

agreed to the entry of this Consent Judgment against them by the Court, the terms of which are set forth herein:

A. For the purposes of this Consent Judgment, Defendants admit that the Court has jurisdiction over them and the subject matter of this action.

B. Following the execution of this Consent Judgment, the Acting Secretary intends to file a Complaint under ERISA in the United States District Court for the Eastern District of Pennsylvania seeking relief under Sections 409 and 502(a)(2) and (5) of ERISA, 29 U.S.C. §§ 1109, 1132(a)(2) and (5) for Defendants' violations of ERISA.

C. Defendants agree that they will authorize attorney Hope C. Lefebber to accept service of process on their behalf for the Complaint and summons. The Acting Secretary and Defendants agree that they shall jointly seek entry of this Consent Judgment to resolve all claims and allegations in the Complaint.

D. The Acting Secretary and Defendants understand and agree that entry of this Consent Judgment is without prejudice to the Acting Secretary's right to investigate and redress violations of ERISA, if any, not alleged in the Complaint, including the Acting Secretary's right to institute future enforcement actions with respect to any other such matter. It is further understood that this paragraph shall not constitute a waiver by Defendants of any defenses, legal or equitable, to any such future action.

E. This Consent Judgment may be signed in multiple counterparts and transmitted by facsimile or by electronic mail or by any other electronic means intended to preserve the original graphic and pictorial appearance of a party's signature, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument. This

Consent Judgment is only valid if signed by the Acting Secretary and Defendants, or their designated representatives.

F. The Acting Secretary and Defendants intend this Consent Judgment to constitute the complete, exclusive, and fully integrated statement of their agreement. As such, this Consent Judgment is the sole repository of the agreement between the Acting Secretary and Defendants. The parties are not bound by any other agreements, promises, statements, representations, or writings of any kind or nature.

Accordingly, it is hereby **ORDERED, ADJUDGED, AND DECREED** that:

1. This Court has jurisdiction over this action.
2. This Court has jurisdiction over Defendants.
3. Defendants Joseph Silvestri & Son, Inc. and Donna M. Fecondo are removed as fiduciaries of the Plan and are also removed from the role(s) of trustee, fiduciary, advisor, or administrator that they hold with respect to any other employee benefit plan, as that term is defined at Section 3(3) of ERISA, 29 U.S.C. § 1002(3).
4. Defendants Joseph Silvestri & Son, Inc. and Donna M. Fecondo are permanently enjoined from serving as a trustee, fiduciary, advisor, or administrator to any employee benefit plan, as that term is defined at Section 3(3) of ERISA, 29 U.S.C. § 1002(3), or from serving in any capacity that involves decision-making authority or custody or control of the moneys, funds, assets, or property of any employee benefit plan subject to ERISA.
5. The Court appoints AMI Benefit Plan Administrators, Inc. (“AMI”) as the independent fiduciary for the Plan. AMI shall have plenary authority over the administration, management, and assets of the Plan and be subject to ERISA’s fiduciary duties. AMI is directed to take all appropriate action for distribution of benefits to the Plan’s participants and beneficiaries, including: (1) issuing distribution election forms for the remaining Plan participants; (2) processing the election forms when returned by participants; (3) answering

participant questions and providing assistance to participants, as needed; and (4) providing routine updates and/or reports to the Acting Secretary on an as-needed basis. AMI is empowered to instruct the custodians of the Plan's assets and the Plan record keepers respecting the performance of its duties as independent fiduciary, including as to disposition of the Plan's assets. Upon completing distribution of the Plan's assets, AMI shall consider whether termination of the Plan is appropriate in light of the Plan documents, ERISA, and other applicable federal law. If it determines that termination is appropriate, it will have authority to perform all actions necessary to wind down and terminate the Plan, consistent with the Plan documents and ERISA. No third-party service provider is permitted to refuse AMI's instructions on the basis of fees they claim to be owed relating to the Plan.

6. AMI shall be compensated for the performance of its duties and costs incurred, as described in the attached proposal, up to the amount of \$11,025.00, payable solely from the Plan.

7. Defendant Donna M. Fecondo agrees to forfeit and pay over her interest, and all monies held by the Plan on her behalf, in her individual Plan account(s) to the extent necessary to satisfy any order of restitution entered in *United States v. Donna M. Fecondo*, No. 22-CR-11 (E.D. Pa.). Contemporaneous with the execution of this Consent Judgment, Defendant Donna M. Fecondo also will agree to entry of a restitution order providing for payment of these Plan assets in *United States v. Donna M. Fecondo*, No. 22-cr-11 (E.D. Pa.). Defendant Donna M. Fecondo further agrees that AMI is expressly instructed to distribute Plan assets belonging to her, excluding any applicable taxes, fees, or other deductions required by this Consent Judgment, by law, or by any Plan limitations, payable to the "Clerk, U.S. District Court," Attn: Financial Manager, 2609 U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106-1797.

8. A copy of this Consent Judgment shall be filed with the Plan records.

9. No assets of the Plan will be used to pay the attorney fees, costs, and other litigation expenses incurred by any of the Defendants in this action.

10. The Court orders Defendants, along with their agents, employees, service providers, banks, accountants, and attorneys, to provide AMI with all of the books, documents, and records relating to the finances and administration of the Plan, and to make an accounting to the Plan of all contributions to the Plan, and all transfers, payments, or expenses incurred or paid in connection with those Plan.

11. The Court orders all third-party service providers to the Plan, including the Plan custodian, along with their agents, employees, service providers, banks, accountants, and attorneys, to provide AMI with all of the books, documents, and records relating to the finances and administration of the Plan, and to make an accounting to the Plan of all contributions to the Plan, and all transfers, payments, or expenses incurred or paid in connection with those Plan.

12. Each Defendant, as well its agents, beneficiaries, representatives, assigns, and successors in interest, hereby releases the Acting Secretary and the Acting Secretary's officers, agents, attorneys, employees, and representatives, both in their individual and official capacities, from all actions, claims, and demands of whatsoever nature, including those arising under any statute, rule, or regulation, that relate in any manner to the filing, prosecution, and maintenance of this civil action or any other proceeding or investigation relating to or in connection with this civil action. Each Defendant expressly waives any and all such claims of any nature that it may have against the Acting Secretary or any of the Acting Secretary's officers, agents, attorneys, employees, or representatives arising under the Equal Access to Justice Act, as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412.

13. This Consent Judgment shall operate as a full, final, and complete judicial resolution and disposition of all claims asserted in the Complaint by the Acting Secretary against Defendants.

14. Nothing in this Consent Judgment is binding on any governmental agency other than the U.S. Department of Labor, Employee Benefits Security Administration.

15. This Court retains jurisdiction over this action for purposes of enforcing compliance with the terms of this Consent Judgment.

16. The Court directs the entry of this Consent Judgment as a final order pursuant to Federal Rule of Civil Procedure 54.

DATED THIS 15th DAY OF APRIL, 2024.

/s/ Mitchell S. Goldberg
UNITED STATES DISTRICT JUDGE

The parties approve the Consent Judgment and Order as to form and substance:

<p>For Plaintiff:</p> <p>Seema Nanda Solicitor of Labor</p> <p>Samantha N. Thomas Acting Regional Solicitor</p> <p>Usha Rengachary Counsel for ERISA</p> <p><u>Alejandro A. Herrera</u> By: Alejandro A. Herrera Senior Trial Attorney U.S. Department of Labor Office of the Solicitor, Region III 1835 Market Street Mailstop SOL/22 Philadelphia, PA 19103 (215) 861-5136 (Phone) (215) 861-5162 (Fax) herrera.alejandro.a@dol.gov</p> <p>Dated: 03/04/2024</p> <p><i>Attorneys for Plaintiff</i></p>	<p>For Joseph Silvestri & Son, Inc., Donna M. Fecondo, and the Joseph Silvestri & Son, Inc. Profit Sharing Plan:</p> <p><u>Donna M. Fecondo</u> Donna M. Fecondo</p> <p>As to form and for purposes of submission only (the Undersigned is a not a party to the above judgment):</p> <p><u>Hope C. Lefeber</u> Hope. C. Lefeber Law Offices of Hope C. Lefeber, LLC 2 Penn Center Suite 1205 1500 John F. Kennedy Blvd. Philadelphia, PA 19102 610-668-7927 (Phone) 610-668-7929 (Fax) hope@hopelefeber.com</p> <p>Dated: 3.4.24</p> <p><i>Attorney for Defendants</i></p>
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