

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

CENTRAL STATES, SOUTHEAST AND)	
SOUTHWEST AREAS PENSION FUND;)	
and HOWARD McDOUGALL, as Trustee,)	
)	
Plaintiffs,)	
)	Case No. 09 CV 752
v.)	
)	District Judge Castillo
TRUCKERS PLUS HR, LLC, an Ohio)	
limited liability company, and RESOLVE)	
STAFFING, INC., a Nevada corporation,)	
)	
Defendants.)	

PLAINTIFFS’ MOTION FOR ENTRY OF JUDGMENT BY DEFAULT

NOW COME Plaintiffs, Central States, Southeast and Southwest Areas Pension Fund, and Howard McDougall, Trustee, and move pursuant to Fed. R. Civ. P. 55 for entry of a final judgment by default against Defendants Truckers Plus HR, LLC, an Ohio limited liability company, and Resolve Staffing, Inc., a Nevada corporation. In support, Plaintiffs submit the Affidavit of Andrew Sprau, the Affidavit of Edward H. Bogle, and state as follows:

1. On February 5, 2009, Plaintiffs filed a complaint against Defendant under the Employee Retirement Income Security Act of 1974 as amended by the Multiemployer Pension Plan Amendments Act of 1980, 29 U.S.C. §1001 *et seq*, in order to collect withdrawal liability as well as interest, liquidated damages, attorneys’ fees, and costs.

2. Both Defendants were duly served with process, and neither filed an answer or responsive pleading. *See*, Fed. R. Civ. P. 55(a). The Court, *sua sponte*, entered default against Defendant Truckers Plus HR, LLC on March 3, 2009 (*see*, [Doc. 9]), and against

Defendant Resolve Staffing, Inc. on April 28, 2009 (*see*, [Doc. 12]), retaining jurisdiction to enter a final default judgment. Plaintiffs now seek entry of a final money judgment against Defendants.

3. Defendants have failed to make any withdrawal liability payments to Plaintiffs. *See*, Exhibit A, Sprau Aff. ¶9. Pursuant to 29 U.S.C. §1451(b), the failure to make withdrawal liability payments when due is treated in the same manner as a delinquent contribution under 29 U.S.C. §1145. *See*, Exhibit A, Sprau Aff. ¶10; *Central States, Se. & Sw. Areas Pension Fund v. Slotky*, 956 F.2d 1369, 1377 (7th Cir. 1992).

4. Pursuant to 29 U.S.C. § 1132(g)(2), Plaintiffs are entitled to: delinquent withdrawal liability payments; interest on the delinquent withdrawal liability payments; an amount equal to the greater of the interest or liquidated damages as provided under the Plan in an amount not in excess of 20% of the delinquent withdrawal liability payments; and reasonable attorneys' fees and costs. *See*, Exhibit A, Sprau Aff. ¶10; *Central States, Se. & Sw. Areas Pension Fund v. Gerber Truck Serv.*, 870 F.2d 1148, 1156 (7th Cir. 1989).

5. Plaintiffs calculated Defendants' withdrawal liability principal pursuant to 29 U.S.C. §1381(b). Based upon 29 U.S.C. §1132(g)(2), Defendant owes Plaintiffs \$557,727.50 in withdrawal liability principal. *See*, Exhibit A, Sprau Aff. ¶7.

6. Pursuant to 29 U.S.C. §1132(g)(2), interest is computed and charged at the rate set by Plaintiffs. Under Plaintiffs' Plan, interest is computed and charged at an annualized interest rate equal to 2% plus the prime interest rate established by JPMorgan Chase Bank, NA for the 15th day of the month for which interest is charged. Using this rate, Defendants owe Plaintiffs \$15,337.52 in interest through April 30, 2009. *See*, Exhibit A, Sprau Aff. ¶11.

7. Pursuant to 29 U.S.C. §1132(g)(2), Plaintiffs are entitled to the greater of interest on the delinquent withdrawal liability or liquidated damages of up to 20% of the delinquent withdrawal liability as provided under the Plan. Plaintiffs' Plan provides for liquidated damages in the amount of 20% of the unpaid withdrawal liability payments. Defendant therefore owes Plaintiffs \$111,545.50 in liquidated damages. *See*, Exhibit A, Sprau Aff. ¶12.

8. Pursuant to 29 U.S.C. §1132(g)(2), Defendant is also liable for attorneys' fees and costs incurred by Plaintiffs to collect on the withdrawal liability. Defendant therefore owes Plaintiffs \$2,748 in attorneys' fees and \$445 in costs. *See*, Exhibit B, Bogle Aff. ¶15.

9. Finally, pursuant to the terms of Plaintiffs' Plan, Plaintiffs are entitled to post-judgment interest on the entire judgment balance at an annualized interest rate equal to 2% plus the prime interest rate established by JPMorgan Chase Bank for the 15th day of the month for which interest is charged. *Central States, Se. & Sw. Areas Pension Fund v. Bomar Nat'l Inc.*, 253 F.3d 1011, 1019-20 (7th Cir. 2001). *See*, Exhibit A, Sprau Aff. ¶13.

WHEREFORE, Plaintiffs Central States, Southeast and Southwest Areas Pension Fund and Howard McDougall, Trustee, request the following relief in their favor and against Defendants Truckers Plus HR, LLC, an Ohio limited liability company, and Resolve Staffing, Inc., a Nevada corporation:

- (a) A judgment against Defendants, jointly and severally, in favor of Plaintiffs in the total amount of \$687,803.52, expressed as follows:

Withdrawal Liability Principal:	\$ 557,727.50
Interest (through 4/30/09)	\$ 15,337.52
Liquidated Damages	\$ 111,545.50
Attorney's Fees	\$ 2,748.00
Court Costs	\$ 445.00
TOTAL	\$ 687,803.52

- (b) Post-judgment interest at an annualized interest rate equal to 2% plus the prime interest rate established by JPMorgan Chase Bank, NA for the 15th day of the month for which interest is charged, adjusted monthly and compounded annually; and
- (d) Such further or different relief as the Court may deem proper and just.

Respectfully submitted,

/s/ Edward H. Bogle
Edward H. Bogle (ARDC No. 6277152)
Attorney for Plaintiffs
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April 29, 2009

CERTIFICATE OF SERVICE

I, Edward H. Bogle, one of the attorneys for Plaintiffs, certify that on April 29, 2009, I caused the foregoing Plaintiffs' Motion for Entry of Judgment by Default to be filed electronically. This filing was served on all parties indicated on the electronic filing receipt via the Court's electronic filing system. For all other parties, who are listed below, I served the foregoing by mailing said documents to:

Truckers Plus HR, LLC
c/o Gregory W. Bee
425 Walnut Street, Suite 1800
Cincinnati, Ohio 45230

Resolve Staffing, Inc.
c/o State Agent and Transfer Syndicate, Inc.
112 North Curry Street
Carson City, Nevada 89703

Said document was deposited in the United States Mail at 9377 West Higgins Road, Rosemont, Illinois, 60018-4938, with proper prepaid postage affixed thereto, this 29th day of April, 2009.

/s/ Edward H. Bogle
Edward H. Bogle
Attorney for Plaintiffs