

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

SETH D. HARRIS, Secretary of Labor,)	
United States Department of Labor,)	
)	
Plaintiff,)	
)	CAUSE NO. 3:12-CV-415 JD
v.)	
)	
JOSEPH A. SEHER, <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

Following a consent judgment with defendants Pat Mowery and Cheryl Sloan and the clerk’s entry of a default against sole remaining defendant Joseph Seher, the United States Department of Labor (“USDOL”) moved for a default judgment against Seher on October 23, 2012. [DE 8]. In an eight-page opinion issued on January 31, 2013, this Court found that a default judgment is warranted, but ordered supplemental briefing from USDOL concerning two aspects of the relief requested. [DE 11]. First, the Court noted that, despite the fact that the default judgment was sought with respect to both counts of the Complaint, USDOL only asked for monetary damages with respect to Count I. Second, the Court noted that USDOL has asked, essentially, for an injunction prohibiting Seher from breaking the law, whereas the Seventh Circuit has previously cautioned that such injunctions may be generally overbroad and, in many ways, are redundant to the law’s existence. On February 12, 2013, USDOL filed the requested supplemental brief. [DE 12].

The USDOL brief adequately clears up any confusion about the amount of monetary relief sought. As explained therein, the amount of unremitted 401(k) contributions not owed to one of the defendants in this case was restored to the plan by the parties to the earlier consent judgment. [DE

12 at 2]. The amount requested with respect to Count II will be included in the judgment.

Additionally, USDOL's point about the need to allow the Secretary to aggressively enforce ERISA provisions once they have been violated is well taken. [DE 14 at 4-5]. Furthermore, despite our own Circuit's warning against overbroad injunctions in a similar context, *see Lineback v. Spurlino Materials, LLC*, 546 F.3d 491, 504 (7th Cir. 2008) (quoting *Int'l Rectifier Corp. v. IXYS Corp.*, 383 F.3d 1312, 1315 (Fed. Cir. 2004)), it does appear that injunctions against future violations of ERISA frequently pass without mention in many federal courts. *See, e.g., Livolsi v. Ram Const. Co., Inc.*, 728 F.2d 600, 601 (3d Cir. 1984) (noting, and not disturbing, a district court's decision to enjoin the defendants "from violating ERISA"); *Solis v. Cooper*, No. 1:10-CV-152, 2011 WL 497614 (N.D. Ind. Feb. 4, 2011) (finding that defendants are "permanently enjoined from violating the provisions of Title I of ERISA"); *S. Elec. Health Fund v. Bedrock Servs.*, No. 3:02-CV-00309, 2003 WL 24272405 (M.D. Tenn. July 23, 2003) (granting requested relief when private-party ERISA plaintiff asked that "[d]efendants be permanently enjoined from violating ERISA). Particularly in light of the defendant's deliberate default, despite the fact that he has been served and knows what is at stake, the Court will grant the requested relief.

In conclusion, for the reasons stated in the Court's previous Order [DE 11] and as discussed above, the Court **GRANTS** USDOL's Motion for Default Judgment [DE 8] as follows:

- (1) Seher is hereby removed as a fiduciary of both the Accucast Technology, LLC, 401(k) and Health Plans that serve as the basis for the Complaint;
- (2) Seher is hereby permanently enjoined from violating the provisions of Title I of ERISA;
- (3) Seher is hereby permanently enjoined from serving as a fiduciary to any ERISA-covered plan; and
- (3) Seher must restore \$2,546.00 in unremitted contributions to the Accucast

technology, LLC, Health Plan, in order to correct the prohibited transaction in which he engaged.

Costs of this action are awarded to USDOL.

SO ORDERED.

ENTERED: February 15, 2013

 /s/ JON E. DEGUILIO
Judge
United States District Court