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6 Attorneys for Plaintiffs, Sheet Metal Workers  
 Local 104 Health Care Trust, et al.

8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA

11 SHEET METAL WORKERS LOCAL 104  
 HEALTH CARE TRUST, et al.,

Case No.: C15-5025 RS

12 Plaintiffs,

**FIRST AMENDED JUDGMENT  
 PURSUANT TO STIPULATION**

13 v.

14 LEFCO, INC., a California corporation,

15 Defendant.

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 18 IT IS HEREBY STIPULATED and AGREED by and between the parties hereto that this First  
 19 Amended Judgment Pursuant to Stipulation (“First Amended Judgment” or “First Amended  
 20 Stipulation”) shall be entered in the within action in favor of Plaintiffs Sheet Metal Workers Local 104  
 21 Health Care Trust, et al. (“Plaintiffs” or “Trust Funds”) and against Defendant Lefco, Inc., a California  
 22 corporation (“Defendant”), as follows:

23 1. Defendant is signatory to and bound by the terms of a Collective Bargaining  
 24 Agreement(s) (“Bargaining Agreement”) with the Plaintiff Union (“Union”). The Bargaining Agreement  
 25 is still in full force and effect.

26 2. William Leffler (“Guarantor”) confirms that he is authorized to enter into this First  
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1 Amended Stipulation on behalf of Defendant and confirms that he is personally guaranteeing the  
2 amounts due herein. Defendant/Guarantor specifically consent to the Court's jurisdiction, as well as the  
3 use of a Magistrate Judge for all proceedings, including entry of judgment herein. Defendant/Guarantor  
4 further confirm that all successors in interest, assignees, and affiliated entities (including, but not limited  
5 to, parent or other controlling companies), and any companies with which Defendant joins or merges, if  
6 any, shall also be bound by the terms of this First Amended Stipulation as Guarantors. This shall include  
7 any additional entities in which Guarantor is an officer, owner or possesses any controlling ownership  
8 interest. All such entities shall specifically consent to the Court's jurisdiction, the use of a Magistrate  
9 Judge for all proceedings, and all other terms herein, in writing, at the time of any assignment, affiliation  
10 or purchase.

11 3. Defendant is currently indebted to the Trust Funds as follows:

<b>ORIGINAL STIPULATION</b>		
Original Stipulation Total (including conditionally-waived liquidated damages of \$35,198.86):	\$159,483.32	
Total Principal Paid:	<i>(-\$20,551.04)</i>	
<b>Subtotal:</b>		<b>\$138,932.28</b>
<b>CONTRIBUTIONS</b>		
10/15 Variance:	\$14.38	
11/15 Contributions:	\$67,312.27	
20% Liquidated Damages on Late-Paid 11/15 Contributions:	\$13,462.45	
<b>Subtotal:</b>		<b>\$80,789.10</b>
<b>ATTORNEYS' FEES AND COSTS</b>		
Additional Attorneys' Fees (11/10/15-11/30/15):	\$819.00	
Additional Costs (11/10/15-11/30/15):	\$0.00	
<b>Subtotal:</b>		<b>\$819.00</b>
<b>FIRST AMENDED STIPULATION TOTAL:</b>		<b>\$220,540.38</b>

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1                    **REQUIREMENTS UNDER THE TERMS OF THIS FIRST AMENDED STIPULATION**

2                    4.        Notice requirements pursuant to the terms of this First Amended Stipulation are as  
3 follows:

4                    (a)        **Notices to Defendant/Guarantor:** William Leffler, Lefco, Inc., 1650 Las  
5                    Plumas Avenue, Suite G, San Jose, Ca 95133; email: [wleffler@lefcoinc.com](mailto:wleffler@lefcoinc.com)

6                    (b)        **Notices to Plaintiffs:** Erica J. Russell, Saltzman & Johnson Law Corp., 44  
7                    Montgomery Street, #2110, San Francisco, CA 94104; email:  
8                    [erussell@sjlawcorp.com](mailto:erussell@sjlawcorp.com), copy to [compliance@sjlawcorp.com](mailto:compliance@sjlawcorp.com)

9                    5.        The requirements pursuant to the terms of this First Amended Stipulation are as follows:

10                    (a)        **Monthly Payments:** Defendant/Guarantor shall conditionally pay the amount of  
11 **\$171,879.07**, representing all of the above amounts, less liquidated damages in the amount of  
12 **\$48,661.31**.

13                    (1)        Payments in the amount of **\$15,111.00 per month** shall begin on January  
14 22, 2015, and continue on or before the 22nd day of each month thereafter **for a period of twelve (12)**  
15 **months**. Plaintiffs may require that Defendant/Guarantor pay electronically by wire transfer or by  
16 cashier's check.

17                    (2)        Defendant/Guarantor shall have the right to increase the monthly  
18 payments at any time and there is no penalty for prepayment.

19                    (3)        Payments shall be applied first to interest, at the rate of 10% per annum in  
20 accordance with the Bargaining Agreement and Trust Agreements. Interest shall begin to accrue on  
21 December 23, 2015.

22                    (b)        **Contributions:** For contributions due for hours worked by Defendant's  
23 employees during the month of December 2015, Defendant shall remain current in reporting and  
24 payment of contributions due to Plaintiffs under the terms of the Collective Bargaining Agreement(s).

25                    Beginning with contributions due for hours worked by Defendant's employees during the  
26 month of January 2016, and for every month thereafter until this Judgment is satisfied, Defendant will

1 both report and pay contributions on a weekly basis. Defendant's weekly contributions shall be received  
2 by Plaintiffs by the Wednesday following the week during which hours were worked by Defendant's  
3 employees. For example, contributions for hours worked on January 1, 2016 shall be received by  
4 Plaintiffs by January 6, 2016; contributions due for hours worked during the week of January 4, 2016  
5 through January 8, 2016 shall be received by Plaintiffs by January 13, 2016.

6 (c) **Job Report:** Beginning with the month of January 2016, and for every month  
7 thereafter, Defendant shall fully disclose all jobs on which it is working by providing Plaintiffs with  
8 fully completed job reports on the form attached hereto as Exhibit A. Upon request by Plaintiffs,  
9 Defendant shall also provide Plaintiffs with copies of Certified Payroll Reports.

10 (d) **Audit:** Should the Trust Funds request an audit of Defendant's payroll records  
11 pursuant to the requirements of the Bargaining Agreement and/or Trust Agreements, Defendant must  
12 contact the auditor within seven (7) days of receiving notice and schedule the audit as requested.

13 (1) In the event that amounts are found due to Plaintiffs as a result of the  
14 audit, Plaintiffs shall send a copy of the audit report, and written demand for payment to Defendant. In  
15 the event that the audit findings are not contested, payment in full shall be delivered to Erica J. Russell  
16 at the address provided above.

17 (2) In the event that Defendant disputes the audit findings, Defendant must  
18 provide the dispute in writing, with all supporting documentation, within ten (10) days of the date of the  
19 demand. Defendant shall be notified as to whether revisions will be made to the audit. If revisions are  
20 not made, payment will be immediately due. If revisions are made, payment in full of the revised  
21 amount shall be immediately due.

22 (3) If Defendant is unable to make payment in full, Defendant may submit a  
23 request to add the amounts found due to this First Amended Stipulation. If the First Amended  
24 Stipulation is so revised, Defendant shall execute the Second Amended Judgment or Second  
25 Amendment to Judgment within ten (10) days of receipt. Failure to execute the revised agreement shall  
26 constitute a default of the terms herein.

1 (4) Failure by Defendant to submit either payment in full or a request to add  
 2 the amounts due to this Judgment within ten days of receipt shall constitute a default of the obligations  
 3 under this agreement. All amounts found due as a result of the audit shall immediately become part of  
 4 this Judgment.

5 (e) **Fees:** Defendant/Guarantor shall pay all additional attorneys' fees and costs  
 6 incurred through Satisfaction of Judgment, whether or not a default occurs.

7 6. In summary, Defendant/Guarantor shall deliver the following payments and documents to  
 8 Plaintiffs, at the following locations, on or before the following delivery deadlines, until this First  
 9 Amended Stipulation has been fully satisfied:

Required Submissions	Delivery deadlines <sup>1</sup>	Delivery locations
<b>Stipulated payments in the amount of \$15,111.00</b> payable to <i>Sheet Metal Workers of Northern California Trust Funds</i>	22 <sup>nd</sup> day of each month (1/22/16-12/22/16)	Erica J. Russell Saltzman & Johnson Law Corp. 44 Montgomery Street, #2110 San Francisco, CA 94104
<b>Current contribution payments</b> (for 12/15) payable to <i>Sheet Metal Workers of Northern California Trust Funds</i>	1/22/16	Erica J. Russell Saltzman & Johnson Law Corp. 44 Montgomery Street, #2110 San Francisco, CA 94104
<b>Current contribution payments</b> (for 1/16-11/16) payable to <i>Sheet Metal Workers of Northern California Trust Funds</i>	Contributions due on a <u>weekly</u> basis  (by the Wednesday following the week during which hours were worked)	Erica J. Russell Saltzman & Johnson Law Corp. 44 Montgomery Street, #2110 San Francisco, CA 94104
<b>Current contribution reports</b> (for 12/15)	1/22/16	Erica J. Russell Saltzman & Johnson Law Corp. 44 Montgomery Street, #2110 San Francisco, CA 94104 or compliance@silawcorp.com

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<sup>1</sup> If the First Amended Stipulation has not been fully satisfied by 12/22/16, all submission requirements shall continue until all amounts have been paid and a Satisfaction of Judgment has been filed with the Court.

		<p>(subject: "Lefco")</p> <p><u>and</u></p> <p>Sheet Metal Workers Trust Funds P.O. Box 45312 San Francisco, CA 94145</p>
<p><b>Current contribution reports</b> (for 1/16-11/16)</p>	<p>Contributions due on a <u>weekly</u> basis</p> <p>(by the Wednesday following the week during which hours were worked)</p>	<p>Erica J. Russell Saltzman &amp; Johnson Law Corp. 44 Montgomery Street, #2110 San Francisco, CA 94104 or <u>compliance@sjlawcorp.com</u> (subject: "Lefco")</p> <p><u>and</u></p> <p>Sheet Metal Workers Trust Funds P.O. Box 45312 San Francisco, CA 94145</p>
<p><b>Completed job reports</b> (form attached as Exhibit A to Stipulation) (1/16-12/16) <b>and Certified Payroll Reports</b> (if requested)</p>	<p>22<sup>nd</sup> day of each month (1/22/16-12/22/16)</p>	<p>Erica J. Russell Saltzman &amp; Johnson Law Corp. 44 Montgomery Street, #2110 San Francisco, CA 94104 or <u>compliance@sjlawcorp.com</u> (subject: "Lefco")</p>

7. Failure to comply with any of the above terms, including submitting a payment that does not clear the bank, shall constitute a default of the obligations under this First Amended Stipulation.

**DEFAULTS UNDER THE TERMS OF THIS FIRST AMENDED STIPULATION**

8. If a default occurs, Plaintiffs shall make a written demand to Defendant/Guarantor, to cure said default *within seven (7) days of the date of the notice from Plaintiffs*. In the event default is not cured within the required time frame, all amounts remaining due hereunder (after application of principal payments made, if any) shall be due and payable on demand by Plaintiffs. These amounts shall include any conditionally waived liquidated damages, additional (current) contributions/liquidated damages/interest, and additional attorney's fees and costs incurred herein.

9. Any unpaid or late-paid contributions, together with 20% liquidated damages and 10% per annum interest, shall become part of this First Amended Judgment. Plaintiffs reserve all rights

1 available to collect any contributions and related amounts not included herein. This includes, but is not  
2 limited to, any amounts due pursuant to employee timecards or paystubs, by audit, or other means.  
3 Should Defendant fail to submit a contribution report for any month, contributions shall be estimated  
4 pursuant to the Trust Funds' policy. Defendant/Guarantor specifically waive the defense of the doctrine  
5 *res judicata* as to any such additional amounts determined as due.

6 10. A Writ of Execution may be obtained without further notice, in the amount of the unpaid  
7 balance plus any additional amounts due under the terms herein. Such Writ of Execution may be  
8 obtained solely upon declaration by a duly authorized representative of Plaintiffs setting forth the  
9 balance due as of the date of default.

10 **MISCELLANEOUS PROVISIONS**

11 11. The above requirements remain in full force and effect regardless of whether or not  
12 Defendant has ongoing work, whether Defendant's account with the Trust Funds is active, or whether  
13 Defendant is signatory to a Collective Bargaining Agreement with the Union. If, for any reason,  
14 Defendant has no work to report during a given month, Defendant shall submit the job report form  
15 (Exhibit A attached hereto) indicating that there are no current jobs. If Defendant has no contributions to  
16 report, Defendant shall submit the applicable contribution report stating "no employees."

17 12. Payments made by joint check shall be endorsed on behalf of Defendant prior to  
18 submission, and may be applied toward Defendant's monthly stipulated payment, provided that the  
19 issuer of the joint check is not requesting a release in exchange for the payment. Joint checks for which a  
20 release is requested may not be applied toward Defendant's monthly stipulated payment, but shall be  
21 deducted from the total balance owed under this First Amended Stipulation, provided the payment is for  
22 contributions included in this First Amended Stipulation.

23 13. Prior to the last payment pursuant to this First Amended Stipulation, Plaintiffs shall  
24 advise Defendant/Guarantor as to the final amount due, including additional interest, any current  
25 contributions and related amounts, and all additional attorneys' fees and costs incurred by Plaintiffs,  
26 whether or not Defendant defaults herein. Any additional amounts due shall be paid in full with the final  
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1 stipulated payment due on December 22, 2016.

2 14. The conditional waiver of liquidated damages shall be presented to the Board of Trustees  
3 for consideration only after all amounts due under the terms of this First Amended Stipulation are paid  
4 in full, and Defendant's account is otherwise current. If Defendant has fully complied with the terms of  
5 this First Amended Stipulation without default(s), the waiver shall be granted. If the waiver is granted, a  
6 Satisfaction of Judgment will be filed with the Court once all payments have cleared the bank. If the  
7 waiver is not granted, the liquidated damages will be immediately due.

8 15. Defendant/Guarantor waive any notice of Entry of Judgment or of any Request for a Writ  
9 of Execution, and expressly waive all rights to stay of execution and appeal.

10 16. Any failure on the part of Plaintiffs to take any action as provided herein in the event of  
11 any breach of the provisions of this First Amended Stipulation shall not be deemed a waiver of any  
12 subsequent breach.

13 17. The parties agree that any payments made pursuant to the terms of this Judgment shall be  
14 deemed to have been made in the ordinary course of business as provided under 11 U.S.C. Section  
15 547(c)(2) and shall not be claimed by Defendant/Guarantor as a preference under 11 U.S.C. Section 547  
16 or otherwise.

17 18. Should any provisions of this First Amended Stipulation be declared or determined by  
18 any court of competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity, and  
19 enforceability of the remaining parts, terms or provisions shall not be affected thereby and said illegal,  
20 unenforceable or invalid part, term, or provisions shall be deemed not to be part of this First Amended  
21 Stipulation.

22 19. This First Amended Stipulation is limited to the agreement between the parties with  
23 respect to the unpaid and delinquent contributions and related sums enumerated herein, owed by  
24 Defendant to Plaintiffs. This First Amended Stipulation does not in any manner relate to withdrawal  
25 liability claims, if any. Defendant acknowledges that Plaintiffs expressly reserve their right to pursue  
26 withdrawal liability claims, if any, against Defendant and all of its control group members, as provided  
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1 by Plaintiffs' Plan documents, Trust Agreements incorporated into their Bargaining Agreements, and  
2 applicable laws and regulations.

3 20. This First Amended Stipulation contains all of the terms agreed to by the parties and no  
4 other agreements have been made. Any changes to this First Amended Stipulation shall be effective only  
5 if made in writing and signed by all parties hereto.

6 21. This First Amended Stipulation may be executed in any number of counterparts and by  
7 facsimile, each of which shall be deemed an original and all of which shall constitute the same  
8 instrument.

9 22. Defendant/Guarantor represent and warrant that they have had the opportunity to be or  
10 have been represented by counsel of their own choosing in connection with entering this First Amended  
11 Stipulation under the terms and conditions set forth herein, that they have read this First Amended  
12 Stipulation with care and are fully aware of and represent that they enter into this First Amended  
13 Stipulation voluntarily and without duress.

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1 23. The parties agree that the Court shall retain jurisdiction of this matter until this First  
2 Amended Judgment is satisfied.

3 DATED: January 5, 2016

**LEFCO, INC.**

4 By: \_\_\_\_\_ /S/  
5 William Leffler  
6 CEO of Defendant

7 DATED: January 5, 2016

**WILLIAM LEFFLER**

8 By: \_\_\_\_\_ /S/  
9 William Leffler, individually, as Guarantor

10 DATED: January 25, 2016

**SALTZMAN & JOHNSON LAW CORPORATION**

11 By: \_\_\_\_\_ /S/  
12 Erica J. Russell  
13 Attorneys for Sheet Metal Workers Local 104  
14 Health Care Trust, et al.

15 DATED: January 12, 2016

**SHEET METAL WORKERS LOCAL 104  
HEALTH CARE TRUST, ET AL.**

16 By: \_\_\_\_\_ /S/  
17 Sean O'Donoghue, Chairman of Plaintiff Sheet  
18 Metal Workers Pension Trust of Northern  
19 California on behalf of all Plaintiffs

20 DATED: January 12, 2016

**SHEET METAL WORKERS LOCAL 104  
HEALTH CARE TRUST, ET AL.**

21 By: \_\_\_\_\_ /S/  
22 Rick Werner, Co-Chairman of Plaintiff Sheet  
23 Metal Workers Pension Trust of Northern  
24 California on behalf of all Plaintiffs

25 IT IS SO ORDERED.

26 IT IS FURTHER ORDERED that the calendar in this matter is vacated, and that the Court shall  
27 retain jurisdiction over this matter.

28 DATED: ~~December~~ February 1, 2016

  
UNITED STATES DISTRICT JUDGE

**EXHIBIT A  
JOB REPORT FORM**

Updated Job Reports shall be delivered to Saltzman & Johnson Law Corporation at 44 Montgomery Street, Suite 2110, San Francisco, California 94104 or to [compliance@sjlawcorp.com](mailto:compliance@sjlawcorp.com) by the 22nd day of each month.

**Employer: LEFCO, INC.**

**Report for the month of \_\_\_\_\_, 20\_\_ Submitted by: \_\_\_\_\_**

<b>Project Name:</b>		<b>Public or Private?</b> (Circle one)
<b>Project Address:</b>		
<b>General Contractor:</b>		
<b>General Contractor Address:</b>		
<b>General Contractor Telephone #:</b>		<b>Project Manager Name:</b>
<b>Project Manager Telephone #:</b>		<b>Project Manager email address:</b>
<b>Contract #:</b>		<b>Contract Date:</b>
<b>Total Contract Value:</b>		
<b>Work Start Date:</b>		<b>Work Completion Date:</b>
<b>Project Bond #:</b>		<b>Surety:</b>

<b>Project Name:</b>		<b>Public or Private?</b> (Circle one)
<b>Project Address:</b>		
<b>General Contractor:</b>		
<b>General Contractor Address:</b>		
<b>General Contractor Telephone #:</b>		<b>Project Manager Name:</b>
<b>Project Manager Telephone #:</b>		<b>Project Manager email address:</b>
<b>Contract #:</b>		<b>Contract Date:</b>
<b>Total Contract Value:</b>		
<b>Work Start Date:</b>		<b>Work Completion Date:</b>
<b>Project Bond #:</b>		<b>Surety:</b>

\*\*\*Attach additional sheets as necessary\*\*\*