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8 **UNITED STATES DISTRICT COURT**

9 **DISTRICT OF NEVADA**

10 **CLARK COUNTY FIREFIGHTERS UNION**
11 **LOCAL 1908 SECURITY FUND, a Voluntary**
12 **Employee Beneficiary Association located in**
13 **Nevada,**

14 **Plaintiff,**

15 **v.**

16 **ROBERT T. LEINBACH, an individual Utah**
resident,

17 **Defendant.**

CASE NO.:

COMPLAINT

18 The Clark County Firefighters Union Local 1908 Security Fund (the “Fund”) alleges
19 against Defendant Robert T. Leinbach (“Leinbach”) as follows:

20 **PARTIES, JURISDICTION AND VENUE**

21 1. This is an action for breach of trust, breach of contract, breach of the covenant of
22 good faith and fair dealing and unjust enrichment regarding Leinbach’s intentional failure to
23 comply with the terms of the Fund’s Plan and Eligibility Verification Agreement resulting in a
24 misappropriation of Fund assets to Leinbach’s benefit and the Fund’s detriment.

25 2. The Fund is a Voluntary Employee Beneficiary Association (“VEBA”) under 26
26 U.S.C. § 501(c)(9) of the Internal Revenue Code located in Clark County, Nevada.

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1 13. At all relevant times, Leinbach was a Participant in the Fund as a result of his work
2 in a position in Clark County, Nevada, represented by Firefighters Local Union 1908.

3 14. The Fund and the Fund's plan of benefits are governed and carried into effect by
4 the Fund's Board of Trustees in Clark County, Nevada, who are fiduciaries with respect to the
5 Fund and are responsible for ensuring that Fund benefits are provided solely to those entitled to
6 them under the terms of the Fund's governing documents.

7 15. The Board of Trustees is also responsible for ensuring that the assets of the Fund
8 are preserved so the Fund is able to pay for the benefits it provides to eligible Participants.

9 16. The rights of any Participant to receive Fund benefits are set forth in detail in the
10 Fund's Benefit Plan Book.

11 17. The Plan states that "Participants of the Plan have the responsibility and obligation
12 to read, understand and comply with all rules, regulations and requirements of the Security
13 Fund's plan of benefits"

14 18. Participants are responsible to provide information to the Fund leading to the
15 payment of benefits and are liable for payments the Fund makes in error as the result of a
16 Participant's failure to provide all relevant information. The Plan states:

17 If an Employee, Dependent, or other beneficiary submits false information or fails to
18 provide relevant information either in enrolling in the Plan or in claiming benefits, this
19 action could constitute fraud and could result in a loss of benefits and/or coverage and/or
20 liability for erroneous payments and other costs, including legal fees and costs to recover
21 such payments.

22 19. The Plan also allows for the recovery of any overpayment made by the Plan. It
23 provides:

24 Whenever the Plan pays any benefits in excess of the amounts that should have been paid,
25 for any reason, including but not limited to incorrect or out-dated information provided (or
26 the failure to provide correct, up-to-date information) by Participants or Dependents, or
27 administrative error, the Plan shall be entitled to recover such payments from any
28 appropriate source, including but not limited to: . . . ii) Participant

29 20. The Plan also requires payment of attorney's fees and costs incurred by the Plan to
30 collect overpayments. It states:

31 Any legal or administrative expenses incurred by the Plan in recovering any such over
32 payment shall be the responsibility of the Participant and Dependents.

1 21. The Fund's Plan has a coordination of benefits provision that requires the benefit
2 plan a person is entitled to use as an employee to pay benefits first and the plan that a person is
3 entitled to use as a retiree to pay second.

4 22. On information and belief, Leinbach has been eligible for health benefits from his
5 employer, Home Depot, since at least October of 2009.

6 23. On information and belief, Leinbach never attempted to notify the Fund, the
7 Fund's administrator or his medical providers regarding his eligibility for health benefits arising
8 from his employment at Home Depot.

9 24. It was not until late 2013 that the Fund became aware, through its own
10 investigation, that Leinbach was employed and eligible for health benefits as a result of his
11 employment at Home Depot.

12 25. As a result of Leinbach's failure to notify the Fund, the Fund's administrator or his
13 medical providers regarding his eligibility for health benefits arising from his employment at
14 Home Depot, the Fund erroneously paid for medical benefits on Leinbach's behalf first instead of
15 second for several years.

16 26. The Fund's payments for medical benefits on Leinbach's behalf first, instead of
17 second, resulted in an overpayment of benefits paid on Leinbach's behalf by the Fund.

18 27. On information and belief, Leinbach began to receive medical treatment for a
19 work-related illness or injury a few years ago.

20 28. The Plan expressly excludes coverage of medical benefits for injuries or illnesses
21 arising out of, or in the course of, any employment.

22 29. In addition to the Benefit Plan Book, Participants of the Plan are also required to
23 fully comply with the Fund's Work-Related Injuries Policies and Procedures.

24 30. Although normally excluded by the Plan, the Fund's Work-Related Injuries
25 Policies and Procedures permit a Participant to receive conditional coverage from the Plan for
26 work-related injuries and illnesses as long as the Participant is proceeding diligently to obtain
27 workers' compensation coverage by timely filing workers' compensation claims and appeals as
28 necessary.

1 48. By failing and refusing to abide by the Plan's terms and failing to reimburse the
2 Plan for the amounts the Fund shouldn't have paid, Leinbach has breached the terms of the
3 Eligibility Verification Agreement.

4 49. The Fund was required to engage the services of an attorney to collect the sums
5 due to the Fund by Leinbach, and is entitled to reasonable attorneys' fees and costs.

6 **THIRD CAUSE OF ACTION**
7 **(Breach of the Covenant of Good Faith and Fair Dealing)**

8 50. Paragraphs 1 through 49 above are reincorporated by reference as though fully set
9 forth here.

10 51. Every contract, including the Eligibility Verification Agreement, imposes on each
11 party a duty of good faith and fair dealing in the performance of the contract.

12 52. By failing to fulfill his obligations to the Eligibility Verification Agreement as
13 explained above, Leinbach has breached his duty of good faith and fair dealing in the
14 performance of the Eligibility Verification Agreement's terms.

15 53. The Fund was required to engage the services of an attorney to collect the sums
16 due to the Fund by Leinbach, and is entitled to reasonable attorneys' fees and costs.

17 **FOURTH CAUSE OF ACTION**
18 **(Unjust Enrichment)**

19 54. Paragraphs 1 through 53 above are reincorporated by reference as though fully set
20 forth here.

21 55. The Fund has paid for Leinbach's medical benefits for several years at his request.

22 56. Leinbach accepted, used and enjoyed the benefit of those paid benefits.

23 57. Leinbach knew or should have known that the Fund was not required to pay for at
24 least some of those benefits either because he was eligible for benefits on a primary basis from his
25 employer's insurance and/or because those benefits were excluded because they were for
26 treatment of a work-related illness.

27 58. To date, Leinbach has failed, neglected and/or refused to pay the amounts owed, to
28 the detriment of the Fund.

1 59. Leinbach has been unjustly enriched, to the detriment of the Fund, in excess of
2 \$75,000.

3 60. The Fund was required to engage the services of an attorney to collect the sums
4 due to the Fund by Leinbach, and is entitled to reasonable attorneys' fees and costs.

5
6 **PRAYER FOR RELIEF**

7 Wherefore, the Fund prays for relief as follows:

- 8 1. Damages and/or an order to turn over funds in excess of \$75,000;
- 9 2. Pre and postjudgment interest;
- 10 3. Attorneys' fees and costs;
- 11 4. Such other relief as the Court deems appropriate.

12 Dated: June 17, 2014.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

13 /s/ Bryce C. Loveland

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