

**IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO**

DOUGLAS P. LABORDE, et al.,	:	CASE No. 12-CV-8517
	:	
PLAINTIFFS,	:	
	:	
v.	:	JUDGE COCROFT
	:	
THE CITY OF GAHANNA, et al,	:	
	:	
DEFENDANTS.	:	

**DECISION AND ENTRY GRANTING
THE PLAINTIFFS’ MOTION TO COMPEL DEFENDANT CITY OF GAHANNA TO
COMPLY WITH THE CLASS ACTION SETTLEMENT
AND COURT’S JULY 11, 2019 JUDGMENT ENTRY**

It is with profound disappointment that this matter is before the Court on the plaintiffs’ motion to compel the defendant, City of Gahanna (“Gahanna”) to comply with the class action settlement and the Court’s July 11, 2019 judgment entry, which was filed on November 18, 2019. Gahanna and the defendant, Jennifer Teal, filed their memorandum contra on November 22, 2019. The plaintiffs filed their reply to the memorandum contra on December 17, 2019 and, in the hope of helping the parties reach a resolution without the Court’s intervention, a hearing was held on December 19, 2019. Consistent with the arduous procedural history of this litigation, the parties were either unable or unwilling to reach a resolution and, as such, this dispute is now ripe for review.

The current controversy revolves around the preparation and distribution of 1099 tax forms associated with the Class Action Settlement Agreement (the “Agreement”) that was approved by this Court on July 11, 2019. The plaintiffs contend that Gahanna has a statutory obligation, as well as an obligation under the terms of the Agreement to issue 1099-G and/or 10999-INT forms to Class Members and to satisfy all associated reporting

requirements, so that payments can be issued by the Class Administrator. Conversely, Gahanna argues there is nothing in the Agreement that requires it to issue the tax form(s) and that it has satisfied all its obligations under the terms of the Agreement.

Despite the divergent positions between the parties, this Court finds that there is a consistent and controlling admission in electronic communications and during the hearing on this matter – it is that, while Gahanna concedes it cannot handle the tax reporting requirements for the payments, it, nonetheless has a duty to prepare tax forms and to make a report to the Internal Revenue Service of payments distributed. It is noteworthy to highlight that Gahanna has never said that it has *no duty* to handle the tax reporting but, rather that it *cannot* handle the requirement based on limited personnel within Gahanna’s finance department. However, this Court finds that the lack of personnel does not relieve Gahanna of its acknowledged responsibilities. Moreover, the Agreement, which was approved as to form by counsel for Gahanna and signed by a representative for Gahanna, states:

The parties shall reasonably cooperate with each other and use their best efforts to effectuate this Agreement, shall not do anything or take any position inconsistent with a prompt order from the Court approving this Agreement, *and shall execute all documents and perform all acts necessary and proper to effectuate the terms of this Agreement.*

(Emphasis added.) The Court is fully persuaded, based on Gahanna’s admission, the Agreement and other relevant communications, that Gahanna has an obligation to provide the tax documents associated with distribution of payments and, by not doing so, it has hindered all ability to effectuate the terms of the Agreement.

Despite Gahanna’s admission, it further argues that it did not receive a copy of the Class Administrator’s scope of work and, therefore, was unaware of the assumption that

the municipality (Gahanna) would be responsible for issuing 1099-G forms. The Court finds this argument unpersuasive because the first and only time it was raised was when Gahanna and Ms. Teal filed their memorandum contra in November 2019, despite the fact that the Class Administrator provided this information to all parties in the plaintiffs' motion to approve Class Administrator, which was filed in June 2016. Gahanna never challenged or disputed the assumption that it would be responsible for issuing tax forms and the Court will not permit it to do so three years after the matter was raised initially. Gahanna also contends that, during a telephonic conference with the Court on October 3, 2019, the plaintiffs agreed that the Class Administrator would perform this task. While it is true that the plaintiffs did agree to have the Class Administrator work as Gahanna's agent in issuing the tax forms, Gahanna has a glaring omission in its recitation. In order for the Class Administrator to issue the tax forms, it needed Gahanna to cooperate in providing specific information including, but not limited to, the amount of payment associated with each tax year included in the action. Unfortunately, neither the plaintiffs nor the Class Administrator could get Gahanna to provide definitive answers to specific questions and, as such, it could not implement its offer to issue the forms on behalf of Gahanna. Indeed, when the Court inquired of Gahanna about specifics associated with the preparation of the tax forms during its December 19 hearing, it could not get direct and specific answers, as well. To be clear, the plaintiffs' offer to have the Class Administrator handle the tax process was not a duty required by law or by agreement of the parties but was an attempt to resolve this unnecessary dispute so that the Class Members could receive payments as contemplated.

Based on the foregoing, the Court hereby **GRANTS** the plaintiffs' motion to compel Gahanna to comply and **ORDERS** Gahanna to issue 1099-G and/or 1099-INT tax forms to Class Members, to comply with all associated reporting obligations in connection with the Agreement and to cooperate with the Class Administrator and exchange all information necessary to ensure the prompt distribution of payments under the Agreement by **no later than January 31, 2020**. If payments and tax forms have not been distributed by the deadline imposed by the Court, then counsel for the parties shall contact the Court's Staff Attorney **by close of business on February 3, 2020 via electronic communication** to inform that Court of the basis for the delay and to provide the Court with a reasonable timeframe by which payments and tax forms will be issued. Failure to comply with the Court's order could subject the parties and counsel to sanctions including, but not limited to, a notice to show cause why a finding of contempt would be improper.

IT IS SO ORDERED.

Copies to all parties.

Franklin County Court of Common Pleas

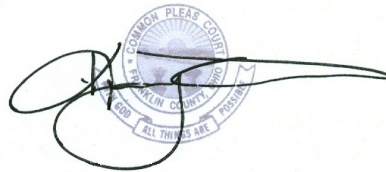
Date: 01-09-2020

Case Title: DOUGLAS P LABORDE -VS- GAHANNA CITY
ET AL

Case Number: 12CV008517

Type: DECISION/ENTRY

It Is So Ordered.

A handwritten signature in black ink is written over a blue circular seal. The seal contains the text "FRANKLIN COUNTY OHIO" and "ALL THINGS ARE POSSIBLE".

/s/ Judge Kimberly Cocroft

Court Disposition

Case Number: 12CV008517

Case Style: DOUGLAS P LABORDE -VS- GAHANNA CITY
ET AL

Motion Tie Off Information:

1. Motion CMS Document Id: 12CV0085172019-11-1899980000
Document Title: 11-18-2019-MOTION TO COMPEL - GENERAL -
PLAINTIFF: DOUGLAS P. LABORDE
Disposition: MOTION GRANTED