

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN**

R. ALEXANDER ACOSTA, Secretary of Labor,)
United States Department of Labor,)

Plaintiff,)

v.)

REBECCA IOCCA, DAVID IOCCA,)
DJI & ASSOCIATES, INC., and)
DJI & ASSOCIATES, INC. SIMPLE PLAN,)

Defendants.)

CIVIL ACTION

Case No. 5:19-cv-10371

CONSENT ORDER AND JUDGMENT

Plaintiff R. Alexander Acosta, 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 Defendants Rebecca Iocca, David Iocca, and DJI & Associates, Inc. (“DJI”) (collectively, “Defendants”), alleging breaches of their fiduciary responsibilities under ERISA §§ 403, 404, and 406, with respect to the DJI & Associates, Inc. SIMPLE PLAN (the “Plan”).¹

Defendants Rebecca Iocca, David Iocca, DJI, and the Plan waived service of process of the complaint and admitted to the jurisdiction of this Court over them and the subject matter of this action.

The Secretary and Defendants have agreed to resolve all matters in controversy in this action between them (except for the imposition by the Secretary 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.

¹ The Plan is named as a defendant herein pursuant to Federal Rule of Civil Procedure 19(a) solely to

The parties agree that, if the Secretary assesses a penalty pursuant to ERISA § 502(I) in connection with the violations alleged in this matter, the “applicable recovery amount” shall be based on the \$68,539.38 restored on May 24, 2019.

Defendants Rebecca Iocca, David Iocca, and DJI restored \$17,622.07 to the Plan before this litigation was initiated. These monies represent delinquent and untimely employee and employer contributions and lost opportunity costs thereon restored to Plan participants’ accounts.. Defendants Rebecca Iocca, David Iocca, and DJI provided the Secretary with satisfactory proof of these restorations to the Plan and the allocations to the Plan’s participants.

On May 24, 2019, Defendants Rebecca Iocca, David Iocca, and DJI, restored \$68,539.38 to the Plan. This Plan restoration represents all the delinquent and untimely employee and employer contributions withheld or due to Plan participants’ accounts during the period of April 15, 2012 through December 26, 2016 plus lost opportunity costs.

All restorations made by the Defendants on May 24, 2019 included allocation instructions to American Funds to ensure the Plan participants’ accounts receive all amounts they are owed. Once the restoration funds were received by American Funds, the Plan credited the loss restoration monies to the investment accounts of all individuals, who: (1) were employees of DJI, (2) Plan participants during the period April 15, 2012 through December 26, 2016, (3) had voluntary employee contributions withheld from their pay for contribution to the Plan during this period and such contributions were either not remitted or remitted untimely to the Plan , and/or (4) were due delinquent employer contributions and these employer contributions were not remitted to the Plan, and (5) who have not received a distribution of their full vested account balance as of the date of the entry of this Consent Order and Judgment. The Plan allocated the \$68,539.38 to the individual investment accounts of the Plan’s participants in

assure that complete relief can be granted.

an amount equal to unremitted employee and employer contributions owed to each participant. The lost opportunity cost amount allocated to each participant was based on the percentage of the amount due for unremitted and untimely remitted employee and employer contributions. Defendants Rebecca Iocca, David Iocca, and DJI provided the Secretary with satisfactory proof of these restorations to the Plan.

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, ADJUDICATED, and DECREED that:

1. Defendants Rebecca Iocca, David Iocca, and DJI are permanently enjoined and restrained from violating the provisions of Title I of ERISA, 29 U.S.C. § 1001 *et seq.*
2. Within 120 days of the entry of this Judgment, in accordance with ERISA, Defendants Rebecca Iocca, David Iocca, and DJI will distribute to the participants all Plan assets and will terminate the Plan.
3. Defendants Rebecca Iocca, David Iocca, and DJI shall take appropriate actions to locate each such participant or beneficiary of the Plan to notify each such participant or beneficiary of his/her entitlement to a restoration of losses. Appropriate actions include complying with the guidance in EBSA Field Assistance Bulletin 2014-01, Fiduciary Duties and Missing Participants in Terminated Defined Contribution Plans (Aug. 21, 2014) available at <https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2014-01>.
4. Within thirty days from the date that the Plan is fully terminated, Defendants Rebecca Iocca, David Iocca, and DJI shall provide satisfactory proof of such termination, including proof of issuance of the Plan's participant distributions, to the EBSA Regional Director Joe Rivers, 1885 Dixie Highway, Suite 210, Ft. Wright, KY 41011-2664 ("EBSA

Regional Director”).

5. Defendants Rebecca Iocca and David Iocca agree that they will notify the EBSA Regional Director within seven days of any change of their name, residence, telephone number, mailing address or employment until the Plan is fully terminated as identified in paragraphs 2 through 4 above.

6. Defendants Rebecca Iocca, David Iocca, and DJI shall be permanently enjoined from serving or acting as fiduciaries or service providers with respect to employee benefit plans subject to ERISA, except to the extent necessary for Defendant David Iocca to restore losses owed to the Plan participants pursuant to this Consent Order and Judgment and the Plan’s termination identified in paragraphs 2 through 4 above.

7. 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.

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

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

SO ORDERED.

Dated: June 11, 2019
Detroit, MI

s/ Mark A. Goldsmith
Mark A. Goldsmith
United States District Judge

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

FOR THE SECRETARY OF LABOR:

KATE O'SCANNLAIN
Solicitor of Labor

CHRISTINE Z. HERI
Regional Solicitor

s/ Mark H. Ishu

DATED: June 10, 2019

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FOR THE DEFENDANTS:

s/ Rebecca Iocca

DATED: May 24, 2019

REBECCA IOCCA

s/ David R. Iocca

DATED: May 24, 2019

DAVID IOCCA

s/ DJI & Associates, Inc.

DJI & ASSOCIATES, INC.

DATED: May 24, 2019

By: David R. Iocca

Its: President

CERTIFICATE OF SERVICE

I hereby certify that on June 11, 2019 I electronically filed the foregoing paper with the Clerk of the Court using the ECF system, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants:

Rebecca Iocca
5261 Blairmoor St.
Jackson, MI 49201

David Iocca
6001 Carriage Hill
Jackson, MI 49201

DJI & Associates, Inc.
c/o David Iocca
6001 Carriage Hill
Jackson, MI 49201

DJI & Associates, Inc. Simple Plan
c/o David Iocca
6001 Carriage Hill
Jackson, MI 49201

s/ Mark H. Ishu

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