Class Counsel, on behalf of the Class, will move the Court to enter the Preliminary Approval Order (“Preliminary Approval Motion”). The Preliminary Approval Motion will seek an Order in a form agreed upon by the Settling Parties which will propose among other things:

(a) Preliminary Approval of the Settlement as set forth in this Settlement Agreement, subject to further hearing and determination under Fed. R. Civ. P. 23(e);

(b) Approval of the form of Class Notice, substantially in the form agreed-upon by the Parties, and the manner of distribution and publication which is consistent with this Agreement, Fed. R. Civ. P. Rule 23, and the requirements of due process;

(c) Preliminary Approval of the Plan of Allocation;

(d) Appointment of the Settlement Administrator to the extent that one of the Parties request appointment of a Settlement Administrator;

(e) Deadlines by which all objections to the Settlement must be made or any submissions to the Settlement Administrator regarding their Plan account data must be made (and if a Rule 23(b)(3) class is certified, a deadline for requests for exclusion to be filed);

(f) A deadline by which any requests for exclusion must be submitted (if any claim is certified under Rule 23(b)(3)) and provide that any requests for exclusion will be submitted to the Settlement Administrator and/or Class Counsel and Defense Counsel (but will not be disclosed to the Parties until filed with the Court after the deadline for exclusion has passed);

(g) A schedule for a hearing date for the Court to determine whether the Settlement Agreement should be finally approved as fair, reasonable, and adequate, and whether an Order finally approving the Settlement Agreement should be entered (“Final Approval Hearing”);

(h) That no objection to the Settlement Agreement will be heard and no papers submitted in support of said objection will be received and considered by the Court at the Final Approval Hearing unless the objection and reasons therefore, along with copies of any supporting papers, are filed with the Clerk of the Court and served on the Parties within forty-five (45) days of the publication and/or distribution of the Class Notice;

(i) A deadline for filing a Final Approval Motion and for Class Counsel's application for Fee Award, and Expense Award;

(j) A deadline for filing any motion or brief in support of any additional findings requested to be made by the Court on Final Approval;

(k) That the Final Approval Hearing may be continued from time to time by Order of the Court if necessary, and without further notice to the Class;

(l) Require Defendants to produce the Class Data required pursuant to this Agreement to the extent that such data is reasonably available and within their possession, custody or control; and

(m) If requested by Defendants, approval of the CAFA Notice.

2. **Final Approval of the Settlement.** If the Court preliminarily approves this Settlement, and if neither Defendants nor Class Counsel has not exercised any right to withdraw pursuant and within the times required by this Agreement, Class Counsel will file a Final Approval Motion, which will seek entry of a proposed Final Order in a form to be agreed-upon by the Settling Parties and will, among other things request that the Court order and/or find as follows:

- (a) Order Final Approval of the Settlement of the claims of the Class set forth in this Settlement Agreement;
- (b) Adjudge that the Settlement is fair, reasonable, and adequate to the Class pursuant to Fed. R. Civ. P. 23(e);
- (c) Finally Approve the Plan of Allocation;
- (d) Dismiss the Action against Defendants with prejudice;
- (e) Adjudge that Plaintiff and the Class will be deemed conclusively to have released and waived any and all Settled Class Claims against Defendants as provided in this Settlement Agreement;
- (f) Bar and permanently enjoin the Parties and the Class from prosecuting any and all Settled Claims, as provided in this Settlement Agreement, against any Party from whom they have released claims;
- (g) Determine Class Counsel's request(s) for Fee Award and Expense Award;
- (h) Retain exclusive jurisdiction, without affecting the finality of the Order entered, with regard to: (i) implementation of this Settlement Agreement; (ii) disposition of the Settlement Fund and distributions from the Settlement Fund; and (iii) enforcement and administration of this Settlement Agreement, including the release provisions thereof; and
- (i) To the extent that Defendants have timely complied with CAFA and provided CAFA Notice consistent with this Agreement, find that notice to the appropriate state and federal officials has been provided as required by CAFA and Defendants have satisfied their obligations pursuant to 28 U.S.C. § 1715.

3. **Additional Requested Findings on Final Approval.** To the extent that the Final Approval Motion, which will address the Third Circuit factors for final approval of a settlement under Rule 23, does not, in the opinion of Defendants, address the following factors, Defendants will be entitled to file a separate motion and memorandum in support by a deadline set by the Court sufficiently in advance of the Final Approval Hearing additionally addressing and requesting that the Court also find that (a) the Cash Settlement Amount is being paid in order to resolve claims for which there was a reasonable risk of liability for breach of fiduciary duties; (b) the Cash Settlement Amount is not excessive; and (c) the Plan of Allocation as proposed by Class Counsel and/or as approved by the Court allocates payments among the individual accounts to the participants and beneficiaries in a manner such that similarly situated participants are not being treated differently. Class Counsel will join in the request that the Court make these findings as part of the Final Approval Order; however, these findings by the Court are not a condition of the Settlement, and in the event that the Court does not make any of the findings requested in this paragraph, that will not be a basis for any Party to withdraw from the Settlement.

4. **Defendants' Additional Requested Findings on Final Approval.** At a time to be set by the Court, Defendants will be entitled to file a motion and memorandum (separate or as part of the motion and memorandum in Paragraph 3) that is filed sufficiently in advance of the Final Approval Hearing requesting that the Court determine in connection with the Final Approval Order that the Net Settlement Amount to be distributed pursuant to the Plan of Allocation constitutes "restorative payments" within the meaning set forth in Internal Revenue Service Revenue Ruling 2002-45 and shall not be subject to the annual limits on contributions under Section 415 of the Internal Revenue Code. Plaintiff will not oppose the relief sought by

Defendants' motion; however, these findings by the Court are not a condition of the Settlement, and in the event that the Court does not make any of the findings requested in this paragraph, that will not be a basis for any Party to withdraw from the Settlement.

XII. CONDITIONS OF SETTLEMENT

1. **Court Approval.** Each of the following is an express condition of Settlement: (a) the Court certifies at least one of Counts I, II, III, IV or V as a class action under Rule 23 on behalf of the Class substantially similar to that defined in this Agreement; (b) the Court enters a Preliminary Approval Order substantially in the form as required by this Agreement; (c) the Court does not materially modify the Plan of Allocation, and (d) the Court enters the Final Order, substantially in the form as required by this Agreement.

2. **Effect of Modification of the Class Definition.** In the event that the Court does not certify a Class substantially similar to the definition set forth in this Settlement Agreement, Class Counsel and Defendants will each have the right to withdraw from and void this Settlement so long as the notice of the exercise of such right is provided to the Court and the opposing Party within 14 days after the date on which the Court enters the order establishing the non-confirming Class Definition.

3. **Effect of Modification of the Plan of Allocation.** In the event that the Court materially modifies the Plan of Allocation, Class Counsel will have the unilateral right to withdraw from and void this Settlement so long as the notice of the exercise of such right is provided to the opposing Party within 14 days after the date on which the Court enters the order modifying the Plan of Allocation.

4. **Effect of Objection or Opposition by the Department of Labor.** In the event that the United States Department of Labor seeks to intervene for the purpose of objecting to or opposing this Settlement, either Class Counsel or Defendants will each have the right to

withdraw from and void this Settlement so long as notice of the exercise of such right is provided to the Court and the other Party prior to the Final Approval Hearing and if such right is exercised unilaterally also within 14 days of the date on which the United States Department of Labor has stated its intent to oppose or object to the Settlement.

5. Material Correctness of Defendants' Information About Class

Members. A condition of this Settlement is that the information and data about the Class -- including the number of Class members, their account balances, investments, distributions, other account activity and whether they signed releases -- provided to Class Counsel in the Fall of 2020 is materially correct. In the event that the Class data produced by Defendants to Class Counsel in the Fall of 2020 was not materially correct, Class Counsel will have the unilateral prior to the Final Approval Hearing to withdraw from and void this Settlement so long as the notice of the exercise of such right is provided to the opposing Party within 14 days after the date Class Counsel learns of the material incorrectness of the Class Data. In the event that Class Counsel only learns after the Final Approval Hearing that the Class Data produced by Defendants in the Fall of 2020, this Agreement does not affect the rights or remedies which the Parties may have under state or federal law beyond those provided in this Agreement.

6. Non-Conditional Matters. Court approval of the Fee Award or Expense Award are not conditions of the Settlement. No action by the Court or any courts of appeal related to the Fee Award or the Expense Award will prevent the Final Order allowing the approval of the Settlement from becoming Non-Appealable.

XIII. RESTRICTIONS ON DEFENDANT'S CONTACT WITH CLASS MEMBERS

1. Defendants' Contact with Class Members. Prior to the date Final Approval has been entered, Defendants, Defense Counsel, or any person acting on behalf of Defendants or Defendants' Counsel will not communicate with any Class Member about this

Action or Settlement except (a) with the prior written consent of Class Counsel (b) as provided in this Section or (c) allowed by the Court (including Court-approved communications).

2. **Communications About the Plan.** The restriction on Defendants' communications with Class Members does not prohibit communications by Defendants about the Plan if such communications are either required under ERISA or IRC or provided consistent with Defendants' fiduciary duties under ERISA so long as such communications make no reference to the Action or Settlement. To the extent that Defendants intend to issue a communication to any member of the Class that refers to this Action or this Settlement, Defense Counsel will provide Class Counsel with advance notice and a draft of the proposed communication for approval, which approval will not be unreasonably withheld. In the absence of approval by Class Counsel, Defendants may seek leave of Court to issue the communication, but will not issue such communication until the Court approves the communication.

3. **Communications Initiated by Class Members.** If any Class Member initiates contact with the Plan, any Defendant or Defense Counsel to request copies of Plan documents, the summary plan description, or their individual records of contributions and account balances (i.e. documents required to be disclosed under ERISA § 104(b) or 105), Defendants may supply copies of the requested documents so long as Defendants or Defense Counsel do not communicate with the Class Member regarding this Action or this Settlement. To the extent that a Class Member initiates any communication with any Defendant or Defense Counsel about this Action or the Settlement, Defendants or Defense Counsel will respond by (a) advising the Class Member to contact Plaintiff's Counsel and (b) promptly advise Class Counsel about the communication including the name and any contact information of the Class Member.

4. **Remedy for Breach of this Provision.** In the event that any Defendant, Defense Counsel or any person acting on behalf of any of them, violates the provisions of this Section, any request for exclusion by any Class Member will not count toward the number in the Confidential Supplement Agreement. This remedy does not preclude Class Counsel seeking other remedies to be imposed by the Court, including requesting invalidation of a request for exclusion.

5. **Provisions of Communications with Class Members.** Within 14 days of this Settlement Agreement being fully executed Defendants shall provide Class Counsel with copies of any written communications made after June 22, 2021 between any Defendant, any Defense Counsel or any person acting on behalf of either and Class Members about the Plan, this Action, or the Settlement. As to any subsequent communication between any Defendant, any Defense Counsel or any person acting on behalf of any of them on the one hand and any Class Member on the other hand about the Plan, this Action, or the Settlement, until the date on which Final Approval has been entered, Defendants shall provide Class Counsel with copies of any written communications within 10 days after any such communication (unless the 10th day falls on a non-business day in which case, it will be provided on the following business day).

XIV. INDEPENDENT FIDUCIARY

Defendants, at their own expense, will hire an Independent Fiduciary to approve the Settlement consistent with Prohibited Transaction Exemption 2003-39 and issue a release to Defendants on behalf of the Plan on terms comparable to the releases given by Plaintiff and the Class. No later than twenty-one (21) days prior to the deadline for Class Counsel to file the Motion in Support of Final Approval, the Independent Fiduciary will issue its final opinion. If at any point, the Independent Fiduciary issues an opinion that does not approve all aspects of this Settlement Agreement as satisfying PTE 2003-39, Defendants or Class Counsel will have the

right, but not the obligation, to withdraw from the Settlement Agreement so long as such right is exercised within seven (7) days of receipt of the Independent Fiduciary's opinion. If either Class Counsel or one of Defendants exercises such right under this provision, then the entire Settlement Agreement will be terminated.

XV. ISSUANCE OF NOTICE UNDER THE CLASS ACTION FAIRNESS ACT

1. **CAFA Notice.** Pursuant to CAFA, Defendants, at their own expense, will prepare and provide the CAFA Notice, including the notices to the United States Department of Justice, the United States Department of Labor, and to the Attorneys General of all states in which the Class Members reside, as specified by 28 U.S.C. § 1715, within ten (10) days of the execution of this Settlement Agreement.

2. **CAFA Notice Provided to Class Counsel.** Defendants will provide Class Counsel with a copy of the CAFA Notice and materials that Defendants sent within three (3) business days after such notices have been sent. The CAFA Notice and materials will be provided without further request by Class Counsel.

XVI. RELEASES

1. **As to the Class Claims.** Upon the Final Order becoming Non-Appealable, and provided that each Party has performed their respective obligations under this Settlement Agreement to be performed on or prior to such date by such Party:

a. **Release of Defendants by the Class.** The Class Members (including their heirs, executors, administrators, successors, and assigns), solely in their capacity as participants in the Plan or as beneficiaries of other Class Members who are participants in the Plan, fully and finally release Defendants themselves and as applicable depending on whether the Party is an individual or an entity, their past, present, and future officers, directors, shareholders, members, affiliates,

independent contractors, agents, insurers, insurance administrators, employees, attorneys, fiduciaries, trustees, heirs, administrators, executors, devisees, conservators, representatives, parents, subsidiaries, predecessors-in-interest, successors-in-interest, trusts, spouses, and assigns, from any and all claims, or causes of action, including any claims for costs, attorneys' fees, and/or expenses, whether in law or in equity, whether known or unknown, whether fixed or contingent, that existed prior to the date of the execution of this Agreement and consist of the claims set forth in the Complaint which were filed by Plaintiff on behalf of the Class (i.e. Counts I-V) or the claims that the Class Members have based on or arising out of the same factual predicate as those claims.

b. Release of Plaintiff and the Class by Defendants. Defendants individually and as fiduciaries of and on behalf of the Plan (and to the extent Defendants have insurance, their insurers) fully and finally release Plaintiff, each Class Member, Plaintiff's Counsel (and any of its attorneys) and Class Counsel from any and all claims or causes of action, whether in law or in equity, whether known or unknown, that Defendants have or have had against Plaintiff, each Class Member, Plaintiff's Counsel (and any attorneys of those firms) or Class Counsel (i) related to challenging the correctness of any distribution or allocation in any of the Class Member's Plan accounts or (ii) any claims for attorneys' fees, costs, expenses, sanctions that relate to the filing, commencement, prosecution, or settlement of this Action.

2. Release of Defendant InterArch by Plaintiff Individually. Upon receipt of the payment to Plaintiff in the amount of \$5,000.00, Plaintiff will fully and finally release

Defendant InterArch from any claim or cause of action, including any claim for attorneys' fees, costs or expenses arising out of Defendant InterArch's failure to timely provide all documents in response to Plaintiff's April 13, 2020 request for documents pursuant ERISA § 104(b) and InterArch will fully and finally release Plaintiff and Plaintiff's Counsel (and any attorneys of those firms) from any and all claims that InterArch has or had against Plaintiff or Plaintiff's Counsel (and any attorneys of those firms) related to the filing of Count VI, including any claims for attorneys' fees, costs, expenses, or sanctions, that relate to the filing, commencement, prosecution or settlement of Count VI.

3. **Non-Released Claims.** Notwithstanding the foregoing or any other language in this Settlement Agreement, the Settling Parties are not releasing Claims to enforce this Settlement Agreement.

XVII. EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION

1. **Right to Terminate.** In the event that the Court fails to certify the Class as defined in this agreement, refuses to grant Preliminary Approval, does not enter the Final Approval Order, or in the event that approval of the Settlement or the Plan of Allocation or certification of the Class as to all claims is reversed on appeal or materially altered, or the United States Department of Labor seeks to intervene to object to or oppose this Settlement, or as otherwise set forth in this agreement, each Party shall have the right withdraw from and seek to void this Settlement under the conditions set forth in this Agreement.

2. **Termination Notice.** Either Class Counsel or Defendants may void this Settlement by providing written notice to counsel for all other Parties to the Settlement within fourteen days (14) days after the event prompting the right to terminate ("Termination Notice") and subject to other time limits or conditions set forth in this Agreement. In the event that the Final Order has not become Non-Appealable, the Party providing such Termination Notice will

be entitled to withdraw based on the specified condition not being met and may void the Settlement within the time period specified in Section XVII.3.

3. **Effectiveness of Termination Notice.** The Termination Notice will become effective to void the Settlement Agreement only if and after the Settling Parties have failed to reach a written agreement within thirty (30) days of the Termination Notice to modify this Settlement Agreement to resolve the issue.

4. **Effect of Withdrawal.** In the event that the Court refuses to grant Preliminary Approval or enter the Final Approval Order, or such approval is reversed on appeal and one of the Settling Parties exercises its right to withdraw from the Settlement Agreement within the time specified above, or any other circumstance which causes the Final Order to not become Non-Appealable and the Parties have not entered into a written modification of the Settlement Agreement within thirty (30) days of such occurrence: (a) the monies in the Escrow Account (including any interest or earnings accrued while in Escrow, but less any amount paid or owing for taxes or other expenses incurred in connection with administering the Settlement Agreement while in Escrow, including any amounts necessary to prepare tax returns or monies paid or owing to the Settlement Administrator, will be returned to Defendants upon written request within ten (10) business days of such written request; (b) the Settling Parties will not be released from the claims asserted in this Litigation; (c) this Agreement will be void *ab initio*; and (d) the Parties' positions, rights, and responsibilities will be deemed to have reverted to their respective status in this Action as of June 28, 2021 and, except as may otherwise be expressly provided herein, the Settling Parties will proceed in all respects as if this Settlement Agreement never existed.

XVIII. MISCELLANEOUS PROVISIONS

1. **Confidentiality.** The Parties shall keep the terms of this Settlement Agreement confidential until it is filed with the Court (except as otherwise agreed by the Parties).

2. **Return of Confidential Information.** Within 60 days of the distribution of the Net Settlement Amounts to all members of the Class each party or other individual who received copies of documents and things containing Confidential material or Attorneys'-Eyes Only material from another party in this Litigation will destroy or destroy all originals and copies of documents and things containing Confidential material or Attorneys'-Eyes Only material. Notwithstanding this provision, counsel who have appeared for a party may retain complete copies of all transcripts and pleadings, motion papers, legal memoranda, correspondence, expert and consultant reports and work product, attorney work product, including any exhibits attached any of the foregoing for archival purposes, except that the party retaining the information will maintain such information as Confidential subject to the Protective Order entered by the Court.

3. **Tax Obligations and Tax Advice.** No opinion or advice concerning the Tax consequences of the Settlement Agreement has been given or will be given by counsel involved in the Action to the Class, nor is any representation or warranty in this regard made by virtue of this Settlement Agreement. The Tax obligations of the Class and the determination thereof are the sole responsibility of each Class Member, and it is understood that the Tax consequences may vary depending on the particular circumstances of each Class Member. No charge or claim may be asserted against any Class Member, Class Counsel, or the Settlement Fund for reimbursement of any Tax, including any penalty or excise tax, imposed or sought to be imposed upon any Defendant in relation to or as a consequence of this Agreement.

4. **Binding Effect.** This Settlement Agreement will be binding upon, and inure to the benefit of, the successors, assigns, executors, administrators, affiliates, heirs, spousal

beneficiaries, and legal representatives of the Settling Parties, provided, however, that no assignment by any Settling Party will operate to relieve such Party of its obligations hereunder.

5. **Good Faith.** The Settling Parties: (a) acknowledge that it is their intent to consummate this Settlement; (b) agree to exercise their best efforts and to act in good faith to cooperate to the extent necessary to effectuate and implement all terms and conditions of this Settlement Agreement; and (c) agree to exercise their best efforts and to act in good faith to cooperate to the extent necessary to obtain the fullest possible participation of all Class Members in any Settlement. The Settling Parties and their counsel agree to cooperate fully with one another in seeking entry of the Preliminary Approval Order and final approval of the Settlement. The Settling Parties also agree to promptly execute and/or provide such documentation as may be reasonably required to obtain preliminary and final approval of this Settlement.

6. **Modification.** This Settlement Agreement may be amended or modified only by written instrument signed by Class Counsel on behalf of Plaintiff and the Class and by Defense Counsel on behalf of Defendant(s) that they represent or their respective successors in interest and to the extent that such modifications are made after approval by the Court and such modification is material, after the Court has approved such modification.

7. **Representations.** This Settlement Agreement (and the Confidential Supplemental Agreement) constitutes the entire agreement among the Settling Parties, and no representations, warranties, or inducements have been made to any Party concerning this Settlement Agreement other than the representations, warranties, and covenants contained and memorialized in such documents.

8. **Authorization.** Each signatory to this Settlement Agreement represents that he or she is authorized to enter into this Settlement Agreement on behalf of the respective

Parties he or she represents. Should any non-signing Party ever contend that they did not authorize their counsel to sign this Settlement Agreement on their behalf, counsel for that Party and their law firms shall defend, indemnify, and hold harmless the other Parties with respect to any and all claims, demands, actions, causes of action, or losses related to such contention.

9. **Counterparts.** This Settlement Agreement may be executed in one or more original, photocopied, or facsimile counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument.

10. **Governing Law.** All terms of this Settlement Agreement will be governed by and interpreted according to the laws of the State of New Jersey without regard to its rules of conflicts of law and in accordance with the laws of the United States, except that ERISA will govern (and preempt New Jersey law) to the extent applicable.

11. **Waiver.** The waiver by one Party of any breach of this Settlement Agreement by any other Party will not be deemed a waiver of any other breach of this Settlement Agreement. The provisions of this Settlement Agreement may not be waived except by a writing signed by the affected Party, or counsel for that Party, or orally on the record in court proceedings.

12. **Continuing Jurisdiction.** The Settling Parties agree to submit to the jurisdiction of the Court and will be bound by the terms of this Settlement Agreement, including, without limitation, disputes related to implementing and enforcing the Settlement embodied in this Settlement Agreement. Any and all disputes related to claims that are not satisfactorily resolved by the Settling Parties will be submitted to the Court for final resolution. The Final Order will provide that the Court will have continuing jurisdiction over this Settlement.

13. **Enforcement of this Agreement.** In the event that any Party to this Agreement believes that another Party to this Agreement has breached the terms of this Agreement, that Party will notify the alleged breaching Party and Counsel in writing setting forth the nature of the breach and the requested method to cure the breach at least 14 days prior to filing any litigation to enforce the terms of the Settlement Agreement (and if the allegedly breaching Party is a Class Member regardless of whether that Class Member has separate counsel, Defendants must also notify Class Counsel in writing). In the event that the allegedly breaching Party fails to cure the alleged breach as set forth in the written notification after 14 days, the other Party may then file an action to enforce the Settlement Agreement. A Party who substantially prevails in any action to enforce the Settlement Agreement will be entitled to attorneys' fees and expenses consistent with the standards of ERISA § 502(g)(1); however, attorneys' fees and expenses will not be available to a Party that failed to provide the breaching Party written notification to cure the breach as set forth in this Paragraph.

14. **Extensions.** The Settling Parties reserve the right, subject to the Court's approval, to request any reasonable extensions of time that might be necessary to carry out any of the provisions of this Settlement Agreement.

15. **Evidentiary Effect.** Neither this Settlement Agreement nor the Settlement, nor any negotiation, nor act performed, nor document executed, nor proceedings held pursuant to or in forbearance of this Settlement Agreement or the Settlement, even if this Settlement Agreement is cancelled or terminated: (a) is, or may be deemed to be, or may be used as an admission of, or evidence of the validity of any Settled Claims, or of any wrongdoing, negligence, misrepresentation, violation, or liability of any Settling Party; (b) is, or may be deemed to be, or may be used as an admission of, or evidence of any infirmity in the Complaint

or claims asserted by Plaintiff and the Class; or (c) is, may be deemed to be, or may be used as an admission of, or evidence of, any fault or omission of any Settling Party in any civil, criminal, or administrative proceeding in any court, administrative agency, or tribunal, including in this Action. This Settlement Agreement may be used in such proceedings as may be necessary to consummate or enforce this Settlement Agreement, the Settlement, or the Final Order; and any Settling Party may file this Settlement Agreement and/or the Final Order in any action to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

16. **Final and Complete Resolution.** The Settling Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to this Action. The Settlement compromises claims which are contested and will not be deemed an admission by any Settling Party as to the merits of any claim or defense. The Settling Parties agree that the amount paid to the Settlement Fund and the other terms of the Settlement Agreement were negotiated in good faith at arm's-length by the Settling Parties and reflect a settlement that was reached voluntarily after consultation with competent legal counsel.

17. **Duplicative Provisions.** In interpreting this Settlement Agreement, duplicative and/or overlapping release provisions will not be presumed or construed to be intended to release separate claims or have different meanings.

The Parties hereto, intending to be legally bound hereby, have caused this Settlement Agreement to be executed by them or their duly authorized counsel, on the date set forth below.

DATED: August 31, 2021

Agreed:



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Attorneys for Defendants

Attorneys for Plaintiff

DATED: September 3, 2021

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