

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

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SETH D. HARRIS, Acting Secretary of Labor,	:
United States Department of Labor,	:
	:
Plaintiff,	: Case No. 11-cv-00460
	:
v.	: Judge Van Bokkelen
	:
JOHN LEVY and ROMAINE, INC. 401(k)	: Magistrate Judge Nuechterlein
PLAN,	:
	:
Defendants.	:
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**CONSENT ORDER AND JUDGMENT**

Plaintiff Seth D. Harris, Acting Secretary of Labor, United States Department of Labor (“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 defendant John Levy, alleging breaches of his fiduciary responsibilities under ERISA §§403(a) and (c)(1), 404(a)(1)(A), 406(a)(1)(D), 406(b)(1) and (2), 29 U.S.C. §§ 1103(a) and (c)(1), 1104(a)(1)(A), 1106(a)(1)(D), and 1106(b)(1) and (2), with respect to his administration of the Romaine, Inc. 401(k) Plan (the “Plan”).

Defendant Levy admits to the jurisdiction of this Court over him and the subject matter of this action.

The Secretary and defendant Levy 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.

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.

**WHEREAS**, defendant Levy and the Secretary having agreed to the terms of this Judgment, subject to its approval by the Court, and with due consideration and being fully advised of the premises,

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

1. Defendant Levy is hereby permanently enjoined from violating any provision of ERISA.
2. Defendant Levy violated his ERISA fiduciary duties with respect to the Plan, as alleged in the Secretary's complaint. Defendant John Levy is liable to the Plan in the total amount of \$11,029.57, which represents \$10,286.41 in unremitted employee contributions and loan repayments, plus \$743.16 in lost opportunity costs (computed through February 29, 2012), that accrued as a result of the non-remittance and untimely remittance of employee contributions and loan repayments to the Plan.
3. As a result of defendant Levy's ERISA violations, he owes and is ordered to restore \$11,029.57 to the Plan.
4. Defendant Levy has provided satisfactory proof to the Secretary that he restored \$11,029.57 to the Plan.<sup>1</sup>

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<sup>1</sup> Pursuant to the Secretary's action, defendant Levy also restored \$1,061.17 to a related Plan, the Market Development Specialist 401(k) Plan.

5. Each party agrees to bear his 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.

6. Nothing in this Judgment is binding on any government agency other than the United States Department of Labor.

DATED May 10, 2013

s/ Joseph S. Van Bokkelen

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**JOSEPH VAN BOKKELEN**  
**UNITED STATES DISTRICT JUDGE**

The parties hereby consent to the entry of this consent order and judgment:

FOR THE ACTING SECRETARY OF LABOR:

M. PATRICIA SMITH  
Solicitor of Labor

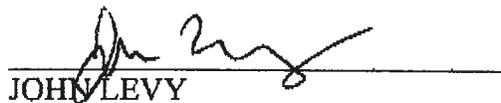
CHRISTINE Z. HERI  
Regional Solicitor



DATED: 5-1-13

BRUCE C. CANETTI  
Trial Attorney  
P.O. ADDRESS:  
Office of the Solicitor  
U.S. Department of Labor  
230 South Dearborn Street, 8<sup>TH</sup> Floor  
Chicago, Illinois 60604  
Telephone: (312) 353-1218

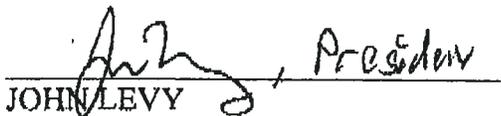
FOR DEFENDANT JOHN LEVY:



DATED: 4-30-13

JOHN LEVY  
16991 Shandwick Lane  
Granger, IN 46530

FOR DEFENDANT ROMAINE INC. 401(k) PLAN:



DATED: 4-30-13

JOHN LEVY  
Trustee to the Romaine Inc. 401(k) Plan  
16991 Shandwick Lane  
Granger, IN 46530