

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

HILDA L. SOLIS, Secretary of Labor,
United States Department of Labor,

Plaintiff,

v.

SME, INC. d/b/a ALLEGRA PRINT& IMAGING,
and **SEAN EAGAN**, individually and as fiduciaries
to the Allegra Print and Imaging 401(k) Plan and Trust
and the Allegra Print and Imaging Health Plan; the
ALLEGRA PRINT AND IMAGING 401(K) PLAN;
and the **ALLEGRA PRINT AND IMAGING HEALTH**
PLAN,

Defendants.

Cause No. 3:10-CV-430 RM

CONSENT ORDER AND JUDGMENT

Plaintiff Hilda L. Solis, Secretary of Labor (“Secretary”), United States Department of Labor, has filed a complaint against Defendants SME Inc., d/b/a Allegra Print & Imaging (“Allegra”), and Sean Eagan (“Eagan”) (collectively “Defendants”)¹ alleging that they violated their fiduciary obligations under Title I of the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended, 29 U.S.C. §§ 1001, *et seq.* with respect to their administration of the Plan.

Defendants have waived service of process of the complaint and have admitted to the jurisdiction of this court over them and the subject matter of this action.

¹ The Allegra Print and Imaging 401(k) Plan and the Allegra Print and Imaging Health Plan were only named as defendants pursuant to Rule 19(a) of the Federal Rules of Civil Procedure solely to assure that complete relief can be granted.

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.

Now, therefore, upon consideration of the record herein, and as agreed to by the parties hereto, the court finds that it has jurisdiction to enter this Consent Order and Judgment, and being fully advised in the premises, it is ORDERED, ADJUDGED, and DECREED that:

1. Upon execution of this Consent Order and Judgment by the Defendants, Defendants shall pay \$ 9,879.19 in total, \$3,797.61 to the Allegra Print and Imaging 401(k) Plan and \$6,081.58 to the Allegra Print and Imaging Health Plan. These monies represent the total outstanding unremitted health premiums, loan payments, and associated lost opportunity costs owed to the Plans. Defendants shall provide the Secretary with satisfactory proof of these payments to the Plans.

2. Pursuant to this court's Default Judgment and Order in Cause No. 3:08-CV-97 dated July 13, 2009, the Defendants were ordered to pay \$55,119.00 (\$48,889 to the Allegra Print & Imaging 401(k) Plan, plus \$426 in lost opportunity costs, and \$5,804 to the Allegra Print & Imaging Health Plan). As part of the agreement to resolve the present matter, the Defendants have agreed to make the following payments on this judgment: (a) \$120.81 to the Plans upon execution of the agreement, (b) \$10,000 to the Plans within thirty days of the execution, and (c) the remaining \$45,256.20 will be paid in twelve monthly installments (\$3,771.35) starting sixty days after the execution of this agreement and

continuing every thirty days thereafter. Should Defendants fail to pay any of the installment payments described in this paragraph on or before the dates set forth herein, the entire amount of the balance remaining shall become due and payable immediately together with post-judgment interest pursuant to 28 U.S.C. § 1961 with no further notice or demand required by Plaintiff to Defendants.

3. The Independent Fiduciary, M. Larry Lefoldt, appointed in the court's Default Judgment and Order in Cause No. 3:08-CV-97, dated July 13, 2009, and charged with the proper administration and termination of the Plans, shall continue in his role of independent fiduciary in accordance with this and the previous order.

4. For the additional services performed pursuant to this consent judgment, the independent fiduciary shall receive compensation not to exceed \$ 3950.00 for fees and expenses reasonably and necessarily incurred.

5. Each party agrees to bear its own attorneys' fees, costs, and other expenses incurred by such party in connection with any stage of this proceeding, including attorneys' fees which may be available under the Equal Access to Justice Act, as amended.

6. The court retains jurisdiction for purposes of enforcing compliance with the terms of this Consent Judgment.

SO ORDERED.

ENTERED: July 14, 2011

/s/ Robert L. Miller, Jr.
Judge, United States District Court

The undersigned apply for and consent to the entry of this Consent Order and Judgment this 12 of July, 2011:

For the Defendants:

/s/ Sean Eagan
Sean Eagan

/s/ Sean Eagan
Allegra Print and Imaging
By: Sean Eagan
Its: President

/s/ Brian Casey
Brian Casey
Barnes & Thornburg, LLP
Attorneys for Mr. Eagan and
Allegra Print and Imaging

For the Secretary of Labor:

M. PATRICIA SMITH
Solicitor of Labor

JOAN E. GESTRIN
Regional Solicitor

/s/ Bruce C. Canetti
Bruce C. Canetti
Attorneys for HILDA L. SOLIS
Secretary of Labor, Plaintiff