

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 16-cv-00446
)	
(1) SAINT LOUIS CONCRETE, LLC; and)	
(2) JAMES G. AUBUCHON (individually)	
and d/b/a AUBUCHON PAVING),)	
)	
Defendants.)	
_____)	

DEFAULT JUDGMENT AND ORDER OF PERMANENT INJUNCTION

This matter comes before the Court on the United States’ Motion for Default Judgment Against Saint Louis Concrete, LLC and James G. Aubuchon (individually and d/b/a Aubuchon Paving). The United States seeks to: (1) reduce to judgment certain federal employment taxes assessed against Saint Louis Concrete, LLC; (2) reduce to judgment certain federal employment taxes assessed against James G. Aubuchon d/b/a/ Aubuchon Paving; and (3) enjoin defendants Saint Louis Concrete and James G. Aubuchon (individually and d/b/a Aubuchon Paving) from violating and interfering with the administration of the internal revenue laws by requiring them to timely report, deposit, and pay over federal employment and unemployment taxes.

Defendants Saint Louis Concrete, LLC and James G. Aubuchon (individually and d/b/a Aubuchon Paving) each were properly served with a summons and complaint. No answer or other defense has been filed by the above-referenced defendants and the time within which they may respond to the complaint has expired. James G. Aubuchon is over the age of 18, not incompetent, and not on active military duty. The Clerk of Court entered defaults against Defendants Saint Louis Concrete, LLC and James G. Aubuchon. (Dkt. 12.) Defendants Saint

Louis Concrete and James G. Aubuchon are in default and the United States is entitled to default judgment in its favor and against the defendants.

Having reviewed the record in this case and considered the United States' Motion for Default Judgment Against Saint Louis Concrete, LLC and James G. Aubuchon (individually and d/b/a Aubuchon Paving), **IT IS HEREBY ORDERED** that the United States' Motion (Dkt. 13) is **GRANTED**.

IT IS FURTHER ORDERED that default judgment is entered in favor of the United States and against the defendant, Saint Louis Concrete, for unpaid federal employment tax liabilities and federal unemployment tax liabilities in the amounts of \$130,275.54 and \$9,620.19, respectively, plus interest accruing after June 7, 2016, in accordance with Counts I and II of the complaint.

IT IS FURTHER ORDERED that default judgment is entered in favor of the United States and against the defendant, James G. Aubuchon (individually and d/b/a Aubuchon Paving), for unpaid federal employment tax liabilities and federal unemployment tax liabilities in the amounts of \$1,441,277.66 and \$2,328.04, respectively, plus interest accruing after June 7, 2016, in accordance with Counts I and II of the complaint.

IT IS FURTHER ORDERED that a permanent injunction shall enter pursuant to 26 U.S.C. § 7402(a) against Saint Louis Concrete, LLC and James G. Aubuchon consistent with this Order.

IT IS ORDERED:

- I. This injunction is issued to prevent Defendants Saint Louis Concrete, LLC and James G. Aubuchon (individually and d/b/a Aubuchon Paving) from "pyramiding" employment taxes by accruing federal tax liabilities beyond their ability to pay the

liabilities as they become due. This injunction is warranted under 26 U.S.C. § 7402(a) as necessary or appropriate for the enforcement of the internal revenue laws.

- II. This Injunction Order authorizes enforceable injunctive relief. If any provision of this Injunction Order is violated, the United States or the Court may enforce the injunction through the mechanisms set forth in paragraph III(J) below.
- III. An injunction shall issue as follows from the date of this Order:
 - A. Parties Covered by Injunction: This injunction binds Defendants as well as their officers, shareholders, agents, employees, and persons in concert or participation with them, in whatever form they continue to carry on business-related activities under the name Saint Louis Concrete, Aubuchon Paving, or any other name.

Where the terms of the injunction require Saint Louis Concrete, LLC or Aubuchon Paving to take action, such requirement shall equally apply to James G. Aubuchon insofar as he shall be required to ensure that Saint Louis Concrete, LLC, Aubuchon Paving, or any business entity that he controls takes the required actions.
 - B. Withholding Requirement: Defendants shall withhold federal income, Federal Insurance Contributions Act (“FICA”), Social Security, and Medicare taxes from the wages of their employees when wages are paid; shall keep the withheld funds in a bank account separate from any operating account(s) or other accounts; and shall pay the withheld taxes to the Internal Revenue Service as they become due.
 - C. Deposit Requirements: In accordance with federal deposit regulations, Defendants shall timely make deposits of withheld income and FICA taxes, as well as FICA taxes owed by Saint Louis Concrete, LLC, James G. Aubuchon, or

any entity James G. Aubuchon controls, and Federal Unemployment Tax Act (“FUTA”) taxes, in an appropriate federal depository bank. Defendants shall also timely deposit FUTA taxes in an appropriate federal depository bank each quarter, in accordance with the federal deposit regulations.

- D. Reporting Requirements: Within three days after Defendants make a timely federal tax deposit as required by paragraph III(C), Defendants shall send by fax to IRS Revenue Officer Steven Friend at (888) 268-0096, or to such other IRS employee designated by the IRS, the receipt, deposit slip, or other proof that the tax deposit has been made, and a copy of the payroll report showing the amount that should be deposited. James G. Aubuchon shall also sign and deliver a declaration (signed under penalty of perjury) to Revenue Officer Friend, or to such other person or location as the IRS designates in writing, on the first day of each month, stating that he has personally ensured that for each pay period during the prior month, the required federal income taxes, FICA, and FUTA taxes were fully deposited and timely made. If Defendants do not pay their payroll at the regularly scheduled time, James G. Aubuchon shall send a letter within two business days of any regularly scheduled payroll date stating that the payroll was not paid and stating the date it will be paid. This letter shall be sent to Revenue Officer Friend, or such other employee of the IRS who the IRS designates in writing, at 1222 Spruce Street, Stop 5223 STL, St. Louis, MO 63103.
- E. Return Requirements: Saint Louis Concrete, LLC, James G. Aubuchon, and any entity James G. Aubuchon controls shall timely file with the IRS all of its employment (Form 941) and unemployment (Form 940) tax returns. Saint Louis

Concrete, LLC, James G. Aubuchon, and any entity James G. Aubuchon controls shall file the original forms with Revenue Officer Steven Friend, (or such other employee of the IRS who the IRS designates in writing), at 1222 Spruce Street, Stop 5223 STL, St. Louis, MO 63103. Each return shall be considered timely filed if filed before the date it is due or within three days after the return is due.

Saint Louis Concrete, LLC, James G. Aubuchon, and any entity James G.

Aubuchon controls shall pay any balance due on those returns upon filing.

- F. Employment Tax Priority: From the date this injunction is entered, Saint Louis Concrete, LLC, James G. Aubuchon, and any entity James G. Aubuchon controls shall be prohibited from paying other creditors before paying federal employment and unemployment tax debts as they come due.
- G. Transfer Prohibition: Defendants and those persons in concert or participation with them are prohibited from transferring, disbursing, or assigning any money, property, or assets after the date of the injunction order if the tax deposits required by paragraph III(C) of this Injunction Order have not been fully made for any tax period.
- H. Notification of New Business: For the next five years, Saint Louis Concrete, LLC shall notify Revenue Officer Friend, or such other IRS employee who is designated by the IRS, of any new or presently operating company or entity with which Saint Louis Concrete, LLC becomes involved in relation to federal employment and unemployment tax withholding, depositing, or reporting, and shall also inform the IRS if Saint Louis Concrete, LLC assumes a new name or transfers its employees or business operations to another entity. Saint Louis

Concrete, LLC shall provide such notification within 10 days after the aforementioned actions. For the next five years, James G. Aubuchon shall notify Revenue Officer Friend, or such other IRS employee who is designated by the IRS, of any new or presently operating company or entity James G. Aubuchon may come to own, manage, or work for as an officer or employee during the term of this injunction. James G. Aubuchon shall provide such notification within 10 days after the aforementioned actions.


- I. Term of Injunction: If Defendants comply with the terms of this injunction for five years from the date the injunction is issued, they may move this Court to dissolve the injunction order at a hearing to be set in 2021.
- J. Failure to Comply: If Defendants, or anyone subject to this injunction violates any part of this injunction, the following enforcement mechanisms may be taken:
 - i. the IRS may seize the business property of Saint Louis Concrete, LLC, James G. Aubuchon, or any entity that James G. Aubuchon owns, directs, or controls as part of his concrete contracting work, and may sell the seized property to satisfy Saint Louis Concrete, LLC's or James G. Aubuchon's outstanding tax liabilities; and
 - ii. the Court may find Saint Louis Concrete, LLC or James G. Aubuchon in civil or criminal contempt of this Court and punish the violator with a fine, incarceration, or both.
- K. Enforcement of Injunction: The United States shall be permitted to issue discovery requests during the term of the injunction to assure Defendants' compliance with the injunction. The Court shall retain jurisdiction of this action

for the purpose of implementing and enforcing this injunction and entering all additional decrees and orders necessary and appropriate for the public interest.

- IV. Defendants shall deliver to all of their current employees a copy of this Injunction Order.
- V. Within 30 days after entry of this Order by the Court, James G. Aubuchon shall provide counsel for the United States in this action a declaration, signed under penalty of perjury, certifying that he has received the Court-executed copy of this Order and has complied with Paragraph IV above.
- VI. The Clerk of Court is instructed to enter judgment against each Defendant and in favor of the United States consistent with this Order.

IT IS FURTHER ORDERED that pursuant to Fed. R. Civ. P. 4.1, the following individuals are specially appointed to personally serve this Default Judgment and Order of Permanent Injunction on Saint Louis Concrete, LLC and James G. Aubuchon: (i) IRS Revenue Officer Steven Friend; (ii) any employee of the IRS; and (iii) any process server hired by the United States.

Dated this 5th day of July, 2016.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE