

Case: 1:16-cv-09825 Document #: 16 Filed: 05/05/17 Page 1 of 12 PageID #:33

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MAY 09 2017

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

SHEET METAL WORKERS LOCAL 265  
WELFARE FUND, *et al.*,

Plaintiffs,

vs.

M & J'S COOLING, INC., an Illinois corporation,

Defendant.

CIVIL ACTION

NO. 16 C 9825

JUDGE ELAINE E. BUCKLO

AGREED ORDER OF DISMISSAL

NOW COME the Plaintiffs, SHEET METAL WORKERS LOCAL 265 WELFARE FUND, *et al.*, by and through their attorneys, and Defendant, M & J'S COOLING, INC., and hereby state that this case has been settled and all issues and controversies have been resolved to their mutual satisfaction. The parties request the Court to retain jurisdiction to enforce the terms of the Settlement Agreement under the authority of *Kokkonen v. Guardian Life Insurance Company of America*, 511 U.S. 375, 381-82 (1994).

IT IS HEREBY ORDERED:

1. The parties shall comply with the signed Settlement Agreement attached hereto as Exhibit A.
2. By consent of the parties, the Court shall retain jurisdiction for the sole and limited purpose of enforcing the terms of the Settlement Agreement attached hereto.
3. This Agreed Order of Dismissal is entered without prejudice in order to allow the Court to enforce the Settlement Agreement, if necessary.

4. In the event a Motion to Reinstate or Motion to Enforce Settlement is not filed on or before June 20, 2019, the Court shall relinquish jurisdiction and the case shall be deemed dismissed with prejudice without further order of the Court. Each party shall bear its own attorneys' fees and costs.

ENTERED:

  
UNITED STATES DISTRICT COURT JUDGE

DATED: 5/5/17

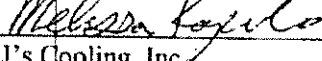
Respectfully submitted,

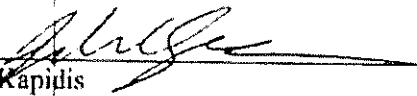
Sheet Metal Workers' Local 265 Welfare  
Fund, *et al.*

By: /s/ Cecilia M. Scanlon  
One of the Attorneys for the Plaintiffs  
Cecilia M. Scanlon  
Baum Sigman Auerbach & Neuman, Ltd.  
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Respectfully submitted,

M & J's Cooling, Inc.

By:   
M & J's Cooling, Inc.  
341 Kathy Drive  
Bourbonnais, IL 60914

By:   
John Kapidis  
341 Kathy Drive  
Bourbonnais, IL 60914

**EXHIBIT A**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

SHEET METAL WORKERS LOCAL 265  
WELFARE FUND, *et al.*,

Plaintiffs,

vs.

M & J'S COOLING, INC., an Illinois corporation,  
Defendant.

CIVIL ACTION

NO. 16 C 9825

JUDGE ELAINE E. BUCKLO

**SETTLEMENT AGREEMENT**

This Settlement Agreement ("Agreement") is made and entered into this \_\_\_\_\_ day of April 2017, by and between the Plaintiffs, SHEET METAL WORKERS LOCAL 265 WELFARE FUND, *et al.*, ("Funds") and Defendant, M & J'S COOLING, INC., ("M&J's") to resolve the above captioned lawsuit. The parties agree as follows:

1. Upon execution of this Settlement Agreement and the Promissory Note attached hereto and incorporated herein by reference, the Funds and M&J's will submit an agreed order of dismissal through which the Court will retain jurisdiction until June 20, 2019 to enforce the Settlement Agreement. In the event that M&J's breaches the Settlement Agreement, the Funds shall be entitled to move the Court to enforce the Settlement Agreement and request that judgment be entered against M&J's and John Kapidis, individually, for the balance due and any additional amounts that may come due in the course of the Settlement Agreement.

2. M&J's has at all relevant times been bound to a collective bargaining agreement which obligated it to report and pay monthly contributions at the rates specified therein to the Funds.

3. The Funds through their accountants performed a review of M&J's' payroll records for the period of April 1, 2013 to June 30, 2016. Based on that review, it was determined that M&J's owed to the Funds contributions of \$8,115.16 and liquidated damages in the amount of \$811.51.

4. In addition to the amounts set forth in Paragraph 3, M&J's submitted monthly contribution reports for the period of February 2016 through September 2016 indicating that there were contributions due on behalf of M&J's' employees in the amount of \$21,537.80 and liquidated damages in the amount of \$2,153.77. M&J's further owed liquidated damages in the amount of \$628.99 for the period of September 2013 through November 2013 and January 2016.

5. Since it was necessary to file suit and pursue the delinquent contributions due on behalf of M&J's' employees, the Funds incurred attorneys' fees in the amount of \$3,882.00 for July 2016 to January 31, 2017.

6. In order to avoid the time and expense of continued litigation, the parties have agreed to accept the sum of \$37,129.11, plus 1.5% interest per month on a declining basis over a period of twenty-six (26) months pursuant to the payment schedule in Exhibit A of the Promissory Note.

7. In exchange for the above, John Kapidis agrees to be jointly and severally liable for the amounts set forth in Paragraph 6. The parties agree that the personal guarantee agreed to by Mr. Kapidis shall cease upon completion of the Settlement Agreement.

8. M&J's agrees to remain current with respect of its submission to monthly reports and fringe benefit contributions that may become due throughout the period of the payment schedule set forth in Exhibit A to the Promissory Note.

9. In the event that M&J's fails to timely submit the payments as agreed in Paragraph 6 and Exhibit A to the Promissory Note or fails to submit current reports and contributions as they

become due during the payment schedule, M&J's shall be considered in default of this Agreement. Thereafter, the Funds shall be entitled to file a motion in this federal court to reinstate the case for the limited purpose of entering judgment against M&J's for all unpaid installments and contributions and liquidated damages due under this Agreement and the Promissory Note, and the Funds' attorneys' fees and costs incurred as a result of M&J's default and enforcement of this Agreement.

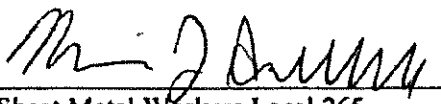
10. It is further understood and acknowledged between the parties that nothing contained herein limits or modifies the right of the Funds to audit the payroll books of M&J's at such future time, as in the course of their regular audit program if such an audit may be requested, nor do the terms of this Agreement limit or modify the Funds' rights to recover from M&J's any additional contributions or liquidated damages which may become due or which may be found to have been due, as a result of such an audit for any time period not previously audited after July 1, 2016.

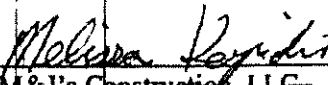
11. Nothing contained herein shall require the Funds to take legal action in the event of a breach of this Agreement. If the Funds decide in their sole discretion to allow additional time for M&J's to cure such breach, such allowance for additional time shall not be construed as a waiver of their rights under this Agreement.

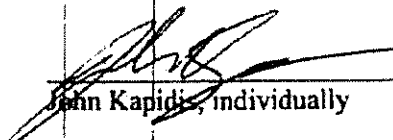
12. The parties agree that, other than as stated herein, no promises or inducements have been made or offered; that this Agreement is not executed with reliance upon any statements or representations other than as stated herein; that this Agreement contains the entire agreement between the parties hereto and shall be binding upon and shall inure to the benefit of the parties and their respective heirs, executors, personal representatives, successors and assigns; and that this Agreement may be amended only by writing executed by all parties.

13. The parties agree and warrant that the individuals signing this Agreement have the capacity and authority and have secured all necessary approval to execute this Agreement and bind the parties to its terms.

14. This Agreement may be executed in multiple or duplicate copies and each such executed copy shall be deemed to be an original.

  
Sheet Metal Workers Local 265  
Welfare Fund, et al.,

  
M&J's Construction, LLC  
COOLING FAC.

  
John Kapidis, individually

**EXHIBIT A**



## PROMISSORY NOTE

**Principal Amount: \$37,129.11**

**Delinquent Period (set forth below):**

Contributions due for February 2016 through September 2016	\$21,537.68
Late fees for February 2016 through September 2016	\$2,153.77
Late fees for September 2013 to November 2013; January 2016	\$ 628.99
Audit contributions for April 1, 2013 through June 30, 2016	\$8,115.16
Late fees for audit delinquency	\$ 811.51
Attorneys' fees for July 2016 to January 31, 2017	<u>\$3,882.00</u>
<b>Total:</b>	<b>\$37,129.11</b>

For the valued received, M&J's Cooling, Inc. ("Employer") and John Kapidis, individually ("Kapidis"), promise to pay to the order of the SHEET METAL WORKERS LOCAL 265 FRINGE BENEFIT FUNDS the total amount due of \$37,129.11, in payments, payable on the 20<sup>th</sup> of each month, payments to include principal, plus interest at 1.5%, per month, on the declining balance. Employer and Kapidis promise to pay such payments as set forth on the schedule set forth below:

<u>Payment Number</u>	<u>Date</u>	<u>Amount Due</u>	<u>Regular Report and Contribution</u>
1	4/20/2017	\$1,500.00	March 2017
2	5/20/2017	\$1,500.00	April 2017
3	6/20/2017	\$1,500.00	May 2017
4	7/20/2017	\$1,500.00	June 2017
5	8/20/2017	\$1,500.00	July 2017
6	9/20/2017	\$1,500.00	August 2017
7	10/20/2017	\$1,500.00	September 2017
8	11/20/2017	\$1,500.00	October 2017
9	12/20/2017	1,500.00	November 2017

<u>Payment Number</u>	<u>Date</u>	<u>Amount Due</u>	<u>Regular Report and Contribution</u>
10	1/20/2018	\$1,500.00	December 2017
11	2/20/2018	\$1,500.00	January 2018
12	3/20/2018	\$1,500.00	February 2018
13	4/20/2018	\$1,500.00	March 2018
14	5/20/2018	\$1,500.00	April 2018
15	6/20/2018	\$1,500.00	May 2018
16	7/20/2018	\$1,500.00	June 2018
17	8/20/2018	\$1,500.00	July 2018
18	9/20/2018	\$1,500.00	August 2018
19	10/20/2018	\$1,500.00	September 2018
20	11/20/2018	\$1,500.00	October 2018
21	12/20/2018	\$1,500.00	November 2018
22	1/20/2019	\$1,500.00	December 2018
23	2/20/2019	\$1,500.00	January 2019
24	3/20/2019	\$1,500.00	February 2019
25	4/20/2019	\$1,500.00	March 2019
26	5/20/2019	\$239.34	April 2019

In addition to the foregoing, Employer and Kapidis promise to promptly submit on a monthly basis contributions due and owing during the term in which payments are made pursuant to this Note. Such contributions shall be submitted together with the payments provided for in the preceding paragraph.

In the event that Employer timely submits installments one (1) through twenty-two (22) and the monthly reports and contributions due thereunder as set forth in the above payment schedule, liquidated damages/late fees totaling \$3,594.27 will be waived upon receipt of a final payment of \$1,134.07 on or before February 20, 2019.

Upon default in the payment of any such installment and/or Employer's monthly report and current contributions due thereon, the balance due then remaining unpaid, plus any current contributions and liquidated damages remaining due and owing shall, at the option of the holder, become immediately due and payable, without demand or notice. In the case of said default, Employer and Kapidis further promise to pay all costs of collection and reasonable attorneys' fees incurred by said Funds as a result of the default.

All payments shall be made to the SHEET METAL WORKERS LOCAL 265 FRINGE BENEFIT FUNDS.

It is further understood and acknowledged between the parties that nothing contained herein limits or modifies the right of the Funds to audit the payroll books and records of Employer at such future time, as in the course of their regular audit program if such an audit is requested, nor do the terms of this Promissory Note limit or modify the Funds' rights to recover from Employer additional contributions or liquidated damages which may become due or which may be found to have been due, as a result of such audit for any time period not previously audited after July 1, 2016.

To secure the payment of this Promissory Note, the undersigned hereby, at any time after default, confess judgment, without process, in favor of said Funds, their successors or assigns, for the unpaid balance due under this Promissory Note and any current contributions and liquidated

damages that may be due and owing, together with costs and reasonable attorneys' fees, and waive and release all errors which may intervene in such judgment. The obligations hereunder shall be joint and several.

M&J's COOLING, INC.

By: Nelissa Knight  
PRESIDENT  
Title

By: [Signature]  
Individually

DATED: 4-7-17

cc: Sheet Metal Workers Local 265 Fringe Benefit Funds

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