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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 3. Defendant Robert T. Leinbach is an individual who, on information and belief,
2 currently resides in Utah.

3 4. This Court has diversity jurisdiction over this case pursuant to 28 U.S.C. § 1332,
4 as there exists complete diversity of citizenship between the parties and the amount in
5 controversy is in excess of \$75,000, as more particularly alleged herein.

6 5. Venue for this action is appropriate in the District of Nevada, in the unofficial
7 southern division, because the Fund is located in Clark County, Nevada, and, as more specifically
8 described below, Leinbach availed himself of this jurisdiction through his actions.

9 **GENERAL ALLEGATIONS**

10 6. Paragraphs 1 through 5 above are reincorporated by reference as though fully set
11 forth here.

12 7. At all relevant times, the Fund provides health benefits to individuals and their
13 dependents who meet the eligibility requirements of the Fund (“Participants”).

14 8. The Fund’s health benefits are not insured and are not provided by an insurance
15 company, but instead are paid directly by the Fund and are administered in Clark County,
16 Nevada.

17 9. The Fund is a “health and welfare plan arising out of collective bargaining” under
18 chapter 288 of the Nevada Revised Statutes, and is therefore excluded from Nevada’s Insurance
19 Code pursuant to Nevada Revised Statute 679A.160(7).

20 10. The Fund is a nonprofit entity, funded primarily from collectively-bargained
21 contributions paid to the Fund by Clark County on behalf of collectively-bargained firefighters
22 represented by Local Union 1908.

23 11. “Participants” include employees represented by Local Union 1908 and their
24 eligible dependents.

25 12. Leinbach lived in Clark County, Nevada while employed in a position represented
26 by Firefighters Union Local 1908.
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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 31. On information and belief, Leinbach intentionally failed to timely file a claim or
2 appeal of his worker's compensation claim for his work-related injury/illness.

3 32. The Fund provided conditional coverage for treatment of Leinbach's work-related
4 injury/illness while under the belief that Leinbach would abide by the Fund's Work-Related
5 Injuries Policies and Procedures.

6 33. Leinbach's failure to abide by the Fund's Work-Related Injuries Policies and
7 Procedures means he is now ineligible for the benefits the Fund paid on his behalf on a
8 conditional basis.

9 34. In other words, despite the clear terms and conditions of the Fund's Plan and
10 Work-Related Injuries Policies, designed to protect the nonprofit Fund from erroneous and
11 overpayment of benefits, Leinbach has violated the Fund's Plan and Policies by: (1) failing to
12 notify the Fund, the Fund's administrator or his providers that he was eligible for coverage of
13 medical benefits through his employment with Home Depot for several years and (2) failing to
14 timely file a claim and/or appeal for worker's compensation resulting in the Fund's erroneous and
15 overpayment of benefits on his behalf.

16 35. Through various reimbursement methods, the Fund has offset the amount
17 erroneously paid on Leinbach's behalf by several thousand dollars. The principal balance
18 currently owed remains in excess of \$75,000, however.

19 **FIRST CAUSE OF ACTION**
20 **(Breach of Trust)**

21 36. Paragraphs 1 through 35 above are reincorporated by reference as though fully set
22 forth here.

23 37. As a Participant in the Fund's Plan, Leinbach agreed to abide by all the terms of
24 the Fund's Plan and the Fund's Work-Related Injuries Policies.

25 38. By the conduct described above, Leinbach intentionally violated the terms of the
26 Fund's Plan and Work-Related Injuries Policies, resulting in the misappropriation and
27 overpayment of the Fund's assets.

28

1 39. Leinbach intentionally used the Fund’s assets in a manner contrary to the terms of
2 the Fund’s Plan and the Fund’s Work-Related Injuries Policies to benefit himself to the detriment
3 of other beneficiaries to the Fund.

4 40. Leinbach’s misappropriation of Fund assets to the detriment of other beneficiaries
5 to the Fund is a breach of trust.

6 41. The Fund was required to engage the services of an attorney to collect the sums
7 due to the Fund by Leinbach, and is entitled to reasonable attorneys’ fees and costs.

8 **SECOND CAUSE OF ACTION**
9 **(Breach of Contract)**

10 42. Paragraphs 1 through 41 above are reincorporated by reference as though fully set
11 forth here.

12 43. Before the Fund paid benefits on Leinbach’s behalf, and in order to induce the
13 Fund to do so, Leinbach completed and signed an enrollment card and eligibility verification form
14 (“Eligibility Verification Agreement”).

15 44. Under the signed Eligibility Verification Agreement, Leinbach agreed to promptly
16 reimburse the Fund in full for any and all benefits the Fund paid on Leinbach’s behalf that he was
17 not in fact eligible for or entitled to or that the Fund otherwise paid by mistake on Leinbach’s
18 behalf.

19 45. Under the signed Eligibility Verification Agreement, Leinbach agreed to pay all
20 the Fund’s attorneys’ fees and costs, whether or not such an action proceeds to judgment, if the
21 Fund files any legal action against him to recover any monies the Fund paid for benefits on
22 Leinbach’s behalf that he was not in fact eligible for or entitled to or otherwise paid by mistake.

23 46. Leinbach and the Fund entered into a valid and existing contract, the Fund’s
24 Eligibility Verification Agreement.

25 47. In consideration of the agreements and obligations of Leinbach pursuant to the
26 Eligibility Verification Agreement and as a Participant in the Plan, the Fund performed pursuant
27 to the terms of the Plan and was induced to pay medical claims on Leinbach’s behalf it wouldn’t
28 otherwise have paid and shouldn’t have paid, in excess of \$75,000.

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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.

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