

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO**

<hr/> SETH D. HARRIS, Acting Secretary of Labor,	:
Successor to Hilda L. Solis, United States	:
Department of Labor,	:
Plaintiff,	:
	:
	:
v.	: Case No. 4:12-cv-01689
	:
	:
DAVID SCOTT OWENS,	:
individually and as a fiduciary of the	:
ADVETECH, INC. GROUP 401(k) PLAN,	:
ADVETECH, INC.	:
and the ADVETECH, INC. GROUP 401(k) PLAN,	:
	:
Defendants.	:

CONSENT ORDER AND JUDGMENT

Plaintiff, Seth D. Harris, Acting Secretary of Labor, successor to Hilda L. Solis, United States Department of Labor (“the Secretary”), pursuant to the provisions of the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended, 29 U.S.C. §1001, *et seq.*, filed a complaint against defendants David Scott Owens, individually and as fiduciary of the Advetech, Inc. Group 401(k) Plan, Advetech, Inc. and the Advetech, Inc. Group 401(k) Plan alleging breaches of their fiduciary responsibilities under ERISA §§104(b)(1)(A), 403(a) and (c)(1), 404(a)(1)(A), 406(a)(1)(D), 406(b)(1) and 406(b)(2), with respect to the Advetech, Inc. Group 401(k) Plan (“Plan”).

Defendants David Scott Owens (“Owens”), Advetech, Inc. (“Advetech”), and the Advetech, Inc. Group 401(k) Plan (“the Plan”) have been served with the complaint, have answered the complaint, have admitted to the jurisdiction of this Court over them and the

subject matter of this action, and, for the purposes of this Agreement, neither admit nor deny the violations alleged in the Secretary's complaint.

The plaintiff and defendants have agreed to resolve all matters in controversy in this action between them (except for the imposition by Plaintiff of any penalty pursuant to ERISA §502(l), 29 U.S.C. §1132(l), and any proceedings related thereto), and said parties do now consent to entry of a Consent Order and Judgment by this Court in accordance therewith.

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 Order and Judgment.

Upon consideration of the record herein, and as agreed to by the parties, the Court finds that it has jurisdiction to enter this Consent Order and Judgment.

IT IS THEREFORE ORDERED that:

1. Defendants Owens and Advetech are permanently enjoined and restrained from violating the provisions of Title I of ERISA, 29 U.S.C. §1001 *et seq.*
2. Defendants Owens and Advetech are jointly and severally liable to the Plan in the amount of \$112,121.24 which represents employee contributions (\$32,779.69) and loan repayments (\$24,044.19) not forwarded to the Plan and \$55,297.36 in lost opportunity costs based upon the higher of the Plan's rate of return or the Internal Revenue Code ("IRC") 6621 rates for the time period January 10, 2007 through April 30, 2013.

3. Defendant Owens hereby waives any rights to his unremitted contributions (\$21,752.04) and loan repayments (\$13,900.40) and lost opportunity costs (\$11,699.54), based upon the higher of the Plan's rate of return or the IRC 6621 rates for the time period January 10, 2007 through April 30, 2013, not forwarded to the Plan. Therefore, Defendant Owens relinquishes his rights to \$47,351.98 in unremitted contributions and loan repayments to the Plan and applicable lost opportunity cost. Consequently, Defendants Owens and Advetech are jointly and severally liable to the Plan for \$64,769.26 and shall pay this sum to the Plan in accordance with this Consent Order and Judgment. Defendants represent that they have been voluntarily making past due employee contributions and loan repayments prior to and during the litigation up to the date of the entry of this Consent Order and Judgment.

4. Defendant Owens hereby waives any right to his entire individual account balance in the Plan. The independent fiduciary, referred to in paragraph 12 below, shall determine the amount in the individual account balance of Defendant Owens. Defendant Owens shall then reduce his final installment payment[s] to the Plan, referred to in paragraph 6 below, by the amount of his entire individual account as determined by the independent fiduciary. Defendant Owens relinquishes the interest in his individual account valued as of the date of the reallocation set forth in paragraph 5 below. The Plan is hereby deemed amended to allow for the forfeiture of Defendant Owens' individual Plan account.

5. Immediately upon the entry of this Consent Order and Judgment, all sums referred to in paragraph 4 above shall be forfeited for reallocation among the individual account balances of the Plan. Within an administratively feasible time, the Plan's

independent fiduciary, referred to in paragraph 12 below, shall reallocate these sums to the accounts of the participants of the Plan (other than Defendant Owens) in an amount equal to employee contributions and loan repayments owed to each participant in partial satisfaction of the employee contributions and loan repayments not forwarded to the Plan.

6. In reliance on the representations made by Defendants Owens and Advetech in the documents provided by them to the Secretary (including a financial declaration and tax returns), which show that they are currently unable to immediately pay the Plan the total remaining restitution amount of \$64,769.26, the Secretary agrees to forbear immediate collection of the entire restitution amount and agrees that Defendants Owens and Advetech shall pay the restitution amount in accordance with the schedule set forth below:

a. Payment of \$5,440.95 on the last day of every month beginning June 30, 2013 through May 31, 2014, including post-judgment interest pursuant to 28 U.S.C. §1961. (In March 2014, the parties may have to adjust the final payments based on payments made but not considered in this Consent Order and Judgment.)

b. Defendants Owens and Advetech shall provide the Secretary with satisfactory proof of the payments monthly. Nothing herein shall prevent Defendants Owens and Advetech from making payments to the Plan on an accelerated basis. Proof of payments shall be sent to the Cincinnati Regional Director, Employee Benefits Security Administration ("Cincinnati Regional Director") at U.S. Department of Labor, EBSA, Cincinnati Regional Office, 1885 Dixie Highway, Suite 210, Ft. Wright, Kentucky 41011-2664.

7. If it is found that the documents Defendants Owens and Advetech provided regarding their financial status are untrue, the sum of **\$64,769.26** (minus the reallocation of Defendant Owens individual Plan account and payments made pursuant to this Consent Order and Judgment) shall immediately become due and payable by them together with post-judgment interest pursuant to 28 U.S.C. §1961.

8. Should Defendants Owens and Advetech fail to pay any of the installment payments described in paragraph 6 above on or before the dates set forth therein, the entire amount of the balance remaining plus post-judgment interest shall become due and payable immediately with no further notice or demand required by Plaintiff to Defendants.

9. Defendants Owens and Advetech may not contribute to Defendant Owens' individual 401(k) account within the Plan until all monies due the Plan have been paid.

10. Defendant Owens agrees that he will notify the Cincinnati Regional Director within seven (7) days of any change of his name, residence, telephone number, mailing address or employment until the amounts recited in this Consent Order and Judgment are repaid to the Plan.

11. In the event Defendant Advetech files for bankruptcy protection in the future, any amount of unpaid liability set forth in paragraph 3 above, which resulted from its breaches of fiduciary duties, is, and shall be treated as, a non-dischargeable debt under §523(a)(4) of the Bankruptcy Code, 11 U.S.C. §523(a)(4).

12. The Plan document is hereby amended to permit the appointment of an independent fiduciary who shall act as the Plan's trustee and administrator. Defendants shall, within thirty (30) days of the entry of this Consent Order and Judgment, retain the

services of an independent fiduciary. The independent fiduciary shall have the exclusive authority to appoint a successor plan trustee. The independent fiduciary and successor trustee shall not be David Smith or Defendant Owens. Further, Defendants shall immediately give notice to the Cincinnati Regional Director of the appointment of the independent fiduciary and the Secretary may file with this Court an objection to the independent fiduciary or successor trustee within 15 days of his/her appointment. If the Secretary files an objection, the Court will decide whether the independent fiduciary or successor remains or is replaced.

13. Once an independent fiduciary is appointed, Defendants Owens and Advetech shall be removed as fiduciaries of the Plan and Defendant Owens shall be permanently enjoined from serving or acting as a fiduciary or service provider with respect to any employee benefit plan subject to ERISA. Defendant Advetech shall be permanently enjoined from serving or acting as a fiduciary or service provider with respect to any ERISA-covered plan except for the Advetech, Inc. Health Plan.

14. The independent fiduciary shall serve as the Plan's trustee and administrator. The independent fiduciary shall have the following powers, duties, and responsibilities:

a. The independent fiduciary shall have responsibility and authority for administering the Plan 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., the Internal Revenue Code, and this Consent Order and Judgment;

b. The independent fiduciary's responsibilities with respect to the administration of the Plan shall include, but not be limited to, managing the Plan's assets,

communicating with participants of the Plan, calculating the participant and beneficiaries account balances, maintaining records and filing appropriate 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 in accordance with the Plan's governing documents, the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code;

d. The independent fiduciary shall have responsibility to reallocate Defendant Owens' account balance as described in paragraph 4 and 5 above, and to allocate the installment payments, described in paragraph 6 above, to active and former Plan participants in an amount equal to the employee contributions, loan repayments and lost opportunity cost owed to each individual;

e. Defendants Owens, Advetech, and the Plan, their agents, representatives, servants and employees and all persons acting by or under their authority, shall cooperate with the independent fiduciary in the performance of his duties. Defendants Owens, Advetech and the Plan shall provide their full cooperation to the independent fiduciary relative to any need for participant or financial data that may exist with regard to any record of the Plan. The independent fiduciary shall have full access to all data, information and calculations in the Plan's possession or under its control, including information contained in the records of the Plan service providers;

f. The independent fiduciary may reasonably terminate any current service providers to the Plan and retain qualified replacement service providers including,

but not limited to, accountants and attorneys, as may be reasonably necessary 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. The costs incurred by the independent fiduciary in obtaining such bonding shall be paid according to terms of the Plan's governing documents;

h. If Defendants Owens and Advetech fail to make a payment, described in paragraph 6, to the Plan, the independent fiduciary shall file a lien(s) on behalf of the Plan on any properties owned by Defendants Owens and Advetech, if prudent to do so ;

i. The independent fiduciary's reasonable and necessary fees for the performance of the above enumerated duties together with administrative expenses and costs reasonably and necessarily incurred shall be paid by Defendants Owens and Advetech. In the event that the independent fiduciary's expenses and costs are not paid by Defendants Owens and Advetech, they may be paid by the Plan in accordance with the Plan's governing documents and Defendants Owens and Advetech shall immediately reimburse the Plan for these expenses and costs including lost opportunity costs;

j. 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; and

k. 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.

15. Defendants shall comply with ERISA §104(b)(1)(A), 29 U.S.C. §1024(b)(1)(A) regarding publication of the summary plan description.

16. Each party agrees to bear 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.

17. This Consent Order and Judgment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

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

19. Nothing in this Order is binding on any government agency other than the Employee Benefits Security Administration, United States Department of Labor.

Dated: 5/30/13

/s/Dan Aaron Polster
JUDGE DAN AARON POLSTER
UNITED STATES DISTRICT COURT JUDGE

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

and Order.

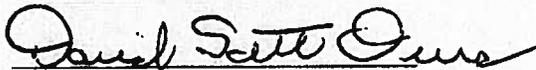
FOR PLAINTIFF, SECRETARY OF LABOR,



Dated 5/29/13.

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FOR DEFENDANTS:



Dated: 5-29-13.

DAVID SCOTT OWENS
Individually and as fiduciary of the
the Advetech, Inc. Group 401(k) Plan,
and as president of Advetech, Inc.

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Dated: 5/29/13

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