

been duly entered by this Court, and Defendant ACS having failed to administer and terminate the Plan, including making distributions to Plan participants as verified by the attested declaration of the Acting Secretary's auditor; now, therefore, upon motion of the Acting Secretary and for cause shown,

JUDGMENT IS HEREBY ENTERED against Defendants ACS and the Plan in accordance with the prayer of the complaint in the above-styled action and it is:

ORDERED, ADJUDGED, AND DECREED that:

1. Defendant ACS is removed from its position as fiduciary with respect to the Plan;
2. Defendant ACS is permanently enjoined from violating the provisions of Title I of the Employee Retirement Income Security Act of 1974 ("ERISA");
3. AMI Benefit Plan Administrators, Inc. of 100 Terra Bella Drive, Youngstown, OH 44505 ("Independent Fiduciary"), is hereby appointed as the Independent Fiduciary for the Plan to administer the Plan and to terminate the Plan consistent with the Plan's governing documents, the Internal Revenue Code, and ERISA. (*See* AMI Benefit Plan Administrators, Inc.'s brochure and biographies of key personnel attached as Exhibit B to the Motion for Default Judgment). The Independent Fiduciary shall have the following powers, duties and responsibilities:
 - a. The Independent Fiduciary shall have responsibility and authority to collect, liquidate, and manage such assets of the Plan for the

benefit of the eligible participants and beneficiaries of the Plan who are entitled to receive such assets, until such time that the assets of the Plan are distributed to the eligible participants and beneficiaries of the Plan and the Plan is fully terminated;

- b. The Independent Fiduciary shall exercise reasonable care and diligence to identify and locate each participant and beneficiary of the Plan who is eligible to receive a payment under the terms of this Default Judgment and to disburse to each such eligible participant or beneficiary the payment to which he or she is entitled. The Independent Fiduciary shall comply with the guidance in EBSA Field Assistance Bulletin No. 2014-01, Fiduciary Duties and Missing Participants in Terminated Defined Contribution Plans (Aug. 14, 2014) available at <https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2014-01>, in attempting to locate participants and handling missing participants, and remain cognizant of the guidance in Missing Participants – Best Practices for Pension Plans (January 12, 2021), available at <https://www.dol.gov/sites/dolgov/files/ebsa/employers-and->

[advisers/plan-administration-and-compliance/retirement/missing-participants-guidance/best-practices-for-pension-plans.pdf](#);

- c. The Independent Fiduciary shall have full access to all data, information and calculations in the Plan's possession or under its control, including that information contained in the records of the Plan's custodial trustees and other service providers, bearing on the distribution of benefit payments, participant account balances and current Plan assets;
- d. The Independent Fiduciary may retain such persons and firms including, but not limited to, accountants and attorneys, as may be reasonably required to perform its duties hereunder;
- e. The Independent Fiduciary shall initiate the termination of the Plan in accordance with ERISA within thirty (30) days of entry of this order. The Independent Fiduciary's responsibilities shall include, but not be limited to, causing the distribution of the Plan's assets to the Plan participants and filing all appropriate documents with the various government agencies. The Plan shall be fully terminated within one hundred eighty (180) days of the entry of this Order and if not, the Independent Fiduciary shall report in writing to the Court and to the parties the projected date of final termination.

Within thirty (30) days from the date that the Plan is fully terminated, the Independent Fiduciary shall provide satisfactory proof of such termination, including proof of issuance of the Plan's participant distributions, to the Regional Director of the Employee Benefits Security Administration, United States Department of Labor, 1885 Dixie Highway, Suite 210, Fort Wright, KY 41011;

- f. For the services performed pursuant to this Default Judgment, the Independent Fiduciary shall receive compensation from the Plan's assets not to exceed \$5,000 for fees and expenses reasonably and necessarily incurred in administering and terminating the Plan; and
 - g. The Independent Fiduciary's appointment shall terminate upon the first to occur of: 1) removal by the Court; 2) its resignation after finding an acceptable replacement, agreed to by all parties or the Court, providing notice to all parties to this matter, and approval by the Court to have the replacement Independent Fiduciary appointed; or 3) the liquidation and distribution of the Plan's assets and the completion of all related tasks.
- 4. Awarding the Acting Secretary costs of this action; and
 - 5. Such further relief as is appropriate and just.

IT IS SO ORDERED.

s/Bernard A. Friedman

Bernard A. Friedman

Senior United States District Judge

Dated: October 26, 2023
Detroit, Michigan