

ERISA §502(l), 29 U.S.C. §1132(l), and any proceedings related thereto) and hereby consent to the entry of a Consent Judgment and Order by this Court.

The parties agree that, if the Secretary of Labor assesses a penalty pursuant to ERISA §502(l) in connection with the violations alleged in this matter, the “applicable recovery amount” shall include all amounts paid in accordance with this Consent Judgment and Order.

Upon consideration of the record herein, and as agreed to by the parties, the Court finds that it has jurisdiction to enter this Consent Judgment and Order and, being fully advised in the premises, it is,

ORDERED, ADJUDGED AND DECREED that:

1. Defendant Fasanella is permanently enjoined and restrained from violating the provisions of Title I of ERISA.

2. Defendant Fasanella shall restore to the plan a total of \$6,310.03 (representing \$5,558.90 in principal and \$751.13 in lost opportunity costs) within 10 days after entry of this Order. Such amount shall be paid directly to the Plan in order to restore Participant Plan accounts and shall be allocated on a per-capita basis (allocated equally to all accounts).

Defendant Fasanella shall provide to the Secretary proof of payment to the Plan. Such proof shall be submitted within ten (10) business days after the payment to the following: L. Joe Rivers, U.S. Department of Labor, EBSA, 1885 Dixie Highway, Suite 210, Ft. Wright, KY 41011. The failure of the Defendant to make full payment within five (5) days of the due date as provided herein shall result in a default.

3. Defendant Fasanella shall be removed from his position as fiduciary of the Plan and permanently enjoined from serving as a fiduciary or service provider to any ERISA –covered employee benefit plan in the future.

4. Lefoldt & Company, P.A. shall be appointed independent fiduciary of the Plan. As the independent fiduciary, Lefoldt & Company, P.A. shall administer the Plan in order to effectuate its termination and distribute its assets to the participants and beneficiaries. The independent fiduciary shall have the following powers, duties and responsibilities:

a. The independent fiduciary shall have responsibility and authority for terminating the Plan. Such terminations shall be made in accordance with the Plan's governing documents, the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §1001 et seq., and the Internal Revenue Code (IRC). While not required to obtain a determination letter to terminate the Plan under ERISA or the IRC, the independent fiduciary shall make a determination as to whether it is prudent to go through the determination letter process for the Plan;

b. The independent fiduciary's responsibilities with respect to the termination of the Plan shall include, but not be limited to, liquidating the Plan's assets, communicating with participants regarding the termination of the Plan and their disbursal options, calculating the participant and beneficiaries account balances, and filing appropriate termination papers with the Internal Revenue Service and the Department of Labor;

c. 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 for 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;

d. 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 the Plan and to disburse to each such eligible participant or beneficiary the payment to which he or she is entitled;

e. 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;

f. The independent fiduciary may terminate any current service providers to the Plan and retain such persons and firms including, but not limited to, accountants and attorneys, as may be reasonably required to perform his duties hereunder;

g. The independent fiduciary shall obtain bonding in an amount that meets the requirements of ERISA 412, 29 U.S.C. 1112;

h. The independent fiduciary shall not be responsible for bringing any action on behalf of the Plan against any prior fiduciaries or service providers of the Plan for violations of state or federal law that occurred prior to the date of the independent fiduciary's appointment. The independent fiduciary shall be responsible for pursuing any violations of ERISA that occur after its appointment as the independent fiduciary by this Court;

i. The independent fiduciary may not be held responsible or liable for any claim against the Plan or related entities that existed, arose, matured or vested prior to his appointment as independent fiduciary for the Plan;

j. The independent fiduciary's reasonable and necessary fees and administrative expenses and costs incurred in terminating the Plan shall be paid out of the assets of the Plan. The independent fiduciary shall not be paid more than \$1,696.25.

5. Each party agrees to pay his, her or its own attorneys' fees, costs and other expenses incurred by such party in connection with any stage of this proceeding to date including, but not limited to, attorneys' fees which may be available under the Equal Access to Justice Act, as amended.

6. The Court shall maintain jurisdiction over this matter only for purposes of enforcing this Consent Judgment and Order.

7. Nothing in this Consent Judgment and Order is binding on any government agency other than the U.S. Department of Labor.

Dated: October 15, 2012

s/Avern Cohn

HONORABLE AVERN COHN
UNITED STATES DISTRICT COURT JUDGE

The parties hereby apply for and consent to the entry of this Consent Judgment and Order.

FOR PLAINTIFF SECRETARY OF LABOR,

/s/ Linda Hastings

Dated: 10/10/12

LINDA M. HASTINGS
Trial Attorney for Plaintiff
HILDA L. SOLIS, Secretary of Labor
U.S. Department of Labor
881 Federal Office Building
1240 East Ninth Street
Cleveland, Ohio 44199
Telephone: (216) 522-3877
Facsimile: (216) 522-7172
E-mail: hastings.linda@dol.gov

FOR DEFENDANT

ROBERT J. FASSANELLA

/s/ Cyril Weiner

Dated: 10/08/12

CYRIL WEINER
C. WEINER & ASSOCIATES