

# EXHIBIT A



**WHEREAS**, Plaintiffs and Defendants consent and stipulate to the entry of judgment against Bales, Inc., H.M. Bales, and C & H Bales and in favor of Plaintiffs as set forth below.

**NOW THEREFORE**, the parties consent and stipulate to and the Court makes the following findings of fact and conclusions of law.

### **JURISDICTION AND VENUE**

1. This is an action under the Employee Retirement Income Security Act of 1974 ("ERISA") *as amended* by the Multiemployer Pension Plan Amendments Act of 1980 ("MPPAA"), 29 U.S.C. § 1001, *et seq.*, for collection of withdrawal liability incurred by an employer as a result of a withdrawal from a multiemployer pension plan.

2. This Court has jurisdiction over this action under 29 U.S.C. §§ 1132(e), 1132(f) and 1451(c).

3. Venue lies in this Court under 29 U.S.C. §§ 1132(e)(2) and 1451(d), in that the Pension Fund is administered at its principal place of business in Rosemont, Illinois.

### **FINDINGS OF FACT<sup>1</sup>**

4. The Pension Fund is a multiemployer pension plan within the meaning of 29 U.S.C. §§ 1002(37) and 1301(a)(3). The Pension Fund is administered by Arthur H. Bunte, Jr. and his fellow trustees at 9377 West Higgins Road, Rosemont, Illinois.

5. Defendant Bales, Inc. is a corporation organized under the laws of the State of Michigan.

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<sup>1</sup> To the extent certain findings of fact may be deemed to be conclusions of law, they also shall be considered conclusions of law. Similarly, to the extent matters contained in the conclusions of law may be deemed findings of fact, they also shall be considered findings of fact.

6. Defendant H.M. Bales is a limited liability company organized under the laws of the State of Michigan.

7. Defendant C & H Bales is a limited liability company organized under the laws of the State of Michigan.

8. On or about November 6, 2010, Howard Bales and Sharon Griffith directly or indirectly owned at least 80% of the total combined voting power of all classes of outstanding stock entitled to vote or at least 80% of the total value of outstanding shares of all classes of stock of Bales, Inc.

9. On or about November 6, 2010, Howard Bales and Sharon Griffith directly or indirectly owned at least 80% of the ownership interest of H.M. Bales.

10. On or about November 6, 2010, Howard Bales and Sharon Griffith directly or indirectly owned at least 80% of the ownership interest of C & H Bales.

11. On or about November 6, 2010, Bales, Inc., H.M. Bales, and C & H Bales were a group of trades or businesses under common control (the "Bales Controlled Group") and therefore constituted a single employer within the meaning of ERISA, 29 U.S.C. § 1301(b)(1), and the regulations promulgated thereunder.

12. The Bales Controlled Group is the "employer" for purposes of the determination and assessment of withdrawal liability under Title IV of ERISA.

13. During all relevant times, Bales, Inc. was bound by collective bargaining agreements with a local union affiliated with the International Brotherhood of Teamsters under which Bales, Inc. was required to make contributions to the Pension Fund on behalf of certain of its employees.

14. The Pension Fund determined that on or about November 6, 2010, the Bales Controlled Group permanently ceased to have an obligation to contribute to the Pension Fund and/or permanently ceased all covered operations, thereby effecting a "complete withdrawal" from the Pension Fund within the meaning of 29 U.S.C. § 1383.

15. As a result of this complete withdrawal, the Bales Controlled Group incurred joint and several withdrawal liability to the Pension Fund in the principal amount of \$459,247.28 (the "Withdrawal Liability"), as determined under 29 U.S.C. § 1381(b).

16. On or about July 21, 2011, the Bales Controlled Group, through Bales, Inc., received a notice and demand for payment of the Withdrawal Liability issued by the Pension Fund in accordance with 29 U.S.C. §§ 1382(2) and 1399(b)(1). The notice demanded full payment of the entire amount of the Withdrawal Liability by August 1, 2011, pursuant to 29 U.S.C. § 1399(c)(5)(B), and Appendix E, § 5(e)(2) of the Pension Fund's Pension Plan. The amount demanded was \$459,247.28, the balance owed at that time on the Withdrawal Liability.

17. The Bales Controlled Group did not initiate arbitration pursuant to 29 U.S.C. § 1401(a)(1).

18. The Bales Controlled Group failed to make the required Withdrawal Liability payment to the Pension Fund.

19. Under the Pension Fund's Pension Plan, interest on delinquent Withdrawal Liability payment is computed and charged 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.

20. The Pension Fund's Pension Plan provides for liquidated damages in the amount of 20% of the unpaid withdrawal liability payments.

21. Pursuant to the terms of the Pension Fund's Pension Plan, the Pension Fund is 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.

### **CONCLUSIONS OF LAW**

22. On and about November 6, 2010, Bales, Inc., H.M. Bales, and C & H Bales were trades or businesses under common control and therefore constituted a single employer within the meaning of 29 U.S.C. § 1301(b)(1), and the regulations promulgated thereunder.

23. The members of the Bales Controlled Group have failed to make any payments on the Withdrawal Liability.

24. Bales, Inc., H.M. Bales, and C & H Bales, as members of the Bales Controlled Group, are jointly and severally liable for the unpaid Withdrawal Liability. 29 U.S.C. § 1301(b)(1); *Cent. States, Se. & Sw. Areas Pension Fund v. Johnson*, 991 F.2d 387, 388 (7th Cir. 1993).

25. Under 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. *Cent. States, Se. & Sw. Areas Pension Fund v. Slotky*, 956 F.2d 1369, 1377 (7th Cir. 1992). Pursuant to ERISA, 29 U.S.C. § 1132(g)(2), the Pension Fund is entitled to:

- (a) the delinquent withdrawal liability payments;
- (b) interest on the delinquent withdrawal liability payments;

- (c) 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 percent of the delinquent withdrawal liability payments;
- (d) reasonable attorney's fees and costs;
- (e) and such other relief the Court deems appropriate.

An award of these amounts is mandatory. *Cent. States, Se. & Sw. Areas Pension Fund v. Gerber Truck Serv.*, 870 F.2d 1148, 1156 (7th Cir. 1989) (*en banc*).

26. Pursuant to 29 U.S.C. § 1132(g)(2), interest on the delinquent withdrawal liability payment is computed and charged at the rate set by the plan.

27. Under 29 U.S.C. § 1132(g)(2), the Pension Fund is 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.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:**

A. That a judgment is entered against Defendants, Bales, Inc., H.M. Bales, and C & H Bales.

B. That Plaintiffs, Central States, Southeast and Southwest Areas Pension Fund, and Arthur H. Bunte, Jr., trustee, have and recover judgment from and against Defendants, jointly and severally, in the total amount of \$581,122.92. This amount consists of \$459,247.28 in Withdrawal Liability; \$27,526.18 in interest on the withdrawal liability through September 21, 2012; \$91,849.46 in liquidated damages on the withdrawal liability; \$2,000.00 in attorneys' fees; and \$500.00 in costs for prosecuting this suit as allowed pursuant to 29 U.S.C. §§ 1132(g)(2), 1451(b).

C. That Plaintiffs are awarded 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 and shall be compounded annually as set forth in the Pension Fund Trust Agreement.

Dated: \_\_\_\_\_

Enter: \_\_\_\_\_  
Robert W. Gettleman  
United States District Judge


STIPULATED AND APPROVED:

Central States, Southeast and Southwest Areas Pension Fund and Arthur H. Bunte, Jr., trustee, Plaintiffs

By:  \_\_\_\_\_

Its: Attorney \_\_\_\_\_

Bales, Inc., f/k/a Bales Trucking, Inc., H.M. Bales, LLC, d/b/a Bales Excavating, and C & H Bales, Co., LLC, f/k/a S.E. Griffith, LLC, Defendants

By: Howard Bales  \_\_\_\_\_

Its: President \_\_\_\_\_