

Exhibit 1

**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. 20-6435 (NLH/JS)

**AMENDMENT TO CLASS
ACTION SETTLEMENT
AGREEMENT**

INTRODUCTION

Subject to approval by the United States District Court for the District of New Jersey, this Amendment to the Class Action Settlement Agreement is made and entered into by and among Plaintiff, individually and on behalf of the certified Class, and Defendants Shirley S. Hill, Vernon W. Hill II, and InterArch, Inc. to modify the Class Action Settlement Agreement (ECF No. 50) filed on September 10, 2021 on the terms and conditions below. All settlement terms in the Class Action Settlement Agreement will continue to apply unless expressly modified by this Amendment. All capitalized terms shall have the meaning ascribed them by Section I of the Class Action Settlement Agreement unless modified by this Amendment.

RECITALS

A. Plaintiff and Defendant filed a proposed Class Action Settlement Agreement (ECF No. 50) with the Court on September 10, 2021 to resolve the claims of Plaintiff and the Class on the terms set forth in that Agreement.

B. The Court certified the Class and granted preliminary approval of the Settlement on April 8, 2022 (ECF No. 53).

C. In the Preliminary Approval Order, the Court ordered that Class Notice be provided to the Class and that any objections to the Settlement were due to be postmarked by July 4, 2022.

D. Class Notice was provided to the Class on May 2, 2022.

E. No Class Member filed any objection with the Court and none was received by the Settlement Administrator, Class Counsel or Defense Counsel.

F. On June 29, 2022, the Independent Fiduciary issued an opinion in which it found that the Original Class Settlement did not meet the requirements of Prohibited Transaction Exemption 2003-39.

G. On July 6, 2022, Defendants issued a Notice of Intent to Terminate the Settlement pursuant to Section XIV of the Original Class Settlement Agreement; however, the Termination of the Original Settlement Agreement did not become effective because the Parties agreed to modify the terms of the Settlement pursuant to Section XVII.3. of Original Class Settlement Agreement.

H. Defendants have informed the Independent Fiduciary of the expected terms of this Amendment to the Original Class Settlement Agreement and anticipate that the Independent Fiduciary will issue its approval with this Amendment in conjunction with a separate settlement agreed to between the Defendants and the United States Department of Labor.

I. Class Counsel has 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.

J. The Parties continue to desire to 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. ADDITIONAL DEFINITIONS

As used in this Amendment, the following definitions apply:

A. “Additional Cash Settlement Amount” means the \$ 562,055.79 paid by or on behalf of Defendants, other than the Nominal Defendant, the Plan.

B. “Class Settlement Agreement” means the Original Class Settlement Agreement as modified by this Amendment.

C. “Modified 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.

D. “Original Class Settlement Agreement” means the Class Action Settlement Agreement (ECF No. 50) filed on September 10, 2021.

E. “Settlement Fund” is modified to mean the original Cash Settlement Amount and the Additional Class Settlement Amount plus any earnings and interest thereon, minus any Court-approved deductions and expenses.

F. “Supplemental Class Notice” means a form of notice provided to the Class Members that complies with the requirements of this Amendment as approved by the Court.

G. “Supplemental Preliminary Approval Motion” means the motion described in Section VII.

H. “Supplemental 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 VII.

I. All other definitions in the Original Class Settlement Agreement continue to apply.

II. THE SETTLEMENT FUND

1. Additional Cash Settlement Amount. As additional consideration of the claims of the Class, Defendants other than the Plan, will pay or cause to be paid \$562,055.79 into the Escrow Account within 7 business days after entry of the Modified Preliminary Approval Order.

2. The Settlement Fund: The Additional Cash Settlement Amount plus any earnings thereon will become part of the Settlement Fund.

III. SUPPLEMENTAL CLASS NOTICE

1. **Provision of Supplemental Class Notice.** Upon the date specified in the Court's Modified Preliminary Approval Order, the Settlement Administrator will be responsible for providing the Supplemental Class Notice to the Class Members.

2. **Contents.** The Supplemental Class Notice, in a form approved by the Court will contain: a summary of the terms of this Amendment to 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; explain the right of Class Members to object to the Plan of Allocation, and will provide information about the Final Approval Hearing. For those Class Members who are expected to receive an increase to their allocation as a result of the Additional Cash Settlement Amount, the estimated settlement allocation for that Class Member (under Class Counsel's proposed Plan of Allocation) will also be provided in an accompanying enclosure.

3. **Method of Providing Supplemental Class Notice.** The Supplemental 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 the Supplemental Class Notice and other settlement-related communications by providing updated email and mailing addresses for all Class Members upon request, to the extent such information is reasonably available in the records of Defendants.

IV. MODIFIED PLAN OF ALLOCATION

1. **Proposed Modified Plan of Allocation.** Class Counsel will propose and submit a Modified 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. The Modified Plan of Allocation will propose that the Additional Cash Payment (without any deductions or additions) will be allocated and distributed among the nine (9) Class Members who signed releases, had an account balance at the time the Plan was terminated, and under the original Plan of Allocation would have received more than the minimum payment.

2. **Modification of Term Plan of Allocation.** Any reference in the Class Settlement Agreement will be modified to refer to the Modified Plan of Allocation.

3. **Defendants' Limited Involvement.** Defendants shall have no responsibility for preparing nor any right to provide input into and will take no position on the Modified Plan of Allocation except to the extent that the Modified Plan of Allocation (a) would jeopardize the tax-qualified status of the Plan or (b) the Modified Plan of Allocation would propose the Additional Cash Payment would be allocated among Class Members who did not sign releases. To the extent that the Parties cannot resolve any of Defendants' concerns about either of the foregoing issues, Defendants will have the right to present their objections about those issues to the Court within 14 days of Plaintiff filing the Supplemental Preliminary Approval Motion.

V. SETTLEMENT ADMINISTRATION

1. **Settlement Administrator's Responsibilities.** In addition to the tasks set forth in the Original Class Settlement Agreement (which responsibilities will apply to the

Settlement as modified by this Amendment) the Settlement Administrator will be responsible for all of the duties with respect to the Supplemental Class Notice as applied to the original Class Notice.

2. Costs and Expenses For any Additional Settlement Administration.

Defendants will bear all costs of administration of the Settlement as Modified including any costs relating to the Supplemental Notice, additional administration costs incurred by the Settlement Administrator and 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 any additional 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.

VI. ATTORNEYS' FEES AND REIMBURSEMENT OF COSTS AND EXPENSES

1. Attorneys' Fees & Expenses from the Settlement Fund. Class Counsel previously filed a motion seeking an award of attorneys' fees and reimbursement of expenses from the Settlement Fund, in which Class Counsel sought an award of attorneys' fees out of the Settlement Fund provided in and based on the Original Class Settlement Agreement. As part of the consideration for Defendant providing the Additional Cash Payment, Class Counsel has

agreed that they will not seek as attorney's fees more than one-third of the Settlement Fund provided in the Original Class Settlement Agreement.

VII. SUPPLEMENTAL PRELIMINARY APPROVAL

1. **Supplemental Preliminary Approval Order.** Class Counsel, on behalf of the Class, will move the Court to enter the Preliminary Approval Order ("Supplemental Preliminary Approval Motion"). The Supplemental 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 amended by this Amendment to the Class Settlement Agreement, subject to further hearing and determination under Fed. R. Civ. P. 23(e);
- (b) Approval of the form of Supplemental 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 and a date when such Supplemental Class Notice will be sent to Class Members;
- (c) Preliminary Approval of the Modified Plan of Allocation;
- (d) Provide that any objections will be limited to the Modified Plan of Allocation and deadlines by which all objections to the Plan of Allocation must be made;
- (e) That no objection to the Modified Plan of Allocation 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 thirty (30) days of the publication and/or distribution of the Class Notice;

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

(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”); and

(h) 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.

VIII. INDEPENDENT FIDUCIARY

1. Defendants, at their own expense, may hire an Independent Fiduciary to approve the Settlement as amended by this Amendment, 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.

2. No later than twenty-one (21) days after the Supplemental Preliminary Approval Order, the Independent Fiduciary will issue its final opinion. If the Independent Fiduciary issues an opinion that does not approve all aspects of this Settlement Agreement as amended, 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 Termination provisions set forth in Section XVII of the Original Class Settlement Agreement will apply.

IX. MISCELLANEOUS PROVISIONS

1. **Effectiveness of Termination of Original Agreement.** The Effective Date of the Termination was extended and hereby is agreed to be extended until at least September 19, 2022. So long as this Agreement is fully executed on or before September 19, 2022, the Effective Date for the Termination of the Class Action Settlement Agreement will never occur.
2. **Compliance with Terms of Original Agreement.** All Parties to the Original Class Action Settlement have to date complied with their obligations under that Agreement.
3. **Validity of Unamended Settlement Terms.** Unless expressly modified by this Amendment, all settlement terms in the original Class Action Settlement Agreement will continue to be in full force and effect.
4. **Construction of the Modification with Original Agreement.** In construing the original Class Action Settlement Agreement and this Amendment, the terms in the original Class Action Settlement will be construed so that those terms will be construed to mean the Class Action Settlement as modified by this Amendment.
5. **Confidentiality.** The Parties shall keep the terms of this Amendment confidential until it is filed with the Court (except as otherwise agreed by the Parties).
6. **Entire Agreement.** This Amendment and the Original Class 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.

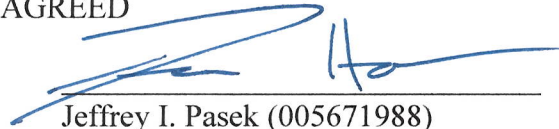
Dated: September 15, 2022

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