

UNITED STATE DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

BENJAMIN JOUSMA, et al.,

Plaintiffs,

Case No. 2:12-cv-106

v.

HON. ROBERT HOLMES BELL

THOMAS J. MOYLE, et al.,

Defendants.

_____ /

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT is made the 16th day of October, CPL
2013, by and between BENJAMIN JOUSMA, MARK KELA, DARIN BURCAR, MICHAEL
NEWKIRK, DANIEL A. GHAZALE, RICHARD J. SIMONS (collectively referred to as
"Plaintiffs"), ON BEHALF OF THEMSELVES AND THOSE SIMILARLY SITUATED, and
THOMAS J. MOYLE, JR., INC., THOMAS J. MOYLE, JR., ANDREW J. MOYLE, GARY A
MOYLE, THOMAS R. HELMINEN, AND KIMBERLY R. MOYLE (collectively referred to as
"Moyle Defendants") and ORCHARD TRUST COMPANY ("Orchard").

1. **CONDITIONS OF SETTLEMENT.** Plaintiffs and Defendants (collectively
referred to as the "Parties") agree to seek a class certification of a mandatory class, under Federal
Rule of Civil Procedure 23, for settlement purposes only. They further agree that this Settlement
Agreement is conditioned on Court approval and certification of the class for settlement purposes.
The Parties agree to seek Court approval of the Settlement and certification of a mandatory non-
opt out class consisting of all persons who worked as laborers and construction mechanics for

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Thomas J. Moyle, Jr., Inc. ("Moyle, Inc.") on Federal Davis-Bacon or State Prevailing Wage projects at any time during the years 2009 through 2012 (hereafter referred to as "Class Members"). The term "laborers and construction mechanics" refers to persons who performed work of the type covered by the applicable Federal Davis-Bacon or State Prevailing Wage law. If the class is certified and this Settlement is approved by the Court, this Settlement will be binding on Plaintiffs, Defendants and Class Members.

2. **PAYMENT.** The Parties agree that Moyle, Inc. will make the following Settlement payments:

- (A) the pension contribution amount as determined and verified by a jointly-retained, court-appointed certified public accountant (CPA) payable into its Davis-Bacon Pension Plan (the "Plan") for work performed by Class Members on Davis-Bacon projects and State Prevailing Wage projects from January 1, 2009 through December 31, 2012; and
- (B) the amount of \$56,000.00 to the Plan representing lost opportunity costs which shall be allocated to the Class Members proportionally to the amounts owed for each Class Member.

The Settlement payments, which will be made by Moyle, Inc. alone, will be made following Court approval of the Settlement according to the payment schedule set forth below. The \$56,000 lost opportunity costs amount shall be paid out of the first installment discussed below.

3. **PAYMENT PLAN.** The entire settlement amount, *i.e.*, both contributions and lost opportunity costs, will be paid by September 30, 2014, according to the following payment schedule.

- (1) \$100,000.00 will be paid to the CPA, who shall escrow it, within 2 weeks of the time closing documents are signed and submitted to the Court for

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approval. Upon the Court's approval of the Settlement, the CPA shall pay the escrowed amount to the Plan;

- (2) \$100,000.00 ^{no later than} ~~within~~ 2 weeks ^{after} of Court approval of the settlement;
- (3) \$100,000.00 ^{no later than 6 weeks after Court approval} ~~on December 31, 2013;~~ of the settlement
- (4) \$100,000.00 ^{no later than} ~~on~~ June 30, 2014; and
- (5) \$120,000.00 ^{no later than} ~~on~~ September 30, 2014.

The payments shall be made after Court approval of the class settlement and regardless of when the jointly retained CPA (which is discussed in paragraphs 4 and 5 below) begins or completes his/her work.

If Moyle, Inc. pays more than the agreed-upon payment on any scheduled payment date, the amount above the required payment will be credited towards Moyle, Inc.'s next required payment. The CPA, jointly retained by the Parties as described in paragraph 4 below, shall provide Plaintiffs' counsel with proof of each settlement payment at the time of each such payment. The pension contribution amounts to be paid to the Plan under this Settlement Agreement shall be allocated to participant accounts consistent with Plan terms and federal law. The \$56,000 in lost opportunity costs shall be allocated to the Class Members in proportion to the amounts owed for each Class Member.

4. **INDEPENDENT VERIFICATION.** The Parties agree that the total contribution amounts owed to the Plan under the Settlement for work performed by Class Members on federal Davis Bacon projects and State Prevailing Wage projects from January 1, 2009-December 31, 2012 are subject to verification by a jointly retained independent CPA. The costs and fees for

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this jointly retained CPA shall be borne entirely and exclusively by Moyle, Inc. Magistrate Judge Timothy Greeley will select the CPA.

5. **CPA DUTIES.** The Parties agree that the CPA will verify and determine the exact amount of pension contributions which Moyle, Inc. must pay to the Plan for work performed by Class Members on Davis Bacon projects and State Prevailing Wage projects for the period of January 1, 2009 through December 31, 2012. The CPA will also verify that payments required under this Settlement Agreement have been made according to the payment schedule in Paragraph 3.

Moyle, Inc. will make all payments required under this Settlement Agreement to the CPA, who shall transfer these payments to the Plan. The Moyle Defendants and Orchard will give the CPA full, unhindered access to all files and records that the CPA determines, in his sole discretion, are relevant to the determination and verification of the contributions owed to the Plan under the Settlement for work performed by Class Members on Federal Davis-Bacon projects and State Prevailing Wage projects during the period of January 1, 2009- December 31, 2012.

All source information obtained by the CPA is subject to confidentiality terms. The CPA will honor confidentiality terms and not produce or provide any confidential information to Plaintiffs or to Plaintiffs' counsel without a protective order or confidentiality agreement.

The Parties specifically agree that the CPA's final report and the information in that report is not confidential.

6. **PAYMENT ADJUSTMENTS.** The last payment required under the payment schedule (September 30, 2014) will be adjusted, up or down, from the amount of \$464,000 based

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the actual amount of pension contributions determined to be owed by the CPA. The amount of the last payment will be the amount needed to pay all remaining settlement amounts owed as determined by the CPA for the January 1, 2009 through December 31, 2012 period. By the end of the payment plan set forth in paragraph 3 above (September 30, 2014), Moyle, Inc. must pay the total settlement amounts as described above.

7. ORDER GRANTING FINAL APPROVAL OF SETTLEMENT. The Parties agree to seek entry of an Order Granting Final Approval of Settlement. (Exhibit 1)

8. CURRENT FRINGE PAYMENTS. Defendants agree that for the duration of the payment schedule set forth in Paragraph No. 3 above, Moyle, Inc. will make timely contributions to the Plan. By this section, the Parties articulate their agreement that these settlement payments are not to be financed by Moyle, Inc.'s failure to timely pay required post-settlement pension contributions. Compliance with this requirement will be verified by the CPA appointed in Paragraph No. 4, who will report any noncompliance to Plaintiffs' counsel of record.

9. RELEASE OF CLAIMS. Provided Moyle, Inc. is in compliance with the terms of this Settlement Agreement, Plaintiffs and Class Members release the Moyle Defendants and Orchard, and their parent and affiliated companies, attorneys, officers, directors, employees, agents, and shareholders from all claims for pension contributions, lost opportunity costs for work performed through December 31, 2012, attorneys' fees and litigation costs and all other claims or damages arising from or related to the Action.

Should Moyle, Inc. default on its payment obligations required by this Agreement and fail to cure within 30-days after written notice of default, all Moyle Defendants and Orchard agree that a Stipulated Consent Judgment (Exhibit 2) for the remaining unpaid settlement amounts may be entered against Moyle, Inc. and that Plaintiffs may reinstate any and all of their claims against the individual Defendants and Orchard, retroactive to the date of Plaintiffs' original Complaint in this matter.

If any of Plaintiffs' claims are reinstated following an uncured default, the individual Defendants and Orchard do not waive any claims or defenses, except for the defenses of statute of limitation and/or laches based on the lapse of time between the date of the Consent Order Approving Settlement and 90 days after Plaintiffs receive notice of default.

Nothing in this provision nor any other term of this Settlement Agreement shall be interpreted or applied so as to release any claim by any Plaintiff or Class Member for pension contributions or other amounts for work an individual performs for Defendants on Federal Davis-Bacon and State Prevailing Wage projects *after December 31, 2012* or for work on non-prevailing wage projects for any period.

All Defendants, on behalf of themselves and their heirs, administrators, executors, successors and assigns and affiliated companies, release Plaintiffs and Class Members and their spouses, executors, successors, heirs, assigns, and attorneys from any and all debts, obligations, demands, claims, judgments, causes of action of any kind arising out of or related to the Action. But, this release is void should Plaintiffs reinstate any claims against the individual Defendants and Orchard.

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10. **ATTORNEY FEES.** Provided Moyle, Inc. is in compliance with the terms of the Settlement Agreement, Plaintiffs release and waive any and all claims for attorney fees and costs arising from or related to this action.

11. **ORCHARD FEES.** Orchard will not, during the payment schedule set forth in the Settlement Agreement, increase its administrative fees to the Plan.

12. **WITHDRAWAL OF PENDING CLAIMS.** Plaintiffs and Class Members further agree to stay all bond claims unless Moyle, Inc. defaults under this Settlement Agreement. Plaintiffs and Class Members agree to withdraw any bond claims when Moyle, Inc. makes full contributions for applicable projects.

13. **DENIAL OF LIABILITY.** All Defendants expressly deny liability or any wrongdoing, and the payment of consideration in this Settlement Agreement does not constitute an admission of liability or violation of any applicable law, any contract provisions or any rule or regulation. This Settlement Agreement shall not be admissible against any Defendants or Plaintiffs, in any proceeding, except in an action to enforce its terms.

14. **UNITED STATES DEPARTMENT OF LABOR (USDOL).** Plaintiffs agree to send the following attached letter (Exhibit 3) to the USDOL.

15. **CONSULTATION WITH COUNSEL.** Parties acknowledge that they have fully discussed the terms of this Settlement Agreement with their attorneys of record and have fully reviewed the claims which are being released and the obligations that they have under this Settlement Agreement. Based on that review and discussions with their attorneys, the Parties

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acknowledge that they fully and completely understand and accept the terms of this Settlement Agreement and enter it freely and voluntarily of their own accord.

16. **SEVERABILITY.** If any provision or portion thereof of this Settlement Agreement is held invalid or unenforceable under applicable statute or rule of law, only that provision shall be deemed omitted from this Settlement Agreement, and only to the extent to which it is held invalid. In such a case, the remainder of the Settlement Agreement shall remain in full force and effect.

17. **ENTIRE AGREEMENT.** The Parties acknowledge that this Settlement Agreement contains the Parties' entire, final and complete agreement and understanding, and that there are no additional promises or terms of the settlement between the Parties, other than those contained herein, and that this Settlement Agreement shall not be amended or modified except in writing and signed by all Parties.

18. **GOVERNING LAW.** This Settlement Agreement is to be construed in accordance with the laws of the State of Michigan.

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FOR PLAINTIFFS:

Chris P. Leggio

Christopher P. Leggio (P22278)
Michael J. Bommarito (P36870)
LEGGIO & ISRAEL, PC
306 S. Washington Avenue, Ste. 600
Royal Oak, MI 48067
(248) 398-5900

Dated: 10-16-13

FOR DEFENDANTS THOMAS J. MOYLE, JR., INC., THOMAS J. MOYLE, JR., ANDREW J. MOYLE, GARY A. MOYLE, THOMAS R. HELMINEN and KIMBERLY R. MOYLE:

FOR DEFENDANT ORCHARD TRUST COMPANY:

Katerina M. Vujca

Peter J. Kok (P16121) with permission
Keith E. Eastland (P66392) of Moyle
Katerina M. Vujca (P76641) Defendants
MILLER JOHNSON
250 Monroe Ave. NW, Ste 800
Grand Rapids, MI 49501-0306
(616) 831-1700

Dated: 10/16/2013

Scott A. Storey AS

Scott A. Storey (P30232)
FOSTER SWIFT, COLLINS & SMITH,
PC
313 S. Washington Square
Lansing, MI 48933
(517) 371-8159

Dated:

KEE
Keith E. Eastland
KEITH E. EASTLAND

CPL
Chris P. Leggio
9-13-13

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

BENJAMIN JOUSMA, MARK KELA,
DARIN BURCAR, MICHAEL NEWKIRK,
DANIEL A. GHAZALE, and RICHARD J.
SIMONS on behalf of themselves and those
who are similarly situated,

Plaintiffs,

v

Case No. 2:12-cv-106

THOMAS J. MOYLE, JR., INC., a Michigan
corporation, THOMAS J. MOYLE, JR., an
individual, ANDREW J. MOYLE, an
individual, GARY A. MOYLE, an individual,
THOMAS R. HELMINEN, an individual,
KIMBERLY R. MOYLE, an individual, and
ORCHARD TRUST COMPANY, limited
liability company, individual, jointly and
severally,

Hon. Robert Holmes Bell

Defendants.

Christopher P. Legghio (P27378)
Michael Joseph Bommarito (P36870)
LEGGHIO & ISRAEL, PC
Attorneys for Plaintiff
306 S. Washington Avenue, Suite 600
Royal Oak, MI 48067
(248) 398-5900

Peter J. Kok (P16121)
Keith E. Eastland (P66392)
Katerina M. Vujea (P76641)
MILLER JOHNSON
Attorneys for Defendants Thomas J. Moyle,
Jr., Inc., Thomas J. Moyle, Jr., Andrew J.
Moyle, Gary A. Moyle, Thomas Helminen and
Kimberly R. Moyle
250 Monroe Avenue, NW, Suite 800
Grand Rapids, MI 49501-0306
(616) 831-1700

Scott A. Storey (P30232)
FOSTER SWIFT COLLINS & SMITH, P.C.
Attorney for Defendant
Orchard Trust Company
313 S. Washington Square
Lansing, MI 48933
(517) 371-8159

CONSENT FINAL JUDGMENT

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Pursuant to the Parties' Settlement Agreement, and the _____, 2013 Consent Order Approving Class Settlement,

NOW THEREFORE IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. This Court has jurisdiction over the subject matter of this action (the "Action") and over all Parties and all Class Members, and this matter is before the Court on Plaintiffs' motion.

2. Pursuant to Federal Rule of Civil Procedure 23, the Court has certified, for purposes of effectuating the Parties' settlement, a Class consisting of all persons who worked as laborers and construction mechanics for Thomas J. Moyle, Jr., Inc. ("Moyle, Inc.") on Federal Davis-Bacon Projects and State Prevailing Wage Projects in the years 2009-2012 (the "Class"). The term "laborers and construction mechanics" refers to persons who performed work of the type covered by applicable Federal Davis-Bacon and/or State Prevailing Wage laws.

3. Pursuant to Federal Rule of Civil Procedure 23, the Court has previously certified the Class for settlement purposes only and has found that:

- (a) The Class is so numerous that joinder of all members is impracticable;
- (b) There are questions of law or fact common to the Class;
- (c) The claims or defenses of the Plaintiffs as Class representatives are typical of the claims or defenses of the Class;
- (d) The representative Plaintiffs will fairly and adequately protect the interests of the Class; and
- (e) The criteria of Rule 23(b)(1) are met.

4. Plaintiffs Benjamin Jousma, Mark Kela, Darin Burcar, Michael Newkirk, Daniel Ghazale and Richard Simons have been designated as the Class representatives. For settlement

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purposes only, the Court finds that the Class representatives and their counsel have fairly and adequately represented the interests of the Class.

5. The Notice of Pendency and Proposed Settlement of Class Action (the "Settlement Notice") was timely mailed to members of the Class pursuant to and in the manner directed by Court Order, and a full opportunity to be heard has been offered to all Parties, Class Members and persons in interest.

6. The form and manner of the Settlement Notice fully complied with each of the requirements of Federal Rule of Civil Procedure 23, the Constitution of the United States, and any other applicable law. It constitutes due and sufficient notice to all persons entitled to such notice.

7. On _____, 2013, this Court entered a Consent Order Approving Settlement.

8. The Parties and all Class Members are bound by this Consent Final Judgment.

9. Pursuant to Federal Rule of Civil Procedure 23, the Settlement Agreement is hereby approved in its entirety and incorporated into this Consent Final Judgment. The Parties to the Settlement Agreement are hereby authorized, directed and ordered to comply with the Settlement Agreement.

10. Defendant Moyle, Inc. will:

(1) pay the pension contribution amounts owed, as determined and verified by a jointly retained, independent certified public accountant (CPA) selected by U.S. Magistrate Judge Timothy Greeley, into Moyle, Inc.'s Davis-Bacon Pension Plan (the "Plan") for work performed by Class Members on Davis-Bacon projects and State Prevailing Wage projects during the period January 1, 2009 through December 31, 2012; and

(2) pay \$56,000.00 to the Plan for lost opportunity costs which shall be allocated to the Class Members proportionally to the amounts owed for each Class Member.

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These payments, which will be made by Moyle, Inc. alone, will be made according to the payment schedule discussed below. The \$56,000 for lost opportunity costs shall be paid out of the first installment discussed below. The total amount due under this Judgment shall be reduced by any amounts already paid by Moyle, Inc., pursuant to the terms of the Parties' agreement.

11. The entire settlement amount, i.e., both contributions and lost opportunity costs, will be paid by September 30, 2014, according to the following payment schedule, regardless of when the jointly-retained CPA begins or completes his/her work. Accordingly, Moyle, Inc., will pay to the CPA:

- (1) \$100,000.00 within 2 weeks of the time the Settlement Agreement is signed and submitted to the Court for approval. The CPA will escrow this initial payment. Upon the Court's approval of the Settlement, the CPA shall pay the escrowed amount to the Plan;
- (2) \$100,000.00 ^{no later than} within 2 weeks ^{after} of Court approval of the Settlement; **CPL**
- (3) \$100,000.00 ^{no later than} on December 31, 2013; ^{no later than 6 weeks after Court approval of the Settlement;}
- (4) \$100,000.00 ^{no later than} on June 30, 2014; and
- (5) \$120,000.00 ^{no later than} on September 30, 2014.

As explained below, the final September 30, 2014 payment may be adjusted.

12. If Moyle, Inc. pays more than the agreed-upon minimum payment on any of the scheduled payment dates, the amount above the required payment will be credited towards Moyle, Inc.'s next required payment. Moyle, Inc., and the CPA shall provide Plaintiffs' counsel with proof of each settlement payment at the time of each such payment. The pension contributions to be paid under this Settlement Agreement shall be allocated to participant accounts consistently with Plan terms and federal law.

13. The costs and fees associated with this jointly-retained CPA shall be borne entirely and exclusively by the Moyle, Inc.

14. The CPA will collect all payments due under this Consent Judgment and transfer those amounts to the Plan. The Moyle Defendants will give the CPA full unhindered access to

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all files and records that the CPA, in its sole discretion, determines is necessary to assess the amount of the pension contributions owed to the Plan for Federal Davis-Bacon projects and State Prevailing Wage projects for the period of January 1, 2009 through December 31, 2012.

15. All source information obtained by the CPA is subject to confidentiality terms. The CPA will honor confidentiality terms and not produce any confidential information to Plaintiffs or to Plaintiffs' counsel without a protective order or confidentiality agreement. The CPA's final report, and the information included in that report, is not confidential and may be used for all purposes.

16. The last payment required under the payment schedule (September 30, 2014) will be adjusted, up or down based on the actual amount of pension contributions determined to be owed by the CPA. The amount of the last payment will be the amount needed to pay all remaining settlement amounts owed as determined by the CPA for the January 1, 2009 through December 31, 2012 period. By the end of the payment plan set forth in paragraph 11 above (September 30, 2014), Moyle, Inc. must pay the total settlement amounts as described in paragraphs 10 and 11 above, including the \$56,000 in lost opportunity costs.

17. Moyle, Inc. has defaulted on Settlement Agreement-required payment schedule.

18. Moyle, Inc. did not timely cure its default.

19. This Consent Judgment is now entered against Moyle, Inc. for the entire amount owed, as determined by the jointly-retained CPA, less any amounts already paid by Moyle, Inc., pursuant to the terms of the Settlement Agreement.

20. For the duration of the payment plan set forth in Paragraph 11 above, Moyle, Inc. will make timely pension contributions to the Plan for post-December 31, 2012 work so that the payments required under the Settlement Agreement and Court-ordered payment schedule are not

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made or financed by deferring any of Moyle's current Plan contributions obligations. The CPA will verify compliance with the requirements of this paragraph and immediately report to Plaintiffs' Counsel any delinquent payment not made on its due date.

21. Plaintiffs' claims against the individual Defendants and Orchard are reinstated retroactive to February 24, 2012. All defenses of these Defendants are preserved except that the individual Defendants and Orchard are foreclosed from raising any statute of limitations or laches defense based on the lapse of time between the entry of the Consent Order Approving Settlement and 90 days after Plaintiffs received notice of Moyle, Inc.'s default. Pursuant to Federal Rule of Civil Procedure 54(b), this Consent Final Judgment is a Final Judgment against Moyle, Inc. only.

22. Orchard will not, during the agreed-upon and Court-ordered payment schedule set forth in Paragraph 11 above, increase its administrative fees to the Plan.

23. The Court hereby retains jurisdiction over the Parties and the Class Members for purposes of administering, interpreting, effectuating, and enforcing the Settlement Agreement and this Consent Final Judgment.

24. The Parties are entitled to enforce their Settlement Agreement, the Consent Order Approving the Settlement, and this Consent Final Judgment notwithstanding any previous Orders staying this litigation. Any such Orders are no longer of any force or effect.

25. There being no just reason for delay, the Court hereby directs that this Consent Final Judgment be entered by the Clerk of the Court.

IT IS SO ORDERED.

Hon. Robert Holmes Bell

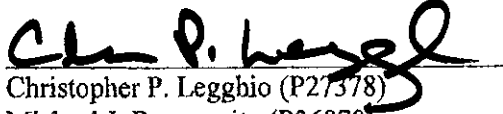
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APPROVED AS TO FORM AND SUBSTANCE:

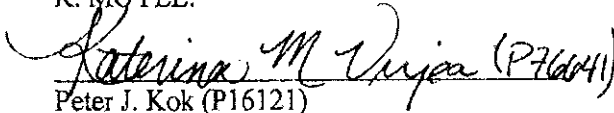
FOR PLAINTIFFS:



Christopher P. Legghio (P27378)
Michael J. Bommarito (P36870)
LEGGHIO & ISRAEL, P.C.
306 South Washington Avenue, Suite 600
Royal Oak, Michigan 48067
(248) 398-5900

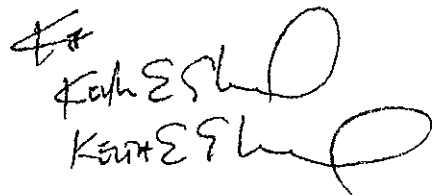
Dated: _____

FOR DEFENDANTS THOMAS J. MOYLE,
JR., INC., THOMAS J. MOYLE, JR.,
ANDREW J. MOYLE, GARY A MOYLE,
THOMAS R. HELMINEN AND KIMBERLY
R. MOYLE:

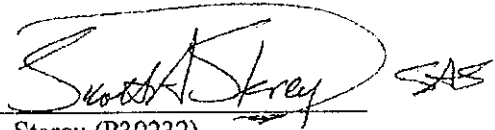


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MILLER JOHNSON
250 Monroe Avenue, NW, Ste. 800
Grand Rapids, Michigan 49501-0306
(616) 831-1700

Dated: _____

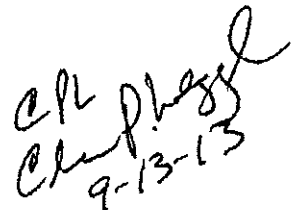


FOR DEFENDANT ORCHARD TRUST
COMPANY:



Scott A. Storey (P30232)
FOSTER SWIFT COLLINS &
SMITH, P.C.
313 S. Washington Square
Lansing, Michigan 48933
(517) 371-8159

Dated: _____



CONSENT ORDER APPROVING SETTLEMENT

WHEREAS, a Settlement Agreement was formed between Plaintiffs *Benjamin Jousma, Mark Kela, Darin Burcar, Michael Newkirk, Daniel Ghazale, and Richard Simons* (collectively referred to as "Plaintiffs"), Defendants *Thomas J. Moyle, Jr., Inc., Thomas J. Moyle, Jr., Andrew Moyle, Gary Moyle, Kim Moyle and Thomas Helminen* (collectively referred to as the "Moyle Defendants") and *Orchard Trust Company* (Orchard) which was expressly conditioned on this Court's certification of the Class for settlement purposes and this Court's approval of the Settlement; and

WHEREAS, at the request of all Plaintiffs and all Defendants (collectively referred to as the "Parties") and after a hearing, this Court issued an Order that certified the Class for settlement purposes, preliminarily approved the settlement subject to a Fairness hearing, approved the Class notice regarding the pendency of the Class action and settlement and scheduled a Fairness hearing; and

WHEREAS, the certified Class was provided with Notice of the Class action, the proposed settlement and the date, time and place of the Fairness hearing as directed by Court Order, and this Notice was adequate and sufficient; and

WHEREAS, the Court held a Fairness hearing to consider the settlement and the attorneys for the respective Parties and the Class have been heard in support of the settlement, and an opportunity to be heard has been given to all other persons desiring to be heard as provided in the Notice sent to the Class; and

WHEREAS, the Court has heard and considered the entire matter of the proposed settlement, including all papers, memoranda of law, and material filed in connection therewith,

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and concludes that the settlement is fair and adequate and in the best interests of the Class and will be approved;

NOW THEREFORE IT IS HEREBY ORDERED as follows:

1. This Court has jurisdiction over the subject matter of this action (the "Action") and over all Parties and all Class Members.

2. Pursuant to Federal Rule of Civil Procedure 23, the Court has certified, for purposes of effectuating the Parties' settlement, a Class consisting of all persons who worked as laborers and construction mechanics for Thomas J. Moyle, Jr., Inc. ("Moyle, Inc.") on Federal Davis-Bacon Projects and State Prevailing Wage Projects in the years 2009-2012 (the "Class"). The term "laborers and construction mechanics" refers to persons who performed work of the type covered by applicable Federal Davis-Bacon and/or State Prevailing Wage laws.

3. Pursuant to Federal Rule of Civil Procedure 23, the Court has previously certified the Class for settlement purposes only and has found that:

- (a) The Class is so numerous that joinder of all members is impracticable;
- (b) There are questions of law or fact common to the Class;
- (c) The claims or defenses of the Plaintiffs as Class representatives are typical of the claims or defenses of the Class;
- (d) The representative Plaintiffs will fairly and adequately protect the interests of the Class; and
- (e) The criteria of Rule 23(b)(1) is met.

4. Plaintiffs Benjamin Jousma, Mark Kela, Darin Burcar, Michael Newkirk, Daniel Ghazale and Richard Simons have been designated as the Class representatives. The Court finds

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that the Class representatives and their counsel have fairly and adequately represented the interests of the Class.

5. The Notice of Pendency and Proposed Settlement of Class Action (the "Settlement Notice") was timely mailed to Class Members pursuant to and in the manner directed by Court Order, and a full opportunity to be heard has been offered to all Parties, Class Members and persons in interest.

6. The form and manner of the Settlement Notice fully complied with each of the requirements of Federal Rule of Civil Procedure 23, the Constitution of the United States, and any other applicable law. It constitutes due and sufficient notice to all persons entitled to such notice.

7. The Parties and all Class Members are bound by this Consent Order.

8. Pursuant to Federal Rule of Civil Procedure 23, the Settlement Agreement is hereby approved in its entirety and incorporated into this Consent Order. The Parties to the Settlement Agreement are hereby authorized and directed to comply with the Settlement Agreement.

9. Defendant Moyle, Inc. will make the following Settlement payments:

(1) the pension contribution amount, determined and verified to be owed by a jointly retained, Court-appointed, independent certified public accountant (CPA), into its Davis-Bacon Pension Plan (the "Plan") for pension contributions for work performed by Class Members on Davis-Bacon projects and State Prevailing Wage projects during the period January 1, 2009 through December 31, 2012; and

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(2) \$56,000.00 to the Plan for lost opportunity costs which shall be allocated to the Class Members proportionally to the amounts owed for each Class Member.

These payments, which will be made by Moyle, Inc. alone, will be made according to the payment schedule discussed below. The \$56,000 for lost opportunity costs shall be paid out of the first installment payment discussed below.

10. The entire settlement amount, *i.e.*, both contributions and lost opportunity costs, will be paid by September 30, 2014 according to the following payment schedule, regardless of when the jointly-retained CPA begins or completes his/her work. Accordingly, Moyle, Inc. will pay to the CPA:

- (1) \$100,000.00 within 2 weeks of the time closing documents are signed and submitted to the Court for approval. The CPA will escrow this initial payment. Upon the Court's approval of the Settlement, the CPA shall pay the escrowed initial payment amount to the Plan;
- (2) \$100,000.00 ^{no later than} within 2 weeks ^{after} of Court approval of the Settlement; CPL
- (3) \$100,000.00 ^{no later than} on December 31, 2013; ^{no later than} no later than 6 weeks ^{after} after Court approval of the Settlement;
- (4) \$100,000.00 ^{no later than} on June 30, 2014; and
- (5) \$120,000.00 ^{no later than} on September 30, 2014.

As explained below, the final September 30, 2014 payment may be adjusted.

If Moyle, Inc. pays more than the agreed-upon payment on any of the scheduled payment dates, the amount above the required payment will be credited towards Moyle's next required payment. Moyle, Inc., and the CPA shall provide Plaintiffs' counsel with proof of each settlement payment at the time of each such payment. The pension contribution amounts to be paid to the Plan under this Settlement Agreement shall be allocated to participant accounts consistent with the Plan terms and federal law.

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11. The costs and fees associated with the jointly-retained CPA shall be borne entirely and exclusively by Moyle, Inc.

12. The CPA will collect all payments due under this Consent Order and Settlement Agreement and transfer those amounts to the Plan. The Moyle Defendants will give the CPA full unhindered access to all files and records that the CPA, in its sole discretion, determines is necessary to determine and verify the amount of the pension contributions owed to the Plan for Federal Davis-Bacon projects and State Prevailing Wage projects for the period of January 1, 2009 through December 31, 2012.

13. All source information obtained by the CPA is subject to confidentiality terms. The CPA will honor confidentiality terms and not produce any confidential information to Plaintiffs or to Plaintiffs' counsel without a protective order or confidentiality agreement. The CPA's final report, and the information included in that report, is not confidential.

14. The last payment required under the payment schedule (September 30, 2014) will be adjusted, up or down based on the actual amount of pension contributions determined to be owed by the CPA. The amount of the last payment will be the amount needed to pay all remaining settlement amounts owed as determined by the CPA for the January 1, 2009 through December 31, 2012 period. By the end of the payment plan set forth in paragraph 10 above (September 30, 2014), Moyle, Inc. must pay the total settlement amounts as described in paragraphs 9 and 10 above, including the \$56,000 for lost opportunity costs.

15. For the duration of the payment plan set forth in Paragraph 10, Moyle, Inc., will make timely pension contributions to the Plan for post-December 31, 2012 work so that the

for SAS

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payments required under the Settlement Agreement payment schedule, described in Paragraph 10 of this Consent Order, are not made or financed by deferring any of Moyle, Inc.'s current Plan contribution obligations. The CPA, retained under Paragraph 9 of this Consent Order, will verify compliance with the requirements of this paragraph and immediately report to Plaintiffs' Counsel if Moyle, Inc., is delinquent in any post-December 31, 2012 pension contributions.

16. The individual Defendants and Orchard shall have no obligations to remit the amounts owed under this Consent Order. Plaintiffs' claims against the individual Defendants and Orchard are dismissed without prejudice subject to reinstatement as set forth below. If Moyle, Inc. fails to make a payment required under this Consent Order, and fails to cure such default within 30 days of written notice of default, this Court shall, upon motion by Plaintiffs enter a Stipulated and Final Consent Judgment, which is attached as Exhibit A, against Moyle, Inc. for any amounts unpaid under the Settlement and this Consent Order and reinstate all Plaintiffs' claims against the individual Defendants and Orchard retroactive to the date of Plaintiffs' original complaint in this matter, viz., February 24, 2012.

If Plaintiffs' claims against the individual Defendants and Orchard are reinstated, all defenses of those Defendants are preserved. But, the individual Defendants and Orchard are foreclosed from raising any statute of limitations or laches defense based on the lapse of time between this Consent Order and ninety (90) days after Plaintiffs receive notice of Moyle, Inc.'s default. Written notice of default shall be sent to Keith Eastland, counsel for Moyle, Inc., 250 Monroe Avenue, NW, Suite 800, Grand Rapids, MI 49501-0306 and shall be effective upon mailing.

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Once all conditions of settlement are met, no claims may be reinstated against any Defendant and this Consent Order Approving Settlement shall be the Court's final judgment disposing of all claims for pension contributions, lost opportunity costs for work performed through December 31, 2012, attorney's fees and litigation costs and all other claims or damages arising from or related to the Action and concludes this case.

17. Orchard will not, during this agreed-upon and Court-ordered payment schedule, increase its administrative fees to the Plan.

18. The Court hereby retains jurisdiction over the Parties and the Class Members for purposes of administering, interpreting, effectuating, and enforcing the Settlement Agreement and this Consent Order.

19. The Parties are entitled to enforce their Settlement Agreement and this Consent Order notwithstanding any previous Orders staying the litigation. Any such Orders are no longer of any force or effect.

20. There being no just reason for delay, the Court hereby directs that this Consent Order be entered by the Clerk of the Court.

IT IS SO ORDERED.

Dated:

Hon. Robert Holmes Bell

Handwritten initials: KRS SAS

Handwritten notes: C PL 9-13-13

APPROVED AS TO FORM AND SUBSTANCE:

FOR PLAINTIFFS:



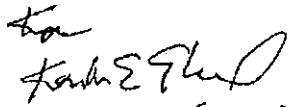
Christopher P. Legghio (P27378)
Michael J. Bommarito (P36870)
LEGGHIO & ISRAEL, P.C.
306 South Washington Avenue,
Suite 600
Royal Oak, Michigan 48067
(248) 398-5900

Dated:

FOR DEFENDANTS THOMAS J. MOYLE,
JR., INC., THOMAS J. MOYLE, JR.,
ANDREW J. MOYLE, GARY A MOYLE,
THOMAS R. HELMINEN AND KIMBERLY
R. MOYLE:



Peter J. Kok (P16121)
Keith E. Eastland (P66392)
MILLER JOHNSON
250 Monroe Avenue, NW,
Suite 800
Grand Rapids, Michigan 49501-0306
(616) 831-1700

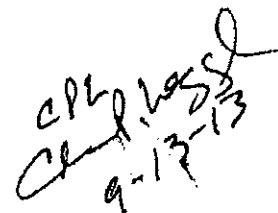

KEITH E. EASTLAND

FOR DEFENDANT ORCHARD TRUST
COMPANY:



Scott A. Storey (P30232)
FOSTER SWIFT COLLINS &
SMITH, P.C.

313 S. Washington Square
Lansing, Michigan 48933
(517) 371-8159


CPL Legghio
9-13-13

Date

Patrick T. Kawa, Detroit District Supervisor
United States Department of Labor
211 West Fort Street, Suite 1310
Detroit, MI 48226-3211

Re: *Benjamin Jousma, et al. v Thomas J. Moyle, Jr., Inc., et al.*
USDC Case No. 12-cv-00106

Dear Mr. Kawa:

We are Class counsel in the above-referenced litigation. In this suit, employees and former employees of Moyle, Inc. sued to collect unpaid pension contributions for the period January 1, 2009 through December 31, 2012 for work performed on Davis Bacon and State prevailing wage jobs.

On _____, 2013, the parties settled this litigation. Enclosed is a copy of the Settlement Agreement, Notice to the Class, Consent Order and Consent Judgment.

Sincerely,

Christopher P. Legghio

CPL/dkm
Enclosures

cc: Keith E. Eastland

Draft July 1, 2013