

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

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|---|---|---------------------------------|
| MARTIN J. WALSH, Secretary of Labor, |) | |
| U.S. DEPARTMENT OF LABOR, |) | |
| |) | |
| Plaintiff, |) | |
| |) | No. 2:20-cv-02624-TC-ADM |
| v. |) | |
| |) | |
| DANIEL L. WHITNEY, et al. |) | |
| |) | |
| Defendants. |) | |

**INDEPENDENT FIDUCIARY’S AGREED MOTION TO AMEND
APPENDIX A TO THE CONSENT ORDER TO REMOVE NON-ERISA PLANS**

Receivership Management, Inc. (“RMI”), the Court-appointed interim Independent Fiduciary in this case, hereby moves for an order (a) permitting the removal from Appendix A to the Consent Order appointing RMI as Independent Fiduciary, of 1) Lighthouse Academies of Indiana, Inc., group code LLA5414, and 2) Morris County Hospital, group code PNX3344; two employee welfare benefit plans that were included on Appendix A to the Consent Order appointing RMI as Independent Fiduciary; and (b) discharging RMI from any continuing obligations to those two plans. RMI seeks this relief because after an in-depth inquiry, it has learned and determined that Lighthouse Academies of Indiana, Inc. and Morris County Hospital are both governmental plans, which are exempt from ERISA, and neither should have been included among the plans for which RMI was appointed Independent Fiduciary. All parties agree to the relief requested in this motion. In support of this motion, RMI states as follows:

1. On March 18, 2021, a Consent Order was entered appointing RMI as interim Independent Fiduciary “for all employee welfare benefit plans *as defined in [ERISA]* (the “Plans”) for which Defendant [Medova Healthcare Financial Group, LLC (“Medova”)] serves as the claims administrator.” Consent Order (Dkt. 32), ¶ 1 (the “Order”) (emphasis added).

2. The Order further provides that the Independent Fiduciary “shall have ... full and exclusive control over the Plans’ assets in the accounts listed in Appendix A” of the Order. *Id.*

3. Thus, the Consent Order was intended to include only ERISA Plans administered by Medova, whose assets would be under the control of the Independent Fiduciary as indicated in Appendix A.

4. ERISA provides that “governmental plan[s]” and “church” plans, respectively, are exempt from and therefore not governed by ERISA. 29 U.S.C. § 1003(b)(1) and (b)(2). ERISA defines “governmental plan” as “a plan established or maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any one of the foregoing.”

5. RMI has determined that Lighthouse Academies of Indiana, Inc. and Morris County Hospital are governmental plans. Therefore, RMI should not have been appointed their independent fiduciary, and RMI should not be administering those plans nor controlling their assets.

6. The Order provides for adding Plans to Appendix A “by written consent of both the Defendants and the Independent Fiduciary or as otherwise ordered by the Court or Magistrate” (Dkt. 32, ¶ 1), but it contains no provision specifying a procedure for removing Plans from Appendix A. RMI, therefore, makes this motion to obtain the Court’s permission to remove from Appendix A:

| Plan Name | Group Code | Simmons Bank (last 4) | ABT (last 4) |
|---------------------------------------|------------|-----------------------|--------------|
| Lighthouse Academies of Indiana, Inc. | LLA5414 | 5965 | 0796 |
| Morris County Hospital | PNX3344 | 1126 | 4563 |

WHEREFORE, RMI respectfully requests that the Court enter an order (a) removing Lighthouse Academies of Indiana, Inc and Morris County Hospital from Appendix A of the Consent Order, (b) and discharging RMI from any continuing obligations with respect to those plans.

Respectfully submitted,

RECEIVERSHIP MANAGEMENT, INC.,
IN ITS CAPACITY AS INDEPENDENT
FIDUCIARY

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