

# EXHIBIT A



contributions owed to the Funds, including past due employer contributions owed by Indiana Earth, Inc. ("Indiana Earth"), an Indiana corporation.

3. In the regular course of business, the Funds keeps and maintains files relating to the contributions owed by Indiana Earth to the Pension Fund and the Welfare Fund. The file is under my dominion and control.

4. On the date this action was filed and to the present date, Plaintiff Howard McDougall was and is one of the trustees and a fiduciary of the Pension Fund and the Welfare Fund. The Trustees are the plan sponsors of the Pension Fund and the Welfare Fund within the meaning of Section 4001(a)(10) of ERISA, 29 U.S.C. § 1301(a)(10).

5. The Funds are multiemployer plans which are administered at their principal place of business at 9377 West Higgins Road, Rosemont, Illinois 60018-4938.

6. The Funds receives contributions from numerous employers pursuant to collective bargaining agreements by and between employers and various local unions affiliated with the International Brotherhood of Teamsters ("IBT").

7. All principal and income from such contributions and investments thereof are held and used for the exclusive purpose of providing health and retirement benefits to participants and beneficiaries of the Funds and paying the administrative expenses that arise therefrom.

8. Indiana Earth is an Indiana corporation that, for all relevant times, was bound by a collective bargaining agreement entered into with Local Union No. 364 of the IBT under which it was required to pay employer contributions to the Funds on behalf of certain employees.

9. Defendant also entered into a Participation Agreement with Local Union No.

364 of the IBT that requires Defendant to pay contributions to the Funds.

10. Defendant is bound by the Pension Fund's Trust Agreement and the Welfare Fund's Trust Agreement (collectively referred to as the "Trust Agreements").

11. Participating employers are required to advise the Pension Fund and the Welfare Fund with respect to the names of those individuals who perform covered work and are required to indicate which weeks are worked by the employees. Based upon the work history reported by the employers, the Funds bill the employers for contributions.

12. The Trust Agreements permit the Trustees of the Pension Fund and the Welfare Fund to audit the records of participating employers to verify the accuracy and completeness of the employee work history reported by employers.

13. Indiana Earth breached the provisions of the Trust Agreements by failing to permit the Funds' representatives to perform an examination of all of its pertinent records for the period of January 1, 2006, through December 27, 2008.

14. After this lawsuit was initiated, Indiana Earth agreed to cooperate with the Plaintiffs' audit, which was performed in March 2010.

15. The audit revealed that Indiana Earth breached the provisions of ERISA, the collective bargaining agreement, the participation agreement and the Trust Agreements by failing to accurately report employee work history and pay all contributions (and interest due thereon) owed to the Funds for the audit period. As a result, the Defendant owes contributions to the Pension Fund in the amount of \$1,080.20 and interest thereon through October 28, 2010 in the amount of \$199.20. Defendant owes contributions to the Welfare Fund in the amount of \$2,791.50 and interest thereon through October 28, 2010 in the amount of \$559.93.

16. Indiana Earth self-reported the work history of its employees to the Pension Fund and the Welfare Fund for the period March 2010 through September 2010.

17. Since Plaintiffs filed their complaint in this case, Indiana Earth has paid the contributions and interest owed to the Pension Fund for the period March 2010 through May 2010 and to the Welfare Fund for the period March 2010 through August 2010.

18. Indiana Earth has not paid all contributions and interest revealed to be owed based on the work history it reported to the Pension Fund for the period June 2010 through September 2010. For the period of June 2010 through September 2010, Indiana Earth owes contributions to the Pension Fund in the amount of \$2,258.02 and interest thereon through October 28, 2010 in the amount of \$30.42. A true and genuine copy of the Pension Fund's Breakdown of Contributions Outstanding for Defendant is attached hereto as Exhibit 1 and is incorporated herein by reference.

19. Indiana Earth has not paid contributions and interest revealed to be owed based on the work history it reported to the Welfare Fund for the month of September 2010. For the month of September 2010, Indiana Earth owes contributions to the Welfare Fund in the amount of \$1,093.21. A true and genuine copy of the Welfare Fund's Breakdown of Contributions Outstanding for Defendant is attached hereto as Exhibit 2 and is incorporated herein by reference.

20. Pursuant to the terms of the Trust Agreements, Plaintiffs are entitled to pre-judgment interest on the entire outstanding balance at an annualized interest rate equal to the greater of 7.5% or two percent (2%) plus the prime interest rate established by JPMorgan Chase Bank, NA for the fifteenth (15th) day of the month for which interest is charged and shall be compounded annually.

21. Through October 28, 2010, Indiana Earth owes the Pension Fund the total amount of \$3,567.84 in principal and interest on the unpaid employer contributions for the period of June 2010 through September 2010 and for the unpaid audit findings. See Ex. 1.

22. Through October 28, 2010, Indiana Earth owes the Welfare Fund the total amount of \$4,444.64 in principal and interest on the unpaid employer contributions for the month of September 2010 and for the unpaid audit findings. See Ex. 2.

23. Pursuant to the terms of the Pension Fund Trust Agreement and the Welfare Fund Trust Agreement, Plaintiffs are entitled to the greater of doubled interest or liquidated damages in the amount of twenty percent (20%) of unpaid employer contributions and for the unpaid audit findings.

24. Indiana Earth owes the Pension Fund the total amount of \$667.64 in liquidated damages in the greater amount of twenty percent (20%) of the unpaid employer contributions for the period of June 2010 through September 2010 and for the unpaid audit findings.


25. Indiana Earth owes the Welfare Fund the total amount of \$776.94 in liquidated damages in the greater amount of twenty percent (20%) of the unpaid employer contributions for the month of September 2010 and for the unpaid audit findings.

26. Pursuant to the rules promulgated by the Trustees in accordance with the Trust Agreements, the Defendant is required to pay all audit fees and costs incurred in connection with the audit of the Defendant's records. The audit fees and costs total \$3,171.75.

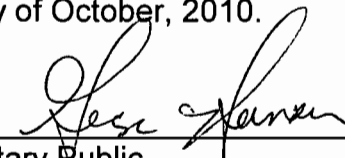
27. Pursuant to the terms of the Trust Agreements, Plaintiffs are entitled to post-

judgment interest on the entire judgment balance at an annualized interest rate equal to two percent (2%) plus the prime interest rate established by JPMorgan Chase Bank, NA for the fifteenth (15th) day of the month for which interest is charged, compounded annually.

**FURTHER AFFIANT SAYETH NOT.**

  
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Juan J. Beaton

Subscribed and sworn to before  
me, a Notary Public, this 26<sup>th</sup>  
day of October, 2010.

  
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Notary Public

