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UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF NEW YORK

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THOMAS E. PEREZ, Secretary of Labor,	:	
United States Department of Labor,	:	
	:	Civil Action File
Plaintiff,	:	
	:	No.
v.	:	
	:	
EDWARD J. SAJOVIC and the EDWARD J.	:	
SAJOVIC DESIGN, LLC 401(k) PROFIT	:	
SHARING PLAN	:	
Defendants.	:	

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**COMPLAINT**

Plaintiff, Thomas E. Perez, Secretary of Labor, United States Department of Labor (the “Secretary”), to the best of his knowledge, information and belief alleges:

1. This action arises under Title I of the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended, 29 U.S.C. §§ 1001 *et seq.*, and is brought by the Secretary against Edward J. Sajovic (“Sajovic” or “Defendant”) and the Edward J. Sajovic Design, LLC 401(k) Profit Sharing Plan (the “Plan”) to enjoin practices in violation of Title 1 of ERISA and to obtain such further equitable relief as may be appropriate to redress violations and to enforce the provisions of Title I of ERISA.

**JURISDICTION AND PARTIES**

2. The Plan is an employee pension benefit plan within the meaning of ERISA § 3(3), 29 U.S.C. § 1002(3) and is covered by ERISA, pursuant to ERISA § 4(a), 29 U.S.C. § 1003(a). The Plan was sponsored by Edward J. Sajovic Design, LLC (the “Company”). The Plan’s last known address was 10-39 44<sup>th</sup> Drive, Long Island City, NY 11101.

3. This Court has jurisdiction over this action pursuant to ERISA §502(e)(1), 29 U.S.C. § 1132(e)(1).

4. Venue of this action lies in the Eastern District of New York pursuant to ERISA § 502(e)(2), 29 U.S.C. §1132(e)(2), because the Plan was administered in Queens, New York, within the Eastern District of New York.

5. The Secretary has the authority to bring this action pursuant to ERISA § 502(a)(5), 29 U.S.C. § 1132(a)(5).

### **FACTUAL ALLEGATIONS**

#### ***Background***

6. The Plan was established on or about January 1, 2011 by the Company.

7. The Company is the Plan Administrator, responsible for the day-to-day operation of the Plan, at all times relevant to this action.

8. Edward Sajovic (“Sajovic”) is a Plan Trustee and 55% owner of the Company.

9. Joseph Cuzzo (“Cuzzo”) is a Plan Trustee and a 45% owner of the Company.

10. As Plan Trustees, Sajovic and Cuzzo shared fiduciary responsibilities over the Plan, including responsibilities for its administration and distribution of assets.

11. As of July 18, 2013, there were seven participants in the Plan, including but not limited to Marc Rosenbaum (“Rosenbaum”), Gregg Winkelman, Gino Ibarondo, Cuzzo, and Sajovic.

12. John Hancock Financial Services (“JHFS”), located at 200 Bloor Street E, ST7, Toronto, Canada, M4W 1E5, is and has been the custodian of Plan assets at all times relevant to this action.

13. As the asset custodian of the Plan, JHFS is a non-fiduciary recordkeeper for the Group Annuity Contract in which the assets of the Plan are invested. JHFS acts only pursuant to directions that are provided to it by individuals who are named as Trustees or Authorized Signers in its Recordkeeping Agreement with the Plan.

14. On or about March 2012, in their capacities as Plan Trustees, Sajovic and Cuzzo entered into a Recordkeeping Agreement with JHFS.

15. Under the terms of the Recordkeeping Agreement, Cuzzo and Sajovic were both designated as Trustees (“Contract Trustees”).

16. As Contract Trustees, Cuzzo and Sajovic were responsible for providing direction on any administrative matters and approving any financial transactions allowed under the Plan’s contract with JHFS. For instance, JHFS requires the signature of a Contract Trustee before it will distribute eligible plan benefits to Plan participants.

17. Under the terms of the Recordkeeping Agreement, Cuzzo was also designated as the Administrative Contact for the Plan, its Payroll Administrator, and the Primary Contact and Client Mail Recipient Information.

18. In his capacity as Administrative Contact for the Plan, Cuzzo provided administrative direction and submitted and updated employee census information under the Plan’s contract with JHFS.

19. On or about April 19, 2013, Sajovic unilaterally sought to remove Cuzzo as a Contract Trustee by submitting a form seeking his removal to JHFS. At that time, Sajovic also unilaterally sought to remove Cuzzo as the Plan’s Primary Contact, Client Mail Recipient, and Trustee Mail Recipient.

20. After receipt of Sajovic's request to remove Cuozzo from his responsibilities under the Company's Recordkeeping Agreement with JHFS, JHFS no longer recognized Cuozzo as the Contract Trustee, or as the Plan's Primary Contact, its Client Mail Recipient or its Trustee Mail Recipient.

21. On or about June 2013, Cuozzo asked JHFS that he be reinstated as a Contract Trustee but JHFS has not honored Cuozzo's request.

***The Violative Conduct***

22. On or about February 28, 2013, Cuozzo's employment with the Company ended.

23. On or about May 10, 2013, Cuozzo submitted to JHFS an Eligible Withdrawal Form requesting that JHFS roll over his eligible plan benefits to his Individual Retirement Account. Cuozzo signed the form as a Plan Trustee.

24. To date, Sajovic has not authorized distribution of eligible plan assets to Joseph Cuozzo.

25. Without Sajovic's authorization, JHFS will not honor Cuozzo's request that his eligible plan benefits be rolled over to their IRA account and Cuozzo has not been able to obtain his eligible plan benefits.

26. On or about February 28, 2013, Rosenbaum's employment with the Company ended.

27. On or about May 10, 2013, Rosenbaum submitted to JHFS an Eligible Withdrawal Form requesting that JHFS roll over his eligible plan benefits to his Individual Retirement Account. Cuozzo signed the form as a Plan Trustee.

28. To date, Sajovic has not authorized distribution of eligible plan assets to Rosenbaum.

29. Without Sajovic's authorization, JHFS will not honor Rosenbaum's request that their eligible plan benefits be rolled over to his IRA account and Rosenbaum has not been able to obtain his eligible plan benefits.

30. On information and belief, sometime in late 2012 or early 2013, employee Gregg Winkelman's employment with the Company ended and he has not been able to obtain their eligible plan benefits.

31. On information and belief, sometime in early 2013, employee Gregorio Ibarrodo's employment with the Company ended, and he has not been able to obtain their eligible plan benefits.

32. On information and belief, Sajovic failed to provide the Plan's Third Party Administrator with the information necessary to calculate the employer matching funds due to each plan participant for the year 2012.

33. Sajovic failed to file a form 5500 with the Internal Revenue Service for the year 2012.

34. In May and June 2013, Sajovic took loans totaling approximately \$30,000 from his eligible plan benefits, which John Hancock approved.

35. Sajovic stopped performing his fiduciary duties when he ceased administering the Plan on behalf of Plan participants other than himself. Cuozzo is the only person who has come forward to assume fiduciary responsibility for the Plan and to distribute its assets. However, Sajovic effectively prevented Cuozzo from doing so when he unilaterally removed him as Contract Trustee in April 2013. At the present time, there is no fiduciary actively functioning on behalf of the Plan.

36. The Plan has not been terminated.

37. As of July 18, 2013, John Hancock held \$118,678.82 in the Plan's assets.

38. Plan participants are unable to obtain distributions of funds from the Plan without instructions to asset custodians from a duly appointed Plan Trustee or other fiduciary.

### VIOLATIONS

19. By the conduct and circumstances described in paragraphs 6-38, Sajovic has breached his fiduciary duty in violation of ERISA § 404, 29 U.S.C. §§ 1104(a)(1)(A) and 1104(a)(1)(B).

### PRAYER FOR RELIEF

**WHEREFORE**, the Secretary requests that this Court enter an Order:

- A. Removing Sajovic as Plan Trustee;
- B. Barring Sajovic from serving as a fiduciary to the Plan and as a fiduciary or service provider to any other ERISA-Plan in the future; and
- C. Ordering such further relief as is appropriate and just.

DATED: March 24, 2014  
New York, NY

Respectfully submitted,

M. PATRICIA SMITH  
Solicitor of Labor

  
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JEFFREY S. ROGOFF  
Acting Regional Solicitor

  
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U.S. Department of Labor

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