

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

NEVADA STATE EDUCATION ASSOCIATION;
NATIONAL EDUCATION ASSOCIATION; RUBEN
MURILLO; ROBERT BENSON; DIANE DI
ARCHANGEL; JACON WYCKOFF,
Appellants,

v.

CLARK COUNTY EDUCATION ASSOCIATION;
JOHN VELLARDITA; VICTORIA COURTNEY,
Respondents.

No. 79208

Electronically Filed
Aug 09 2019 12:41 p.m.

Elizabeth A. Brown
Clerk of Supreme Court
DOCKETING STATEMENT
CIVIL APPEALS

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eight Judicial District Department 4
County Clark County Judge Kerry Earley
District Ct. Case No. A-17-761364-C

2. Attorney filing this docketing statement:

Attorney Robert Alexander Telephone (202) 842-2600
Firm Bredhoff & Kaiser PLLC
Address 805 15th St. NW
Suite 1000
Washington, DC 20005

Client(s) Appellants

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Richard G. McCracken Telephone (702) 386-5107
Firm McCracken, Stemerman & Holsberry, LLP
Address 1630 South Commerce Street, Suite 1-A
Las Vegas, Nevada 89102

Client(s) Respondent

Attorney John S. Delikanakis Telephone (702) 784-5200
Firm Snell & Wilmer, LLP
Address 3883 Howard Hughes Parkway
Suite 1100
Las Vegas, Nevada 89169

Client(s) Respondents

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input checked="" type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input checked="" type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input checked="" type="checkbox"/> Other (specify): <u>NRCP 59</u> |
| <input checked="" type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

N/A

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

Consolidated Proceeding: Clark County Education Association, et al. v Nevada State Education Association, et al., Case No. A-17-761364-C, pending, Clark County Eighth Judicial District Court, Department 4

8. Nature of the action. Briefly describe the nature of the action and the result below:

Please see attachment.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Please see attachment.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

We are unaware of any proceedings presently pending before this court that raise the same or similar issues raised in this appeal.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: This case involves important issues regarding the application of bylaws of a major state public sector labor union, which represents more than 10,000 teachers and other school employees, as well as the nature of the organizational relationship of affiliated unions. This case also involves a substantial issue of first impression regarding the interpretation of the organizational bylaws of affiliated membership organizations in Nevada.

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter is presumptively retained by the Nevada Supreme Court because it raises as a principal issue a matter that has statewide public importance. See NRAP 17(a)(12). One of the claims for relief raised by the NSEA Parties is that CCEA's withholding of \$4,089,364.16 in dues money owed to NSEA and NEA is in violation of the NSEA Bylaws. Those Bylaws govern 30 local unions affiliated with NSEA throughout the state of Nevada, affecting approximately 11,600 individual members, not just the parties in this case. The interpretation of those Bylaws is also a matter of first impression. See NRAP 17(a)(11).

14. Trial. If this action proceeded to trial, how many days did the trial last? _____

Was it a bench or jury trial? _____

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

Should this case be assigned to the Court of Appeals, it may be appropriate to file a motion to have Judge Bonnie Bulla recuse herself from participation in this appeal. Judge Bulla served as the discovery commissioner in this case and rendered decisions relevant to issues of importance to the resolution of the NSEA Parties' claims.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from July 1, 2019

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served July 3, 2019

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed July 15, 2019

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input checked="" type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |
-

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The district court's Findings of Fact, Conclusions of Law, and Order Granting the Clark County Education Association Parties' Motion for Partial Summary Judgment and Denying the Nevada State Education Association Parties' Motion for Partial Summary Judgment, entered on July 3, 2019, resolved all claims against all parties in Case. No. A-17-761884-C and therefore constituted a final appealable judgment under NRAP 3A(b)(1). The district court's Findings of Fact, Conclusions of Law, and Order Granting CCEA Parties' Motion to Alter or Amend Court's May 11, 2018 Order Pursuant to NRCP 59(E) and 60(B), entered on July 3, 2019, dissolved an injunction at the request of Respondents and therefore is appealable under NRAP 3A(b)(3).

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Nevada State Education Association; National Educational Association; Ruben Murillo, Jr.; Robert Benson; Diane Di Archangel; Jason Wyckoff; Clark County Education Association; John Vellardita; and Victoria Courtney

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

James Frazee, Robert Hollowood, Maria Neisess, Dana Galvin, Brian Lee, and Brian Wallace are parties in the consolidated Case No. A-17-761364-C, but are not parties to this appeal because Case No. A-17-761364-C has not yet reached final judgment.

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Appellants' claims: Breach of obligation under the dues transmittal agreement: December 5, 2018; breach of contract (dues transmittal agreement): December 20, 2018; breach of contract (NSEA, NEA, CCEA bylaws), unjust enrichment, conversion, fraud, unauthorized mid-year dues increase: July 3, 2019

Respondents' counterclaims: Breach of contract, breach of covenant of good faith and fair dealing, breach of contract and fiduciary duty: December 5, 2018

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☐ Yes

☒ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

All claims in Case No. A-17-761884-C have been adjudicated, but there remain unresolved claims in the consolidated action, Case No. A-17-761364-C. Those claims have been stayed pending the outcome of this appeal.

(b) Specify the parties remaining below:

Clark County Education Association; Victoria Courtney; James Frazee; Robert G. Hollowood; Maria Neisess; Nevada State Education Association; Dana Galvin; Ruben Murillo Jr.; Brian Wallace; Brian Lee

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☒ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☒ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

Pursuant to Matter of Estate of Sarge v. Quality Loan Serv. Corp., 432 P.3d 718 (Nev. 2018), the final judgment in Case No. A-17-761884-C is immediately appealable under NRAP 3A(b) (1).

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

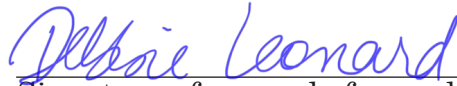
VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Nevada State Ed. Ass'n, et al.
Name of appellant

August 9, 2019
Date

Debbie Leonard
Name of counsel of record


Signature of counsel of record

Washoe County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 9th day of August, 2019, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Richard G. McCracken
Kimberly C. Weber
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1630 S. Commerce Street, Suite A-1
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Joel A. D'Alba
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John S. Delikanakis
Michael Paretti
Snell & Wilmer, L.L.P.
3883 Howard Hughes Parkway
Suite 1100
Las Vegas, Nevada 89169

Dated this 9th day of August, 2019

/s/ Tricia Trevino
Signature

NEVADA STATE EDUCATION
ASSOCIATION; NATIONAL EDUCATION
ASSOCIATION; RUBEN MURILLO;
ROBERT BENSON; DIANE DI
ARCHANGEL; JACON WYCKOFF,
Appellants,

v.

CLARK COUNTY EDUCATION
ASSOCIATION; JOHN VELLARDITA;
VICTORIA COURTNEY,
Respondents.

Case No.: 79208

Docketing Statement Additional Responses

2. Additional Counsel of Record for Appellants

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* Admitted pro hac vice

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Paul J. Lal (Nevada Bar No. 3755)
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3. Additional Counsel of Record for Respondents

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Chicago, Illinois 60606

Michael Paretti
Snell & Wilmer, L.L.P.
3883 Howard Hughes Parkway
Suite 1100
Las Vegas, Nevada 89169

8. Nature of the action:

This case is a breach of contract and tort action arising from a dispute between three long-affiliated labor unions representing approximately 10,000 teachers and other education

professionals in Clark County Nevada. For decades up until it formally disaffiliated on April 25, 2018, the Clark County Education Association (“CCEA”) was affiliated on the state level with the Nevada State Education Association (“NSEA”), and on the national level with the National Education Association (“NEA”). For periods prior to disaffiliation, the relationship between the parties was governed by various contracts, including the NSEA Bylaws, the NEA Bylaws, a 1979 Dues Transmittal Agreement, and a 1999 Service Agreement. At the heart of the dispute is the Appellants’ contention that CCEA has wrongfully withheld over \$6 million in NEA and NSEA dues money that it collected from members of CCEA, NSEA, and NEA during the 2017-2018 school year.

On September 21, 2017, Appellants filed a complaint in Case No. A-17-761884-C seeking to recover these funds and alleging breaches of contract, unjust enrichment, conversion, and fraud claims. The Appellants filed an Amended Complaint on February 27, 2018 and a Second Amended Complaint on June 6, 2018. On June 27, 2018, the case was consolidated with Case No. A-17-761364-C, in which Clark County Education Association, Victoria Courtney, James Frazee, Robert G. Hollowood, and Maria Neisess (“CCEA Parties”) filed a complaint on September 13, 2017 alleging breach of fiduciary duty, breach of contract, and seeking declaratory relief resulting from alleged actions taken by NSEA in 2017. The CCEA Parties amended their complaint on October 17, 2017 and again on October 26, 2017.

The district court granted partial summary judgment to the CCEA Parties on one claim in the related consolidated action in an order dated December 20, 2018. The district court then granted summary judgment on the remainder of the Appellants’ claims in an order dated July 1, 2019, in which the district court also denied the Appellants’ motions for partial summary judgment. That order constituted the final judgment in Case. No. A-17-761884-C. Appellants appeal the district court’s entry of summary judgment in favor of the Respondents on all claims in Case. No. A-17-761884-C.

Also on appeal are the Findings of Fact, Conclusions of Law, and Order Granting CCEA Parties’ Motion to Alter or Amend Court’s May 11, 2018 Order Pursuant to NRCP 59(E) and 60(B) dated July 1, 2019 (“Alteration Order”), which dissolved an injunction put in place on May 10, 2018. That injunction preserved in a restricted account the \$4,089,364.16 in dues money in dispute, pending final resolution of the Appellants’ claims.

9. Issues on appeal:

Appellants appeal from the Findings and Conclusions and the district court’s Orders awarding summary judgment to Respondents on the following issues:

- (1) Whether CCEA terminated a Dues Transmittal Agreement prior to the beginning of the 2017-2018 school year, or whether it remained obligated to comply with the Dues Transmittal Agreement at least until its disaffiliation on April 25, 2018.
- (2) Whether CCEA’s failure to remit to NSEA the NSEA and NEA membership dues it had collected was in breach of the NSEA Bylaws.

- (3) Whether CCEA's failure to remit to NSEA the NEA and NSEA membership dues it had collected was in breach of the NEA Bylaws.
- (4) Whether CCEA's collection of membership dues in the amount owed to NSEA and NEA, and its failure to remit those membership dues to NSEA constitutes conversion.
- (5) Whether CCEA's collection of membership dues in the amount owed to NSEA and NEA, and its failure to remit those membership dues to NSEA constitutes unjust enrichment.
- (6) Whether CCEA was entitled to summary judgment on the claim that it unlawfully increased CCEA members' dues mid-year.
- (7) Whether CCEA was entitled to summary judgment on members' claims for fraud through CCEA's inducing members to execute and reauthorize the membership enrollment and dues deduction forms.

*Nevada State Education Association v.
Clark County Education Association*

Case No. 79208

**DOCKETING STATEMENT
PART 2 OF 6**

NEVADA STATE EDUCATION
ASSOCIATION; NATIONAL EDUCATION
ASSOCIATION; RUBEN MURILLO;
ROBERT BENSON; DIANE DI
ARCHANGEL; JACON WYCKOFF,
Appellants,

v.

CLARK COUNTY EDUCATION
ASSOCIATION; JOHN VELLARDITA;
VICTORIA COURTNEY,
Respondents.

Case No.: 79208

Docketing Statement Attachments

Attachment 1: Second Amended Complaint for Breach of Fiduciary Duty, Breach of Contract, and Declaratory Relief filed by Clark County Education Association, Victoria Courtney, James Frazee, Robert G. Hollowood, and Maria Neisess (Oct. 26, 2017)

Attachment 2: Second Amended Complaint for Declaratory and Injunctive Relief and Exhibits A-D, filed by Nevada State Education Association, National Education Association, Ruben Murillo, Robert Benson, Diane Di Archangel, and Jason Wyckoff (June 6, 2018)

Attachment 3: Defendants-Counter Plaintiffs Clark County Education Association's, John Vellardita's and Victoria Courtney's Answer to Second Amended Complaint for Declaratory and Injunctive Relief and Second Amended Counterclaim, filed by Clark County Education Association, John Vellardita, and Victoria Courtney (July 9, 2018)

Attachment 4: Order Granting Defendant Clark County School District's Motion to Dismiss (November 21, 2017)

Attachment 5: Order Denying in Part, and Granting in Part, Defendants' Partial Motion to Dismiss and Supporting Memorandum (Feb. 2, 2018)

Attachment 6: Notice of Entry of Order Denying in Part, and Granting in Part, Defendants' Partial Motion to Dismiss (Feb. 7, 2018)

Attachment 7: Order (May 10, 2018)

Attachment 8: Notice of Entry of Order (May 11, 2018)

Attachment 9: Order Denying in Part, and Granting in Part, CCEA Parties' Partial Motion to Dismiss Second Amended Complaint of the NSEA Parties (Dec. 4, 2018)

Attachment 10: Order Granting NSEA Parties' Motion to Dismiss CCEA Parties' Second Amended Counterclaim (Dec. 4, 2018)

Attachment 11: Notice of Entry of Order Granting NSEA Parties' Motion to Dismiss CCEA Parties' Second Amended Counterclaim (Dec. 5, 2018)

Attachment 12: CCEA Parties' Motion to Alter or Amend Court's May 11, 2018 Order Pursuant to NRCP 59(e) and 60(b) and Exhibits 1-10, filed by Clark County Education Association, Victoria Courtney, James Frazee, Robert Hollowood, Marie Neisess, and John Vellardita (Dec. 12, 2018)

Attachment 13: Findings of Fact, Conclusions of Law, and Order Granting Plaintiffs' Motion for Partial Summary Judgment (Dec. 18, 2018)

Attachment 14: Notice of Entry of Findings of Fact, Conclusions of Law, and Order Granting Plaintiffs' Motion for Partial Summary Judgment (Dec. 20, 2018)

Attachment 15: Findings of Fact, Conclusions of Law, and Order Granting in Part and Denying in Part the NSEA Parties' Motion for Partial Reconsideration of the December 20 Findings of Fact, Conclusions of Law, and Order (June 24, 2019)

Attachment 16: Notice of Entry of Findings of Fact, Conclusions of Law, and Order Granting in Part and Denying in Part the NSEA Parties' Motion for Partial Reconsideration of the December 20 Findings of Fact, Conclusions of Law, and Order (June 28, 2019)

Attachment 17: Findings of Fact, Conclusions of Law, and Order Granting CCEA Parties' Motion to Alter or Amend Court's May 11, 2018 Order Pursuant to NRCP 59(e) and 60(b) (July 1, 2019)

Attachment 18: Notice of Entry of Findings of Fact, Conclusions of Law, and Order Granting CCEA Parties' Motion to Alter or Amend Court's May 11, 2018 Order Pursuant to NRCP 59(e) and 60(b) (July 3, 2019)

Attachment 19: Findings of Fact, Conclusions of Law, and Order Granting the Clark County Education Association Parties' Motion for Partial Summary Judgment and Denying the Nevada State Education Association Parties' Motions for Partial Summary Judgment (July 1, 2019)

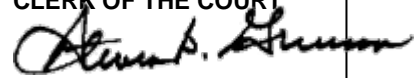
Attachment 20: Notice of Entry of Findings of Fact, Conclusions of Law, and Order Granting the Clark County Education Association Parties' Motion for Partial Summary Judgment and Denying the Nevada State Education Association Parties' Motions for Partial Summary Judgment (July 3, 2019)

Attachment 1

Second Amended Complaint for Breach of Fiduciary Duty, Breach of
Contract, and Declaratory Relief

Filed by Clark County Education Association, Victoria Courtney, James
Frazee, Robert G. Hollowood, and Maria Neisess

(Oct. 26, 2017)



SACOM

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Attorneys for Plaintiffs

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

CLARK COUNTY EDUCATION
ASSOCIATION, VICTORIA COURTNEY,
JAMES FRAZEE, ROBERT G. HOLLOWOOD,
and MARIA NEISESS,

Plaintiffs

v.

NEVADA STATE EDUCATION
ASSOCIATION, DANA GALVIN, RUBEN
MURILLO JR., BRIAN WALLACE, and BRIAN
LEE,

Defendants.

CASE NO. A-17-761364-C

DEPT. NO. 28

SECOND AMENDED COMP. FOR BREACH OF FIDUCIARY DUTY;
BREACH OF CONTRACT, AND DECLARATORY RELIEF

Case No. A-17-761364-C

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1 6. James Frazee is an elected director of the CCEA and is listed on the Nevada Secretary of
2 State business entity profile for CCEA as having an address in Clark County, Nevada.

3 7. The CCEA is a recognized employee organization within the meaning of the Nevada
4 Revised Statutes and is authorized to engage in collective bargaining negotiations over wages, hours,
5 and working conditions, as provided by Nevada law. CCEA has its principal place of business in Clark
6 County Nevada.

7 8. Plaintiffs CCEA additionally files this action on behalf of the CCEA members. CCEA
8 represents thousands of licensed professional employees of the Clark County School District.

9 9. Defendant NSEA is a voluntary association of three or more persons authorized pursuant
10 to Nevada law as a domestic non-profit cooperative corporation without stock. NSEA has it principal
11 place of business in Carson City, Nevada.

12 10. Defendant Dana Galvin is named as an individual defendant and in the official capacity
13 as an elected director of the NSEA and is listed on the Nevada Secretary of State business entity profile
14 for NSEA as having an address in Clark County, Nevada.

15 11. Defendant Ruben Murillo Jr., is named as an individual defendant and in the official
16 capacity as the elected president of the NSEA and is listed on the Nevada Secretary of State profile for
17 NSEA as having an address in Clark County, Nevada.

18 12. Defendant Brian Wallace is named as an individual defendant and in the official capacity
19 as an elected officer of the NSEA and the elected secretary-treasurer of the NSEA and is listed on the
20 Nevada Secretary of State business entity profile for NSEA as having an address in Clark County,
21 Nevada. The duties of defendant Brian Wallace as secretary-treasurer are to serve as the chairperson of
22 the budget committee, make financial reports as required by the Board of Directors, and to in the
23 preparation of the annual budget for presentation to the Board of Directors.

24 13. Defendant Brian Lee is named as an individual defendant and in the official capacity as
25 the Executive Director of NSEA and is the administrative officer of NSEA responsible for working with
26 the secretary-treasurer to prepare an annual budget for presentation to the Board of Directors, to direct
27 activities of the staff subject to the direction of the Board of Directors and serves as the custodian of all
28

property owned by the NSEA. Defendant Lee is also responsible, among other duties, for the deposits, disbursements, safe keeping and accounting of all NSEA funds as directed by NSEA Board of Directors.

FACTUAL BACKGROUND

14. The CCEA is a local teacher association that engages in the representation of licensed professional employees, including teachers and other licensed professional employees for the purposes of collective bargaining and the negotiation of wages, hours and working conditions with the Clark County School District. The CCEA is a local affiliate of the NSEA and has been granted that status by the NSEA Delegate Assembly and/or the Board of Directors of the NSEA.

15. The CCEA has thousands of members, has at least one general meeting each year, and has adopted bylaws consistent with the bylaws of the NSEA in the parent organization. The CCEA elects officers, elects delegates to the NSEA Delegate Assembly, and has submitted to the NSEA on a regular basis its list of officers, school representatives, and local committee members.

16. Members of CCEA pay dues to CCEA, NSEA, and a parent organization, the National Education Association (“NEA”), through dues payments deducted from their pay checks by the employer, the Clark County School District, pursuant to a collective bargaining agreement between the CCEA and the School District. Dues payments are directed to CCEA by the School District.

17. The NSEA bylaws and policies provide for designated funds to be created by NSEA, and these include the Capital Improvement Fund, the Operating Reserves Fund, and the Advocacy Fund. CCEA members have a right to know how NSEA officers and the NSEA executive director have exercised their fiduciary responsibility to collect and spend the dues resources collected from CCEA members for such funds.

18. In particular, the Advocacy Fund is used to help ensure sufficient funding is available to support strategic efforts to advance the pro-education interests of the organization, including payments for internal and external partnerships, independent expenditures for political campaigns, ballot initiatives, lobbying and other pro-public education advocacy. Members of CCEA contribute through dues money to the NSEA’s Advocacy Fund and have a right pursuant to the NSEA bylaws and policies to know how money is being spent in that fund and further to object to any payments made by NSEA to political causes or interests to which those members object.

1 19. Based on information and belief, the CCEA members' dues comprise 50.0 percent of the
2 NSEA total revenue from local affiliates.

3 20. On or about January 11, 2017, Plaintiff Courtney and the CCEA Board of Directors
4 directed the Executive Director of CCEA, Mr. John Vellardita, to send a letter to Defendant Lee to
5 request the following financial information pursuant to financial concerns of the CCEA officers,
6 including the Plaintiffs herein. The information requested was:

- 7 a. A return on investment analytic assessment to determine what CCEA members
8 receive from NSEA in exchange for the dues paid into NSEA; and
- 9 b. A review of the past three years of NSEA's budget in terms of its incoming
10 revenue, its expenditures, with special revenue of CCEA funding contribution to
11 NSEA and NSEA's return of that funding to CCEA.

12 21. On or about January 15, 2017, Plaintiff Courtney and the CCEA Board of Directors
13 directed CCEA Executive Director John Vellardita to send a request for financial information to NSEA
14 and to specifically request:

- 15 a. In relation to the amount of dues collected from a CCEA member to NSEA,
16 please identify where in the NSEA budget those contribution go towards
17 expenditures. Please identify by line item;
- 18 b. Specially please identify what return in form of program, service benefits, legal
19 services, etc., that a CCEA member receives from NSEA for its monthly \$31.66
20 dues contribution. Please be specific in terms of actual expenses associated with
21 those payments;
- 22 c. Please also, identify any and all other funds NSEA receives (including any NEA
23 grants) for its members that can be specifically identified for CCEA. Please be
24 specific in identifying what programs and services those grant monies produced
25 for CCEA members;
- 26 e. In addition, CCEA requests that this information be provided by identifying those
27 expenditures and from what line items from NSEA's budget they were drawn; and
- 28 f. In addition, what request, grant, demand, etc., from CCEA was made for those
 funds. For example, please identify the funds provided to CCEA for the
 membership organizing grant are in the sum of XX and a result of CCEA
 submitting a grant for that request.

1 22. On or about February 3, 2017, President Courtney and the CCEA Board of Directors
2 directed CCEA Executive Director John Vellardita to request additional information and to renew the
3 information requests that had already been made as follows:

- 4 a. The Clark County Education (CCEA) again request the following financial and
5 operational information for the last three NSEA budget years (2016, 2015, and
6 2014), pursuant to Article III D(3)(e) of the Nevada State Education Association
7 (NSEA) policies updated (11/2016), first requested on January 15, 2017;
8
9 b. The information specifically requested is a repeat of the information that
10 had been requested in the January 15, 2017 letter; and
11
12 c. In this letter dated February 3, 2017, CCEA requested that a neutral third party
13 financial expert perform an audit and review the NSEA records budget and
14 prepare information and report related to revenues received from CCEA members
15 as well as expenditures related to CCEA member benefits and programs pursuant
16 to Article III, D(5B))vii) and that this would be required pursuant to the bylaws
17 and policies of NSEA.

18 23. On or about June 28, 2017, Plaintiff Courtney and the CCEA of Directors directed CCEA
19 Executive Director John Vellardita to send a letter to Defendant Lee to request financial and operational
20 information pursuant to NSEA bylaws and policies. In addition to the information requested in earlier
21 letters sent to Defendant Lee, Mr. Vellardita also requested “in relation to the amount of dues collected
22 from a CCEA member and remitted to NSEA a breakdown of those ‘dues collected, i.e., member dues,
23 special assessments, political action, advocacy funds, etc.’”

24 24. The information requested in the January 11, January 15, February 3, and June 28, 2017
25 letters has not been produced.

26 **FIRST CAUSE OF ACTION:**

27 **BREACH OF CONTRACT AND FIDUCIARY DUTY**

28 25. The Plaintiffs reallege paragraphs 1 through 24 and incorporate them by reference.

 26. The bylaws of the NSEA constitute a contractual relationship between the NSEA and its
local affiliate, the CCEA, and this contractual relationship requires that the officers of the NSEA be
responsible for its general management including submitting a proposed budget for the NSEA to the
delegate assembly for adoption and subsequent amendment as needed between delegate assemblies.

1 27. The Board of Directors has the authority pursuant to the bylaws to originate NSEA policy
2 and to report all policy decisions to the Delegate Assembly. These policies are an inherent part of the
3 NSEA bylaws and include specific fiduciary responsibilities for financial and operational standards.

4 28. NSEA through its bylaws acknowledges that it has, through its officers and executive
5 director, a special responsibility to ensure the integrity, honesty and reputation of the association and to
6 treat association resources with the utmost care and to adhere to the highest of ethical standards. These
7 bylaws place fiduciary responsibilities on the NSEA officers. These duties are owed to Plaintiff CCEA,
8 its officers, and its members.

9 29. NSEA bylaws provide for the compliance with these fiduciary standards and to “exercise
10 appropriate fiduciary responsibilities over Association resources and provide Association constituents
11 with information that is complete, accurate and appropriate.” This obligation to maintain the highest
12 standards of quality and financial reporting through business ethics and effective internal controls
13 includes the institution of “fluid information pathways among management, employees and governance,
14 including local affiliates, that capture, process and communicate relevant internal and external
15 information in a timely manner.”

16 30. The failure of NSEA and individual defendants Galvin, Murillo, Wallace, and Lee to present
17 this information violates the fiduciary responsibilities outlined in the NSEA bylaws and policies.

18 31. NSEA and the individual defendants have violated their fiduciary responsibilities required
19 by the NSEA bylaws and policies by not disclosing this financial information to the members of CCEA.
20 This failure constitutes a material breach of contract.

21 32. The information requested by CCEA through the Plaintiffs and its Executive director is
22 necessary in order for CCEA to carry out its fiduciary responsibilities in serving its members for the
23 purpose of organizing new members and to retain existing members by demonstrating the direct benefits
24 to the members for providing funding to the NSEA and its related activities. As a result, Plaintiff CCEA
25 has suffered damages under the contract, commensurate with the annual dues owed to Defendant NSEA.

26 **SECOND CAUSE OF ACTION:**

27 **FAILURE OF CONSIDERATION AND DECLARATORY RELIEF**

28 33. The Plaintiffs reallege paragraphs 1 through 32 and incorporate them by reference.

1 34. The bylaws of NSEA provide that a local affiliate such as CCEA is to maintain a dues
2 transmittal contract with NSEA for the purpose of transmitting dues payments to NSEA.

3 35. Pursuant to a dues transmittal contract, all dues of CCEA members that are collected by
4 CCEA are to be transmitted in proportioned amounts to NSEA, and that at all material times herein
5 CCEA members contributed \$31.66 in dues to NSEA that had been deducted by payroll deductions by
6 the Clark County School District.

7 36. The payroll deductions of dues payments were made pursuant to a collective bargaining
8 agreement between CCEA and the Clark County School District. Dues payments received by CCEA
9 were transmitted to the NSEA pursuant to a service agreement that expired on August 31, 2017. A
10 successor dues transmittal contract has not been negotiated.

11 37. On May 3, 2017, CCEA Executive Director, John Vellardita, notified Defendant Lee that
12 the CCEA was terminating the Service Agreement under which the CCEA members' dues payments had
13 been transmitted to the NSEA. The Service Agreement was to expire on August 31, 2017, and was
14 subject to termination by written notice to the NSEA no later than thirty (30) days prior to the
15 anniversary date of the agreement (September 1, 2017).

16 38. On July 17, 2017, and August 3, 2017, the CCEA Executive Director requested that the
17 NSEA renegotiate the Service Agreement and the Contract for Dues Remittance.

18 39. On September 4 and 6, 2017, the CCEA Executive Director again requested that the
19 NSEA renegotiate the Service Agreement and the Contract for Dues Remittance.

20 40. On July 26, 2017 and September 4, 2017, Defendant Lee asserted that the policies of
21 NSEA provide for affiliate agreements under which dues payments are to be submitted by CCEA to
22 NSEA and that the Service Agreements are no longer available to a local affiliate such as CCEA.

23 41. The NSEA bylaws and the bylaws of the parent organization, NEA, require that a payroll
24 deduction is contingent upon the existence of a valid dues transmittal contract.

25 42. The definition of affiliate agreements in the NSEA policies does not refer to the payment
26 of dues from a local affiliate. Rather, the affiliate agreement definition refers to "mutual agreements that
27 establish or confirm programs, training and other activities that or not addressed by NSEA policy or
28 governing documents."

1 43. The dues transmittal contract is an agreement that is required by the NSEA bylaws
2 (Article VIII Section 3 (F)) and governing documents and the NEA bylaws (Section 2-9).

3 44. The affiliate agreement referred to by Defendant Lee is not a dues transmittal contract
4 that allows for the transmittal of member's dues from CCEA to NSEA.

5 45. There has been no mutual agreement between CCEA and NSEA to transmit dues
6 deducted from CCEA member paychecks to NSEA since the expiration of the service agreement on
7 August 31, 2017. Since that time, there has been no mutual agreement between CCEA and NSEA to
8 provide for a dues transmittal contract or the creation of an affiliate agreement.

9 46. Plaintiffs' and the CCEA members' obligation to transmit dues to the NSEA was
10 terminated upon expiration of the service agreement on August 31, 2017.

11 47. Plaintiff CCEA, its officers, and its members have an interest in the dues transmittal
12 contract, any affiliate agreement for dues between CCEA and NSEA, and in any bylaw creating a dues
13 obligation for CCEA. Aside from NSEA and CCEA, Plaintiffs are aware of no other party who would
14 have an interest in such an agreement.

15 48. Plaintiffs seek a declaratory judgment pursuant to the Uniform Declaratory Judgement
16 Act, NRS 30.010 et seq.

17 49. Plaintiffs request that this Court declare their rights pursuant to the NSEA bylaws not to
18 transmit dues payments to NSEA until a dues transmittal contract has been mutually negotiated between
19 NSEA and CCEA. Until the determination by the court of such rights, the CCEA has placed dues money
20 designated for the NSEA in the amount of \$31.66 in an escrow account.

21 **THIRD CAUSE OF ACTION**

22 **BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

23 50. The Plaintiffs re-allege paragraph 1 through 49 and incorporate them by reference.

24 51. Plaintiff Clark County Education Association and Defendant Nevada State Education
25 Association have a special contractual relationship in that the CCEA is a local affiliated labor
26 organization of the statewide labor organization NSEA.

27 52. This special contractual relationship is based upon the NSEA bylaws and related rules
28 that provide, inter alia, for NSEA to follow fiduciary responsibilities for financial and operational

standards and disclose to its local affiliated labor organizations financial information that is complete, accurate and appropriate as to how dues contributions from CCEA members are spent on all NSEA programs, including but not limited to member benefits, employee organizing, legislation, lobbying activities, political contributions, salaries, and administrative expenses.

53. As a result of this special relationship between the CCEA and NSEA, there is a covenant of good faith and fair dealing that applies to the contractual relationship between CCEA and NSEA.

54. The failure of NSEA to provide CCEA with certain financial information requested by CCEA as alleged in paragraphs 21 to 24 above, and NSEA's failure to be transparent about NSEA financial matters constitutes a breach of the covenant of good faith and fair dealing.

55. As a result of the special relationship between CCEA and NSEA, NSEA is liable for any breach of its covenant of good faith and fair dealing under both tort law and contract law. Accordingly, CCEA asserts this cause of action as both a tort claim and a contract claim.

PRAYER

WHEREFORE, Plaintiffs CCEA, Courtney, Frazee, Hollowood, and Thrower, on behalf of themselves and those similarly situated, pray for the following relief:

1. An order of this court finding that Defendants have breached their contract by failing to provide information to Plaintiffs CCEA, its officers, and its members; entitling Plaintiffs to damages under the contract.

2. An order of this court finding that Defendants are required by contract to provide to the Plaintiffs the information that CCEA has requested as follows:

- a. A return on investment analytic assessment to determine what CCEA members receive from NSEA in exchange for the dues paid into NSEA;
- b. A review of the past three years of NSEA's budget in terms of its incoming revenue, its expenditures, with special revenue of CCEA funding contribution to NSEA and NSEA's return of that funding to CCEA.
- c. In relation to the amount of dues collected from a CCEA member to NSEA identify where in the NSEA budget those contributions go towards expenditures by each line item.

- 1 d. The financial return in form of programs, service benefits, legal and other
2 services, that a CCEA member receives from NSEA for its monthly \$31.66 dues
3 contribution. Specify in terms of actual expenses associated with those payments
4 by budget line item.
- 5 e. Identify any and all and any other funds NSEA receives (including any NEA
6 grants) for its members that can be specifically identified for CCEA. Specify what
7 programs and services those grant monies produced for CCEA member and
8 identify those expenditures and from what line items from NSEA's budget they
9 were drawn.
- 10 f. Identify the requests, grants, demands from CCEA that were made for those
11 funds. For example, please identify the funds provided to CCEA for the
12 membership organizing grant and the amount of the grant that were the result of
13 CCEA submitting requests, grants or demands for such funds.
- 14 g. Identify how CCEA dues money is being spent in the Advocacy Fund for internal
15 and external partnerships, independent expenditure campaigns, ballot initiatives,
16 and other pro-public education advocacy in the past three years.
- 17 h. A determination by this court that the bylaws of the NSEA and the NEA require
18 that CCEA dues may only be transmitted by the CCEA to the NSEA by way of a
19 contract of transmission rather than an affiliate agreement.
- 20 i. Such other relief as the Court deems to be just and proper.

21 3. An order of this court declaring the non-existence of a contract obliging Plaintiff CCEA,
22 its members, or any Plaintiff to transmit dues to Defendant NSEA or any Defendant.
23

24 Dated: October 26, 2017

Respectfully Submitted,

McCRACKEN, STEMERMAN, & HOLSBERY, LLP

/s/ Richard G. McCracken

Richard G. McCracken

Attorney for Plaintiffs

*Nevada State Education Association v.
Clark County Education Association*

Case No. 79208

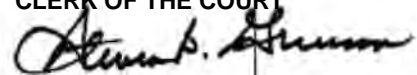
**DOCKETING STATEMENT
PART 3 OF 6**

Attachment 2

**Second Amended Complaint for Declaratory and Injunctive
Relief and Exhibits A-D**

**Filed by Nevada State Education Association, National
Education Association, Ruben Murillo, Robert Benson, Diane
Di Archangel, and Jason Wyckoff**

(June 6, 2018)



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**DISTRICT COURT
EIGHTH JUDICIAL DISTRICT
CLARK COUNTY, NEVADA**

NEVADA STATE EDUCATION
ASSOCIATION; NATIONAL EDUCATION
ASSOCIATION; RUBEN MURILLO;
ROBERT BENSON; DIANE
DI ARCHANGEL; and JASON WYCKOFF,

Plaintiffs/Counter-Defendants,

vs.

CLARK COUNTY EDUCATION
ASSOCIATION; JOHN VELLARDITA; and
VICTORIA COURTNEY,

Defendants/Counter-Plaintiffs.

Case No.: A-17-761884-C

DEPT. NO.: 31

**SECOND AMENDED COMPLAINT FOR
DECLARATORY
AND INJUNCTIVE RELIEF**

**Arbitration Exemption Claimed:
Declaratory Relief**

SECOND AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF - 1

1. In this action for declaratory, injunctive, and other equitable relief, Plaintiffs Nevada State Education Association (“NSEA”), National Education Association (“NEA”), and individual Plaintiffs Ruben Murillo, Robert Benson, Diane Di Archangel, and Jason Wyckoff seek to prevent CCEA from diverting to its own use dues monies forwarded to it from the Clark County School District (“CCSD”), which rightfully belong to NSEA and NEA. These funds are collected through payroll deduction from CCSD teachers who have signed up as members of CCEA, NSEA, and NEA, and CCEA’s refusal to transmit to NSEA the portion of these dues payments that belongs to NSEA and NEA is in violation of CCEA’s contractual obligations, constitutes (in the alternative) unjust enrichment, and amounts to conversion and fraud.

PARTIES

2. Plaintiff NSEA, a nonprofit corporation organized under the laws of this State, is an employee organization with approximately 24,000 members. NSEA is the parent affiliate of 31 local associations, of which CCEA is one, that together represent some 40,000 teachers and other employees of Nevada school districts. NSEA is affiliated at the national level with NEA.

3. Plaintiff NEA, a federally chartered nonprofit corporation, is a nationwide employee organization of some three million education professionals, the vast majority of whom are employed by public school districts, as well as colleges and universities, throughout the United States, including in Nevada.

4. Plaintiffs Ruben Murillo, Robert Benson, and Diane Di Archangel are teachers employed by CCSD and residents of Clark County, and have each signed up to be members of CCEA, NSEA, and NEA. Plaintiff Murillo is the President of NSEA and is a former President of CCEA. Plaintiff Benson is a member of the NSEA Board of Directors and is a former Vice President of CCEA.

1 5. Plaintiff Jason Wyckoff is a teacher employed by CCSD and a resident of Clark
2 County, and he has signed up as a member of CCEA, NSEA, and NEA.

3 6. Defendant CCEA, a nonprofit corporation organized under the laws of this State,
4 is an employee organization that represents teachers and other licensed personnel employed by
5 CCSD. CCEA previously was known as the Clark County Classroom Teachers Association
6 (“CCCTA”).

7 7. Defendant John Vellardita is the Executive Director of CCEA, and on information
8 and belief is a resident of Clark County.

9 8. Defendant Victoria Courtney is the President of CCEA, and on information and
10 belief is a resident of Clark County.

11
12
13 **JURISDICTION AND VENUE**

14 9. This Court has jurisdiction over the action under Article 6, § 6, of the Nevada
15 Constitution.

16 10. Venue is proper in this Court pursuant to NRS § 13.040 because Defendants, or
17 some of them, reside or have their principal places of business in Clark County.

18
19 **FACTS**

20 11. Since 1957, CCEA has been the local affiliate of NSEA. NSEA, in turn, has been
21 affiliated at the national level with NEA since 1888. These affiliation relationships are
22 contractual in nature. CCEA’s Bylaws require that it “shall maintain affiliate status with the
23 National Education Association and the Nevada State Education Association under the required
24 procedures of each organization.”

25 12. NEA, NSEA and CCEA have unified membership, meaning that by joining
26 CCEA a member also joins NSEA and NEA as well, becoming a member of all three
27

1 organizations entitled to all the benefits of membership and obligated to pay membership dues to
2 all three associations. The benefits of membership include the NEA Educators Employment
3 Liability (“EEL”) Program, legal services for members provided through the NEA Unified Legal
4 Services Program, and various NEA member benefits programs, including complimentary and
5 for-purchase life insurance products.
6

7 **13.** NSEA and NEA dues are set by the duly elected representatives of those
8 organizations, pursuant to those organizations’ governing bylaws. For the 2017-18 academic
9 year, full-time active members pay \$377.66 in annual dues to NSEA and \$189 to NEA. CCEA
10 determines its own membership dues, which on information and belief are approximately \$245
11 for the current academic year.
12

13 **14.** Under the Bylaws of NEA and NSEA, both of which are binding on CCEA,
14 CCEA is required to collect the NSEA and NEA portions of membership dues (along with its
15 own local dues) and to transmit them to NSEA, which in turn transmits to NEA its portion of a
16 member’s dues.
17

18 **15.** NSEA’s Bylaws mandate that local affiliates, such as CCEA, shall “[h]ave a Dues
19 Transmittal Agreement with NSEA.” In addition, NEA’s Bylaws provide that “[l]ocal affiliates
20 shall have the full responsibility for transmitting state and [NEA] dues to state affiliates on a
21 contractual basis.”
22

23 **16.** In 1979, CCEA (then known as CCCTA) and NSEA entered into a contract
24 (“Dues Transmittal Agreement”), which designates CCEA as NSEA’s agent for the collection
25 and transmission to NSEA of the NSEA and NEA portions of members’ dues payments. The
26 Dues Transmittal Agreement sets out a schedule for CCEA’s transmission of dues payments to
27 NSEA on a monthly basis. It further provides that the Contract shall remain in force from year to
28

1 year “unless terminated in writing by either party prior to September 1 of any NSEA
2 membership year, or amended by mutual consent of both parties.” A true and correct copy of the
3 Dues Transmittal Agreement is attached hereto as Exhibit A.

4
5 17. Neither party has terminated the Dues Transmittal Agreement, which accordingly
6 remains in force during the current 2017-18 membership year.

7 18. Most CCEA members pay their CCEA/NSEA/NEA dues through payroll
8 deduction. For members who have authorized such payroll deduction, CCSD deducts the
9 cumulative membership dues owed to CCEA, NSEA, and NEA from members’ paychecks and
10 transmits the deducted funds to CCEA. In signing their CCEA/NSEA/NEA Membership
11 Enrollment Form and payroll deduction authorization, members are informed that they are
12 becoming members of all three associations, and they understand that the dues that are deducted
13 from their CCSD paychecks and forwarded to CCEA are dues payments to all three associations.
14

15 19. Since at least 1979, CCEA has served as the collection agent for NSEA,
16 collecting and transmitting NSEA and NEA dues to NSEA under the terms of the Dues
17 Transmittal Agreement.
18

19 20. With regard to membership dues owed to NSEA and NEA, CCEA is merely a
20 collection agent, and has no independent claim of right to the NSEA and NEA portions of the
21 dues it collects from its members.
22

23 21. Periodically, CCEA and NSEA have entered into “service agreements” that
24 specify aspects of their working relationship in more detail. The most recent of these agreements
25 was signed by the parties in June 1999. This Service Agreement, by its terms, automatically
26 renewed from year to year unless terminated in writing by one of the parties, and it was in place
27 as of the 2016-17 school year. On July 17, 2017 Defendant Vellardita notified NSEA that CCEA
28

1 intended to terminate the June 1999 Service Agreement effective August 31, 2017. The
2 termination of the 1999 Service Agreement did not affect the parties' Dues Transmittal
3 Agreement, which has been in effect since 1979 and which remains in force.

4
5 **22.** Nonetheless, on August 3, 2017, Vellardita asserted in a letter to NSEA that, upon
6 the expiration of the 1999 Service Agreement, "CCEA is not only legally not obligated to
7 transmit dues, but cannot transmit member dues to NSEA per NSEA's own ByLaws," and that
8 "when the current Agreement between CCEA and NSEA expires on August 31, 2017 there will
9 not be a contract in place between the two organizations to collect and remit dues to NSEA."
10 These assertions are mistaken and are contradicted by past practice.

11
12 **23.** CCEA has further asserted, in a September 13, 2017 filing with this Court, that its
13 obligation and "CCEA members' obligation to transmit dues to the NSEA was terminated upon
14 expiration of the service agreement on August 31, 2017."

15
16 **24.** Notwithstanding its contention that both the 1999 Service Agreement and the
17 Dues Transmittal Agreement are no longer in effect, CCEA has failed and refused to negotiate in
18 good faith with NSEA for a successor agreement governing the transmission of dues, and has
19 instead conditioned any agreement to continue transmitting dues on NSEA's acceptance of
20 CCEA demands unrelated to the transmittal of membership dues. These demands include, in
21 particular, CCEA's insistence that the amount of NSEA dues that CCEA members are required
22 to pay be substantially reduced – notwithstanding that NSEA dues are set uniformly on a
23 statewide basis through NSEA's democratic governing body—the NSEA Delegate Assembly—
24 in accordance with the NSEA Bylaws.

25
26 **25.** On October 1, 2017, CCEA received from CCSD its monthly transmittal of
27 CCEA/NSEA/NEA membership dues from members' payroll deductions for the month of
28

1 September 2017. Under the terms of the Dues Transmittal Agreement, CCEA was required to
2 forward to NSEA the NSEA and NEA portions of those membership dues by October 15, 2017.
3 CCEA has failed to make that payment to NSEA and instead has made clear that it intends to
4 keep for itself all of the members' dues payments, including the portions due and owing to
5 NSEA and NEA. Since October 2017, CCEA has continued this course of conduct: Each month
6 CCEA has received from CCSD its monthly transmittal of CCEA/NSEA/NEA membership dues
7 from members' payroll deductions but has refused to transmit NSEA and NEA dues to NSEA.
8

9 **26.** On September 18, 2017, representatives of CCEA and NSEA met to renegotiate a
10 successor agreement to the 1999 Service Agreement. CCEA's representatives, including
11 Defendant Vellardita, refused to bargain in good faith and walked out of the meeting after only
12 eight minutes.
13

14 **27.** On information and belief, Defendants Vellardita and Courtney are responsible
15 for directing CCEA to withhold the NSEA and NEA dues.
16

17 **28.** By reason of CCEA's failure to transmit the NEA and NSEA dues to NSEA,
18 members have lost their status as members in good standing of NSEA and NEA. As a
19 consequence, members have been rendered ineligible for important NEA and NSEA benefits,
20 including, for example, professional liability insurance and life insurance.
21

22 **29.** Defendants owe fiduciary duties to members of CCEA, including to Plaintiffs
23 Ruben Murillo, Robert Benson, Diane Di Archangel, and Jason Wyckoff.
24

25 **30.** CCEA advertises on its website the benefits of NEA and NSEA membership,
26 including NEA's complimentary life insurance. For example, CCEA has published a page on its
27 website, entitled "Member Benefits & Discounts," that states: "Many of the benefits you'll enjoy
28 as an educator in Clark County came about as a direct result of efforts by the CCEA/NSEA/NEA

1 on behalf of its members.” This webpage lists specific benefits of “NSEA membership” as well
2 as “NEA membership,” including a “\$1 million Educators Employment Liability Protection
3 Policy” and “NEA Complimentary Life[®] Insurance Benefits.” CCEA has included this webpage,
4 and these representations, on its website throughout 2017 and indeed prior to 2017.

5
6 31. The membership enrollment form used by CCEA refers to an applicant’s
7 becoming a member of CCEA, NSEA, and NEA, and includes the logos of all three
8 organizations in the header. The same form contains the payroll deduction authorization. CCEA
9 makes this membership enrollment form available to members and prospective members on its
10 website as part of a three-page document, a true and correct copy of which is attached as Exhibit
11 B. CCEA’s website directs people to the hyperlink to Exhibit B by stating: “Joining CCEA is the
12 first step to peace of mind. Membership in CCEA/NSEA/NEA provides you the strength and
13 support of a 3-million member organization. To download the membership enrollment
14 application form, please click here.” On the first page of Exhibit B, which is entitled “Enrollment
15 Form: CCEA, NSEA, and NEA... Keeping the Promise of Quality Public Education,” CCEA
16 states: “As a member of CCEA, NSEA, and NEA you automatically have access to: ... NEA
17 Complimentary Life Insurance[™] — free to you as a membership benefit — up to \$50,000 in
18 accidental death and dismemberment insurance and a \$150,000 benefit for death due to homicide
19 while actively engaged in your occupation. (To activate your free complimentary life insurance
20 coverage, please complete the form in the back of the application.)” The third page of Exhibit B
21 advertises in large font “NEA Complimentary Life Insurance[®] Benefits” and “Free coverage for
22 eligible members.” The third page also includes a registration form which states that “NEA
23 Complimentary Life Insurance[®] is an automatic benefit for eligible NEA members” and includes
24
25
26
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28

1 the following verification above the signature line: "By signing this form, I verify that I am a
2 member in good standing of the National Education Association."

3 **32.** CCEA has posted Exhibit B on its website since 2015, if not earlier, and
4 continuing through February 2018.
5

6 **33.** Defendant Victoria Courtney has stated that the membership enrollment form
7 provides notice to prospective members that they are joining CCEA, NSEA, and NEA.

8 **34.** In inducing teachers to become CCEA/NSEA/NEA members and inducing
9 members to authorize payment of their dues by payroll deduction, CCEA has represented that the
10 deducted dues would pay for the membership fee not just in CCEA but also in NSEA and NEA.
11

12 **35.** CCEA made the representations referenced in Paragraphs 30-34 for the purpose
13 of inducing teachers to join CCEA and to authorize the payroll deduction of their
14 CCEA/NSEA/NEA dues.

15 **36.** Plaintiff Di Archangel attended a new teacher orientation on January 20, 2011, at
16 the Teacher's Health Trust building, located at 2950 E Rochelle Ave, Las Vegas, NV 89121.
17 Representatives of CCEA were present at the orientation. CCEA prepared and distributed to Di
18 Archangel a packet of new-hire information, which included messages on behalf of CCEA. On a
19 page entitled "Unified Membership and Its Benefits to You," CCEA stated that "[m]any of the
20 benefits you'll enjoy as an educator in Clark County came about as a direct result of efforts by
21 the CCEA/NSEA/NEA on behalf of its members." CCEA then listed various benefits associated
22 with "Your NSEA membership" and "Your NEA membership" and stated on the following page
23 that "[a]ll these member benefits have been specifically designed by CCEA/NSEA/NEA to
24 promote and support professional working conditions for members. By joining the
25
26
27
28

1 CCEA/NSEA/NEA, you become a member of the largest group of professional educators—more
2 than 3.2 million strong. Join CCEA/NSEA/NEA today.”

3 **37.** Included with the packet of materials CCEA gave to Plaintiff Di Archangel on
4 January 20, 2011 was a pamphlet describing the NEA Educators Employment Liability Program.
5 This program, known also by its abbreviation as the NEA EEL Program, provides professional
6 liability insurance with respect to job-related civil suits brought against NEA members. The EEL
7 Program in Nevada is administered by NSEA. The pamphlet in the packet CCEA gave to Di
8 Archangel states that the “NEA EEL Program is a professional liability program that is provided
9 by NEA as a benefit of membership” and further states that “[t]he entire premium for the
10 program is paid by the NEA.”

11
12 **38.** CCEA provided Plaintiff Di Archangel on January 20, 2011 with a membership
13 enrollment form. A true and correct copy of this document is attached in redacted form as
14 Exhibit C. The form appears to have been signed on behalf of CCEA by George Radich.

15
16 **39.** On the basis of CCEA’s representations described in the preceding paragraphs—
17 both express and implied—Plaintiff Di Archangel chose to become a CCEA/NSEA/NEA
18 member and consented to payroll deduction of the dues owed to those three associations.
19 Plaintiff Di Archangel became a CCEA/NSEA/NEA member primarily to obtain the legal
20 coverage provided through the EEL Program by NSEA and NEA. Ms. Di Archangel would not
21 have signed up for membership in CCEA nor consented to payroll deduction had CCEA not
22 represented to her that, by doing so, she would receive the benefits of NSEA and NEA
23 membership, including the legal protections offered by the EEL Program.

24 **40.** After Ms. Di Archangel became a CCEA/NSEA/NEA member, CCEA stated that
25 it would be sending emails to members to keep them “abreast of information that impacts ...
26
27
28

1 [their] membership benefits with CCEA/NSEA/NEA.” But in 2017 CCEA neglected to inform
2 Ms. Di Archangel and other members of material information affecting their benefits with
3 CCEA/NSEA/NEA: namely, CCEA’s decision to jeopardize individuals’ membership in good
4 standing and NSEA and NEA benefits by choosing not to transmit the NSEA and NEA dues that
5 CCSD deducted from members’ paychecks and sent to CCEA.
6

7 41. CCEA/NSEA/NEA members can withdraw their membership or withdraw their
8 consent to payroll deduction only during a two-week period from July 1st to 15th each year.
9

10 42. CCEA knew prior to this two-week period in July 2017 that it would take action
11 that would jeopardize its members’ ability to maintain membership in good standing with NSEA
12 and NEA. And yet CCEA failed to keep members abreast of this material information affecting
13 their member benefits with CCEA/NSEA/NEA. To the contrary, CCEA throughout 2017
14 continued to advertise NSEA and NEA benefits on its website.
15

16 43. CCEA never corrected its material misrepresentations (a) that the dues deducted
17 from members’ paychecks would pay for the membership fee in CCEA, NSEA, and NEA, or (b)
18 that by joining CCEA teachers would also join NSEA and be entitled to the benefits associated
19 with membership in NSEA and NEA. CCEA never corrected these misrepresentations despite
20 having a continuing duty to do so based upon, *inter alia*, CCEA’s having induced teachers to join
21 CCEA and to consent to payroll deduction on the basis of these representations.
22

23 44. Plaintiffs Murillo, Benson, and Di Archangel, in remaining CCEA members and
24 in continuing to consent to payroll deduction during the July 1-15, 2017 drop period (and thus
25 for the entire 2017-2018 school year), relied on CCEA’s material misrepresentations or CCEA’s
26 failure to disclose the material fact that it intended to take action that would jeopardize members’
27 access to NSEA and NEA benefits during the 2017-2018 school year.
28

1 45. Jason Wyckoff attended a new teacher orientation on August 1, 2017, which took
2 place at the Mandalay Bay Convention Center, located at 3950 S Las Vegas Blvd, Las Vegas,
3 NV 89119. CCEA organized the event and produced information packets for attendees, including
4 for Mr. Wyckoff. Hundreds of new teachers were in attendance, sitting around tables during a
5 series of presentations. Seated at each table was a CCEA representative. The CCEA
6 representative seated at Mr. Wyckoff's table was Chris Mitchell.

7
8 46. CCEA provided Mr. Wyckoff on August 1, 2017 with the membership enrollment
9 form, a true and correct copy of which is attached in redacted form as Exhibit D.

10
11 47. By providing the membership enrollment form to Mr. Wyckoff and the other new
12 teachers at the orientation, CCEA represented to them that individuals who joined CCEA would
13 also become members of NSEA and NEA, paying dues to all three organizations, and that, if the
14 member authorized payroll deduction, the deducted dues would pay for the membership fees in
15 CCEA, NSEA, and NEA.

16
17 48. In the welcome packet prepared by CCEA for Mr. Wyckoff, CCEA included a
18 "Certificate of Insurance: Nevada State Education Association Educators Employment Liability
19 Insurance" that named "All Unified Members" as the insured and stated that the policy would
20 provide coverage starting September 1, 2017. By doing so, CCEA represented that, by signing up
21 to become a CCEA member, Mr. Wyckoff would be entitled to the insurance described in the
22 Certificate of Insurance, which bore a specific policy number, and that he would also be entitled
23 to other complimentary NEA and NSEA benefits.

24
25 49. CCEA's representations described in the previous two paragraphs were false and
26 CCEA knew them to be false at the time. CCEA knew at the time both that it intended to
27 withhold NEA and NSEA dues and that it intended not to transmit Mr. Wyckoff's enrollment

1 information to NSEA and NEA. These misrepresentations on the part of CCEA were material.
2 And CCEA made these representations for the purpose of inducing Mr. Wyckoff to join CCEA
3 and to authorize the payroll deduction of his CCEA/NSEA/NEA dues.
4

5 **50.** Mr. Wyckoff joined CCEA to obtain NSEA and NEA member benefits, including
6 the liability insurance. He would not have joined CCEA nor authorized payroll deduction but for
7 CCEA's misrepresenting that Mr. Wyckoff, by submitting his membership enrollment form and
8 authorizing payroll deduction, would be joining CCEA, NSEA, and NEA, that the dues deducted
9 from his paycheck would fully fund his NSEA and NEA dues obligations, and that he would
10 have access to NSEA and NEA member benefits, including to the Nevada State Education
11 Association Educators Employment Liability Insurance as to which CCEA gave him a certificate
12 of insurance.
13

14 **51.** In addition to not transmitting to NSEA the NSEA and NEA dues deducted from
15 Mr. Wyckoff's paycheck, CCEA has failed to transmit Mr. Wyckoff's membership information
16 to NSEA. That has prevented Mr. Wyckoff from enjoying the NSEA and NEA membership
17 benefits that CCEA represented he could enjoy as a part of signing up with CCEA.
18

19 **52.** Defendant John Vellardita has expressed his and CCEA's belief that the result of
20 CCEA's not transmitting to NSEA the membership forms or information of new members like
21 Mr. Wyckoff is that these individuals are not members of NSEA and NEA.
22

23 **COUNT ONE**
24 **(Breach of Contract – Dues Transmittal Agreement)**

25 **53.** Plaintiffs incorporate by reference and re-allege the allegations of Paragraphs 1-
26 52.
27
28

1 54. Because neither party has terminated the Dues Transmittal Agreement pursuant to
2 its terms, that Agreement remains in force and is binding on CCEA at a minimum through the
3 academic year 2017-18.

4
5 55. In the alternative, any purported termination of the Dues Transmittal Agreement
6 on the part of CCEA was ineffective under that agreement, which states that “should any
7 provision of the agreement conflict with any policy or amendment to the Constitution and
8 Bylaws adopted by the NSEA ... or with any procedure and/or requirement adopted by the NSEA
9 Board of Directors ..., such policy, amendment, procedure or requirement shall prevail and the
10 conflicting provision in this agreement shall be automatically amended to reflect the prevailing
11 policy, amendment, procedure or requirement.” Because the NSEA Bylaws include the
12 requirement that local affiliates “[h]ave a dues transmittal contract with NSEA,” the termination
13 provision of the Dues Transmittal Agreement was therefore “automatically amended” to permit
14 termination of the agreement only upon conclusion of a successor “dues transmittal contract.”
15 For this reason as well, the Dues Transmittal Agreement remains in effect.
16
17

18 56. The Dues Transmittal Agreement requires CCEA, as the agent of NSEA, to
19 collect from its members, including by the receipt of payroll deduction payments from CCSD,
20 the dues owed by these members to NSEA and NEA, and to transmit these funds to NSEA on a
21 monthly basis.
22

23 57. Notwithstanding this contractual obligation, CCEA has since October 1, 2017
24 failed and refused to transmit to NSEA the NSEA/NEA portion of dues collected from members,
25 including the September 2017 member dues paid by payroll deduction and transmitted to CCEA
26 by CCSD on October 1, 2017. CCEA has furthermore made clear that it intends to refuse to
27
28

1 transmit further dues payments to NSEA as required by the Dues Transmittal Agreement, and
2 that it instead intends to keep the NSEA and NEA portion of member dues for its own use.

3 **58.** The Dues Transmittal Agreement provides that any controversy arising under it
4 “may” be submitted to arbitration, but it does not require the parties to do so, stating that if
5 “neither party has initiated arbitration, this agreement may be enforced in the courts of Nevada.”
6 Neither NSEA nor CCEA has initiated arbitration. NSEA has elected to bring its claim under the
7 Dues Transmittal Agreement in this judicial forum.
8

9
10 **COUNT TWO**
 (Breach of Contract - NSEA Bylaws)

11 **59.** Plaintiffs incorporate by reference and re-allege the allegations of Paragraphs 1-
12 58.

13 **60.** NSEA’s Bylaws constitute a contract between NSEA and its affiliated local
14 associations, including CCEA.
15

16 **61.** As CCEA has acknowledged in its September 13, 2017 filing with this Court,
17 NSEA’s Bylaws “provide that a local affiliate such as CCEA is to maintain a dues transmittal
18 contract with NSEA for the purpose of transmitting dues payments to NSEA.”
19

20 **62.** By purporting to terminate its Dues Transmittal Agreement with NSEA without
21 having a successor contract in place, by failing and refusing to negotiate in good faith for a
22 successor agreement, by asserting that it has no obligation to transmit the NSEA and NEA
23 portions of membership dues to NSEA, and by refusing to transmit those dues, CCEA has
24 breached its contractual obligation under the NSEA Bylaws.
25
26
27
28

COUNT THREE
(Breach of Contract - NEA Bylaws)

63. Plaintiffs incorporate by reference and re-allege the allegations of Paragraphs 1-62.

64. NEA's Bylaws constitute a contract between NEA and its affiliated state and local associations, including CCEA.

65. NEA's Bylaws require that local affiliates "have the full responsibility for transmitting state and [NEA] dues to state affiliates on a contractual basis."

66. By purporting to terminate its Dues Transmittal Agreement with NSEA without having a successor contract in place, by failing and refusing to negotiate in good faith for a successor agreement, by asserting that it has no obligation to transmit the NSEA and NEA portions of membership dues to NSEA, and by refusing to transmit those dues, CCEA has breached its contractual obligation under the NEA Bylaws.

COUNT FOUR
(Breach of Contract - CCEA Bylaws)

67. Plaintiffs incorporate by reference and re-allege the allegations of Paragraphs 1-66.

68. The CCEA Bylaws constitute a contract between CCEA and its members, including Plaintiffs Murillo, Benson, and Di Archangel.

69. Article X, § 1 of CCEA's Bylaws provides that CCEA "shall maintain affiliate status with the [NEA] and the [NSEA] under the required procedures of each organization." Those "required procedures" include NEA's Bylaw provision that local affiliates "have the full responsibility for transmitting state and [NEA] dues to state affiliates on a contractual basis," as

1 well as NSEA's Bylaw provision requiring that local affiliates "[h]ave a Dues Transmittal
2 Agreement with NSEA."

3 70. By purporting to terminate the Dues Transmittal Agreement without having a
4 successor contract in place, by failing and refusing to negotiate in good faith for a successor
5 agreement, by asserting that it has no obligation to transmit the NSEA and NEA portions of
6 membership dues to NSEA, and by refusing to transmit those dues, CCEA has violated its
7 Bylaws and thus breached its contractual obligations to its members.
8

9 71. As a result of this breach of contract, Plaintiffs Murillo, Benson, and Di
10 Archangel, and other CCEA members, are no longer NEA members in good standing and are
11 losing valuable benefits that are available to them as NEA members in good standing, including
12 life insurance and other benefits.
13

14 72. Plaintiffs Murillo, Benson, and Di Archangel have no recourse through CCEA
15 internal procedures by which this violation of CCEA's Bylaws could be remedied.
16

17 **COUNT FIVE**
18 **(Unjust Enrichment)**

19 73. Plaintiffs incorporate by reference and re-allege the allegations of Paragraphs 1-
20 72.

21 74. In the alternative (if CCEA is deemed not to be bound by a written contract),
22 CCEA has been unjustly enriched by its retention of membership dues owed to NSEA and NEA,
23 and should be required to disgorge these funds to which it has no legal entitlement.
24

25 75. By keeping NEA/NSEA dues for itself, CCEA has retained a benefit which in
26 equity and good conscience belongs to another.
27
28

76. By paying dues to CCEA that include NEA/NSEA dues, Plaintiffs Murillo, Benson, and Di Archangel have conferred a benefit on CCEA, which CCEA appreciates as a benefit and which CCEA has accepted and retained even though the benefit does not belong to it.

77. By permitting CCEA to collect dues in the name and on behalf of NSEA and NEA, NSEA has conferred a benefit on CCEA. CCEA understands that this arrangement is a benefit and has retained the NSEA and NEA dues so collected, which in equity and good conscience belong to NSEA and NEA.

COUNT SIX
(Conversion)

78. Plaintiffs incorporate by reference and re-allege the allegations of Paragraphs 1-

77.

79. For decades CCEA has served as the collection agent for the dues its members owe to NSEA and NEA. CCEA's members owe these dues to NSEA and NEA, not to CCEA, which has served merely as collection agent.

80. The monthly dues CCEA has historically remitted to NSEA are personal property belonging to NSEA and NEA. These dues are not the personal property of CCEA.

81. By choosing to keep these dues, CCEA has performed a distinct act of dominion wrongfully exerted over NSEA's and NEA's personal property in defiance of their rights to that property.

82. CCEA's keeping dues money that does not belong to it constitutes the conversion of NSEA's and NEA's personal property.

COUNT SEVEN
(Fraud)

83. Plaintiffs incorporate by reference and re-allege the allegations of Paragraphs 1-82.

84. Defendants were under a duty to disclose, in advance of July 15, 2017, facts material to whether existing members—including Plaintiffs Ruben Murillo, Robert Benson, and Diane Di Archangel—would maintain their consent to payroll deduction and remain members of CCEA. Because July 1-15, 2017 constituted the only opportunity for existing members to resign their CCEA membership or withdraw their consent to payroll deduction for the 2017-2018 school year, Defendants' duty to disclose applied to matters expected to occur during the 2017-2018 school year.

85. In the lead-up to the July 1-15, 2017 drop period, Defendants concealed the material fact that they intended to cease transmitting members' NSEA and NEA dues to NSEA during the upcoming school year, and that such an action would jeopardize members' NEA and NSEA member benefits by endangering their membership in good standing with NEA and NSEA. Defendants concealed these facts to induce Plaintiffs not to alter their membership status or their consent to payroll deduction during the July 2017 drop period.

86. CCEA has made various material representations, both express and implied, to Plaintiffs Murillo, Benson, Di Archangel, and Wyckoff that are false. As detailed above, CCEA represented (a) that the dues deducted from members' paychecks would pay for the membership fee not just in CCEA but also in NSEA and NEA, (b) that by joining CCEA teachers would also join NSEA and be entitled to the benefits associated with membership in NSEA and NEA, (c) that Plaintiff Wyckoff, by completing the membership enrollment form, would be covered by the

1 insurance policy as to which CCEA provided him a "Certificate of Insurance" that stated that
2 insurance coverage was to begin on September 1, 2017, and (d) that, upon Mr. Wyckoff's
3 signing the membership enrollment form, CCEA would take all necessary steps, including
4 transmitting Mr. Wyckoff's membership information to NSEA, to ensure that Mr. Wyckoff
5 received the benefit of the NSEA and NEA membership to which he was entitled.
6

7 **87.** As to each of these representations, CCEA knew the representation was false
8 either at the time CCEA made the representation or at a later time when CCEA was under a duty
9 to disclose that its prior representation was no longer true.
10

11 **88.** CCEA intended to induce Plaintiffs Murillo, Benson, Di Archangel, and Wyckoff
12 to rely on CCEA's misrepresentations (or its failure to disclose material facts) in order not only
13 to join or remain a CCEA/NSEA/NEA member but also to consent or continue consenting to
14 payroll deduction.
15

16 **89.** Plaintiffs Murillo, Benson, Di Archangel, and Wyckoff justifiably relied on
17 CCEA's misrepresentations (or its failure to disclose material facts) in electing to become or
18 remain CCEA members, in consenting to payroll deduction of the dues owed to CCEA, NSEA,
19 and NEA, or in not withdrawing their consent to payroll deduction.
20

21 **90.** Plaintiffs Murillo, Benson, Di Archangel, and Wyckoff suffered damages as a
22 consequence of either their relying on CCEA's material misrepresentations or on Defendants'
23 concealing from them a material fact. Plaintiffs Murillo, Benson, Di Archangel, and Wyckoff
24 have lost NSEA and NEA benefits to which they would have been entitled but for Defendants'
25 actions, and they have been harmed, at a minimum, in the amount of the NSEA and NEA dues
26 that CCEA obtained from them by their fraudulent conduct.
27
28

1 91. CCEA made similar material misrepresentations and Defendants similarly failed
2 to disclose material facts to numerous other CCEA members, who similarly were injured by their
3 reliance on those statements and omissions.
4

5 **COUNT EIGHT**
6 **(Breach of Obligations under the Dues Transmittal Agreement**
7 **and Membership Enrollment Forms regarding the Collection of Dues)**

8 92. Plaintiffs incorporate by reference and re-allege the allegations of Paragraphs 1-
9 91.
10

11 93. In a letter dated April 26, 2018, Defendant Courtney and CCEA Vice-President
12 Theo Small wrote to NEA and stated “[p]lease be advised that effective immediately CCEA is no
13 longer affiliated with the National Education Association (NEA) and the Nevada State Education
14 Association (NSEA) and accordingly, we will no longer have any contractual relationships with
15 NEA and NSEA.”

16 94. On information and belief, on or about April 26, 2018, CCEA sent a written
17 communication to CCSD requesting that CCSD change the amount of dues to be deducted from
18 teachers’ paychecks from the annualized \$810.50 dues rate representing the aggregated CCEA,
19 NSEA, and NEA dues for the 2017-18 school year to a prorated annualized dues rate of \$510.

20 95. On information and belief, the annualized \$510 dues rate CCEA requested be
21 deducted is intended to represent only an increased CCEA dues rate, and CCEA intends to stop
22 collecting the NSEA and NEA dues payments.
23

24 96. CCEA is for the remainder of the 2017-2018 school year obligated to collect
25 NSEA and NEA dues pursuant to the Dues Transmittal Agreement.

26 97. CCEA’s refusal to collect NSEA and NEA dues through authorized payroll
27 deduction is in breach of the Dues Transmittal Agreement.
28

1 **98.** Pursuant to the terms of the payroll deduction authorizations in the Membership
2 Enrollment Forms, signed by individual members and a CCEA agent, “[d]ues are paid on an
3 annual basis” and members are “obligated to pay the entire amount of dues for a membership
4 year.”

5
6 **99.** The authorized dues represent the aggregated annualized dues permitting
7 memberships in all three organizations.

8 **100.** The purpose of the dues authorization on the Membership Enrollment Form is,
9 *inter alia*, to permit members to pay their annual dues in installments rather than in a single,
10 upfront payment.

11
12 **101.** The payroll deduction authorizations constitute contracts between members and
13 CCEA as to which NEA and NSEA are intended third-party beneficiaries.

14 **102.** CCEA’s actions to stop collecting NSEA and NEA dues for the remainder of the
15 2017-18 school year is a breach of NEA’s and NSEA’s rights as third-party beneficiaries to the
16 teachers’ payroll deduction authorizations.

17
18 **COUNT NINE**
19 **(Unauthorized Mid-Year Increase in CCEA Dues)**

20 **103.** Plaintiffs incorporate by reference and re-allege the allegations of Paragraphs 1-
21 102.

22 **104.** CCEA members, including the individual plaintiffs here, only authorized the
23 deduction of dues “as established annually” for the “membership year.” They did not authorize
24 the deduction of dues that exceed the amount of dues established annually for a membership
25 year.
26
27
28

105. CCEA dues established for the 2017-18 membership year are \$243.84. The 2017-18 membership year ends August 31, 2018.

106. CCEA is now purporting to raise CCEA annualized dues effective immediately from \$234.84 to \$510 for the remainder of the 2017-18 school year.

107. The attempt to cause the deduction of higher CCEA dues from individual Plaintiffs' paychecks in the middle of the 2017-18 membership year violates the Membership Enrollment Forms, which do not authorize the deduction of any dues besides those "established annually" for the "membership year."

108. The individual Plaintiffs, as CCEA members, are or will imminently be injured by CCEA's increases of CCEA dues for the remainder of the 2017-18 school year through payroll deduction.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants that provides the following relief:

A. A declaration that CCEA is contractually obligated monthly to transmit the NSEA and NEA portions of membership dues it receives to NSEA, under the terms of the Dues Transmittal Agreement, until August 31, 2018;

B. An injunction prohibiting CCEA from retaining NSEA and NEA membership dues and requiring that all such dues received from CCSD or from individual members be transmitted to NSEA, consistent with the terms of the Dues Transmittal Agreement;

C. An order requiring CCEA to disgorge to NSEA, with interest, all NSEA and NEA membership dues that it has received but not transmitted to NSEA;

D. An award of punitive damages with respect to Count Seven;

1 E. An order requiring CCEA to continue collecting all NSEA and NEA membership
2 dues until August 31, 2018;

3 F. A declaration that individual Plaintiffs have not authorized the deduction of any
4 CCEA dues that exceed the amounts initially set by CCEA for the 2017-18 membership
5 year, and an award of damages for any CCEA dues wrongfully deducted;
6

7 G. An award of Plaintiffs' reasonable attorney's fees and costs in this action; and

8 H. Such other relief as this Court may deem just and proper under the circumstances.
9

10 Dated this 6th day of June, 2018.

11 Respectfully submitted,

12 /s/ Paul J. Lal

13
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28

*Nevada State Education Association v.
Clark County Education Association*

Case No. 79208

**DOCKETING STATEMENT
PART 4 OF 6**

Exhibit A

ADDENDUM A

AGREEMENT BETWEEN THE NEVADA STATE EDUCATION ASSOCIATION
AND THE CLARK COUNTY CLASSROOM TEACHERS ASSOCIATION

This agreement is entered into for the purpose of collecting and transmitting UTP dues and membership data.

The Nevada State Education Association (hereinafter referred to as the "NSEA"), and the Clark County Classroom Teachers Association (hereinafter referred to as CCCTA), desire to set forth their respective understandings and responsibilities with regard to the collection and transmission of UTP dues and membership data.

Therefore, for full and adequate consideration and for their mutual benefit, the parties agree as follows:

I DESIGNATION OF THE CLARK COUNTY CLASSROOM TEACHERS ASSOCIATION AS AGENT

The NSEA designates, and CCCTA agrees to be its authorized agent for the purpose of collecting and transmitting NSEA and NEA dues and membership data from NSEA/NEA members who are also members of the CCCTA. The CCCTA will collect or cause to be collected NSEA/NEA dues from NSEA/NEA members and will transmit or have transmitted all NSEA/NEA dues.

II OBLIGATIONS OF THE CLARK COUNTY CLASSROOM TEACHERS ASSOCIATION (CCCTA)

A. NSEA/NEA Membership Data

1. The CCCTA currently has in operation adequate and reasonable procedures for recording and reporting membership information that will provide both the NSEA and NEA with all necessary membership data as described in the NSEA and NEA general membership transmittal procedures.
2. The initial transmittal of the aforesaid data for NSEA/NEA each membership year shall (a) be on a mutually acceptable enrollment card; (b) reflect the most current membership data available to the CCCTA; and (c) be received by NSEA not later than October 15 of each membership year. At least one subsequent transmittal of all additions to or changes in the above membership data shall be received by the NSEA not later than the 15th day of each month thereafter, subject to need for modification due to conditions beyond the CCCTA's control.

B. NSEA and NEA Membership Dues

1. The CCCTA agrees to transmit or have transmitted to the NSEA on a monthly basis within ten (10) working days after the school district transmits payroll deductions check and membership list to the CCCTA, membership dues at rates equal to 1/12th of the annual dues according to the following schedule:

Agreement between the NSEA and CCCTA

CCCTA Receives Check
From School District

October 2, 1979
November 2, 1979
November 30, 1979
January 3, 1980
February 1, 1980
March 3, 1980
April 2, 1980
May 2, 1980
June 2, 1980
July 2, 1980
August 1, 1980
September 1, 1980

CCCTA Mails Check For
Transmittal to NSEA

October 17, 1979
November 19, 1979
December 14, 1979
January 17, 1980
February 15, 1980
March 17, 1980
April 16, 1980
May 16, 1980
June 16, 1980
July 17, 1980
August 15, 1980
September 16, 1980

2. Dues transmitted to the NSEA pursuant to Section II, B (1) above shall be receivable in the form of a check drawn on the bank account of the CCCTA or the governmental subdivision that is the employer of the member.
3. In the event a member terminates employment voluntarily or involuntarily, said member shall forward to the NSEA, through CCCTA, the balance of the unpaid dues for the membership year ending August 31.

C. Enforcement of the Dues Transmittal Schedule

1. Should the CCCTA become delinquent in the above transmittal schedule by more than thirty (30) days, the CCCTA agrees to a penalty of one percent (1%) per month on the overdue balance, beginning with the first day of the month following the scheduled payment date.
2. The delegates representing the CCCTA shall be seated in the NSEA Delegate Assembly at the Annual Meeting only if the CCCTA is up to date on its dues transmittal as of one (1) month prior to the DA.
3. If the NSEA informs the NEA in writing that said CCCTA has failed to transmit the association dues in accordance with the dates set forth in II, B (1), and such information is verified by the Executive Director, the delegate of CCCTA shall not be seated in the NEA Representative Assembly at the Annual Meeting.
4. (a) If the dues collection pattern in the CCCTA changes substantially during the term of the agreement, the CCCTA may apply to NSEA for modification of its dues transmittal agreement set forth in Section II, B (1) above.
(b) If because of emergency conditions or unforeseen developments, compliance with the dues transmittal schedule set forth in Section II, B (1) above would result in extreme hardship or inequity for the CCCTA then, CCCTA may apply to the NSEA Board for temporary suspension of the enforcement provisions set forth in Section II, C (1) above.

Agreement between the NSEA and CCCTA

- (c) Applications made by the CCCTA pursuant to Section II, C (4-a) or (b) above shall not be unreasonably denied. In case of unresolved issue between NSEA or CCCTA, either or both parties may appeal directly to NEA for resolution.

III OBLIGATIONS OF THE NSEA

The NSEA shall transmit NEA membership dues and membership data as described in Section II of the agreement between the NEA and NSEA regarding the collection and transmission of NEA dues and membership data.

NSEA shall assist CCCTA in its processing effort by assisting CCCTA office employees in membership processing and accounting methods and techniques and will continue to explore more efficient operational procedures in an effort to assist CCCTA to reduce its overhead costs.

IV DISPUTES INVOLVING INTERPRETATION, APPLICATION OR ENFORCEMENT OF THIS AGREEMENT

- A. Any controversy or claim arising out of or relating to this agreement, or breach thereof, may be submitted by either party to the American Arbitration Association to be settled in accordance with the Commercial Arbitration rules of the the American Arbitration Association. Such arbitration shall be held in Carson City, Nevada and judgment upon the award rendered by the arbitrator(s) may be entered in the courts of Nevada. Both parties will share the expense.
- B. If neither party has initiated arbitration, this agreement may be enforced in the courts of Nevada.
- C. This agreement, being entered into in the State of Nevada, shall be interpreted, construed, applied and governed by the laws of Nevada.

V AMMENDMENT OF AGREEMENT

Should any provision of the agreement conflict with any policy or amendment to the Constitution and Bylaws adopted by the NSEA Delegate Assembly or with any procedure and/or requirement adopted by the NSEA Board of Directors pursuant to the powers under Article VI of the NSEA Bylaws, such policy, amendment, procedure or requirement shall prevail and the conflicting provision in this agreement shall be automatically amended to reflect the prevailing policy, amendment, procedure or requirement.

VI CONTINUATION OF AGREEMENT

This agreement shall remain in force for each subsequent membership year unless terminated in writing by either party prior to September 1 of any NSEA membership year, or amended by mutual consent of both parties.

Agreement between the NSEA and CCCTA

CLARK COUNTY CLASSROOM TEACHERS ASSOCIATION

BY: Gilda M. Brown

TITLE: President CCCTA

DATE: October 23, 1979

NEVADA STATE EDUCATION ASSOCIATION

BY: John L. Simpson

TITLE: Executive Director

DATE: 23 October 1979

Exhibit B



**CLARK COUNTY EDUCATION ASSOCIATION
NEVADA STATE EDUCATION ASSOCIATION
NATIONAL EDUCATION ASSOCIATION**

ENROLLMENT FORM

CCEA, NSEA, and NEA ... Keeping the Promise of Quality Public Education

As a member of CCEA, NSEA, and NEA you automatically have access to:

- NEA Complimentary Life Insurance® — **free to you as a membership benefit** — up to \$50,000 in accidental death and dismemberment insurance and a \$150,000 benefit for death due to homicide while actively engaged in your occupation. **(To activate your free complimentary life insurance coverage, please complete the form in the back of the application.)**
- Job development.
- Quality training.
- Professional resources and research.
- Help and support networks.
- Legal assistance.
- Professional assistance to help you be successful in your job.
- And much more!

Join with your colleagues from across the state and the nation to support quality public education—become a member of CCEA, NSEA, and NEA.

For more information about products and services available to members, contact:

Clark County Education Association at:
(800) 772-2282 or visit our website at www.ccea-nv.org.

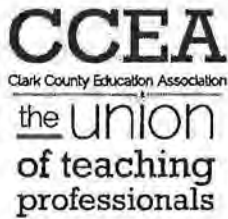
Nevada State Education Association:
(800) 248-6732 or visit the website at www.nsea-nv.org.

National Education Association:
visit the website at www.nea.org.

CCEA
Clark County Education Association
the union
of teaching
professionals

Nevada State
Education Association
NSEA

nea
NATIONAL
EDUCATION
ASSOCIATION
nea.org
These Public Schools
Are Part of Mine



CLARK COUNTY EDUCATION ASSOCIATION
NEVADA STATE EDUCATION ASSOCIATION
NATIONAL EDUCATION ASSOCIATION



Membership Enrollment Form

BELOW TO BE COMPLETED BY MEMBER

LAST NAME		FIRST NAME		MIDDLE INITIAL
ADDRESS			HOME PHONE	CELL PHONE
CITY	STATE	ZIP CODE	SOCIAL SECURITY NO. _____	
PERSONAL E-MAIL ADDRESS (By providing my e-mail address I am enrolling in e-mail alerts/communications)			SCHOOL	
MEMBERSHIP TYPE: <input type="checkbox"/> Full Time <input type="checkbox"/> Half Time			METHOD OF PAYMENT: <input type="checkbox"/> Payroll <input type="checkbox"/> Cash	

* The following information is optional and failure to answer it will in no way affect your membership status, rights or benefits in NEA, NSEA, or CCEA.

SEX: <input type="checkbox"/> Male <input type="checkbox"/> Female	BIRTH DATE: _____ <small>Month Day Year</small>	ETHNIC CODE: <input type="checkbox"/> American Indian/Alaska Native <input type="checkbox"/> Asian <input type="checkbox"/> Hispanic <input type="checkbox"/> Caucasian <input type="checkbox"/> Black <input type="checkbox"/> Pacific Islander <input type="checkbox"/> Other _____	MARITAL STATUS: <input type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Separated/Divorced/Widowed
EXPERIENCE: Years of Teaching Experience _____ Previous School District/State _____ Relocating from Zip Code _____			

My signature authorizes CCEA to negotiate for me before the school district, as provided in Nevada Statutes, those items affecting my salary, hours and conditions of employment and to represent me in other matters affecting the professional services of educators and the quality of education.

Payroll Deduction Authorization. With full knowledge of the above, I hereby agree to pay cash for, or herein authorize my employer, the Clark County School District, to deduct from my salary, and pay to CCEA, in accordance with the agreed-upon payroll deduction procedure, the professional dues as established annually for this membership year and each year thereafter, provided that I may revoke this authorization by giving written notice to that effect to CCEA between July 1 and July 15 of any calendar year, or as otherwise designated by the negotiated agreement.

Dues are paid on an annual basis and, although dues may be deducted from my payroll check(s) in order to provide an easier method of payment, as a member I am obligated to pay the entire amount of dues for a membership year. I understand that if I resign my membership in CCEA, or in the event of termination, resignation or retirement from employment, I am still obligated to pay the balance of my annual dues for that membership year and such payments will continue to be deducted from my payroll check(s).

I further understand that dues are not deductible as charitable contributions for federal income tax purposes. Dues may be deductible as a miscellaneous itemized deduction.

MEMBER'S SIGNATURE _____

DATE _____

ASSOCIATION AGENT _____

DATE _____

WHITE: CCEA

YELLOW: NSEA

PINK: MEMBER

REV. 5/14

NEA Complimentary Life Insurance® Beneficiary Registration Form

NEA Complimentary Life Insurance® is an automatic benefit for eligible NEA members. Please help us administer this program by giving us information on your beneficiary and by completing this form in its entirety. This information will be held in strict confidence. Thank you.

PLEASE PRINT

Your Name _____

Address _____

City _____ State _____ Zip _____

Phone (____) _____ Date of Birth ____/____/____ Social Security No. _____
Month Day Year

Select your beneficiary for the NEA Complimentary Life Insurance® death benefit:

- (1) ☐ Surviving spouse (at time of death)
(2) ☐ Surviving children (divided equally)
(3) ☐ Surviving parents
(4) ☐ Estate

(5) ☐ Other

Name _____
Relationship _____
(If selecting partner, provide name of beneficiary and relationship to you.)

I am currently an:

- (1) ☐ Active (2) ☐ Life* (3) ☐ Reserve (4) ☐ Staff

* Life members must be actively employed in the field of education.

Marital status:

- (1) ☐ Single (2) ☐ Married
(3) ☐ Separated, Divorced, Widowed

Are you the major wage earner in your household?

- (1) ☐ Yes (2) ☐ No (3) ☐ About the same

Gender:

- (1) ☐ Male (2) ☐ Female

I have been a continuous NEA member since the _____ school year.

By signing this form, I verify that I am a member in good standing of the National Education Association.

Member's Signature **X** _____ Date Signed _____

If married, what is the employment status of your spouse?

- (1) ☐ Education employee (6) ☐ Unemployed
(2) ☐ Other professional (7) ☐ Homemaker
(3) ☐ Executive (8) ☐ Student
(4) ☐ White-collar worker (9) ☐ Other
(5) ☐ Blue-collar worker (10) ☐ Retired

Total family income:

- (1) ☐ \$19,000 or below (5) ☐ \$50-59,999
(2) ☐ \$20-29,999 (6) ☐ \$60-69,999
(3) ☐ \$30-39,999 (7) ☐ \$70,000 or above
(4) ☐ \$40-49,999

Number of children dependent on you for support and their year of birth:

- (1) ☐ 0 (2) ☐ 1 (3) ☐ 2 (4) ☐ 3 (5) ☐ 4 or more

1st Child (DOB) _____ 3rd Child (DOB) _____
2nd Child (DOB) _____ 4th Child (DOB) _____

Which statement best describes your housing situation?

- (1) ☐ Rent living quarters (4) ☐ Own house
(2) ☐ Own condominium (5) ☐ Live with relatives
(3) ☐ Own mobile home (6) ☐ Other

NEA Complimentary Life Insurance® Benefits

**Free coverage for
eligible members:
Up to \$50,000 in
accidental death
and dismemberment
insurance and a
\$150,000 benefit for
death due to
homicide while
actively engaged in
your occupation.**

Exhibit C



011211
6070
170

0008091854
CLARK COUNTY EDUCATION ASSOCIATION
NEVADA STATE EDUCATION ASSOCIATION
NATIONAL EDUCATION ASSOCIATION



Membership Enrollment Form

PARTICIPATION

BELOW TO BE COMPLETED BY MEMBER

LAST NAME <u>Di Archangel</u>		FIRST NAME <u>Diane</u>		MIDDLE INITIAL <u>D</u>
ADDRESS <u>[REDACTED]</u>		HOME PHONE <u>[REDACTED]</u>		CELL PHONE <u>[REDACTED]</u>
CITY <u>[REDACTED]</u>	STATE <u>[REDACTED]</u>	ZIP CODE <u>[REDACTED]</u>	SOCIAL <u>[REDACTED]</u>	
PERSONAL E-MAIL ADDRESS <u>[REDACTED]</u>			SCHOOL <u>Tarkanian MS</u>	

* The following information is optional and failure to answer it will in no way affect your membership status, rights or benefits in NEA, NSEA, or CCEA.

SEX: <input type="checkbox"/> Male <input checked="" type="checkbox"/> Female	BIRTH DATE: <u>[REDACTED]</u>	ETHNIC CODE: <input type="checkbox"/> American Indian/Alaska Native <input type="checkbox"/> Asian <input type="checkbox"/> Hispanic <input checked="" type="checkbox"/> Caucasian <input type="checkbox"/> Black <input type="checkbox"/> Pacific Islander <input type="checkbox"/> Other _____	METHOD OF PAYMENT: <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Cash	MEMBERSHIP TYPE: <input checked="" type="checkbox"/> Full Time <input type="checkbox"/> Half Time
---	----------------------------------	---	--	---

"288: IF YOU'RE NOT AT THE TABLE, YOU'RE ON THE MENU"

The National Education Association Fund for Children and Public Education (NEA Fund), the Nevada State Education Association Together in Politics (NSEA TIP), and the Clark County Education Association Together in Politics (CCEA TIP) collect voluntary contributions from Association members and use those contributions for political purposes including, but not limited to, making contributions to and expenditures on behalf of friends of public education who are candidates for federal, or in the case of NSEA or CCEA, state and local office. Only U.S. citizens or lawful permanent residents may contribute to the NEA Fund, the NSEA TIP and the CCEA TIP. Contributions to the NEA Fund, the NSEA TIP and the CCEA TIP are voluntary; making a contribution is neither a condition of employment nor membership in the Association, and members have the right to refuse to contribute without suffering any reprisal. A member may give more or less than the suggested amount of \$2.88 per paycheck, or may contribute nothing at all, without it affecting his or her membership status, rights, or benefits in the NEA, the NSEA, or the CCEA.

I understand that I am making a joint contribution to the NEA Fund for Children and Public Education, the NSEA Together in Politics (NSEA TIP), and the CCEA Together in Politics (CCEA TIP) and that one-third of my contribution will be given to the NEA Fund for Children and Public Education, and that one-third of my contribution will be given to the NSEA TIP, and that one-third of my contribution will be given to the CCEA TIP.

Contributions or gifts to the NEA Fund for Children and Public Education, the Nevada State Education Association Together in Politics, and the Clark County Education Association Together in Politics are not deductible as charitable contributions for federal income tax purposes. Federal law requires us to use our best efforts to collect the name, mailing address, occupation and the name of employer of individuals whose contributions aggregate in excess of \$200 in a calendar year.

I want to protect public education at the table. Here is my investment:

☐ \$1.00 per pay check ☐ \$2.88 per pay check ☒ Other \$ 0 per pay check

CCEA Scholarship Payroll Deduction Authorization

Yes! I want to help Clark County graduates further their education!

I will contribute \$ 0 per pay check as a payroll deduction for this purpose. (\$1.00 or more is suggested.)

This is **not** tax deductible as a charitable contribution.

CCEA Community Foundation Payroll Deduction Authorization

Yes! I want to help Clark County teachers with grants up to \$500.00!

I will contribute \$ 0 per pay check as a payroll deduction for this purpose. (\$1.00 or more is suggested.)

This is tax deductible as a charitable contribution.

My signature authorizes CCEA to negotiate for me before the school district, as provided in Nevada Statutes, those items affecting my salary, hours and conditions of employment and to represent me in other matters affecting the professional services of educators and the quality of education.

Payroll Deduction Authorization. With full knowledge of the above, I hereby agree to pay cash for, or herein authorize my employer to deduct from my salary, and pay to CCEA, in accordance with the agreed-upon payroll deduction procedure, the professional dues as established annually and the political action contributions in the amounts indicated above for this membership year and each year thereafter, provided that I may revoke this authorization by giving written notice to that effect to CCEA between July 1 and July 15 of any calendar year, or as otherwise designated by the negotiated agreement. Dues are paid on an annual basis and, although dues may be deducted from my payroll check(s) in order to provide an easier method of payment, a member is obligated to pay the entire amount of dues for a membership year. I understand that if I resign my membership in CCEA, or in the event of termination, resignation or retirement from employment, I am still obligated to pay the balance of my annual dues and political or positive image contributions for that membership year and such payments will continue to be deducted from my payroll check(s).

Dues and political contributions are not deductible as charitable contributions for federal income tax purposes. Dues may be deductible as a miscellaneous itemized deduction.

Diane Di Archangel
MEMBER'S SIGNATURE

1/20/11
DATE

[Signature]
ASSOCIATION AGENT

1/20/2011
DATE

WHITE: CCEA

YELLOW: NSEA

PINK: MEMBER

REV. 7/10

Exhibit D

CCEA

Clark County Education Association

the union
of teaching
professionalsCLARK COUNTY EDUCATION ASSOCIATION
NEVADA STATE EDUCATION ASSOCIATION
NATIONAL EDUCATION ASSOCIATIONNevada State
Education Association
NSEA**nea**
NATIONAL
EDUCATION
ASSOCIATION
4410 10-01-02
Once Public Schools
Are Better Child**Membership Enrollment Form****BELOW TO BE COMPLETED BY MEMBER**

LAST NAME <u>Wickoff</u>		FIRST NAME <u>Jason</u>		MIDDLE INITIAL <u>A</u>
ADDRESS [REDACTED]			HOME PHONE [REDACTED]	CELL PHONE [REDACTED]
CITY [REDACTED]	STATE [REDACTED]	ZIP CODE [REDACTED]	SOCIAL SECURITY NO. [REDACTED]	
PERSONAL E-MAIL ADDRESS (By providing my e-mail address I am enrolling in e-mail alerts/communications) [REDACTED]			SCHOOL <u>Cunningham</u>	
MEMBERSHIP TYPE: <input checked="" type="checkbox"/> Full Time <input type="checkbox"/> Half Time			METHOD OF PAYMENT: <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Cash	

* The following information is optional and failure to answer it will in no way affect your membership status, rights or benefits in CCEA.

SEX: <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female	BIRTH DATE: Month Day Year [REDACTED]	ETHNIC CODE: <input type="checkbox"/> American Indian/Alaska Native <input type="checkbox"/> Asian <input type="checkbox"/> Hispanic	<input checked="" type="checkbox"/> Caucasian <input type="checkbox"/> Black <input type="checkbox"/> Pacific Islander <input type="checkbox"/> Other	MARITAL STATUS: <input checked="" type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Separated/Divorced/Widowed
EXPERIENCE: Years of Teaching Experience <u>0</u> Previous School District/State _____ Relocating from Zip Code _____				

My signature authorizes CCEA to negotiate for me before the school district, as provided in Nevada Statutes, those items affecting my salary, hours and conditions of employment and to represent me in other matters affecting the professional services of educators and the quality of education.

Payroll Deduction Authorization. With full knowledge of the above, I hereby agree to pay cash for, or herein authorize my employer, the Clark County School District, to deduct from my salary, and pay to CCEA, in accordance with the agreed-upon payroll deduction procedure, the professional dues as established annually for this membership year and each year thereafter, provided that I may revoke this authorization by giving written notice to that effect to CCEA between July 1 and July 15 of any calendar year, or as otherwise designated by the negotiated agreement.

Dues are paid on an annual basis and, although dues may be deducted from my payroll check(s) in order to provide an easier method of payment, as a member I am obligated to pay the entire amount of dues for a membership year. I understand that if I resign my membership in CCEA, or in the event of termination, resignation or retirement from employment, I am still obligated to pay the balance of my annual dues for that membership year and such payments will continue to be deducted from my payroll check(s).

I further understand that dues are not deductible as charitable contributions for federal income tax purposes. Dues may be deductible as a miscellaneous itemized deduction.

[Signature]
MEMBER'S SIGNATURE8/1/17
DATE_____
ASSOCIATION AGENT_____
DATE

WHITE: CCEA

YELLOW: NSEA

PINK: MEMBER

REV. 6/17

© 2007 CCEA

Attachment 3

Defendants-Counter Plaintiffs Clark County Education
Association's, John Vellardita's and Victoria Courtney's
Answer to Second Amended Complaint for Declaratory and
Injunctive Relief and Second Amended Counterclaim
Filed by Clark County Education Association, John Vellardita,
and Victoria Courtney
(July 9, 2018)

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*Attorneys for Clark County Education Association, John
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IN THE EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CLARK COUNTY EDUCATION
ASSOCIATION, VICTORIA COURTNEY,
JAMES FRAZEE, ROBERT G.
HOLLOWOOD, and MARIA NEISESS,

Plaintiffs,

vs.

NEVADA STATE EDUCATION
ASSOCIATION, DANA GALVIN, RUBEN
MURILLO, JR., BRIAN WALLACE, and
BRIAN LEE,

Defendants.

Case No.: A-17-761364-C

DEPT. NO.: I

**DEFENDANTS-COUNTER PLAINTIFFS
CLARK COUNTY EDUCATION
ASSOCIATION'S, JOHN
VELLARDITA'S AND VICTORIA
COURTNEY'S ANSWER TO SECOND
AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF AND SECOND AMENDED
COUNTERCLAIM**

1 NEVADA STATE EDUCATION
2 ASSOCIATION; NATIONAL EDUCATION
3 ASSOCIATION; RUBEN MURILLO;
4 ROBERT BENSON; DIANE
5 DI ARCHANGEL; AND JASON WYCKOFF,

6 Plaintiffs-Counter Defendants,

7 And

8 BRIAN LEE,

9 Counter-Defendant,

10 vs.

11 CLARK COUNTY EDUCATION
12 ASSOCIATION; JOHN VELLARDITA; AND
13 VICTORIA COURTNEY,

14 Defendants-Counter Plaintiffs.

Consolidated with:

Case No.: A-17-761884-C

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1. In this action for declaratory, injunctive, and other equitable relief, Plaintiffs Nevada State Education Association (“NSEA”), National Education Association (“NEA”), and individual Plaintiffs Ruben Murillo, Robert Benson, Diane Di Archangel, and Jason Wyckoff seek to prevent CCEA from diverting to its own use dues monies forwarded to it from the Clark County School District (“CCSD”), which rightfully belong to NSEA and NEA. These funds are collected through payroll deduction from CCSD teachers who have signed up as members of CCEA, NSEA, and NEA, and CCEA’s refusal to transmit to NSEA the portion of these dues payments that belongs to NSEA and NEA is in violation of CCEA’s contractual obligations, constitutes (in the alternative) unjust enrichment, and amounts to conversion and fraud.

Answer: Defendant admits that individual Plaintiffs Ruben Murillo, Robert Benson, and Diane Di Archangel are members of NSEA, NEA, and CCEA. However, Defendant denies the remainder of the allegations of this paragraph.

PARTIES

2. Plaintiff NSEA, a nonprofit corporation organized under the laws of this State, is an employee organization with approximately 24,000 members. NSEA is the parent affiliate of 31

1 local associations, of which CCEA is one, that together represent some 40,000 teachers and other
2 employees of Nevada school districts. NSEA is affiliated at the national level with NEA.

3 **Answer:** Defendants admit the allegations in paragraph 2.

4 **3.** Plaintiff NEA, a federally chartered nonprofit corporation, is a nationwide
5 employee organization of some three million education professionals, the vast majority of whom
6 are employed by public school districts, as well as colleges and universities, throughout the
7 United States, including in Nevada.

8 **Answer:** Defendants admit the allegations in paragraph 3.

9 **4.** Plaintiffs Ruben Murillo, Robert Benson, and Diane Di Archangel are teachers
10 employed by CCSD and residents of Clark County, and have each signed up to be members of
11 CCEA, NSEA, and NEA. Plaintiff Murillo is the President of NSEA and is a former President of
12 CCEA. Plaintiff Benson is a member of the NSEA Board of Directors and is a former Vice
13 President of CCEA.

14 **Answer:** Defendants admit the allegations of this paragraph but state that that
15 Plaintiff Benson had a break in membership with the CCEA that should
16 have made him ineligible to be a member of the NSEA Board of Directors.
17 Defendants state that Ruben Murillo is on a long-term leave of absence
18 from CCSD.

19 **5.** Plaintiff Jason Wyckoff is a teacher employed by CCSD and a resident of Clark
20 County, and he has signed up as a member of CCEA, NSEA, and NEA.

21 **Answer:** Defendants deny the allegations in paragraph 5.

22 **6.** Defendant CCEA, a nonprofit corporation organized under the laws of this State,
23 is an employee organization that represents teachers and other licensed personnel employed by
24 CCSD. CCEA previously was known as the Clark County Classroom Teachers Association
25 (“CCCTA”).

26 **Answer:** Defendants admit the allegations in paragraph 6.

27 **7.** Defendant John Vellardita is the Executive Director of CCEA, and on information
28 and belief is a resident of Clark County.

1 **Answer:** Defendants deny the allegations in paragraph 12.

2 **13.** NSEA and NEA dues are set by the duly elected representatives of those
3 organizations, pursuant to those organizations’ governing bylaws. For the 2017-18 academic year,
4 full-time active members pay \$377.66 in annual dues to NSEA and \$189 to NEA. CCEA
5 determines its own membership dues, which on information and belief are approximately \$245
6 for the current academic year.

7 **Answer:** Defendants admit that NSEA and NEA dues are set by the representatives
8 of those organizations and that full-time members of those organizations
9 pay \$377.66 in annual dues to NSEA and \$189 to NEA for the 2017-18
10 academic year. Defendants deny that those dues are applicable to members
11 of CCEA. Defendants admit that CCEA determines its own membership
12 dues, but deny that CCEA’s dues are approximately \$245 for the current
13 academic year.

14 **14.** Under the Bylaws of NEA and NSEA, both of which are binding on CCEA,
15 CCEA is required to collect the NSEA and NEA portions of membership dues (along with its
16 own local dues) and to transmit them to NSEA, which in turn transmits to NEA its portion of a
17 member’s dues.

18 **Answer:** Defendants deny the allegations in paragraph 14.

19 **15.** NSEA’s Bylaws mandate that local affiliates, such as CCEA, shall “[h]ave a Dues
20 Transmittal Agreement with NSEA.” In addition, NEA’s Bylaws provide that “[l]ocal affiliates
21 shall have the full responsibility for transmitting state and [NEA] dues to state affiliates on a
22 contractual basis.”

23 **Answer:** Defendants deny the allegations in paragraph 15.

24 **16.** In 1979, CCEA (then known as CCCTA) and NSEA entered into a contract
25 (“Dues Transmittal Agreement”), which designates CCEA as NSEA’s agent for the collection and
26 transmission to NSEA of the NSEA and NEA portions of members’ dues payments. The Dues
27 Transmittal Agreement sets out a schedule for CCEA’s transmission of dues payments to NSEA
28 on a monthly basis. It further provides that the Contract shall remain in force from year to year

1 “unless terminated in writing by either party prior to September 1 of any NSEA membership year,
2 or amended by mutual consent of both parties.” A true and correct copy of the Dues Transmittal
3 Agreement is attached hereto as Exhibit A.

4 **Answer:** Defendants admit the allegations in paragraph 16.

5 **17.** Neither party has terminated the Dues Transmittal Agreement, which accordingly
6 remains in force during the current 2017-18 membership year.

7 **Answer:** Defendants deny the allegations in paragraph 17.

8 **18.** Most CCEA members pay their CCEA/NSEA/NEA dues through payroll
9 deduction. For members who have authorized such payroll deduction, CCSD deducts the
10 cumulative membership dues owed to CCEA, NSEA, and NEA from members’ paychecks and
11 transmits the deducted funds to CCEA. In signing their CCEA/NSEA/NEA Membership
12 Enrollment Form and payroll deduction authorization, members are informed that they are
13 becoming members of all three associations, and they understand that the dues that are deducted
14 from their CCSD paychecks and forwarded to CCEA are dues payments to all three associations.

15 **Answer:** Defendants deny the allegations in paragraph 18.

16 **19.** Since at least 1979, CCEA has served as the collection agent for NSEA, collecting
17 and transmitting NSEA and NEA dues to NSEA under the terms of the Dues Transmittal
18 Agreement.

19 **Answer:** Defendants admit the allegations in paragraph 19.

20 **20.** With regard to membership dues owed to NSEA and NEA, CCEA is merely a
21 collection agent, and has no independent claim of right to the NSEA and NEA portions of the
22 dues it collects from its members.

23 **Answer:** Defendants deny the allegations in paragraph 20.

24 **21.** Periodically, CCEA and NSEA have entered into “service agreements” that
25 specify aspects of their working relationship in more detail. The most recent of these agreements
26 was signed by the parties in June 1999. This Service Agreement, by its terms, automatically
27 renewed from year to year unless terminated in writing by one of the parties, and it was in place
28 as of the 2016-17 school year. On July 17, 2017, Defendant Vellardita notified NSEA that CCEA

1 intended to terminate the June 1999 Service Agreement effective August 31, 2017. The
2 termination of the 1999 Service Agreement did not affect the parties' Dues Transmittal
3 Agreement, which has been in effect since 1979 and which remains in force.

4 **Answer:** Defendants deny the allegations set forth in paragraph 21.

5 **22.** Nonetheless, on August 3, 2017, Vellardita asserted in a letter to NSEA that, upon
6 the expiration of the 1999 Service Agreement, "CCEA is not only legally not obligated to
7 transmit dues, but cannot transmit member dues to NSEA per NSEA's own Bylaws," and that
8 "when the current Agreement between CCEA and NSEA expires on August 31, 2017, there will
9 not be a contract in place between the two organizations to collect and remit dues to NSEA."
10 These assertions are mistaken and are contradicted by past practice.

11 **Answer:** Defendants deny the allegations set forth in paragraph 22.

12 **23.** CCEA has further asserted, in a September 13, 2017, filing with this Court, that its
13 obligation and "CCEA members' obligation to transmit dues to the NSEA was terminated upon
14 expiration of the service agreement on August 31, 2017."

15 **Answer:** Defendants admit the allegations in paragraph 23.

16 **24.** Notwithstanding its contention that both the 1999 Service Agreement and the Dues
17 Transmittal Agreement are no longer in effect, CCEA has failed and refused to negotiate in good
18 faith with NSEA for a successor agreement governing the transmission of dues, and has instead
19 conditioned any agreement to continue transmitting dues on NSEA's acceptance of CCEA
20 demands unrelated to the transmittal of membership dues. These demands include, in particular,
21 CCEA's insistence that the amount of NSEA dues that CCEA members are required to pay be
22 substantially reduced – notwithstanding that NSEA dues are set uniformly on a statewide basis
23 through NSEA's democratic governing body—the NSEA Delegate Assembly—in accordance
24 with the NSEA Bylaws.

25 **Answer:** Defendants deny the allegations in paragraph 24.

26 **25.** On October 1, 2017, CCEA received from CCSD its monthly transmittal of
27 CCEA/NSEA/NEA membership dues from members' payroll deductions for the month of
28 September 2017. Under the terms of the Dues Transmittal Agreement, CCEA was required to

1 forward to NSEA the NSEA and NEA portions of those membership dues by October 15, 2017.
2 CCEA has failed to make that payment to NSEA and instead has made clear that it intends to
3 keep for itself all of the members' dues payments, including the portions due and owing to NSEA
4 and NEA. Since October 2017, CCEA has continued this course of conduct: Each month CCEA
5 has received from CCSD its monthly transmittal of CCEA/NSEA/NEA membership dues from
6 members' payroll deductions but has refused to transmit NSEA and NEA dues to NSEA.

7 **Answer:** Defendants deny the allegations in paragraph 25.

8 **26.** On September 18, 2017, representatives of CCEA and NSEA met to renegotiate a
9 successor agreement to the 1999 Service Agreement. CCEA's representatives, including
10 Defendant Vellardita, refused to bargain in good faith and walked out of the meeting after only
11 eight minutes.

12 **Answer:** Defendants deny the allegations in paragraph 26.

13 **27.** On information and belief, Defendants Vellardita and Courtney are responsible for
14 directing CCEA to withhold the NSEA and NEA dues.

15 **Answer:** Defendants deny the allegations in paragraph 27.

16 **28.** By reason of CCEA's failure to transmit the NEA and NSEA dues to NSEA,
17 members have lost their status as members in good standing of NSEA and NEA. As a
18 consequence, members have been rendered ineligible for important NEA and NSEA benefits,
19 including, for example, professional liability insurance and life insurance.

20 **Answer:** Defendants deny the allegations in paragraph 28.

21 **29.** Defendants owe fiduciary duties to members of CCEA, including to Plaintiffs
22 Ruben Murillo, Robert Benson, Diane Di Archangel, and Jason Wyckoff.

23 **Answer:** Defendants deny the allegations in paragraph 29.

24 **30.** CCEA advertises on its website the benefits of NEA and NSEA membership,
25 including NEA's complimentary life insurance. For example, CCEA has published a page on its
26 website, entitled "Member Benefits & Discounts," that states: "Many of the benefits you'll enjoy
27 as an educator in Clark County came about as a direct result of efforts by the CCEA/NSEA/NEA
28 on behalf of its members." This webpage lists specific benefits of "NSEA membership" as well as

1 “NEA membership,” including a “\$1 million Educators Employment Liability Protection Policy”
2 and “NEA Complimentary Life[®] Insurance Benefits.” CCEA has included this webpage, and
3 these representations, on its website throughout 2017 and indeed prior to 2017.

4 **Answer:** Defendants deny the allegations in paragraph 30.

5 **31.** The membership enrollment form used by CCEA refers to an applicant’s
6 becoming a member of CCEA, NSEA, and NEA, and includes the logos of all three organizations
7 in the header. The same form contains the payroll deduction authorization. CCEA makes this
8 membership enrollment form available to members and prospective members on its website as
9 part of a three-page document, a true and correct copy of which is attached as Exhibit B. CCEA’s
10 website directs people to the hyperlink to Exhibit B by stating: “Joining CCEA is the first step to
11 peace of mind. Membership in CCEA/NSEA/NEA provides you the strength and support of a 3-
12 million member organization. To download the membership enrollment application form, please
13 click here.” On the first page of Exhibit B, which is entitled “Enrollment Form: CCEA, NSEA,
14 and NEA... Keeping the Promise of Quality Public Education,” CCEA states: “As a member of
15 CCEA, NSEA, and NEA you automatically have access to: ... NEA Complimentary Life
16 Insurance[®] — free to you as a membership benefit — up to \$50,000 in accidental death and
17 dismemberment insurance and a \$150,000 benefit for death due to homicide while actively
18 engaged in your occupation. (To activate your free complimentary life insurance coverage, please
19 complete the form in the back of the application.)” The third page of Exhibit B advertises in large
20 font “NEA Complimentary Life Insurance[®] Benefits” and “Free coverage for eligible members.”
21 The third page also includes a registration form which states that “NEA Complimentary Life
22 Insurance[®] is an automatic benefit for eligible NEA members” and includes the following
23 verification above the signature line: “By signing this form, I verify that I am a member in good
24 standing of the National Education Association.”

25 **Answer:** Defendants deny the allegations in paragraph 31.

26 **32.** CCEA has posted Exhibit B on its website since 2015, if not earlier, and
27 continuing through February 2018.

28 **Answer:** Defendants deny the allegations in paragraph 32.

1 **33.** Defendant Victoria Courtney has stated that the membership enrollment form
2 provides notice to prospective members that they are joining CCEA, NSEA, and NEA.

3 **Answer:** Defendants deny the allegations in paragraph 33.

4 **34.** In inducing teachers to become CCEA/NSEA/NEA members and inducing
5 members to authorize payment of their dues by payroll deduction, CCEA has represented that the
6 deducted dues would pay for the membership fee not just in CCEA but also in NSEA and NEA.

7 **Answer:** Defendants deny the allegations in paragraph 34

8 **35.** CCEA made the representations referenced in Paragraphs 30-34 for the purpose of
9 inducing teachers to join CCEA and to authorize the payroll deduction of their
10 CCEA/NSEA/NEA dues.

11 **Answer:** Defendants deny the allegations in paragraph 35.

12 **36.** Plaintiff Di Archangel attended a new teacher orientation on January 20, 2011, at
13 the Teacher's Health Trust building, located at 2950 E Rochelle Ave, Las Vegas, NV 89121.
14 Representatives of CCEA were present at the orientation. CCEA prepared and distributed to Di
15 Archangel a packet of new-hire information, which included messages on behalf of CCEA. On a
16 page entitled "Unified Membership and Its Benefits to You," CCEA stated that "[m]any of the
17 benefits you'll enjoy as an educator in Clark County came about as a direct result of efforts by the
18 CCEA/NSEA/NEA on behalf of its members." CCEA then listed various benefits associated with
19 "Your NSEA membership" and "Your NEA membership" and stated on the following page that
20 "[a]ll these member benefits have been specifically designed by CCEA/NSEA/NEA to promote
21 and support professional working conditions for members. By joining the CCEA/NSEA/NEA,
22 you become a member of the largest group of professional educators—more than 3.2 million
23 strong. Join CCEA/NSEA/NEA today."

24 **Answer:** Defendants deny the allegations in paragraph 36.

25 **37.** Included with the packet of materials CCEA gave to Plaintiff Di Archangel on
26 January 20, 2011 was a pamphlet describing the NEA Educators Employment Liability Program.
27 This program, known also by its abbreviation as the NEA EEL Program, provides professional
28 liability insurance with respect to job-related civil suits brought against NEA members. The EEL

1 Program in Nevada is administered by NSEA. The pamphlet in the packet CCEA gave to Di
2 Archangel states that the “NEA EEL Program is a professional liability program that is provided
3 by NEA as a benefit of membership” and further states that “[t]he entire premium for the program
4 is paid by the NEA.”

5 **Answer:** Defendants admit the allegations in paragraph 37.

6 **38.** CCEA provided Plaintiff Di Archangel on January 20, 2011, with a membership
7 enrollment form. A true and correct copy of this document is attached in redacted form as Exhibit
8 C. The form appears to have been signed on behalf of CCEA by George Radich.

9 **Answer:** Defendants deny the allegations in paragraph 38.

10 **39.** On the basis of CCEA’s representations described in the preceding paragraphs—
11 both express and implied—Plaintiff Di Archangel chose to become a CCEA/NSEA/NEA member
12 and consented to payroll deduction of the dues owed to those three associations. Plaintiff Di
13 Archangel became a CCEA/NSEA/NEA member primarily to obtain the legal coverage provided
14 through the EEL Program by NSEA and NEA. Ms. Di Archangel would not have signed up for
15 membership in CCEA nor consented to payroll deduction had CCEA not represented to her that,
16 by doing so, she would receive the benefits of NSEA and NEA membership, including the legal
17 protections offered by the EEL Program.

18 **Answer:** Defendants deny the allegations in paragraph 39.

19 **40.** After Ms. Di Archangel became a CCEA/NSEA/NEA member, CCEA stated that
20 it would be sending emails to members to keep them “abreast of information that impacts ...
21 [their] membership benefits with CCEA/NSEA/NEA.” But in 2017 CCEA neglected to inform
22 Ms. Di Archangel and other members of material information affecting their benefits with
23 CCEA/NSEA/NEA: namely, CCEA’s decision to jeopardize individuals’ membership in good
24 standing and NSEA and NEA benefits by choosing not to transmit the NSEA and NEA dues that
25 CCSD deducted from members’ paychecks and sent to CCEA.

26 **Answer:** Defendants deny the allegations in paragraph 40.

27 **41.** CCEA/NSEA/NEA members can withdraw their membership or withdraw their
28 consent to payroll deduction only during a two-week period from July 1st to 15th each year.

1 **Answer:** Defendants admit that CCEA members can withdraw their membership or
2 withdraw their consent to payroll deduction only during a two-week period
3 from July 1st to July 15th each year. Defendants deny the remaining
4 allegations in paragraph 41.

5 **42.** CCEA knew prior to this two-week period in July 2017 that it would take action
6 that would jeopardize its members' ability to maintain membership in good standing with NSEA
7 and NEA. And yet CCEA failed to keep members abreast of this material information affecting
8 their member benefits with CCEA/NSEA/NEA. To the contrary, CCEA throughout 2017
9 continued to advertise NSEA and NEA benefits on its website.

10 **Answer:** Defendants deny the allegations in paragraph 42

11 **43.** CCEA never corrected its material misrepresentations (a) that the dues deducted
12 from members' paychecks would pay for the membership fee in CCEA, NSEA, and NEA, or (b)
13 that by joining CCEA teachers would also join NSEA and be entitled to the benefits associated
14 with membership in NSEA and NEA. CCEA never corrected these misrepresentations despite
15 having a continuing duty to do so based upon, *inter alia*, CCEA's having induced teachers to join
16 CCEA and to consent to payroll deduction on the basis of these representations.

17 **Answer:** Defendants deny the allegations in paragraph 43.

18 **44.** Plaintiffs Murillo, Benson, and Di Archangel, in remaining CCEA members and in
19 continuing to consent to payroll deduction during the July 1-15, 2017, drop period (and thus for
20 the entire 2017-2018 school year), relied on CCEA's material misrepresentations or CCEA's
21 failure to disclose the material fact that it intended to take action that would jeopardize members'
22 access to NSEA and NEA benefits during the 2017-2018 school year.

23 **Answer:** Defendants deny the allegations in paragraph 44.

24 **45.** Jason Wyckoff attended a new teacher orientation on August 1, 2017, which took
25 place at the Mandalay Bay Convention Center, located at 3950 S Las Vegas Blvd, Las Vegas, NV
26 89119. CCEA organized the event and produced information packets for attendees, including for
27 Mr. Wyckoff. Hundreds of new teachers were in attendance, sitting around tables during a series
28

1 of presentations. Seated at each table was a CCEA representative. The CCEA representative
2 seated at Mr. Wyckoff's table was Chris Mitchell.

3 **Answer:** Defendants deny the allegations in paragraph 45.

4 **46.** CCEA provided Mr. Wyckoff on August 1, 2017 with the membership enrollment
5 form, a true and correct copy of which is attached in redacted form as Exhibit D.

6 **Answer:** Defendants deny the allegations in paragraph 46.

7 **47.** By providing the membership enrollment form to Mr. Wyckoff and the other new
8 teachers at the orientation, CCEA represented to them that individuals who joined CCEA would
9 also become members of NSEA and NEA, paying dues to all three organizations, and that, if the
10 member authorized payroll deduction, the deducted dues would pay for the membership fees in
11 CCEA, NSEA, and NEA.

12 **Answer:** Defendants deny the allegations in paragraph 47.

13 **48.** In the welcome packet prepared by CCEA for Mr. Wyckoff, CCEA included a
14 "Certificate of Insurance: Nevada State Education Association Educators Employment Liability
15 Insurance" that named "All Unified Members" as the insured and stated that the policy would
16 provide coverage starting September 1, 2017. By doing so, CCEA represented that, by signing up
17 to become a CCEA member, Mr. Wyckoff would be entitled to the insurance described in the
18 Certificate of Insurance, which bore a specific policy number, and that he would also be entitled
19 to other complimentary NEA and NSEA benefits.

20 **Answer:** Defendants deny the allegations in paragraph 48.

21 **49.** CCEA's representations described in the previous two paragraphs were false and
22 CCEA knew them to be false at the time. CCEA knew at the time both that it intended to
23 withhold NEA and NSEA dues and that it intended not to transmit Mr. Wyckoff's enrollment
24 information to NSEA and NEA. These misrepresentations on the part of CCEA were material.
25 And CCEA made these representations for the purpose of inducing Mr. Wyckoff to join CCEA
26 and to authorize the payroll deduction of his CCEA/NSEA/NEA dues.

27 **Answer:** Defendants deny the allegations in paragraph 49.

50. Mr. Wyckoff joined CCEA to obtain NSEA and NEA member benefits, including the liability insurance. He would not have joined CCEA nor authorized payroll deduction but for CCEA's misrepresenting that Mr. Wyckoff, by submitting his membership enrollment form and authorizing payroll deduction, would be joining CCEA, NSEA, and NEA, that the dues deducted from his paycheck would fully fund his NSEA and NEA dues obligations, and that he would have access to NSEA and NEA member benefits, including to the Nevada State Education Association Educators Employment Liability Insurance as to which CCEA gave him a certificate of insurance.

Answer: Defendants deny the allegations in paragraph 50.

51. In addition to not transmitting to NSEA the NSEA and NEA dues deducted from Mr. Wyckoff's paycheck, CCEA has failed to transmit Mr. Wyckoff's membership information to NSEA. That has prevented Mr. Wyckoff from enjoying the NSEA and NEA membership benefits that CCEA represented he could enjoy as a part of signing up with CCEA.

Answer: Defendants deny the allegations in paragraph 51.

52. Defendant John Vellardita has expressed his and CCEA's belief that the result of CCEA's not transmitting to NSEA the membership forms or information of new members like Mr. Wyckoff is that these individuals are not members of NSEA and NEA.

Answer: Defendants deny the allegations in paragraph 52.

COUNT ONE

(Breach of Contract – Dues Transmittal Agreement)

53. Plaintiffs incorporate by reference and re-allege the allegations of Paragraphs 1-52.

Answer: Defendants incorporate their Answers to the allegations of Paragraphs 1-52.

54. Because neither party has terminated the Dues Transmittal Agreement pursuant to its terms, that Agreement remains in force and is binding on CCEA at a minimum through the academic year 2017-18.

Answer: Defendants deny the allegations in paragraph 54.

1 **55.** In the alternative, any purported termination of the Dues Transmittal Agreement
2 on the part of CCEA was ineffective under that agreement, which states that “should any
3 provision of the agreement conflict with any policy or amendment to the Constitution and Bylaws
4 adopted by the NSEA ... or with any procedure and/or requirement adopted by the NSEA Board
5 of Directors ..., such policy, amendment, procedure or requirement shall prevail and the
6 conflicting provision in this agreement shall be automatically amended to reflect the prevailing
7 policy, amendment, procedure or requirement.” Because the NSEA Bylaws include the
8 requirement that local affiliates “[h]ave a dues transmittal contract with NSEA,” the termination
9 provision of the Dues Transmittal Agreement was therefore “automatically amended” to permit
10 termination of the agreement only upon conclusion of a successor “dues transmittal contract.” For
11 this reason as well, the Dues Transmittal Agreement remains in effect.

12 **Answer:** Defendants deny the allegations in paragraph 55.

13 **56.** The Dues Transmittal Agreement requires CCEA, as the agent of NSEA, to collect
14 from its members, including by the receipt of payroll deduction payments from CCSD, the dues
15 owed by these members to NSEA and NEA, and to transmit these funds to NSEA on a monthly
16 basis.

17 **Answer:** Defendants deny that a dues transmittal agreement is in effect.

18 **57.** Notwithstanding this contractual obligation, CCEA has since October 1, 2017,
19 failed and refused to transmit to NSEA the NSEA/NEA portion of dues collected from members,
20 including the September 2017, member dues paid by payroll deduction and transmitted to CCEA
21 by CCSD on October 1, 2017. CCEA has furthermore made clear that it intends to refuse to
22 transmit further dues payments to NSEA as required by the Dues Transmittal Agreement, and that
23 it instead intends to keep the NSEA and NEA portion of member dues for its own use.

24 **Answer:** Defendants deny the allegations in paragraph 57.

25 **58.** The Dues Transmittal Agreement provides that any controversy arising under it
26 “may” be submitted to arbitration, but it does not require the parties to do so, stating that if
27 “neither party has initiated arbitration, this agreement may be enforced in the courts of Nevada.”
28

1 Neither NSEA nor CCEA has initiated arbitration. NSEA has elected to bring its claim under the
2 Dues Transmittal Agreement in this judicial forum.

3 **Answer:** Defendants admits the allegations in paragraph 58.

4 **COUNT TWO**

5 **(Breach of Contract - NSEA Bylaws)**

6 **59.** Plaintiffs incorporate by reference and re-allege the allegations of Paragraphs 1-58.

7 **Answer:** Defendants incorporate their Answer to the allegations of Paragraphs 1-58.

8 **60.** NSEA's Bylaws constitute a contract between NSEA and its affiliated local
9 associations, including CCEA.

10 **Answer:** Defendants admit the allegations in paragraph 60.

11 **61.** As CCEA has acknowledged in its September 13, 2017, filing with this Court,
12 NSEA's Bylaws "provide that a local affiliate such as CCEA is to maintain a dues transmittal
13 contract with NSEA for the purpose of transmitting dues payments to NSEA."

14 **Answer:** Defendants admit the allegations in paragraph 61.

15 **62.** By purporting to terminate its Dues Transmittal Agreement with NSEA without
16 having a successor contract in place, by failing and refusing to negotiate in good faith for a
17 successor agreement, by asserting that it has no obligation to transmit the NSEA and NEA
18 portions of membership dues to NSEA, and by refusing to transmit those dues, CCEA has
19 breached its contractual obligation under the NSEA Bylaws.

20 **Answer:** Defendants deny the allegations set forth in paragraph 62.

21 **COUNT THREE**

22 **(Breach of Contract - NEA Bylaws)**

23 **63.** Plaintiffs incorporate by reference and re-allege the allegations of Paragraphs 1-62.

24 **Answer:** Defendants incorporate their Answer to the allegations of Paragraphs 1-62.

25 **64.** NEA's Bylaws constitute a contract between NEA and its affiliated state and local
26 associations, including CCEA.

27 **Answer:** Defendants admits the allegations in paragraph 64.

65. NEA's Bylaws require that local affiliates "have the full responsibility for transmitting state and [NEA] dues to state affiliates on a contractual basis."

Answer: Defendants deny the allegations in paragraph 65.

66. By purporting to terminate its Dues Transmittal Agreement with NSEA without having a successor contract in place, by failing and refusing to negotiate in good faith for a successor agreement, by asserting that it has no obligation to transmit the NSEA and NEA portions of membership dues to NSEA, and by refusing to transmit those dues, CCEA has breached its contractual obligation under the NEA Bylaws.

Answer: Defendants deny the allegations in paragraph 66.

COUNT FOUR

(Breach of Contract - CCEA Bylaws)

67. Plaintiffs incorporate by reference and re-allege the allegations of Paragraphs 1-66.

Answer: Defendants incorporate their Answers to the allegations of Paragraphs 1-66.

68. The CCEA Bylaws constitute a contract between CCEA and its members, including Plaintiffs Murillo, Benson, and Di Archangel.

Answer: The Defendants admit the allegations in paragraph 68.

69. Article X, § 1 of CCEA’s Bylaws provides that CCEA “shall maintain affiliate status with the [NEA] and the [NSEA] under the required procedures of each organization.” Those “required procedures” include NEA’s Bylaw provision that local affiliates “have the full responsibility for transmitting state and [NEA] dues to state affiliates on a contractual basis,” as well as NSEA’s Bylaw provision requiring that local affiliates “[h]ave a Dues Transmittal Agreement with NSEA.”

Answer: Defendants deny the allegations in paragraph 69.

70. By purporting to terminate the Dues Transmittal Agreement without having a successor contract in place, by failing and refusing to negotiate in good faith for a successor agreement, by asserting that it has no obligation to transmit the NSEA and NEA portions of membership dues to NSEA, and by refusing to transmit those dues, CCEA has violated its Bylaws and thus breached its contractual obligations to its members.

1 **Answer:** Defendants deny the allegations in paragraph 70.

2 **71.** As a result of this breach of contract, Plaintiffs Murillo, Benson, and Di
3 Archangel, and other CCEA members, are no longer NEA members in good standing and are
4 losing valuable benefits that are available to them as NEA members in good standing, including
5 life insurance and other benefits.

6 **Answer:** Defendants deny the allegations in paragraph 71.

7 **72.** Plaintiffs Murillo, Benson, and Di Archangel have no recourse through CCEA
8 internal procedures by which this violation of CCEA's Bylaws could be remedied.

9 **Answer:** Defendants deny the allegations in paragraph 72.

10 **COUNT FIVE**

11 **(Unjust Enrichment)**

12 **73.** Plaintiffs incorporate by reference and re-allege the allegations of Paragraphs 1-72.

13 **Answer:** Defendants incorporate their Answers to the allegations of Paragraphs 1-
14 72.

15 **74.** In the alternative (if CCEA is deemed not to be bound by a written contract),
16 CCEA has been unjustly enriched by its retention of membership dues owed to NSEA and NEA,
17 and should be required to disgorge these funds to which it has no legal entitlement.

18 **Answer:** Defendants denies the allegations in paragraph 74.

19 **75.** By keeping NEA/NSEA dues for itself, CCEA has retained a benefit which in
20 equity and good conscience belongs to another.

21 **Answer:** Defendants denies the allegations in paragraph 75.

22 **76.** By paying dues to CCEA that include NEA/NSEA dues, Plaintiffs Murillo,
23 Benson, and Di Archangel have conferred a benefit on CCEA, which CCEA appreciates as a
24 benefit and which CCEA has accepted and retained even though the benefit does not belong to it.

25 **Answer:** Defendants denies the allegations in paragraph 76.

26 **77.** By permitting CCEA to collect dues in the name and on behalf of NSEA and
27 NEA, NSEA has conferred a benefit on CCEA. CCEA understands that this arrangement is a
28

benefit and has retained the NSEA and NEA dues so collected, which in equity and good conscience belong to NSEA and NEA.

Answer: Defendants denies the allegations in paragraph 77.

COUNT SIX

(Conversion)

78. Plaintiffs incorporate by reference and re-allege the allegations of Paragraphs 1-77.

Answer: Defendants incorporate their Answers to the allegations of Paragraphs 1-77.

79. For decades CCEA has served as the collection agent for the dues its members owe to NSEA and NEA. CCEA's members owe these dues to NSEA and NEA, not to CCEA, which has served merely as collection agent.

Answer: Defendants denies the allegations in paragraph 79.

80. The monthly dues CCEA has historically remitted to NSEA are personal property belonging to NSEA and NEA. These dues are not the personal property of CCEA.

Answer: Defendants deny the allegations in paragraph 80.

81. By choosing to keep these dues, CCEA has performed a distinct act of dominion wrongfully exerted over NSEA's and NEA's personal property in defiance of their rights to that property.

Answer: Defendants deny the allegations in paragraph 81.

82. CCEA's keeping dues money that does not belong to it constitutes the conversion of NSEA's and NEA's personal property.

Answer: Defendants deny the allegations in paragraph 82.

COUNT SEVEN

(Fraud)

83. Plaintiffs incorporate by reference and re-allege the allegations of Paragraphs 1-82.

Answer: Defendants incorporate their Answers to the allegations of Paragraphs 1-82 and reserve the right to answer paragraphs 84 to 91 pending resolution of the motion to dismiss.

1 **84.** Defendants were under a duty to disclose, in advance of July 15, 2017, facts
2 material to whether existing members—including Plaintiffs Ruben Murillo, Robert Benson, and
3 Diane Di Archangel—would maintain their consent to payroll deduction and remain members of
4 CCEA. Because July 1-15, 2017 constituted the only opportunity for existing members to resign
5 their CCEA membership or withdraw their consent to payroll deduction for the 2017-2018 school
6 year, Defendants’ duty to disclose applied to matters expected to occur during the 2017-2018
7 school year.

8 **85.** In the lead-up to the July 1-15, 2017 drop period, Defendants concealed the
9 material fact that they intended to cease transmitting members’ NSEA and NEA dues to NSEA
10 during the upcoming school year, and that such an action would jeopardize members’ NEA and
11 NSEA member benefits by endangering their membership in good standing with NEA and
12 NSEA. Defendants concealed these facts to induce Plaintiffs not to alter their membership status
13 or their consent to payroll deduction during the July 2017 drop period.

14 **86.** CCEA has made various material representations, both express and implied, to
15 Plaintiffs Murillo, Benson, Di Archangel, and Wyckoff that are false. As detailed above, CCEA
16 represented (a) that the dues deducted from members’ paychecks would pay for the membership
17 fee not just in CCEA but also in NSEA and NEA, (b) that by joining CCEA teachers would also
18 join NSEA and be entitled to the benefits associated with membership in NSEA and NEA, (c) that
19 Plaintiff Wyckoff, by completing the membership enrollment form, would be covered by the
20 insurance policy as to which CCEA provided him a “Certificate of Insurance” that stated that
21 insurance coverage was to begin on September 1, 2017, and (d) that, upon Mr. Wyckoff’s signing
22 the membership enrollment form, CCEA would take all necessary steps, including transmitting
23 Mr. Wyckoff’s membership information to NSEA, to ensure that Mr. Wyckoff received the
24 benefit of the NSEA and NEA membership to which he was entitled.

25 **87.** As to each of these representations, CCEA knew the representation was false
26 either at the time CCEA made the representation or at a later time when CCEA was under a duty
27 to disclose that its prior representation was no longer true.

88. CCEA intended to induce Plaintiffs Murillo, Benson, Di Archangel, and Wyckoff to rely on CCEA's misrepresentations (or its failure to disclose material facts) in order not only to join or remain a CCEA/NSEA/NEA member but also to consent or continue consenting to payroll deduction.

89. Plaintiffs Murillo, Benson, Di Archangel, and Wyckoff justifiably relied on CCEA's misrepresentations (or its failure to disclose material facts) in electing to become or remain CCEA members, in consenting to payroll deduction of the dues owed to CCEA, NSEA, and NEA, or in not withdrawing their consent to payroll deduction.

90. Plaintiffs Murillo, Benson, Di Archangel, and Wyckoff suffered damages as a consequence of either their relying on CCEA's material misrepresentations or on Defendants' concealing from them a material fact. Plaintiffs Murillo, Benson, Di Archangel, and Wyckoff have lost NSEA and NEA benefits to which they would have been entitled but for Defendants' actions, and they have been harmed, at a minimum, in the amount of the NSEA and NEA dues that CCEA obtained from them by their fraudulent conduct.

91. CCEA made similar material misrepresentations and Defendants similarly failed to disclose material facts to numerous other CCEA members, who similarly were injured by their reliance on those statements and omissions.

COUNT EIGHT

(Breach of Obligations under the Dues Transmittal Agreement
and Membership Enrollment Forms regarding the Collection of Dues)

92. Plaintiffs incorporate by reference and re-allege the allegations of Paragraphs 1-91.

Answer: Defendants incorporate their Answers to the allegations of Paragraphs 1-91 and reserve the right to answer paragraphs 93 to 102 pending resolution of the motion to dismiss.

93. In a letter dated April 26, 2018, Defendant Courtney and CCEA Vice-President Theo Small wrote to NEA and stated “[p]lease be advised that effective immediately CCEA is no longer affiliated with the National Education Association (NEA) and the Nevada State Education

1 Association (NSEA) and accordingly, we will no longer have any contractual relationships with
2 NEA and NSEA."

3 **94.** On information and belief, on or about April 26, 2018, CCEA sent a written
4 communication to CCSD requesting that CCSD change the amount of dues to be deducted from
5 teachers' paychecks from the annualized \$810.50 dues rate representing the aggregated CCEA,
6 NSEA, and NEA dues for the 2017-18 school year to a prorated annualized dues rate of \$510.

7 **95.** On information and belief, the annualized \$510 dues rate CCEA requested be
8 deducted is intended to represent only an increased CCEA dues rate, and CCEA intends to stop
9 collecting the NSEA and NEA dues payments.

10 **96.** CCEA is for the remainder of the 2017-2018 school year obligated to collect
11 NSEA and NEA dues pursuant to the Dues Transmittal Agreement.

12 **97.** CCEA's refusal to collect NSEA and NEA dues through authorized payroll
13 deduction is in breach of the Dues Transmittal Agreement.

14 **98.** Pursuant to the terms of the payroll deduction authorizations in the Membership
15 Enrollment Forms, signed by individual members and a CCEA agent, "[d]ues are paid on an
16 annual basis" and members are "obligated to pay the entire amount of dues for a membership
17 year."

18 **99.** The authorized dues represent the aggregated annualized dues permitting
19 memberships in all three organizations.

20 **100.** The purpose of the dues authorization on the Membership Enrollment Form is,
21 *inter alia*, to permit members to pay their annual dues in installments rather than in a single,
22 upfront payment.

23 **101.** The payroll deduction authorizations constitute contracts between members and
24 CCEA as to which NEA and NSEA are intended third-party beneficiaries.

25 **102.** CCEA's actions to stop collecting NSEA and NEA dues for the remainder of the
26 2017-18 school year is a breach of NEA's and NSEA's rights as third-party beneficiaries to the
27 teachers' payroll deduction authorizations.

1 **COUNT NINE**

2 **(Unauthorized Mid-Year Increase in CCEA Dues)**

3 **103.** Plaintiffs incorporate by reference and re-allege the allegations of Paragraphs 1-
4 102.

5 **Answer:** Defendants incorporate their Answers to the allegations of Paragraphs 1-
6 102 and reserve the right to answer paragraphs 104 to 108 pending
7 resolution of the motion to dismiss.

8 **104.** CCEA members, including the individual plaintiffs here, only authorized the
9 deduction of dues "as established annually" for the "membership year." They did not authorize
10 the deduction of dues that exceed the amount of dues established annually for a membership year.

11 **105.** CCEA dues established for the 2017-18 membership year are \$243.84. The 2017-
12 18 membership year ends August 31, 2018.

13 **106.** CCEA is now purporting to raise CCEA annualized dues effective immediately
14 from \$234.84 to \$510 for the remainder of the 2017-18 school year.

15 **107.** The attempt to cause the deduction of higher CCEA dues from individual
16 Plaintiffs' paychecks in the middle of the 2017-18 membership year violates the Membership
17 Enrollment Forms, which do not authorize the deduction of any dues besides those "established
18 annually" for the "membership year."

19 **108.** The individual Plaintiffs, as CCEA members, are or will imminently be injured
20 CCEA's increases of CCEA dues for the remainder of the 2017-18 school year through payroll
21 deduction.

22 Defendants hereby give notice that they intend to rely on such other and further defenses
23 as may become available during discovery and reserve the right to amend this Answer to assert
24 such defenses.

25 **AFFIRMATIVE DEFENSES**

26 Defendants hereby give notice that they intend to rely on such other and further defenses
27 as may become available during discovery and reserve the right to amend this Answer to assert
28 such defenses.

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First Affirmative Defense

Defendants state as an affirmative defense that there is no obligation to transmit dues payments to the NSEA and the NEA in the absence of a negotiated dues transmittal agreement.

Second Affirmative Defense

Defendants state as an affirmative defense that they have not exercised dominion or control over the dues payments deducted from employee paychecks for NSEA and NEA because those funds have been placed into a restricted account for the duration of this litigation.

Third Affirmative Defense

Defendants state as an affirmative defense that Plaintiffs have breached their fiduciary duties owed to Defendants.

Fourth Affirmative Defense

Defendants state as an affirmative defense that the dues forms which employees have signed for payroll deductions do not state that dues are to be sent to the NSEA or the NEA.

Fifth Affirmative Defense

Defendants state as an affirmative defense that the Plaintiffs have unclean hands and are not entitled to equitable relief.

Sixth Affirmative Defense

Defendants state as an affirmative defense that Plaintiffs Ruben Murillo, Robert Benson, and Diane Di Archangel have not alleged or suffered any injury and that Defendants have not caused any injury to the same.

Seventh Affirmative Defense

Defendants state as an affirmative defense that Plaintiffs breached the express terms and the covenant of good faith and fair dealing of the contracts, if any, between Plaintiffs and Defendants.

Eighth Affirmative Defense

Defendants state as an affirmative defense that they have not engaged in a fraud because their actions have been consistent with the terms of the contractual arrangements between the

1 parties, and there is no dues transmittal agreement in effect under which the CCEA is required to
2 transmit dues to the NSEA and the NEA.

3 **Ninth Affirmative Defense**

4 Plaintiff Benson had a break in membership with the CCEA that should have made him
5 ineligible to be a member of the NSEA Board of Directors.

6 **Tenth Affirmative Defense**

7 NSEA and NEA has terminated all benefits and legal representation of CCEA members as
8 of December 1, 2017, and any dues payments to NSEA and NEA for the period of time in which
9 it has provided no benefits or legal representation would constitute unjust enrichment.

10 **SECOND AMENDED COUNTERCLAIM**¹

11 Defendants/Counterclaimants Clark County Education Association (“CCEA”), John
12 Vellardita (“Vellardita”), and Victoria Courtney (“Courtney”, and collectively with CCEA and
13 Vellardita, the “CCEA Parties”) by and through their counsel, Snell & Wilmer L.L.P.,
14 McCracken Stemerman & Holsberry, LLP, and Asher, Gittler & D’Alba, Ltd., file this Second
15 Amended Counterclaim as a mandatory and permissive counterclaim pursuant to Rule 13 of the
16 Nevada Rules of Civil Procedure to challenge the Nevada State Education Association’s
17 (“NSEA”) and the National Education Association’s (“NEA”) failure to comply with the terms of
18 the Service Agreement between the parties, which NSEA and NEA claim survived CCEA’s
19 termination. If the Service Agreement survived termination/expiration, NSEA and NEA have
20 materially breached the Service Agreement and have breached the implied covenant of good faith
21 and fair dealing.

22 **COUNTERCLAIM**

23 **I. Parties, Jurisdiction, and Venue**

24 1. The CCEA is an employee organization that serves as the local voice for education
25 to advance the cause of education, promote professional excellence among educators, to protect
26 the rights of educators and advance their interests and welfare, secure professional autonomy,

27
28 ¹ This Second Amended Counterclaim is identical to the Second Amended Counterclaim filed by the
CCEA Parties on June 14, 2018 and does not include any new claims or fact allegations.

1 unite educators for active citizenship, promote and protect human and civil rights and act as the
2 recognized bargaining agent for licensed personnel in Clark County, and to improve the wages,
3 hours and terms and conditions of employment for the employees it represents. The CCEA is
4 organized as a voluntary association of three or more persons as a Nevada domestic non-profit
5 cooperative corporation without stock pursuant to the provisions of Nevada Revised Statutes.

6 2. John Vellardita is the Executive Director of the CCEA.

7 3. Victoria Courtney is the elected president of the CCEA and is listed on the Nevada
8 Secretary of State business entity profile for CCEA as having an address in Clark County,
9 Nevada.

10 4. The CCEA is a recognized employee organization within the meaning of the
11 Nevada Revised Statutes and is authorized to engage in collective bargaining negotiations over
12 wages, hours, and working conditions, as provided by Nevada law. CCEA has its principal place
13 of business in Clark County Nevada.

14 5. CCEA files this action on behalf of the CCEA members and as a compulsory and
15 permissive counterclaim under Rule 13 of the Rules of Civil Procedure for the Nevada District
16 Courts. CCEA represents thousands of licensed professional employees of the Clark County
17 School District.

18 6. Counterdefendant NSEA is a voluntary association of three or more persons
19 authorized pursuant to Nevada law as a domestic non-profit cooperative corporation without
20 stock. NSEA has its principal place of business in Carson City, Nevada.

21 7. Counterdefendant Robert Benson is named as an individual defendant and in the
22 official capacity as an elected director of the NSEA and is listed on the Nevada Secretary of State
23 business entity profile for NSEA as having an address in Clark County, Nevada.

24 8. Counterdefendant Ruben Murillo, is named as an individual defendant and in the
25 official capacity as the elected president of the NSEA and is listed on the Nevada Secretary of
26 State profile for NSEA as having an address in Clark County, Nevada.

27 9. Counterdefendant Diane Di Archangel is named as an individual defendant and in
28 the official capacity as an elected officer of the NSEA.

- 1 10. Counterdefendant Brian Lee is the Executive Director of the NSEA.
- 2 11. The events at issue in this case occurred in Clark County, Nevada.
- 3 12. The construction, validity, performance, terms and provisions of the contract at
4 issue in this Complaint are governed by Nevada law.
- 5 13. The contract at issue in this Complaint was to be carried out in Clark County,
6 Nevada.
- 7 14. The amount in controversy is in excess of \$15,000.
- 8 15. This Court has personal jurisdiction over the parties pursuant to NRS 14.065;
9 subject matter jurisdiction over this dispute; and the Eighth Judicial District Court is the
10 appropriate venue.

11 **II. General Allegations**

12 16. The CCEA is a local teacher association that engages in the representation of
13 licensed professional employees, including teachers and other licensed professional employees
14 for the purposes of collective bargaining and the negotiation of wages, hours and working
15 conditions with the Clark County School District. The CCEA is a local affiliate of the NSEA and
16 has been granted that status by the NSEA Delegate Assembly and/or the Board of Directors of the
17 NSEA.

18 17. The CCEA has thousands of members, has at least one general meeting each year,
19 and has adopted Bylaws consistent with the Bylaws of the NSEA in the parent organization. The
20 CCEA elects officers, elects delegates to the NSEA Delegate Assembly, and has submitted to the
21 NSEA on a regular basis its list of officers, school representatives, and local committee members.

22 18. On or about June 26, 1999, NSEA and CCEA entered into a Service Agreement
23 regarding the respective services they would provide to one another and their respective
24 members.

25 19. The term of the Service Agreement is from September 1 to August 31, and it is
26 subject to automatic renewal on an annual basis, unless either party shall give written notice to the
27 other no later than thirty (30) days prior to the anniversary date of the agreement. If either party
28

1 gives notice as provided in the agreement, then "... it shall terminate on the anniversary date
2 when a successor agreement has been mutually agreed to by the parties.

3 20. The Service Agreement provides that "CCEA agrees to transmit to NSEA and [an
4 affiliate organization, the National Education Association ("NEA")] dues, and NSEA-T1P and
5 NSEA-PAC contributions to NSEA for each by the tenth business day following the payroll
6 deductions." It also authorized CCEA to collect dues from members for transmittal to NSEA.

7 21. The Service Agreement also provides "NSEA will transmit NEA UniServ grant to
8 CCEA for the employment of nine local UniServ Staff. Additional grants shall be transmitted as
9 CCEA qualifies for funding."

10 22. The Service Agreement further provides: "For each UniServ unit eligible for
11 funding, NSEA will transmit to CCEA the grant amount per unit provided in the UniServ
12 Agreement between NEA/NSEA and CCEA."

13 23. The Service Agreement also provides: "NSEA will transmit an amount equal to
14 60% of the NEA per unit funding for each eligible UniServ Unit. NSEA funding will increase
15 proportionately as CCEA qualifies for additional Uniserve Units."

16 24. The Service Agreement also provides: "For each unit funded under the UniServ
17 Grant Program, NSEA will transmit an annual urban growth grant of \$20,000."

18 25. In addition, the NSEA Policies dated July 19, 2017, provide for the UniServ Grant
19 money that funds a large percentage of the cost of CCEA's UniServ Staff who provide advocacy,
20 representation, and organization of members.

21 26. NSEA provides all other local unions the grant to pay 100% of their Uniserv Staff
22 costs.

23 27. Under the Service Agreement, NEA and NSEA are also obligated to "provide
24 Association Professional Liability (APL) for all CCEA elected officers and professional staff."

25 28. The Service Agreement further provides that "CCEA member rights and
26 organization rights cases will be funded according to the NSEA Legal Services Policy."
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1 29. In addition, the Legal Services Policy of the NSEA Policies dated July 19, 2017,
2 provides for legal costs that cover contract arbitrations, class action arbitration, Employee
3 Management Relations Board cases, dismissals, suspensions, and criminal charges.

4 30. NSEA and NEA also provide CCEA members NEA complimentary life insurance
5 benefits.

6 31. Addendum A to the Service Agreement provides for the actual designation of the
7 CCEA as the authorized agent for the purpose of collecting and transmitting NSEA and NEA
8 dues and membership data.

9 32. Enforcement provisions of the dues transmittal schedule provide for a one percent
10 penalty in the case of a delinquency of more than thirty days.

11 33. Members of CCEA pay dues to CCEA, NSEA, and NEA through dues payments
12 deducted from their pay checks by the employer, the Clark County School District, pursuant to a
13 collective bargaining agreement between the CCEA and the School District. Dues payments are
14 directed to CCEA by the School District.

15 34. Pursuant to Addendum A to the Service Agreement, all dues of CCEA members
16 that are collected by CCEA are to be transmitted in proportioned amounts to NSEA, and that at
17 all material times herein CCEA members contributed \$377.66 per year per teacher to NSEA,
18 pursuant to the NSEA Policies that had been deducted by payroll deductions by the Clark County
19 School District and \$189 per year per teacher to the NEA.

20 35. The payroll deductions of dues payments were made pursuant to a collective
21 bargaining agreement between CCEA and the Clark County School District and were sent to
22 CCEA.

23 36. The August 11, 2015, Bylaws of NSEA provide that a local affiliate such as CCEA
24 is to maintain a dues transmittal contract with NSEA for the purpose of transmitting dues
25 payments to NSEA.

26 37. On May 3, 2017, CCEA Executive Director, John Vellardita, notified NSEA,
27 through Lee, that the CCEA was terminating the Service Agreement under which the CCEA
28 members' dues payments have been transmitted to the NSEA and requested renegotiation of the

1 agreement. The Service Agreement was to expire on August 31, 2017, and was subject to
2 termination by written notice to the NSEA no later than thirty (30) days prior to the anniversary
3 date of the agreement (September 1, 2017).

4 38. Addendum A is an integral part of the Service Agreement and was subject to the
5 May 3, 2017, termination notice and request to renegotiate.

6 39. CCEA sent NSEA subsequent correspondence notifying NSEA of its intent to
7 terminate the Service Agreement, and its Addendum A, on July 17 and August 3, 2017.

8 40. Specifically, CCEA formally gave notice to renegotiate Addendum A pursuant to
9 the Service Agreement, effectively terminating the Contract.

10 41. CCEA further requested to renegotiate the Service Agreement pursuant to the
11 Agreement, effectively terminating the Service Agreement.

12 42. Despite numerous dates and attempts by CCEA to renegotiate prior to the
13 termination dates of the Service Agreement and Contract for Dues Remittance, NSEA refused to
14 negotiate.

15 43. The Parties were unable to agree upon a successor agreement to the Service
16 Agreement and dues transmittal agreement before September 1, 2017.

17 44. Accordingly, the Service Agreement and its corresponding Addendum A, expired
18 and terminated on September 1, 2017.

19 45. Nevertheless, on September 4 and 6, CCEA again requested that the NSEA
20 renegotiate the Service Agreement and its Addendum A.

21 46. NSEA finally accepted a date to meet for September 18, 2017, 18 days after the
22 termination of the Agreements.

23 47. Representatives of CCEA and NSEA met for the purpose of negotiating a new
24 dues transmittal agreement, but CCEA was told at the table that NSEA had no intention of
25 renegotiating, and an agreement was not reached.

26 48. On July 26, 2017 and September 4, 2017, Lee asserted that the policies of NSEA
27 provide for affiliate agreements under which dues payments are to be submitted by CCEA to
28 NSEA and that the Service Agreements are no longer available to a local affiliate such as CCEA.

1 49. The August 11, 2015, NSEA Bylaws and the Bylaws of the affiliate organization,
2 NEA, require that a payroll deduction is contingent upon the existence of a valid dues transmittal
3 contract. Under the CCEA Bylaws and the NSEA Bylaws, a local association shall become an
4 affiliate of the NSEA when it meets the minimum standards as stated above.

5 50. Prior to September 1, 2017, NSEA paid CCEA for its legal costs in accordance
6 with its Legal Services Policy and the Service Agreement.

7 51. Since September 1, 2017, CCEA has submitted funding applications to NSEA in
8 the same manner it did prior to termination of the Service Agreement. NSEA has either denied the
9 requests or simply not responded.

10 52. Since September 1, 2017, CCEA has contracted with a different law firm as its
11 participating law firm and have paid legal costs itself. CCEA's law firm change was necessitated
12 by a conflict of interest asserted by CCEA.

13 53. There is currently no contract between NSEA and CCEA to collect and transmit
14 dues.

15 54. The definition of affiliate agreements in the NSEA policies does not refer to the
16 payment of dues from a local affiliate. Rather, the affiliate agreement definition refers to "mutual
17 agreements that establish or confirm programs, training and other activities that or not addressed
18 by NSEA policy or governing documents."

19 55. The dues transmittal contract is an agreement that is required by the August 11,
20 2015, NSEA Bylaws (Article VIII Section 3 (F)) and governing documents and the NEA Bylaws
21 (Section 2-9).

22 56. The affiliate agreement referred to by Lee is not a dues transmittal contract that
23 allows for the transmittal of member's dues from CCEA to NSEA.

24 57. Since September 1, 2017, Dues designated for NSEA in the amount of 0.6 percent
25 of the teachers' average salary and dues money for NEA have been deducted from paychecks of
26 the licensed professionals of the Clark County School District and have been placed in a restricted
27 account with specific instructions that there can be no withdraws from the account except upon a
28

1 Court order from Department 31 of the Eighth Judicial District Court authorizing such
2 withdrawal.

3 **FIRST CLAIM FOR RELIEF**

4 ***Breach of Contract***

5 58. Counterclaimants incorporate every allegation contained in the preceding
6 paragraphs.

7 59. CCEA maintains that the Service Agreement and its Addendum A were terminated
8 effective September 1, 2017.

9 60. In the alternative, to the extent the Court determines that the Service Agreement
10 did not terminate and is a valid and enforceable contract, NSEA breached the Service Agreement.

11 61. NSEA breached the Service Agreement by failing or otherwise refusing to
12 reimburse CCEA for UniServ Grants for the 2017-2018 school year, as required under the Service
13 Agreement and consistent with its Policies and its previous course of conduct.

14 62. NSEA breached the Service Agreement and its Policies, as demonstrated by its
15 previous course of conduct, by failing or otherwise refusing to reimburse CCEA for legal
16 expenses incurred as a result of an impasse arbitration with the Clark County School District.

17 63. NSEA breached its agreement with CCEA, as demonstrated through its Policies
18 and its previous course of conduct, by failing to reimburse CCEA for legal services not funded,
19 both prior to the litigation and during the litigation, where funding was denied due to the
20 litigation. Cases include Employee-Management Relation Board (EMRB) cases, dismissal
21 arbitrations, and Class Action arbitrations.

22 64. NSEA breached its agreement with CCEA, as demonstrated through its Policies
23 and its previous course of conduct, by failing to reimburse CCEA to a member organizing grant
24 NSEA approved in the fall of 2016 for use during the 2017 New Hire Orientation event.

25 65. NSEA breached its agreement with CCEA, as demonstrated through its Policies
26 and its previous course of conduct, by failing to reimburse CCEA for lobbying services rendered
27 for the 2017 legislative session.

66. NSEA breached its obligations to CCEA and its members by terminating the related life insurance and professional liability insurance policies.

67. Nevada law requires a 60-day written notice of cancellation of an individual or group insurance professional liability insurance policy. The notice of cancellation must be in writing.

68. No notice was given to members of CCEA to advise them of a cancellation of such insurance policy rights.

69. The cancellation of these insurance benefits without proper notice is a violation of Nevada insurance law.

70. As a direct and proximate result of NSEA breaches of the Service Agreement, CCEA has been damaged in excess of fifteen thousand dollars (\$15,000.00) and is entitled to recover same from NSEA as compensatory damages, together with interest thereon.

71. As a further direct and proximate result of NSEA's breaches of the Service Agreement, CCEA has been compelled to retain counsel and has incurred attorneys' fees and costs to enforce its rights, and is entitled to recover same from NSEA, together with interest thereon.

SECOND CLAIM FOR RELIEF

Breach of the Covenant of Good Faith and Fair Dealing

72. Counterclaimants incorporate every allegation contained in the preceding paragraphs.

73. It is well established in Nevada that every contract imposes upon the contracting parties the duty of good faith and fair dealing.

74. Under the Service Agreement, NSEA's August 11, 2015, Bylaws, and the previous course of conduct between the parties prior to September 1, 2017, NSEA and NEA owed a duty of good faith and fair dealing to CCEA.

75. Moreover, CCEA and NEA have a special contractual relationship in that the CCEA is a local affiliated labor organization of the statewide labor organization NSEA.

1 76. This special contractual relationship is based upon the NSEA bylaws and related
2 rules that provide, *inter alia*, for NSEA to follow fiduciary responsibilities for financial and
3 operational standards and disclose to its local affiliated labor organizations financial information
4 that is complete, accurate and appropriate as to how dues contributions from CCEA members are
5 spent on all NSEA programs, including but not limited to member benefits, employee organizing,
6 legislation, lobbying activities, political contributions, salaries, and administrative expenses.

7 77. As a result of this special relationship between the CCEA and NSEA, there is a
8 covenant of good faith and fair dealing that applies to the contractual relationship between CCEA
9 and NSEA.

10 78. NSEA and NEA breached their duty by performing in a manner unfaithful to the
11 purpose of the Service Agreement.

12 79. NSEA and NEA breached their duty by failing to reimburse CCEA for expenses
13 that are included in the Service Agreement and expenses that NSEA and NEA have paid on the
14 basis of past practices.

15 80. NSEA and NEA's actions are counter to the purpose and intent of the Service
16 Agreement.

17 81. NSEA and NEA thus denied CCEA's justified expectations under the Service
18 Agreement.

19 82. As a direct and proximate result of NSEA and NEA's breach of the covenant of
20 good faith and fair dealing, CCEA has been damaged in excess of fifteen thousand dollars
21 (\$15,000.00) and is entitled to recover same from NSEA and NEA as compensatory damages,
22 together with interest thereon.

23 83. As a further direct and proximate result of NSEA and NEA's breach of the
24 covenant of good faith and fair dealing, CCEA has been compelled to retain counsel and has
25 incurred attorneys' fees and costs to enforce its rights, and is entitled to recover same from NSEA
26 and NEA, together with interest thereon.

THIRD CLAIM FOR RELIEF

Breach of Contract and Fiduciary Duty

84. Counterclaimants incorporate every allegation contained in the preceding paragraphs.

85. The August 11, 2015, NSEA Bylaws constitute a contractual relationship between the NSEA and its local affiliate, the CCEA, and this contractual relationship requires that the officers of the NSEA be responsible for its general management including submitting a proposed budget for the NSEA to the delegate assembly for adoption and subsequent amendment as needed between delegate assemblies.

86. The Board of Directors has the authority pursuant to the bylaws to originate NSEA policy and to report all policy decisions to the Delegate Assembly. These policies are an inherent part of the NSEA bylaws and include specific fiduciary responsibilities for financial and operational standards.

87. NSEA, through its bylaws, acknowledges that it has, through its officers and executive director, a special responsibility to ensure the integrity, honesty and reputation of the association and to treat association resources with the utmost care and to adhere to the highest of ethical standards. These bylaws place fiduciary responsibilities on the NSEA officers. These duties are owed to CCEA, its officers, and its members.

88. NSEA bylaws provide for the compliance with these fiduciary standards and to “exercise appropriate fiduciary responsibilities over Association resources and provide Association constituents with information that is complete, accurate and appropriate.” This obligation to maintain the highest standards of quality and financial reporting through business ethics and effective internal controls includes the institution of “fluid information pathways among management, employees and governance, including local affiliates, that capture, process and communicate relevant internal and external information in a timely manner.”

89. The failure of NSEA and individual defendants Galvin, Murillo, Wallace, and Lee to present this information violates the fiduciary responsibilities outlined the NSEA bylaws and policies.

90. NSEA and the individual defendants have violated their fiduciary responsibilities required by the NSEA bylaws and policies by not disclosing this financial information to the members of CCEA. This failure constitutes a material breach of contract.

91. The information requested by CCEA through the Plaintiffs and its Executive director is necessary in order for CCEA to carry out its fiduciary responsibilities in serving its members for the purpose of organizing new members and to retain existing members by demonstrating the direct benefits to the members for providing funding to the NSEA and its related activities. As a result, Plaintiff CCEA has suffered damages under the contract, commensurate with the annual dues owed to Defendant NSEA.

PRA YER

WHEREFORE, Counterclaimants pray for relief as follows:

1. For an award of compensatory damages in excess of \$15,000.00;
2. For attorneys' fees;
3. For costs of the suit; and

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CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **DEFENDANTS-COUNTER PLAINTIFFS CLARK COUNTY EDUCATION ASSOCIATION'S, JOHN VELLARDITA'S AND VICTORIA COURTNEY'S ANSWER TO SECOND AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND SECOND AMENDED COUNTERCLAIM** by the method indicated below:

<u> X </u>	Odyssey E-File & Serve	_____	Federal Express
_____	U.S. Mail	_____	U.S. Certified Mail
_____	Facsimile Transmission	_____	Hand Delivery
_____	Email Transmission	_____	Overnight Mail

and addressed to the following:

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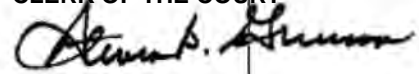
DATED this 9th day of July, 2018.

4845-1205-3357.1

/s/ Gaylene Kim
An Employee of Snell & Wilmer L.L.P.

Attachment 4

Order Granting Defendant Clark County School District's
Motion to Dismiss
(November 21, 2017)



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DISTRICT COURT

CLARK COUNTY, NEVADA

NEVADA STATE EDUCATION
ASSOCIATION; NATIONAL
EDUCATION ASSOCIATION;
RUBEN MURILLO; ROBERT
BENSON; and DIANE DI
ARCHANGEL,

Plaintiffs,

vs.

CLARK COUNTY EDUCATION
ASSOCIATION; JOHN
VELLARDITA; VICTORIA
COURTNEY; and CLARK
COUNTY SCHOOL DISTRICT,

Defendants.

Case No.: A-17-761884-C

Dept. No.: XXXI

Hearing Date: 11/14/17

Time of Hearing: 9:30 AM

ORDER GRANTING DEFENDANT
CLARK COUNTY SCHOOL DISTRICT'S MOTION TO DISMISS

Defendant Clark County School District's Motion to Dismiss (the "Motion")
having come for hearing on November 14, 2017 at the hour of 9:30 a.m. in Department
XXXI of the above-entitled Court, the Honorable Joanna Kishner presiding, Plaintiffs
being represented by Paul J. Lal, Esq. and John M. West, Esq. and Defendant Clark

FPDOCS 33445395.1

County School District being represented by Mark J. Ricciardi, Esq. and Holly E. Walker, Esq., the Court having considered the Motion, Plaintiffs' Opposition to the Motion, Defendant Clark County School District's Reply, and Defendants Clark County Education Association, John Vellardita, and Victoria Courtney's Joinder to the Motion, as well as the arguments made at the hearing, the Court, being fully advised in the premises, makes the following findings:

1. Nevada Rule of Civil Procedure 12(b)(5) provides that a complaint may be dismissed for "failure to state a claim upon which relief can be granted." Dismissal of a complaint is appropriate "only if it appears beyond a doubt that it could prove no set of facts, which, if true, would entitle it to relief." *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008).

2. In their Complaint, Plaintiffs assert seven causes of action, none of which pertain to Defendant Clark County School District. Here, even accepting all facts alleged in the Plaintiffs' Complaint as true, Plaintiffs' Complaint cannot survive a motion to dismiss because the Complaint fails to state any claims against Defendant Clark County School District upon which relief can be granted.

3. Pursuant to Nevada Rule of Civil Procedure 54(b), and with no objection from Plaintiffs, this Court certifies the dismissal of Defendant Clark County School District as a final judgment, making an express determination that there is no just reason for delay and an express direction for the entry of judgment.


For the reasons set forth above, even assuming that all the facts alleged in Plaintiffs' Complaint are true, the Complaint fails to state any cognizable legal claims against Defendant Clark County School District under Nevada law, and good cause otherwise appearing therefor, Defendant Clark County School District's Motion to Dismiss, with prejudice, Plaintiffs' Complaint is granted. Further, pursuant to Nevada

1 Rule of Civil Procedure 54(b), this Court certifies the dismissal of Defendant Clark
2 County School District as a final judgment, upon an express determination that there is
3 no just reason for delay and upon an express direction for the entry of judgment.

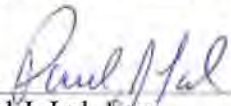
4 DATED this 21 day of November 2017.

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6 
DISTRICT COURT JUDGE TS

7 Submitted by:

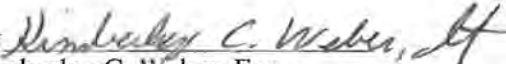
8 
9 Mark J. Ricciardi, Esq.
10 Holly E. Walker, Esq.
11 Fisher & Phillips LLP
12 300 South Fourth Street
Suite 1500
13 Las Vegas, Nevada 89101
Attorneys for Defendant Clark County School District

14 Approved as to form and content:

15 By: 
16 Paul J. Lal, Esq.
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19 John M. West, Esq.
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22 *Attorneys for Plaintiffs*

By: 
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McCracken, Stemerman & Holsberry, LLP
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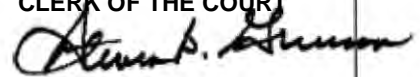
Joel A. D'Alba, Esq.
Asher, Gittler & D'Alba, LTD.
200 West Jackson Blvd., Suite 1900
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*Attorneys for Defendants Clark County
Education Association, John Vellardita,
and Victoria Courtney*

Attachment 5

Order Denying in Part, and Granting in Part, Defendants' Partial
Motion to Dismiss and Supporting Memorandum

(Feb. 2, 2018)



ORDR

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Attorneys for Defendants

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

NEVADA STATE EDUCATION
ASSOCIATION; NATIONAL EDUCATION
ASSOCIATION; RUBEN MURILLO; ROBERT
BENSON; and DIANE DI ARCHANGEL,

Plaintiffs,

v.

CLARK COUNTY EDUCATION
ASSOCIATION; JOHN VELLARDITA; and
VICTORIA COURTNEY,

Defendants.

CASE NO. A-17-761884-C

DEPT. NO 31

**ORDER DENYING IN PART, AND
GRANTING IN PART,
DEFENDANTS' PARTIAL MOTION
TO DISMISS AND SUPPORTING
MEMORANDUM**

Date of Hearing: January 16, 2018

Time of Hearing: 10:00 a.m.



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1. The Nevada Rules of Civil Procedure provide that a complaint may be dismissed for “failure to state a claim upon which relief can be granted.” NRCP § 12(b)(5). “When considering a motion to dismiss made under NRCP 12(b)(5), a district court must construe the complaint liberally and draw every fair inference in favor of the plaintiff.” *Cohen v. Mirage Resorts, Inc.*, 62 P.3d 720, 734 (2003).

3. The Court grants Defendants' Partial Motion to Dismiss with respect to Plaintiffs' claim for fraud. The Court finds that Plaintiffs have failed to allege the fraud with the level of particularity required under Nevada law. Because "[l]eave to amend should be freely given," *Cohen v. Mirage Resorts, Inc.*, 62 P.3d at 734, the Court grants the Plaintiffs' request to amend this claim.

1 5. Plaintiffs shall amend their Complaint no later than 20 days from the date of this
2 Order.

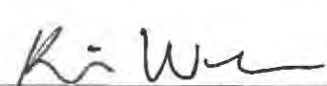
3
4 IT IS SO ORDERED.

5 Dated this 2 day of Feb, 2018.

6
7  JOANNA S. KISHNER
8 THE HON. JOANNA KISHNER
9 District Court Judge

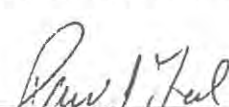
10 Case No. A-17-761884-C
11 Order Denying in Part and Granting in Part
12 Defendants' Partial Motion to Dismiss and
13 Supporting Memorandum

13 Submitted by:

14 
15 Richard G. McCracken (SBN 2748)
16 Kimberley C. Weber (SBN 14434)
17 McCracken, Stemerman
& Holsberry, LLP

18 ASHER, GITTLER & D'ALBA, LTD.
19 Joel A. D'Alba (admitted pro hac vice)
20 *Attorneys for Defendants*

Approved as to form and content:

21 
22 Richard J. Pocker (Nevada Bar No. 3568)
23 Paul J. Lal (Nevada Bar No. 3755)
24 BOIES SCHILLER FLEXNER LLP

25 John M. West*
26 Matthew Clash-Drexler*
27 James Graham Lake*
28 BREDHOFF & KAISER, PLLC

* Admitted pro hac vice
Attorneys for Plaintiffs

*Nevada State Education Association v.
Clark County Education Association*

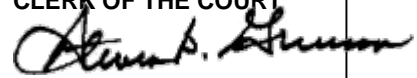
Case No. 79208

**DOCKETING STATEMENT
PART 5 OF 6**

Attachment 6

Notice of Entry of Order Denying in Part, and Granting in Part,
Defendants' Partial Motion to Dismiss

(Feb. 7, 2018)



NOE

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Of counsel:

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jad@ulaw.com

Attorneys for Defendants
Clark County Education Association,
John Vellardita, and Victoria Courtney

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

NEVADA STATE EDUCATION
ASSOCIATION, NATIONAL EDUCATION
ASSOCIATION, RUBEN MURILLO, ROBERT
BENSON; AND DIANE DI ARCHANGEL,

Plaintiffs

v.

CLARK COUNTY EDUCATION
ASSOCIATION; JOHN VELLARDITA;
VICTORIA COURTNEY; and CLARK
COUNTY SCHOOL DISTRICT,

Defendants.

CASE NO. A-17-761884-C

DEPT. NO. 31

**NOTICE OF ENTRY OF ORDER
DENYING, IN PART, AND GRANTING, IN
PART, DEFENDANTS' PARTIAL
MOTION TO DISMISS**

1 TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:
2

3 PLEASE TAKE NOTICE that the **ORDER DENYING, IN PART, AND GRANTING, IN**
4 **PART, DEFENDANTS' PARTIAL MOTION TO DISMISS AND SUPPORTING**
5 **MEMORANDUM** has been entered by the court. A copy of that Stipulation and Order as Entered is
6 attached as Exhibit "1."
7

8
9 DATED: February 7, 2018

McCRACKEN, STEMERMAN & HOLSBERRY, LLP
ASHER, GITTLER & D'ALBA, LTD.

10
11
12 /s/ Kimberley C. Weber

Richard G. McCracken
Kimberley C. Weber
Joel A. D'Alba

13
14
15 *Attorneys for Defendants Clark County Education*
16 *Association, John Vellardita and Victoria Courtney*
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CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 7th day of February, 2018, I served a true and correct copy of the following document: **NOTICE OF ENTRY OF ORDER DENYING, IN PART, AND GRANTING, IN PART, DEFENDANTS' PARTIAL MOTION TO DISMISS** by electronic filing and by placing it in the United States Mail, with first-class postage prepaid, addressed to the following:

Richard J. Pocker
Boies Schiller Flexner LLP
300 S. Fourth Street, Suite 800
Las Vegas, NV 89101

-and-

John M. West
Matthew Clash-Drexler
James Graham Lake
Bredhoff & Kaiser, PLLC
805 15th Street NW, Suite 1000
Washington, DC 20005

Attorneys for Plaintiffs

Per NRS 53.045, I declare under penalty of perjury that the foregoing is true and correct.

/s/ Deborah D. Trujillo
DEBORAH TRUJILLO, PP, CLP

EXHIBIT 1

1 **ORDR**

2 Richard G. McCracken (#2748)
3 Kimberley C. Weber (#14434)
4 McCracken, STEMERMAN & HOLSBERRY, LLP
5 1630 South Commerce Street, Suite 1-A
6 Las Vegas, NV 89102
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11 Of counsel:

12 Joel A. D'Alba
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14 200 West Jackson Blvd, Suite 1900
15 Chicago, Illinois 60606
16 Tel: (312)263-1500
17 Fax: (312)263-1520
18 jad@ulaw.com

19 *Attorneys for Defendants*

20 **EIGHTH JUDICIAL DISTRICT COURT**

21 **CLARK COUNTY, NEVADA**

22 NEVADA STATE EDUCATION)
23 ASSOCIATION; NATIONAL EDUCATION)
24 ASSOCIATION; RUBEN MURILLO; ROBERT)
25 BENSON; and DIANE DI ARCHANGEL,)

26 Plaintiffs,

27 v.

28 CLARK COUNTY EDUCATION)
ASSOCIATION; JOHN VELLARDITA; and)
VICTORIA COURTNEY,)

Defendants.

CASE NO. A-17-761884-C

DEPT. NO 31

**ORDER DENYING IN PART, AND
GRANTING IN PART,
DEFENDANTS' PARTIAL MOTION
TO DISMISS AND SUPPORTING
MEMORANDUM**

Date of Hearing: January 16, 2018

Time of Hearing: 10:00 a.m.

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1. The Nevada Rules of Civil Procedure provide that a complaint may be dismissed for “failure to state a claim upon which relief can be granted.” NRCP § 12(b)(5). “When considering a motion to dismiss made under NRCP 12(b)(5), a district court must construe the complaint liberally and draw every fair inference in favor of the plaintiff.” *Cohen v. Mirage Resorts, Inc.*, 62 P.3d 720, 734 (2003).


3. The Court grants Defendants' Partial Motion to Dismiss with respect to Plaintiffs' claim for fraud. The Court finds that Plaintiffs have failed to allege the fraud with the level of particularity required under Nevada law. Because "[l]eave to amend should be freely given," *Cohen v. Mirage Resorts, Inc.*, 62 P.3d at 734, the Court grants the Plaintiffs' request to amend this claim.

4. The Court denies without prejudice Defendants' Partial Motion to Dismiss Plaintiffs' claims against the individually-named Defendants.

1 5. Plaintiffs shall amend their Complaint no later than 20 days from the date of this
2 Order.

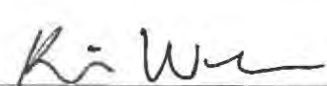
3
4 IT IS SO ORDERED.

5 Dated this 2 day of Feb, 2018.

6
7  JOANNA S. KISHNER
8 THE HON. JOANNA KISHNER
9 District Court Judge

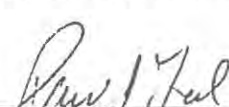
10 Case No. A-17-761884-C
11 Order Denying in Part and Granting in Part
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13 Supporting Memorandum

13 Submitted by:

14 
15 Richard G. McCracken (SBN 2748)
16 Kimberley C. Weber (SBN 14434)
17 McCracken, Stemerman
18 & Holsberry, LLP

19 ASHER, GITTLER & D'ALBA, LTD.
20 Joel A. D'Alba (admitted pro hac vice)
21 *Attorneys for Defendants*

22 Approved as to form and content:

23 
24 Richard J. Pocker (Nevada Bar No. 3568)
25 Paul J. Lal (Nevada Bar No. 3755)
26 BOIES SCHILLER FLEXNER LLP

27 John M. West*
28 Matthew Clash-Drexler*
James Graham Lake*
BREDHOFF & KAISER, PLLC

* Admitted pro hac vice
Attorneys for Plaintiffs

Attachment 7

Order

(May 10, 2018)

ORIGINAL

Steven D. Grierson

ORDR

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Paul J. Lal (Nevada Bar No. 3755)

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Attorneys for Plaintiffs/Counter-Defendants

**DISTRICT COURT
EIGHTH JUDICIAL DISTRICT
CLARK COUNTY, NEVADA**

NEVADA STATE EDUCATION
ASSOCIATION; NATIONAL EDUCATION
ASSOCIATION; RUBEN MURILLO;
ROBERT BENSON; DIANE
DI ARCHANGEL; and JASON WYCKOFF,

Plaintiffs/Counter-Defendants,

vs.

CLARK COUNTY EDUCATION
ASSOCIATION; JOHN VELLARDITA; and
VICTORIA COURTNEY,

Defendants/Counter-Plaintiffs.

Case No.: A-17-761884-C

DEPT. NO.: 31

ORDER

MAY 04 '18 AM 10:32

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1 A hearing having been held on April 23, 2018 on this Court's Order to Show Cause Why
2 an Order for Attachment and Garnishment Should Not Issue stemming from Plaintiffs-Counter
3 Defendants' National Education Association ("NEA") and Nevada State Education Association
4 ("NSEA") Application for Order Directing the Issuance of a Prejudgment Writ of Attachment
5 with Notice (the "Application"), and the Court having considered the Defendants-Counter
6 Plaintiffs' opposition thereto and the pleadings, papers and documents on file herein, and the
7 Court being otherwise fully advised in the premises and good cause appearing therefor, the Court
8 hereby grants the Application as modified, and orders the following relief:
9

10 IT IS HEREBY ORDERED that all funds in the possession of or received by Clark
11 County Education Association ("CCEA") for the 2017-2018 school year in respect to NSEA
12 dues (numerically calculated traditionally at the annual rate of \$376.66) and in respect to NEA
13 dues (numerically calculated traditionally at the annual rate of \$189.00) shall continue to be
14 deposited by CCEA into account number #501014714739 (the "Restricted Account"),
15 maintained at the Bank of America Las Vegas, Nevada Branch (the "Bank") as it has represented
16 to the Court it has done during the course of this litigation.

17 IT IS FURTHER ORDERED that CCEA shall provide NSEA and NEA with a monthly
18 statement starting with the CCEA's reconciliation at the end of April, 2018 showing (1) the
19 balance of funds in the Restricted Account through April 30, 2018, (2) the amount of NSEA and
20 NEA dues received, and (3) a listing by number of members for whom NSEA and NEA dues
21 have been received, and (4) a monthly total of NSEA and NEA dues received. This shall be
22 furnished by CCEA to NSEA and NEA by May 7, 2018. Thereafter, monthly statements
23 showing the balance of funds in the Restricted Account through the end of the month, along with
24 the updated information of items (2), (3) and (4) above, shall be furnished by CCEA to NSEA
25 and NEA by the fifth day of the month after the end of the immediately preceding month,
26 provided, however, if the fifth day of the month falls on a Saturday, Sunday, or legal holiday in
27 the State of Nevada, then such monthly statements and updated information of items (2), (3), and
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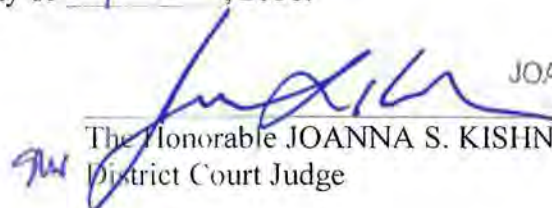
(4) above shall be furnished by CCEA to NSEA and NEA on the next immediately following day that is not a Saturday, Sunday, or legal holiday in the State of Nevada.

IT IS FURTHER ORDERED that all funds on deposit in the Restricted Account with respect to the 2017-2018 NSEA and NEA dues shall remain in the Restricted Account, and that no funds shall be withdrawn, transferred, or disbursed out of the Restricted Account, and the Restricted Account shall not be changed or modified, without a further Order from this Department 31 of this Court.

IT IS FURTHER ORDERED that this Order shall be binding on the parties and their respective successors and assigns.

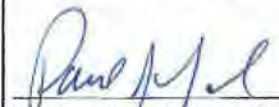
IT IS FURTHER ORDERED that a copy of this Order shall be provided by CCEA to the Bank.

DATED this 10th day of May, 2018.


The Honorable JOANNA S. KISHNER
District Court Judge


Respectfully submitted by,

BOIES SCHILLER FLEXNER LLP


Richard J. Pocker (Nevada Bar No. 3568)
Paul J. Lal (Nevada Bar No. 3755)
300 South Fourth Street, Suite 800
Las Vegas, NV 89101

Approved as to form and content:

SNELL & WILMER, L.L.P.


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1 John M. West*
2 Robert Alexander*
3 Matthew Clash-Drexler*
4 James Graham Lake*
5 BREDHOFF & KAISER, PLLC
6 805 15th Street N.W., Suite 1000
7 Washington, DC 20005
8 * Admitted pro hac vice

9 *Attorneys for Plaintiffs/Counter-Defendants*

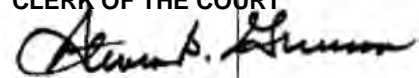
Joel A. D'Alba (pro hac vice)
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Kimberley C. Weber (NV Bar No. 14434)
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Las Vegas, NV 89102

*Attorneys for Defendants/Counter-
Plaintiffs*

Attachment 8

Notice of Entry of Order
(May 11, 2018)



NEOJ
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Paul J. Lal (Nevada Bar No. 3755)
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mcdrexler@bredhoff.com
glake@bredhoff.com

* Admitted pro hac vice

Attorneys for Plaintiffs/Counter-Defendants

**DISTRICT COURT
EIGHTH JUDICIAL DISTRICT
CLARK COUNTY, NEVADA**

NEVADA STATE EDUCATION
ASSOCIATION; NATIONAL EDUCATION
ASSOCIATION; RUBEN MURILLO;
ROBERT BENSON; DIANE
DI ARCHANGEL, and JASON WYCKOFF

Plaintiffs/Counter-Defendants,

v.

CLARK COUNTY EDUCATION
ASSOCIATION; JOHN VELLARDITA;
VICTORIA COURTNEY; and CLARK
COUNTY SCHOOL DISTRICT,

Defendants/Counter-Plaintiffs.

Case No. A-17-761884-C

DEPT. NO. 31

NOTICE OF ENTRY OF ORDER

1
2 PLEASE TAKE NOTICE that an Order Re: Plaintiffs/Counter-Defendants' National
3 Education Association and Nevada State Education Association Application for Order Directing
4 the Issuance of a Prejudgment Writ of Attachment with Notice was entered in the above-entitled
5 matter on the 11th day of May, 2018, a copy of which is attached hereto.
6

7 Dated this 11th day of May, 2018.

8 BOIES SCHILLER FLEXNER LLP
9

10 /s/ Paul J. Lal, Esq.

11 Richard J. Pocker (Nevada Bar No. 3568)

12 Paul J. Lal (Nevada Bar No. 3755)

13 300 South Fourth Street, Suite 800

14 Las Vegas, NV 89101

15 John M. West*

16 Matthew Clash-Drexler*

17 James Graham Lake*

18 Robert Alexander*

19 BREDHOFF & KAISER, PLLC

20 805 15th Street N.W., Suite 1000

21 Washington, DC 20005

22 * Admitted Pro hac vice

23 *Attorneys for Plaintiffs/Counter-Defendants*
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CERTIFICATE OF SERVICE

The undersigned, an employee of BOIES SCHILLER FLEXNER LLP, hereby certifies that on the 11th day of May, 2018, service of the foregoing ***NOTICE OF ENTRY OF ORDER RE: PLAINTIFFS/COUNTER-DEFENDANTS' NATIONAL EDUCATION ASSOCIATION AND NEVADA STATE EDUCATION ASSOCIATION APPLICATION FOR ORDER DIRECTING THE ISSUANCE OF A PREJUDGMENT WRIT OF ATTACHMENT WITH NOTICE*** was made by electronic filing and by mailing a true and correct copy in a sealed envelope, to the following, with postage fully prepaid thereon.

Richard G. McCracken, Esq.
Kimberley C. Weber, Esq.
McCracken, Stemerman & Holsberry, LLP
1630 S. Commerce Street, Suite A-1
Las Vegas, Nevada 89102

Joel A. D'Alba, Esq.
Asher, Gittler & D'Alba, LTD.
200 West Jackson Blvd, Suite 1900
Chicago, Illinois 60606

John S. Delikanakis
Michael Paretti, Esq.
Snell & Wilmer, L.L.P.
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, Nevada 89169

Dated this 11th day of May, 2018.

/s/ Carolyn E. Wright
An employee of Boies Schiller Flexner LLP

ORIGINAL

1 **ORDR**

2 Richard J. Pocker (Nevada Bar No. 3568)

3 Paul J. Lal (Nevada Bar No. 3755)

4 BOIES SCHILLER FLEXNER LLP

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23 * Admitted pro hac vice

24 *Attorneys for Plaintiffs/Counter-Defendants*

25 **DISTRICT COURT**
26 **EIGHTH JUDICIAL DISTRICT**
27 **CLARK COUNTY, NEVADA**

28 NEVADA STATE EDUCATION
ASSOCIATION; NATIONAL EDUCATION
ASSOCIATION; RUBEN MURILLO;
ROBERT BENSON; DIANE
DI ARCHANGEL; and JASON WYCKOFF,

Plaintiffs/Counter-Defendants,

vs.

CLARK COUNTY EDUCATION
ASSOCIATION; JOHN VELLARDITA; and
VICTORIA COURTNEY,

Defendants/Counter-Plaintiffs.

Case No.: A-17-761884-C

DEPT. NO.: 31

ORDER

MAY 04 '18 AM 10:32

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1 A hearing having been held on April 23, 2018 on this Court's Order to Show Cause Why
2 an Order for Attachment and Garnishment Should Not Issue stemming from Plaintiffs-Counter
3 Defendants' National Education Association ("NEA") and Nevada State Education Association
4 ("NSEA") Application for Order Directing the Issuance of a Prejudgment Writ of Attachment
5 with Notice (the "Application"), and the Court having considered the Defendants-Counter
6 Plaintiffs' opposition thereto and the pleadings, papers and documents on file herein, and the
7 Court being otherwise fully advised in the premises and good cause appearing therefor, the Court
8 hereby grants the Application as modified, and orders the following relief:

9
10 IT IS HEREBY ORDERED that all funds in the possession of or received by Clark
11 County Education Association ("CCEA") for the 2017-2018 school year in respect to NSEA
12 dues (numerically calculated traditionally at the annual rate of \$376.66) and in respect to NEA
13 dues (numerically calculated traditionally at the annual rate of \$189.00) shall continue to be
14 deposited by CCEA into account number #501014714739 (the "Restricted Account"),
15 maintained at the Bank of America Las Vegas, Nevada Branch (the "Bank") as it has represented
16 to the Court it has done during the course of this litigation.

17 IT IS FURTHER ORDERED that CCEA shall provide NSEA and NEA with a monthly
18 statement starting with the CCEA's reconciliation at the end of April, 2018 showing (1) the
19 balance of funds in the Restricted Account through April 30, 2018, (2) the amount of NSEA and
20 NEA dues received, and (3) a listing by number of members for whom NSEA and NEA dues
21 have been received, and (4) a monthly total of NSEA and NEA dues received. This shall be
22 furnished by CCEA to NSEA and NEA by May 7, 2018. Thereafter, monthly statements
23 showing the balance of funds in the Restricted Account through the end of the month, along with
24 the updated information of items (2), (3) and (4) above, shall be furnished by CCEA to NSEA
25 and NEA by the fifth day of the month after the end of the immediately preceding month,
26 provided, however, if the fifth day of the month falls on a Saturday, Sunday, or legal holiday in
27 the State of Nevada, then such monthly statements and updated information of items (2), (3), and
28

1 (4) above shall be furnished by CCEA to NSEA and NEA on the next immediately following day
2 that is not a Saturday, Sunday, or legal holiday in the State of Nevada.

3 IT IS FURTHER ORDERED that all funds on deposit in the Restricted Account with
4 respect to the 2017-2018 NSEA and NEA dues shall remain in the Restricted Account, and that
5 no funds shall be withdrawn, transferred, or disbursed out of the Restricted Account, and the
6 Restricted Account shall not be changed or modified, without a further Order from this
7 Department 31 of this Court.

8 IT IS FURTHER ORDERED that this Order shall be binding on the parties and their
9 respective successors and assigns.

10 IT IS FURTHER ORDERED that a copy of this Order shall be provided by CCEA to the
11 Bank.

12 DATED this 10th day of May, 2018.

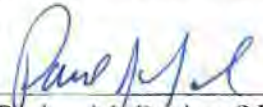
13
14
15  JOANNA S. KISHNER
16 The Honorable JOANNA S. KISHNER
17 District Court Judge


18 Respectfully submitted by,

Approved as to form and content:

19 BOIES SCHILLER FLEXNER LLP

SNELL & WILMER, L.L.P.

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*Attorneys for Defendants/Counter-
Plaintiffs*

Attachment 9

Order Denying in Part, and Granting in Part, CCEA Parties'
Partial Motion to Dismiss Second Amended Complaint of the
NSEA Parties

(Dec. 4, 2018)

ORDR

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And Counter-Defendant*

**DISTRICT COURT
EIGHTH JUDICIAL DISTRICT
CLARK COUNTY, NEVADA**

CLARK COUNTY EDUCATION
ASSOCIATION; VICTORIA COURTNEY;
JAMES FRAZEE; ROBERT G.
HOLLOWOOD; and MARIE NEISESS,

Plaintiffs,

vs.

NEVADA STATE EDUCATION
ASSOCIATION; DANA GALVIN; RUBEN
MURILLO JR.; BRIAN WALLACE; and
BRIAN LEE,

Defendants.

Case No.: A-17-761364-C

(consolidated with No. A-17-761884-C)

DEPT. NO.: 4

**ORDER DENYING IN PART, AND
GRANTING IN PART, CCEA PARTIES'
PARTIAL MOTION TO DISMISS
SECOND AMENDED COMPLAINT OF
THE NSEA PARTIES
(in Case No. A-17-761884-C)**

Date of Hearing: November 15, 2018

Time of Hearing: 9:00 a.m.

1 NEVADA STATE EDUCATION
2 ASSOCIATION; NATIONAL EDUCATION
3 ASSOCIATION; RUBEN MURILLO;
4 ROBERT BENSON; DIANE
DI ARCHANGEL; and JASON WYCKOFF,

5 Plaintiffs-Counter Defendants,

6 and

7 BRIAN LEE,

8 Counter Defendant,

9 vs.

10 CLARK COUNTY EDUCATION
11 ASSOCIATION; JOHN VELLARDITA; and
12 VICTORIA COURTNEY,

13 Defendants-Counter Plaintiffs.

Case No.: A-17-761884-C

(consolidated with No. A-17-761364-C)

14
15 **ORDER**

16 This Court, the Honorable Kerry Earley presiding, on November 15, 2018, heard
17 Defendants/Counter-Plaintiffs Clark County Education Association, John Vellardita, and
18 Victoria County ("CCEA Parties") on their Partial Motion to Dismiss as to Counts SEVEN,
19 EIGHT and NINE of the Second Amended Complaint of Plaintiffs/Counter-Defendants Nevada
20 State Education Association, National Education Association, Ruben Murillo, Robert Benson,
21 Diane Di Archangel and Jason Wyckoff ("NSEA Parties") in Case No. A-17-761884-C. The
22 NSEA Parties appeared through counsel, Paul J. Lal, Robert Alexander, and James Graham Lake
23 (via court call). The CCEA Parties appeared through counsel, John S. Delikanakis, Michael
24 Paretti and Joel D'Alba. The Court, having considered the pleadings, the CCEA Parties' Partial
25 Motion to Dismiss (as to Counts SEVEN and NINE) of the Second Amended Complaint, the
26 NSEA Parties' Opposition to the Motion, the CCEA Parties' Reply, and the arguments made at
27 the hearing, hereby finds and orders:
28

1 1. The Nevada Rules of Civil Procedure provide that a complaint may be dismissed
2 for “failure to state a claim upon which relief can be granted.” NRCP 12(b)(5). “When
3 considering a motion to dismiss made under NRCP 12(b)(5), a district court must construe the
4 complaint liberally and draw every fair inference in favor of the plaintiff.” *Cohen v. Mirage*
5 *Resorts, Inc.*, 62 P.3d 720, 734 (2003). Allegations of fraud and the circumstances constituting
6 fraud must be stated with particularity. *See* NRCP 9(b).


7 2. In regard to Count SEVEN (Fraud) of the NSEA Parties’ Second Amended
8 Complaint, the Court: (a) DENIES the CCEA Parties’ Partial Motion to Dismiss with respect to
9 Clark County Education Association, finding that the NSEA Parties sufficiently have alleged
10 fraud with the level of particularity required under Nevada law as to Clark County Education
11 Association; and (b) GRANTS the CCEA Parties’ Partial Motion to Dismiss with respect to John
12 Vellardita and Victoria Courtney, finding that the NSEA Parties have failed to allege the fraud
13 with the level of particularity required under Nevada law as to John Vellardita and Victoria
14 Courtney.

15 3. In regard to Count EIGHT (Breach of Obligations under the Dues Transmittal
16 Agreement and Membership Enrollment Forms regarding the Collection of Dues), and for the
17 reasons outlined in the Court’s Order Granting the CCEA Parties’ Motion for Partial Summary
18 Judgment, the Court GRANTS the CCEA Parties’ Partial Motion to Dismiss, finding that the
19 Service Agreement and Dues Transmittal Agreement properly terminated on August 31, 2017.
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4. In regard to Count NINE (Unauthorized Mid-Year Increase in CCEA Dues) of the NSEA Parties' Second Amended Complaint, the Court DENIES the CCEA Parties' Partial Motion to Dismiss.

IT IS SO ORDERED.


Dated this 7 day of December, 2018.


THE HON. KERRY EARLEY
District Court Judge

Case No. A-17-761364-C
Order Denying in Part and Granting in Part
CCEA Parties' Partial Motion to Dismiss
Second Amended Complaint of the NSEA
Parties in Case No. A-17-761884-C

Respectfully submitted by,

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Attorneys for Defendants/Counter-Plaintiffs

Attachment 10

Order Granting NSEA Parties' Motion to Dismiss CCEA
Parties' Second Amended Counterclaim

(Dec. 4, 2018)

ORDR

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**DISTRICT COURT
EIGHTH JUDICIAL DISTRICT
CLARK COUNTY, NEVADA**

CLARK COUNTY EDUCATION
ASSOCIATION; VICTORIA COURTNEY;
JAMES FRAZEE; ROBERT G.
HOLLOWOOD; and MARIE NEISESS,

Plaintiffs,

vs.

NEVADA STATE EDUCATION
ASSOCIATION; DANA GALVIN; RUBEN
MURILLO JR.; BRIAN WALLACE; and
BRIAN LEE,

Defendants.

Case No.: A-17-761364-C

(consolidated with No. A-17-761884-C)

DEPT. NO.: 4

**ORDER GRANTING NSEA PARTIES'
MOTION TO DISMISS CCEA
PARTIES' SECOND AMENDED
COUNTERCLAIM
(in Case No. A-17-761884-C)**

Date of Hearing: November 15, 2018

Time of Hearing: 9:00 a.m.

1 NEVADA STATE EDUCATION
2 ASSOCIATION; NATIONAL EDUCATION
3 ASSOCIATION; RUBEN MURILLO;
4 ROBERT BENSON; DIANE
5 DI ARCHANGEL; and JASON WYCKOFF,

6 Plaintiffs-Counter Defendants,

7 and

8 BRIAN LEE,

9 Counter Defendant,

10 vs.

11 CLARK COUNTY EDUCATION
12 ASSOCIATION; JOHN VELLARDITA; and
13 VICTORIA COURTNEY,

14 Defendants-Counter Plaintiffs.

Case No.: A-17-761884-C

(consolidated with No. A-17-761364-C)

15 ORDER

16 This Court, the Honorable Kerry Earley presiding, on November 15, 2018, heard
17 Plaintiffs/Counter-Defendants Nevada State Education Association, et al. ("NSEA Parties") on
18 their Motion to Dismiss Second Amended Counterclaim of Defendants/Counter-Plaintiffs Clark
19 County Education Association, John Vellardita, and Victoria Courtney ("CCEA Parties") with
20 respect to the CCEA Parties' Second Amended Counterclaim in Case No. A-17-761884-C. The
21 NSEA Parties appeared through counsel, Paul J. Lal, Robert Alexander, and James Graham Lake
22 (via court call). The CCEA Parties appeared through counsel, John S. Delikanakis, Michael
23 Paretti and Joel D'Alba. The Court, having considered the pleadings, the NSEA Parties' Motion
24 to Dismiss Second Amended Counterclaim (of the CCEA Parties), the CCEA Parties'
25 Opposition to the Motion, the NSEA Parties' Reply, and the arguments made at the hearing,
26 hereby finds and orders:
27
28

1 The NSEA Parties' Motion to Dismiss Second Amended Counterclaim of the CCEA
2 Parties is GRANTED, without objection on the part of the CCEA Parties, and the CCEA Parties'
3 Second Amended Counterclaim is DISMISSED pursuant to NRCP 7(a), and *Smith v. District*
4 *Court*, 113 Nev. 1343, 950 P.2d 280 (1997).

5 IT IS SO ORDERED.

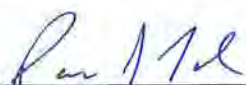
6 Dated this 7 day of December 2018.

7
8 
9 THE HON. KERRY EARLEY
10 District Court Judge (FV)

11 Case No. A-17-761364-C
12 Order Granting NSEA Parties' Motion to
13 Dismiss CCEA Parties' Second Amended
14 Complaint in Case No. A-17-761884-C

15 Respectfully submitted by,

16 BOIES SCHILLER FLEXNER LLP


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27 *Attorneys for Plaintiffs/Counter-Defendants*

28 Approved as to form and content:

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Attorneys for Defendants/Counter-Plaintiffs

Attachment 11

Notice of Entry of Order Granting NSEA Parties' Motion to
Dismiss CCEA Parties' Second Amended Counterclaim

(Dec. 5, 2018)

1 **NEOJ**

2 Richard J. Pocker (Nevada Bar No. 3568)

3 Paul J. Lal (Nevada Bar No. 3755)

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13 James Graham Lake (admitted pro hac vice)

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20 mcdrexler@bredhoff.com

21 glake@bredhoff.com

22 *Attorneys for NSEA Parties*

23 **DISTRICT COURT**
24 **EIGHTH JUDICIAL DISTRICT**
25 **CLARK COUNTY, NEVADA**

26 CLARK COUNTY EDUCATION
27 ASSOCIATION, VICTORIA COURTNEY,
28 JAMES FRAZEE, ROBERT G.
HOLLOWOOD, and MARIE NEISESS,

Plaintiffs,

v.

NEVADA STATE EDUCATION
ASSOCIATION, DANA GALVIN, RUBEN
MURILLO JR., BRIAN WALLACE, and
BRIAN LEE,

Defendants.

Case No. A-17-761364-C
(Consolidated with Case No. A-17-761884-C)

DEPT. NO. 4

NOTICE OF ENTRY OF ORDER
GRANTING NSEA PARTIES' MOTION
TO DISMISS CCEA PARTIES' SECOND
AMENDED COUNTERCLAIM
(in Case No. A-17-761884-C)

1 NEVADA STATE EDUCATION
2 ASSOCIATION; NATIONAL EDUCATION
3 ASSOCIATION; RUBEN MURILLO;
4 ROBERT BENSON; DIANE DI
5 ARCHANGEL; and JASON WYCKOFF,

6 Plaintiffs-Counter Defendants,

7 and

8 BRIAN LEE,

9 Counter Defendant,

10 vs.

11 CLARK COUNTY EDUCATION
12 ASSOCIATION; JOHN VELLARDITA; AND
13 VICTORIA COURTNEY,

14 Defendants-Counter Plaintiffs.

Case No. A-17-761884-C

(consolidated with No. A-17-761364-C)

15 PLEASE TAKE NOTICE that an Order Granting NSEA Parties' Motion to Dismiss
16 CCEA Parties' Second Amended Counterclaim (in Case No. a-17-761884-C) was entered in the
17 above-entitled matter on the 4th day of December, 2018, a copy of which is attached hereto.

18 Dated this 5th day of December, 2018.

19 BOIES SCHILLER FLEXNER LLP

20 /s/ Paul J. Lal, Esq.

21 RICHARD J. POCKER, ESQ.

22 Nevada Bar No. 3568

23 PAUL J. LAL, ESQ.

24 Nevada Bar No. 3755

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James Graham Lake*

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Washington, DC 20005

* Admitted pro hac vice

Attorneys for NSEA Parties

CERTIFICATE OF SERVICE

This document applies to Case No. A-17-761884-C, in which the parties are, on the one hand, the Nevada State Education Association, National Education Association, Ruben Murillo, Robert Benson, Diane Di Archangel, and Jason Wyckoff, and, on the other hand, the Clark County Education Association, John Vellardita, and Victoria Courtney.

Pursuant to NRCP 5(b)(2)(D), I, an employee of BOIES SCHILLER FLEXNER LLP, hereby certify that service of the foregoing ***NOTICE OF ENTRY OF ORDER GRANTING NSEA PARTIES' MOTION TO DISMISS CCEA PARTIES' SECOND AMENDED COUNTERCLAIM (in Case No. A-17-761884-C)*** was made this date by electronic filing and/or service via the Eighth Judicial District Court's E-Filing System to the following:

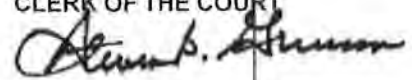
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Michael Paretti, Esq.
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Dated this 5th day of December, 2018.

/s/ Carolyn E. Wright
An employee of Boies Schiller Flexner LLP



ORDR

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Attorneys for NSEA Parties

**DISTRICT COURT
EIGHTH JUDICIAL DISTRICT
CLARK COUNTY, NEVADA**

CLARK COUNTY EDUCATION
ASSOCIATION; VICTORIA COURTNEY;
JAMES FRAZEE; ROBERT G.
HOLLOWOOD; and MARIE NEISESS,

Plaintiffs,

vs.

NEVADA STATE EDUCATION
ASSOCIATION; DANA GALVIN; RUBEN
MURILLO JR.; BRIAN WALLACE; and
BRIAN LEE,

Defendants.

Case No.: A-17-761364-C

(consolidated with No. A-17-761884-C)

DEPT. NO.: 4

**ORDER GRANTING NSEA PARTIES'
MOTION TO DISMISS CCEA
PARTIES' SECOND AMENDED
COUNTERCLAIM
(in Case No. A-17-761884-C)**

Date of Hearing: November 15, 2018

Time of Hearing: 9:00 a.m.

1 NEVADA STATE EDUCATION
2 ASSOCIATION; NATIONAL EDUCATION
3 ASSOCIATION; RUBEN MURILLO;
4 ROBERT BENSON; DIANE
5 DI ARCHANGEL; and JASON WYCKOFF,

6 Plaintiffs-Counter Defendants,

7 and

8 BRIAN LEE,

9 Counter Defendant,

10 vs.

11 CLARK COUNTY EDUCATION
12 ASSOCIATION; JOHN VELLARDITA; and
13 VICTORIA COURTNEY,

14 Defendants-Counter Plaintiffs.

Case No.: A-17-761884-C

(consolidated with No. A-17-761364-C)

15 ORDER

16 This Court, the Honorable Kerry Earley presiding, on November 15, 2018, heard
17 Plaintiffs/Counter-Defendants Nevada State Education Association, et al. ("NSEA Parties") on
18 their Motion to Dismiss Second Amended Counterclaim of Defendants/Counter-Plaintiffs Clark
19 County Education Association, John Vellardita, and Victoria Courtney ("CCEA Parties") with
20 respect to the CCEA Parties' Second Amended Counterclaim in Case No. A-17-761884-C. The
21 NSEA Parties appeared through counsel, Paul J. Lal, Robert Alexander, and James Graham Lake
22 (via court call). The CCEA Parties appeared through counsel, John S. Delikanakis, Michael
23 Paretti and Joel D'Alba. The Court, having considered the pleadings, the NSEA Parties' Motion
24 to Dismiss Second Amended Counterclaim (of the CCEA Parties), the CCEA Parties'
25 Opposition to the Motion, the NSEA Parties' Reply, and the arguments made at the hearing,
26 hereby finds and orders:
27
28

1 The NSEA Parties' Motion to Dismiss Second Amended Counterclaim of the CCEA
2 Parties is GRANTED, without objection on the part of the CCEA Parties, and the CCEA Parties'
3 Second Amended Counterclaim is DISMISSED pursuant to NRCP 7(a), and *Smith v. District*
4 *Court*, 113 Nev. 1343, 950 P.2d 280 (1997).

5 IT IS SO ORDERED.

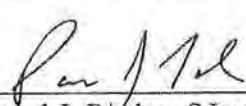
6 Dated this 4 day of December, 2018.

7
8 
9 THE HON. KERRY EARLEY
District Court Judge 

10 Case No. A-17-761364-C
11 Order Granting NSEA Parties' Motion to
12 Dismiss CCEA Parties' Second Amended
Complaint in Case No. A-17-761884-C

13 Respectfully submitted by,

14 BOIES SCHILLER FLEXNER LLP

15
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17 Richard J. Pocker (Nevada Bar No. 3568)
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19 Las Vegas, Nevada 89101

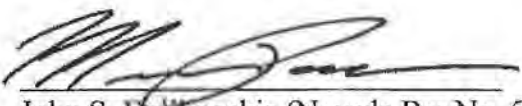
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Attachment 12

CCEA Parties' Motion to Alter or Amend Court's May 11, 2018
Order Pursuant to NRCP 59(e) and 60(b) and Exhibits 1-10,
filed by Clark County Education Association, Victoria
Courtney, James Frazee, Robert Hollowood, Marie Neisess, and
John Vellardita
(Dec. 12, 2018)

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**IN THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

CLARK COUNTY EDUCATION
ASSOCIATION, VICTORIA COURTNEY,
JAMES FRAZEE, ROBERT G. HOLLOWOOD,
and MARIA NEISESS,

Plaintiffs,

vs.

NEVADA STATE EDUCATION
ASSOCIATION, DANA GALVIN, RUBEN
MURILLO, JR., BRIAN WALLACE, and
BRIAN LEE,

Defendants.

NEVADA STATE EDUCATION
ASSOCIATION; NATIONAL EDUCATION
ASSOCIATION; RUBEN MURILLO; ROBERT
BENSON; DIANE
DI ARCHANGEL; AND JASON WYCKOFF,

Plaintiffs-Counter Defendants,

Case No.: A-17-761364-C
DEPT. NO.: 4

(consolidated with A-17-761884-C)

**CCEA PARTIES' MOTION TO ALTER
OR AMEND COURT'S MAY 11, 2018
ORDER PURSUANT TO NRCP 59(E) and
60(B)**

1 And
2 BRIAN LEE,
3 Counter-Defendant,
4 vs.
5 CLARK COUNTY EDUCATION
6 ASSOCIATION; JOHN VELLARDITA; AND
7 VICTORIA COURTNEY,
8 Defendants-Counter Plaintiffs.

9 Pursuant to NRCP 59(e)¹ and 60(b), Clark County Education Association (“CCEA”),
10 Victoria Courtney, James Frazee, Robert B. Hollowood, Marie Neisess, and John Vellardita
11 (collectively, “CCEA Parties”), by and through their counsel, Snell & Wilmer L.L.P., McCracken
12 Stemerman & Holsberry, LLP, and Asher, Gittler & D’Alba, Ltd., move to alter or amend the
13 Court’s May 11, 2018 Order (“Motion”). This Motion is based on the Memorandum of Points
14 and Authorities below, the papers and pleadings on file with the Court, and any oral argument
15 that this Court may entertain on behalf of the CCEA Parties.

16 DATED this 12th day of December, 2018.

17 SNELL & WILMER L.L.P.

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NOTICE OF MOTION

IT IS HEREBY ORDERED that Defendants/Counterclaimants' **CCEA PARTIES'**
MOTION TO ALTER OR AMEND COURT'S MAY 11, 2018 ORDER UNDER NRC
59(E) and 60(B) will be heard on the ____ day of ____, 2018, at the hour of ____ a.m. /
p.m. in Department 4.

DATED this ____ day of December, 2018.

Submitted by:

SNELL & WILMER L.L.P.

/s/ John Delikanakis

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On November 15, 2018, the Court ruled that CCEA owed no duties to NSEA or NEA under the Service Agreement and Dues Transmittal Agreement to collect and/or transmit membership dues on NSEA or NEA's behalf on or after September 1, 2017 ("MSJ Order"). Thus, the Court should alter or amend the May 11, 2018 Order ("Restricted Account Order"), vacating the Restricted Account Order in its entirety and permitting CCEA to disgorge the funds held in the restricted account that were collected between August 31, 2017 and April 24, 2017, and return them to the individual CCEA members, the teachers from whom the funds were collected.²

By way of background, on March 30, 2018, the NSEA Parties filed an Application for Order Directing the Issuance of a Prejudgment Writ of Attachment with Notice ("Application"), which the CCEA Parties opposed. The Application was premised on the specific argument that CCEA had a contractual obligation after September 1, 2017 to collect and remit dues to NSEA/NEA, which argument, as explained below, was expressly rejected by this Court in November. Indeed, the NSEA Parties repeatedly allege as a basis for their Application as follows:

- Despite CCEA's contractual obligations to continue remitting these dues Application at 3:11-12 (emphasis supplied);
- And, as explained below, not only is CCEA contractually obligated to have remitted the dues that it has instead diverted to accounts under its own control.... Application at 4:3-9 (emphasis supplied);
- Since at least 1979, the mechanism by which CCEA is obligated to pay over to NSEA the NSEA and NEA membership dues money transmitted to it by the School District has been a Dues Transmittal Agreement, an agreement which has not been terminated by its terms and remains in effect between CCEA and NSEA. Application at 4:26 – 5:1 (emphasis supplied);
- Specifically, the Dues Transmittal Agreement, attached to Mr. Lee's Affidavit, requires CCEA to transmit "to the NSEA on a monthly basis" the "NSEA and NEA

² Notably, the individual NSEA Parties, Ruben Murillo, Robert Benson, Diane Di Archanhel, and Jason Wycoff are included in this group of CCEA members who will benefit from a grant of this motion.

1 **Membership Dues.**" First entered into in 1979, the Agreement provides that it "shall
2 remain in force for each subsequent membership year unless terminated in writing by
3 either party prior to September 1 of any NSEA membership year." No written termination
4 of the Dues Transmittal Agreement has been made by either party and the Agreement
5 remains in effect. Application at 9:2-10 (emphasis supplied).

6 In opposition, the CCEA Parties showed that CCEA had been voluntarily placing the
7 monies at issue into a restricted bank account since the inception of litigation. The Honorable
8 Judge Joanna Kishner entertained oral argument on the Application on April 23, 2018 and
9 ultimately declined to issue a writ of attachment. Instead, Judge Kishner issued an equitable
10 order, requiring that the CCEA Parties continue placing the dues into a restricted account (as they
11 had been doing since the inception of the case).

12 Specifically, the Court ordered that: (1) all funds in the possession of or received by
13 CCEA for the 2017-2018 school year in respect to NSEA dues and in respect to NEA dues be
14 deposited into a restricted account, "as [CCEA] has represented to the Court it has done during
15 the course of this litigation"; (2) that no funds shall be withdrawn, transferred, or disbursed out of
16 the Restricted Account, and the Restricted Account shall not be changed or modified, without a
17 further Order from Department 31 of this Court;³ and (3) that CCEA provide a monthly account
18 statement to the NSEA Parties. Restricted Account Order dated May 11, 2018, attached hereto as
19 **Exhibit 10.**

20 On June 18, 2018, the CCEA Parties filed a Motion for Partial Summary Judgment
21 ("Motion") on its declaratory relief claim. On November 15, 2018, this Court granted CCEA's
22 Motion and requested relief in its entirety, specifically finding that prior to September 1, 2017,
23 CCEA properly terminated the contracts between CCEA and NSEA requiring dues transmittal
24 (both the Service Agreement and Dues Transmittal Agreement), and expressly held that CCEA
25 owed no duties to NSEA/NEA under the Service Agreement and Dues Transmittal Agreement to

26 ³ The Restricted Account Order makes specific reference to Department 31 because at the time the
27 Restricted Account Order was issued, two separate actions between the NSEA Parties and CCEA Parties
28 were proceeding in Departments 28 and 31. On June 29, 2018 – after the Restricted Account Order was
issued, the Department 31 action was consolidated into the Department 28 action upon motion by CCEA.
On July 2, 2018, the consolidated action was reassigned to Department 1. Upon peremptory challenge,
and on July 9, 2018, the consolidated action was ultimately assigned to this Department. Thus, this
Department is the proper Department to hear the instant Motion.

1 collect and/or transmit membership dues on NSEA or NEA's behalf on or after September 1,
2 2017 – thus, completely nullifying the underlying basis for the Restricted Account Order.

3 Pursuant to Nevada Rule of Civil Procedure 59(e) and 60(b),⁴ and in light of this Court's
4 finding that CCEA owed no duties to NSEA/NEA under the service agreement and dues
5 transmittal agreement to collect and/or transmit membership dues on NSEA/NEA's behalf on or
6 after September 1, 2017, the CCEA Parties respectfully request that this Court vacate the
7 Restricted Account Order in its entirety and permit CCEA to disgorge the funds held in the
8 restricted account and return the money to the CCEA members from whom the funds were
9 collected.

10 **II. STATEMENT OF FACTS**⁵

11 **A. Relationship between the Parties.**

12 CCEA is a democratic organization that is the exclusive collective bargaining
13 representative of the licensed professional employees of CCSD and is the employee organization
14 that serves as the local voice for educators to advance the cause of education, promote
15 professional excellence among educators to protect the rights of educators, advance their interests
16 and welfare, and secure professional autonomy. Affidavit of John Vellardita ("Vellardita Aff.")
17 at ¶4, attached hereto as **Exhibit 9**. CCEA is the recognized and exclusive bargaining agent for
18 CCSD's licensed professional employees. Vellardita Aff. at ¶6. NSEA is not the recognized and
19 exclusive bargaining agent for CCSD's licensed professional employees. Vellardita Aff. at ¶6.
20 NSEA was the state-wide affiliate of the CCEA until April 25, 2018. Vellardita Aff. at ¶5. NEA
21 was the national affiliate of the CCEA until April 25, 2018. Vellardita Aff. at ¶7. NEA remains
22 the national affiliate of NSEA. Vellardita Aff. at ¶8.

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27 ⁴ See FN 1.

28 ⁵ This fact section essentially re-states the facts presented to the Court in the CCEA Parties' successful Motion for Partial Summary Judgment. They are re-stated here for the Court's convenience.

1 **B. The Underlying Dispute between CCEA and NSEA.**

2 1. *Dues are transmitted from CCEA to NSEA only pursuant to a dues transmittal*
3 *agreement.*

4 CCEA has thousands of CCSD educators who are members and whose dues payments are
5 at the center of this litigation due to a good faith dispute between CCEA and NSEA over the
6 rights and obligations under a dues transmittal agreement that expired on August 31, 2017.
7 Vellardita Aff. at ¶9. Members of CCEA pay dues to CCEA pursuant to a CCEA membership
8 authorization form (“CCEA Membership Authorization Form”). Vellardita Aff. at ¶10. The
9 CCEA Membership Authorization Form is only between CCEA and the individual members,
10 with the individual members agreeing that:

11 **Payroll Deduction Authorization.** With full knowledge of the above, I hereby
12 agree to pay cash for, or herein, authorize my employer to deduct from my salary,
13 **and pay to the local association [CCEA]**, in accordance with the agreed-upon
14 payroll deduction procedure, the professional dues as established annually and the
15 political action contributions in the amounts indicated above for this membership
16 year and each year thereafter, provided that **I may revoke this authorization by**
17 **giving written notice to that effect to my local association** between July 1 and
18 July 15 of any calendar year, or as otherwise designated by the negotiated
19 agreement. Dues are paid on an annual basis and, although dues may be deducted
20 from my payroll check(s) in order to provide an easier method of payment, a
21 member is obligated to pay the entire amount of dues for a membership year. I
22 understand that **if I resign my membership in my local Association**, or in the
23 event of termination, resignation or retirement from employment, I am still
24 obligated to pay the balance of my annual dues and political or positive image
25 contributions for that membership year and such payments will continue to be
26 deducted from my payroll check(s).

27 CCEA Membership Authorization Form, attached hereto as **Exhibit 8** (emphasis supplied).

28 Once the individual member enters into the CCEA Membership Authorization Form with
CCEA, membership dues are then deducted from members’ pay checks by their employer, the
CCSD, pursuant to a collective bargaining agreement between CCEA and CCSD. Vellardita Aff.
at ¶10. Dues payments are directed to CCEA by CCSD. Vellardita Aff. at ¶11.

Dues are then transmitted to NSEA only through a dues transmittal agreement (“Dues
Transmittal Agreement”), which is an addendum and incorporated into a services agreement
 (“Service Agreement”) as Addendum A. Vellardita Aff. at ¶12; Service Agreement between

1 Nevada State Education Association and the Clark County Education Association, attached as
2 **Exhibit 1**. The Service Agreement references the Dues Transmittal Agreement as follows:

3 CCEA agrees to transmit NSEA and NEA dues, and NSEA-TIP and NEA-PAC
4 contributions to NSEA for each by the tenth business day following the payroll
5 deduction. The agreement is attached as Addendum A.

6 Exhibit 1, at ¶1.

7 Pursuant to the NSEA Bylaws, NSEA is required to have a Dues Transmittal Agreement
8 in place with any affiliate labor organization as a condition of affiliation (Article VIII Section 3
9 (F)) and the NEA Bylaws (Section 2-9). Bylaws of the Nevada State Education Association,
10 attached as **Exhibit 5**; Bylaws of the National Education Association, attached as **Exhibit 6**.
Specifically, the NSEA bylaws require that:

11 The NSEA shall affiliate a local association when it meets the following minimum
12 standards: (f): Have a dues transmittal with NSEA.

13 Exhibit 6 at Article VIII Section 3 (F). The NEA bylaws require that:

14 The Association [NEA] shall enter into contracts with state affiliates [NSEA]
15 governing the transmittal of Association dues. **Local affiliates [CCEA] shall**
16 **have full responsibility for transmitting state and Association dues to state**
17 **affiliates on a contractual basis....** A local shall transmit to a state affiliate and a
18 state affiliate shall transmit to the Association at least forty (40) percent of the
19 Association dues receivable for the year by March 15... and at least seventy (70)
percent of the Association dues receivable for the year by June 1; the percentage
shall be based upon the last membership count prior to January 15, and upon a
membership year beginning September 1, **unless the contracted transmittal**
schedule stipulates otherwise.

20 Exhibit 5 at Section 2-9 (emphasis supplied).

21 Thus, pursuant to the CCEA Membership Authorization Form, all dues of CCEA
22 members are deducted from their pay checks and are sent to and collected by CCEA. Exhibit 8.
23 Then, pursuant to the Dues Transmittal Agreement, proportioned amounts of the foregoing⁶ are
24 transmitted from CCEA to NSEA. Exhibit 1 at Addendum A. Finally, pursuant to the NEA
25 Bylaws, NSEA then transmits NEA's portion of those dues to NEA. Exhibit 5 at Section 2-9. In
26

27 ⁶ CCEA members each contributed \$377.66 per year to NSEA, pursuant to the NSEA Policies, and \$189
28 per year to the NEA. Vellardita Aff. at ¶14.

1 the absence of a Dues Transmittal Agreement, there is no obligation for CCEA to transmit dues to
2 NSEA and per NEA's bylaws, only NSEA has a contractual obligation to pay NEA. *See id.*

3 2. *CCEA properly terminated the dues transmittal agreement.*

4 The Service Agreement and the Dues Transmittal Agreement expressly allow either party
5 to terminate and seek to renegotiate the terms of the agreement. *See* Exhibit 1 at ¶20 and
6 Addendum A at VI.

7 Specifically, the Service Agreement states that:

8 The term of this agreement shall be from September 1 to August 31. This
9 Agreement shall be automatically renewed on an annual basis, **unless either party**
10 **shall give written notice of termination to the other party, with evidence of**
11 **receipt by the other party no later than thirty (30) days prior to the**
12 **anniversary date of the Agreement. Should either party give notice of**
13 **termination as provided alone, then this Agreement shall terminate on the**
14 **anniversary date** unless a successor agreement has been mutually agreed to by
15 the parties.

16 Exhibit 1 at ¶20 (emphasis supplied). The relevant anniversary date is September 1, 2017.
17 Exhibit 1 at 1.

18 Similarly, the Dues Transmittal Agreement states that “[t]his agreement shall remain in
19 force for each subsequent membership year **unless terminated in writing by either party prior**
20 **to September 1 of any NSEA membership year**, or amended by mutual consent of both
21 parties.” Exhibit 1, Addendum A at VI (emphasis added). The NSEA membership year runs
22 from September 1 to August 31. Exhibit 5 at Article I, Section 3 (“Membership Year: The
23 membership year shall be September 1 to August 31.”).

24 CCEA notified NSEA of its intent to terminate the Dues Transmittal Agreement and
25 negotiate a new agreement on May 3, 2017, in a letter from the CCEA Executive Director to the
26 NSEA Executive Director. *See* May 3, 2017, letter from J. Vellardita to B. Lee, attached as
27 **Exhibit 2**. The notice from CCEA to NSEA on May 3, 2017, was to terminate the Service
28 Agreement inclusive of Addendum A, which constitutes the Dues Transmittal Agreement, under
which CCEA members' dues payments were being transmitted by CCEA to NSEA. Vellardita
Aff. at ¶16. It was set to expire on August 31, 2017. *See* Exhibit 1. Specifically, the May 3rd
letter stated that:

1 Pursuant to the terms of the Service Agreement between the Nevada State
2 Education Association and the Clark County Education Association, I write to give
3 you notice to terminate this agreement, unless a successor agreement can be
4 mutually agreed to by the parties....Please accept this letter as our formal notice of
5 termination of the Service Agreement.

6 May 3, 2017 Letter, Exhibit 2.

7 On July 17, 2017 and August 3, 2017, CCEA sent NSEA additional notices of
8 termination, affirming that CCEA terminated the Service Agreement (inclusive of the Dues
9 Transmittal Agreement) on May 3, 2017, and indicating its desire to renegotiate the Dues
10 Transmittal Agreement. See July 17, 2017 and August 3, 2017, letters from J. Vellardita to B.
11 Lee, attached as **Exhibits 3 and 4**.

12 Specifically, the letters stated that:

13 On May 3, 2017 CCEA served notice that it was terminating the Service
14 Agreement between CCEA and NSEA.....This letter serves notice to NSEA that
15 unless there is a successor agreement in place before the August 31, 2017 all terms
16 and conditions of the agreement shall become null and void.

17 July 17, 2017 Letter, Exhibit 3.

18 Your letter expressing a claim based on NSEA policies is incorrect as this is a
19 contract matter, there has not been a mutual agreement to modify the Agreement,
20 and without mutual agreement, the terms and conditions of the Agreement will be
21 null and void upon its expiration on August 31, 2017....**The Agreement serves as
the dues transmittal contract, and it is otherwise set to expire unless a
successor is negotiated per the terms and conditions of that Agreement.** Upon
22 expiration, CCEA is not only legally not obligated to transmit dues, but cannot
23 transmit member dues to NSEA per NSEA's own ByLaws. To be clear, when the
24 current Agreement between CCEA and NSEA expires on August 31, 2017 there
25 will not be a contract in place between the two organizations to collect and remit
26 dues to NSEA.

27 August 3, 2017 Letter, Exhibit 4 (emphasis supplied).

28 After the termination and expiration of the Dues Transmittal Agreement on August 31,
2017, CCSD continued to send the employees' dues to CCEA, whereupon the dues were
voluntarily placed into a restricted bank account where they remain to this date. Vellardita Aff. at

¶19.

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1 **C. Judge Kishner’s Restricted Account Order.**

2 On March 30, 2018, Plaintiffs filed their Application for Order Directing the Issuance of a
3 Prejudgment Writ of Attachment with Notice, which the CCEA Parties opposed. In opposition,
4 the CCEA Parties represented that CCEA had been placing the dues at issue into a restricted
5 account since the inception of litigation. The Honorable Judge Joanna Kishner entertained oral
6 argument on the Application on April 23, 2018, and issued an equitable order, ordering the CCEA
7 Parties to continue doing what they showed they had been doing since the inception of the case.
8 Restricted Account Order, attached hereto as **Exhibit 11**. Specifically, the Court ordered, in
9 relevant part, as follows:

- 10 • That all funds in the possession of or received by CCEA for the 2017-2018 school
11 year in respect to NSEA dues (numerically calculated traditionally at the annual
12 rate of \$376.66) and in respect to NEA dues (numerically calculated traditionally at
13 the annual rate of \$189.00) shall continue to be deposited by CCEA into account
14 number #501014714739 (the “Restricted Account”), maintained at the Bank of
15 America Las Vegas, Nevada Branch (the “Bank”) as it has represented to the Court
16 it has done during the course of this litigation; and
17 • That all funds on deposit in the Restricted Account with respect to the 2017-2018
18 NSEA and NEA dues shall remain in the Restricted Account, and that no funds
19 shall be withdrawn, transferred, or disbursed out of the Restricted Account, and the
20 Restricted Account shall not be changed or modified, without a further Order from
21 this Department 31 of this Court.

22 The Restricted Account Order further required CCEA to provide NSEA and NEA with a monthly
23 statement from the Restricted Account.

24 **D. This Court Subsequently Held that CCEA Owed No Duties to NSEA or NEA to**
25 **collect and/or transmit membership dues on NSEA/NEA’s behalf on or after**
26 **September 1, 2017.**

27 On June 18, 2018, the CCEA Parties filed a Motion for Partial Summary Judgment on its
28 declaratory relief claim. On November 15, 2018, this Court granted CCEA’s Motion and

1 requested relief in its entirety, finding that: (1) the termination provisions of the Service
2 Agreement and Dues Transmittal Agreement are clear and unambiguous, (2) CCEA's letters
3 notifying NSEA of the termination of the Service Agreement and Dues Transmittal Agreement
4 are equally clear and unambiguous, (3) the Service Agreement and Dues Transmittal Agreement
5 were terminated by CCEA within the required contractual timeframe, (4) this termination caused
6 both agreements to expire on August 31, 2017, and (5) in light of the foregoing termination and
7 expiration, **CCEA owed no duties to NSEA/NEA under the Service Agreement or Dues**
8 **Transmittal Agreement to collect and/or transmit membership dues on NSEA/NEA's behalf**
9 **on or after September 1, 2017.**

10 **III. LEGAL ARGUMENT**

11 **A. Legal Standard.**

12 "A district court may reconsider a previously decided issue if substantially different
13 evidence is subsequently introduced or the decision is clearly erroneous." *Masonry and Tile*
14 *Contractors Ass'n v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486 (1997). Rule
15 59(e) motions have been interpreted as "cover[ing] a broad range of motions, [with] the only real
16 limitation on the type of motion permitted [being] that it must request a substantive alteration of
17 the judgment, not merely correction of a clerical error, or relief of a type wholly collateral to the
18 judgment." *AA Primo Builders, LLC v. Washington*, 245 P.3d 1190, 1193 (Nev. 2010).

19 "Among the 'basic grounds' for a Rule 59(e) motion are 'correct[ing] manifest errors of
20 law or fact,' 'newly discovered or previously unavailable evidence,' the need 'to prevent manifest
21 injustice,' or a 'change in controlling law'." *Id.* (citing *Coury v. Robison*, 115 Nev. 84, 124–27,
22 976 P.2d 518 (1999)). *See also, Lytle v. Rosemere Estates Prop. Owners*, 314 P.3d 946, 948
23 (Nev. 2013) (holding that Rule 59(e) applies to any appealable order).⁷ The requirements for
24 filing a Rule 59(e) motion are minimal; in addition to being timely filed (no later than 10 days
25 after service of written notice of entry of the judgment), the motion must "be in writing, . . . state
26 with particularity [its] grounds [and] set forth the relief or order sought." *Id.* at 1192.

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28 ⁷ Because this Court's Order is injunctive in nature, it is appealable. *See* NRAP 3A(b)(3).

NRCP 60(b) states that:

(b) On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment is void; or, (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that an injunction should have prospective application. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than 6 months after the proceeding was taken or the date that written notice of entry of the judgment or order was served. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

NRCP 60(b).

B. The Court Should Vacate the Restricted Account Order and Permit CCEA to Return the Funds held in the Restricted Account to the Individual CCEA Members from Whom They Were Collected.

On March 30, 2018, the NSEA Parties filed an Application for Order Directing the Issuance of a Prejudgment Writ of Attachment. The Application requested that the Court issue an order directing the issuance of a prejudgment writ of attachment and garnishment in favor of NSEA in the sum of \$4,066,692 and in favor of NEA in the sum of \$2,035,152.

The NSEA Parties' request was entirely premised on the argument that CCEA had a contractual obligation, after September 1, 2017, to collect and remit to NSEA/NEA the foregoing dues – which argument was expressly rejected by this Court. Indeed, the NSEA

Parties repeatedly allege as a basis for their Application as follows:

- Despite CCEA's contractual obligations to continue remitting these dues Application at 3:11-12;
- And, as explained below, not only is CCEA contractually obligated to have remitted the dues that it has instead diverted to accounts under its own control.... Application at 4:3-9;

- 1 • Since at least 1979, the mechanism by which CCEA is obligated to pay over to NSEA the
2 NSEA and NEA membership dues money transmitted to it by the School District has been
3 a Dues Transmittal Agreement, an agreement which has not been terminated by its terms
4 and remains in effect between CCEA and NSEA. Application at 4:26 – 5:1;
- 5 • Specifically, the Dues Transmittal Agreement, attached to Mr. Lee's Affidavit, requires
6 CCEA to transmit "to the NSEA on a monthly basis" the "NSEA and NEA Membership
7 Dues." First entered into in 1979, the Agreement provides that it "shall remain in force for
8 each subsequent membership year unless terminated in writing by either party prior to
9 September 1 of any NSEA membership year." No written termination of the Dues
10 Transmittal Agreement has been made by either party and the Agreement remains in
11 effect. Application at 9:2-10.

12 In opposition, the CCEA Parties, in part, showed that CCEA had voluntarily been placing the
13 dues at issue into a restricted account since the inception of litigation.

14 The Honorable Judge Joanna Kishner declined to issue a writ of attachment, and instead,
15 issued an equitable order, requiring that (1) all funds in the possession of or received by CCEA
16 for the 2017-2018 school year in respect to NSEA dues and in respect to NEA dues be deposited
17 into a restricted account; (2) that no funds shall be withdrawn, transferred, or disbursed out of the
18 Restricted Account, and the Restricted Account shall not be changed or modified, without a
19 further Order from this Department 31 of this Court, "as [CCEA] has represented to the Court it
20 has done during the course of this litigation"; and (3) that CCEA provide a monthly account
21 statement to the NSEA Parties.

22 On June 18, 2018, the CCEA Parties filed a Motion for Partial Summary Judgment on its
23 declaratory relief claim and on November 15, 2018, this Court granted CCEA's Motion and
24 requested relief in its entirety, finding, for the first time in this litigation,⁸ that: (1) the termination
25 provisions of the Service Agreement and Dues Transmittal Agreement are clear and
26 unambiguous, (2) CCEA's letters notifying NSEA of the termination of the Service Agreement
27 and Dues Transmittal Agreement are equally clear and unambiguous, (3) the Service Agreement
28 and Dues Transmittal Agreement were terminated by CCEA within the required contractual
timeframe, (4) this termination caused both agreements to expire on August 31, 2017, and (5)

⁸ "Among the 'basic grounds' for a Rule 59(e) motion are 'correct[ing] manifest errors of law or fact,'
'newly discovered or previously unavailable evidence,' the need 'to prevent manifest injustice,' or a
'change in controlling law'." *AA Primo Builders, LLC v. Washington*, 245 P.3d 1190, 1193 (Nev. 2010)
(citing *Coury v. Robison*, 115 Nev. 84, 124–27, 976 P.2d 518 (1999)) (emphasis supplied).

1 CCEA owed no duties to NSEA/NEA under the Service Agreement or Dues Transmittal
2 Agreement to collect and/or transmit membership dues on NSEA/NEA's behalf on or after
3 September 1, 2017.

4 In light of this Court's subsequent finding that CCEA owed no duties to NSEA/NEA
5 under the Service Agreement or Dues Transmittal Agreement to collect and/or transmit
6 membership dues on NSEA/NEA's behalf on or after September 1, 2017, the repeatedly stated
7 underlying basis for the Restricted Account Order (the contractual relationship between CCEA
8 and NSEA) has been resolved and no longer exists.⁹ As such, the CCEA Parties respectfully
9 request that this Court vacate the Restricted Account Order in its entirety and permit CCEA to
10 disgorge and return the funds held in the restricted account to the individual CCEA members
11 (including the individual NSEA Parties) from whom they were collected.

12 IV. CONCLUSION

13 For the foregoing reasons, the CCEA Parties respectfully request that the Court vacate the
14 Restricted Account Order in its entirety and permit CCEA to disgorge and return the funds held in
15 the restricted account to the individual CCEA members from whom they were collected.

16 DATED this 12th day of December, 2018.

17 SNELL & WILMER L.L.P.

18
19 By: /s/ John Delikanakis
20 John S. Delikanakis
21 Nevada Bar No. 5928
22 Michael Paretti
23 Nevada Bar No. 13926
24 Bradley T. Austin
25 Nevada Bar No. 13064
26 SNELL & WILMER L.L.P.
27 3883 Howard Hughes Parkway, Suite 1100
28 Las Vegas, NV 89169

Joel A. D'Alba (*pro hac vice*)
200 West Jackson Blvd., Suite 720
Chicago, IL 60606

Richard G. McCracken
Nevada Bar No. 2748

⁹ See FN 8.

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Kimberley C. Weber
Nevada Bar No. 14434
McCRACKEN, STEMERMAN
& HOLSBERRY, LLP
1630 South Commerce Street, Suite 1-A
Las Vegas, NV 89102

Attorneys for the CCEA Parties

1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen
3 (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be
4 served a true and correct copy of the foregoing **CCEA PARTIES' MOTION TO ALTER OR**
5 **AMEND COURT'S MAY 11, 2018 ORDER UNDER NRCP 59(E) and 60(B)** by the method
6 indicated below:

7 <u> X </u>	Odyssey E-File & Serve	<u> </u>	Federal Express
8 <u> </u>	U.S. Mail	<u> </u>	U.S. Certified Mail
9 <u> </u>	Facsimile Transmission	<u> </u>	Hand Delivery
10 <u> </u>	Email Transmission	<u> </u>	Overnight Mail

11 and addressed to the following:

12 Richard J. Pocker
13 Nevada Bar No. 3568
14 Paul J. Lal
15 Nevada Bar No. 3755
16 BOIES SCHILLER FLEXNER LLP
17 300 South Fourth Street, Suite 800
18 Las Vegas, NV 89101
19 Telephone: (702) 382-7300
20 Facsimile: (702) 382-2755
21 Email: rpocker@bsfllp.com
22 Email: plal@bsfllp.com
23 Attorneys for Plaintiffs
24 (via Odyssey E-File & Serve, Email
25 Transmission and Hand Delivery)

John M. West (*pro hac vice*)
Matthew Clash-Drexler (*pro hac vice*)
James Graham Lake (*pro hac vice*)
BREDHOFF & KAISER, PLLC
805 15th Street N.W., Suite 1000
Washington, DC 20005
Telephone: (202) 842-2600
Facsimile: (202) 842-1888
Email: jwest@bredhoff.com
Email: mcdrexler@bredhoff.com
Email: glake@bredhoff.com
Attorneys for Plaintiffs
(via Odyssey E-File & Serve and Email
Transmission)

26 DATED this 12th day of December, 2018.

27 /s/ Lyndsey Luxford
28 An Employee of Snell & Wilmer, L.L.P.

4840-6719-7825.1

EXHIBIT 1

SERVICE AGREEMENT

between the

NEVADA STATE EDUCATION ASSOCIATION

and the

CLARK COUNTY EDUCATION ASSOCIATION

This agreement is entered into for the purpose of identifying basic level services and assistance to be provided by to CCEA by NSEA beginning September 1, 1998, and continuing from year to year thereafter; to set forth understandings and responsibilities of NSEA and CCEA regarding the delivery of those services. It is the specific intent of this agreement to eliminate duplication of effort, and to provide a quality level of service to the members of Clark County Education Association. This agreement, in part or in whole, will be subject to renegotiation should it be found to be in conflict with any statute, policy, bylaw, or contract to which the parties are subject. Therefore, for their mutual benefit the parties as follows:

1. The membership collecting and processing agreement of October, 1979, between and CCEA is continued without change. CCEA agrees to transmit NSEA and NEA dues, and NSEA-TIP and NEA-PAC contributions to NSEA for each by the tenth business day following the payroll deduction. The agreement is attached as Addendum A.

CCEA shall be authorized by NSEA to collect dues from NEA/NSEA administrator members for transmittal to NSEA.

2.
 - A. For the fiscal year beginning September 1, 1998, NSEA will transmit NEA UniServ grant to CCEA for the employment of nine local UniServ Staff. Additional grants shall be transmitted as CCEA qualifies for funding. Should the NEA formula change for allocation entitlement, the parties may negotiate a change to this agreement.
 - B. For each UniServ unit eligible for funding, NSEA will transmit to CCEA the grant amount per unit provided in the UniServ Agreement between NEA/NSEA and CCEA. NEA funding and NSEA transmittal begins in the quarter following qualifications.
 - C. Additionally, NSEA will transmit an amount equal to 60% of the NEA per unit funding for each eligible UniServ Unit. NSEA funding will increase proportionately as CCEA qualifies for additional UniServe Units.
 - D. For each unit funded under the UniServ Grant Program, NSEA will transmit an annual urban growth grant of \$20,000.

- E. The NSEA and CCEA Executive Directors will develop a plan to account for the use of the urban growth grants for submission to the respective Board of Directors. The plan shall outline goals and specify activities of mutual interest to the long term health and welfare of the state and local associations. Subsequent monetary transmittals under the urban grant shall be identified appropriately. The plan shall be completed no later than February 28, 1999 and shall be an annually reviewed addendum to this agreement.
3. The NSEA has entered into a 99 year lease for permanent office space in the current CCEA building. Should the CCEA build a new facility, the NSEA and CCEA Executive Directors may negotiate a buy out of the lease, and the NSEA may elect to lease or secure an equity lease similar to the current lease in effect for space in the new facility. Should space become available in the current facility, NSEA will have first right of refusal to lease and actual or potential contiguous space.
 4. NSEA will continue to maintain a toll free 800 number for CCEA members and staff.
 5. NSEA Executive Director will provide for consultative and organizing assistance in the implementation of CCEA/NSEA/NEA programs. Specific projects will be developed by the NSEA Executive Director and CCEA Executive Director.
 6. NSEA will assist the CCEA staff in political action, teacher rights, membership recruitment, and organization development activities upon request. Such requests shall be made by the CCEA Executive Director to the NSEA Executive Director.
 - A. NSEA AND CCEA shall meet annually by the end of March to develop membership and organizing plans and materials.
 - B. CCEA agrees to allocate staff resources for political organizing and legislative support activities according to a plan developed at least sixty days prior to each activity cycle.
 7. CCEA leaders and staff will receive, upon request from the CCEA Executive Director to the NSEA Executive Director, training from NSEA and NEA for request program assistance. CCEA will provide for participation of the CCEA UniServ staff in at least one annual statewide staff meeting/training at NSEA expense. For this purpose, expense does not include salary or benefits.
 8. NSEA and CCEA will work cooperatively to maintain network capability for electronic mail capacity, connection to NEA and membership processing. This includes training and ongoing consultation in the use and maintenance of the network. NSEA will provide a "page" on it's web site which may be utilized by CCEA. The Executive Director and NSEA Executive Director will consult with each other regarding a implementation, content and maintenance of the site.

9. NSEA will provide funding, according to the NEA-RA/NSEA policy, to CCEA for the CCEA/NSEA delegates to the NEA Representative Assembly. Upon receipt, CCEA will disperse the funds to those elected delegates.
10. NSEA/NEA will bond all CCEA employees. A copy of the bonding policy is attached as Addendum B. This bond covers Association funds and does not cover local insurance trusts and retirement plans.
11. NSEA/NEA will provide Association Professional Liability (APL) for all CCEA elected officers and professional staff. Coverage levels and incident definitions shall be as provided in the APL policy offered through the NEA. This policy covers Association activities and does not cover local insurance trusts and retirement plans.
12. CCEA will maintain control of monies collected from its locally endorsed partners/vendors. Administrative monies provided directly to CCEA from companies endorsed by NSEA will continue where provided by current contracts between NSEA and the affected vendor and administrative monies provided directly to NSEA from vendors which do not directly disburse to CCEA in accordance with NSEA Policies. The NSEA and CCEA Executive Directors shall establish a Financial Services delivery vehicle to coordinate the efforts of vendors, expand financial services to members, and increase non-dues revenue for the purpose of providing the most comprehensive, full career financial services to members to our mutual members. CCEA agrees to inform NSEA of vendor solicitation which may not be unique to CCEA members and may be marketed statewide. NSEA will notify the CCEA Executive Director prior to contacting Building Senators for the purpose of promoting products. CCEA agrees to include NSEA endorsed vendors or sponsored services and products at its annual New Hire Orientation.
13. NSEA and CCEA will work cooperatively to establish funding for projects which support mutual goals and objectives of the NEA/NSEA/CCEA. All cooperative projects shall be supported by written documentation which includes, but is not limited to:
 - a. A statement of purpose;
 - b. Project line;
 - c. Time line;
 - d. Responsibilities;
 - e. Budget;
 - f. Evaluation.Funding for projects may come from dues, NEA grants, or vendor administrative fees. Whenever possible, project proposals shall make provisions for joint affiliate participation in activities.
14. CCEA member rights and organization rights cases will be funded according to the NSEA Legal Services Policy.
15. Political Action monies of CCEA TIP and NSEA TIP shall be disbursed in accordance with NSEA TIP Policies.

16. The CCEA Executive Director and the NSEA Executive Director will meet with the NEA Director, when elected from the membership of CCEA, to determine how buy out and reimbursement arrangements will be completed.
17. CCEA members will be released from work to participate in NSEA activities whenever possible, including attendance at the NEA-RA as NSEA delegates. The NSEA will annually, reimburse CCEA proportionately for days CCEA must reimburse CCSD at either the free or full rate of pay based on the provisions of the annual release time plan. The annual release time plan will be developed by the Executive Directors NSEA and CCEA for presentation to their organization presidents. The plan will be developed and presented prior to May 1 each year. For the initial year of this agreement, the time line of May 1 is waived.
18. CCEA will identify its affiliation with the Nevada State Education Association and the National Education Association on all materials.
19. Representatives from CCEA and NSEA will meet to discuss alternative methods of distribution for NSEA publications.
20. The term of this agreement shall be from September 1 to August 31. This Agreement shall be automatically renewed on an annual basis, unless either party shall give written notice of termination to the other party, with evidence of receipt by the other party no later than thirty (30) days prior to the anniversary date of the Agreement. Should either party give notice of termination as provided alone, then this Agreement shall terminate on the anniversary date unless a successor agreement has been mutually agreed to by the parties.

This agreement is binding on all successors to the parties.

CLARK COUNTY EDUCATION
ASSOCIATION

By: John Jasonek
John Jasonek
Executive Director

Date: 6-22-99

NEVADA STATE EDUCATION
ASSOCIATION

By: Ken Lange
Ken Lange
Executive Director

Date: 6/26/99

ADDENDUM A

AGREEMENT BETWEEN THE NEVADA STATE EDUCATION ASSOCIATION
AND THE CLARK COUNTY CLASSROOM TEACHERS ASSOCIATION

This agreement is entered into for the purpose of collecting and transmitting UTP dues and membership data.

The Nevada State Education Association (hereinafter referred to as the "NSEA"), and the Clark County Classroom Teachers Association (hereinafter referred to as CCCTA), desire to set forth their respective understandings and responsibilities with regard to the collection and transmission of UTP dues and membership data.

Therefore, for full and adequate consideration and for their mutual benefit, the parties agree as follows:

I DESIGNATION OF THE CLARK COUNTY CLASSROOM TEACHERS ASSOCIATION AS AGENT

The NSEA designates, and CCCTA agrees to be its authorized agent for the purpose of collecting and transmitting NSEA and NEA dues and membership data from NSEA/NEA members who are also members of the CCCTA. The CCCTA will collect or cause to be collected NSEA/NEA dues from NSEA/NEA members and will transmit or have transmitted all NSEA/NEA dues.

II OBLIGATIONS OF THE CLARK COUNTY CLASSROOM TEACHERS ASSOCIATION (CCCTA)

A. NSEA/NEA Membership Data

1. The CCCTA currently has in operation adequate and reasonable procedures for recording and reporting membership information that will provide both the NSEA and NEA with all necessary membership data as described in the NSEA and NEA general membership transmittal procedures.
2. The initial transmittal of the aforesaid data for NSEA/NEA each membership year shall (a) be on a mutually acceptable enrollment card; (b) reflect the most current membership data available to the CCCTA; and (c) be received by NSEA not later than October 15 of each membership year. At least one subsequent transmittal of all additions to or changes in the above membership data shall be received by the NSEA not later than the 15th day of each month thereafter, subject to need for modification due to conditions beyond the CCCTA's control.

B. NSEA and NEA Membership Dues

1. The CCCTA agrees to transmit or have transmitted to the NSEA on a monthly basis within ten (10) working days after the school district transmits payroll deductions check and membership list to the CCCTA, membership dues at rates equal to 1/12th of the annual dues according to the following schedule:

Agreement between the NSEA and CCCTA

CCCTA Receives Check
From School District

October 2, 1979
November 2, 1979
November 30, 1979
January 3, 1980
February 1, 1980
March 3, 1980
April 2, 1980
May 2, 1980
June 2, 1980
July 2, 1980
August 1, 1980
September 1, 1980

CCCTA Mails Check For
Transmittal to NSEA

October 17, 1979
November 19, 1979
December 14, 1979
January 17, 1980
February 15, 1980
March 17, 1980
April 16, 1980
May 16, 1980
June 16, 1980
July 17, 1980
August 15, 1980
September 16, 1980

2. Dues transmitted to the NSEA pursuant to Section II, B (1) above shall be receivable in the form of a check drawn on the bank account of the CCCTA or the governmental subdivision that is the employer of the member.
3. In the event a member terminates employment voluntarily or involuntarily, said member shall forward to the NSEA, through CCCTA, the balance of the unpaid dues for the membership year ending August 31.

C. Enforcement of the Dues Transmittal Schedule

1. Should the CCCTA become delinquent in the above transmittal schedule by more than thirty (30) days, the CCCTA agrees to a penalty of one percent (1%) per month on the overdue balance, beginning with the first day of the month following the scheduled payment date.
2. The delegates representing the CCCTA shall be seated in the NSEA Delegate Assembly at the Annual Meeting only if the CCCTA is up to date on its dues transmittal as of one (1) month prior to the DA.
3. If the NSEA informs the NEA in writing that said CCCTA has failed to transmit the association dues in accordance with the dates set forth in II, B (1), and such information is verified by the Executive Director, the delegate of CCCTA shall not be seated in the NEA Representative Assembly at the Annual Meeting.
4. (a) If the dues collection pattern in the CCCTA changes substantially during the term of the agreement, the CCCTA may apply to NSEA for modification of its dues transmittal agreement set forth in Section II, B (1) above.
(b) If because of emergency conditions or unforeseen developments, compliance with the dues transmittal schedule set forth in Section II, B (1) above would result in extreme hardship or inequity for the CCCTA then, CCCTA may apply to the NSEA Board for temporary suspension of the enforcement provisions set forth in Section II, C (1) above.

Agreement between the NSEA and CCCTA

- (c) Applications made by the CCCTA pursuant to Section II, C (4-a) or (b) above shall not be unreasonably denied. In case of unresolved issue between NSEA or CCCTA, either or both parties may appeal directly to NEA for resolution.

III OBLIGATIONS OF THE NSEA

The NSEA shall transmit NEA membership dues and membership data as described in Section II of the agreement between the NEA and NSEA regarding the collection and transmission of NEA dues and membership data.

NSEA shall assist CCCTA in its processing effort by assisting CCCTA office employees in membership processing and accounting methods and techniques and will continue to explore more efficient operational procedures in an effort to assist CCCTA to reduce its overhead costs.

IV DISPUTES INVOLVING INTERPRETATION, APPLICATION OR ENFORCEMENT OF THIS AGREEMENT

- A. Any controversy or claim arising out of or relating to this agreement, or breach thereof, may be submitted by either party to the American Arbitration Association to be settled in accordance with the Commercial Arbitration rules of the the American Arbitration Association. Such arbitration shall be held in Carson City, Nevada and judgment upon the award rendered by the arbitrator(s) may be entered in the courts of Nevada. Both parties will share the expense.
- B. If neither party has initiated arbitration, this agreement may be enforced in the courts of Nevada.
- C. This agreement, being entered into in the State of Nevada, shall be interpreted, construed, applied and governed by the laws of Nevada.

V AMMENDMENT OF AGREEMENT

Should any provision of the agreement conflict with any policy or amendment to the Constitution and Bylaws adopted by the NSEA Delegate Assembly or with any procedure and/or requirement adopted by the NSEA Board of Directors pursuant to the powers under Article VI of the NSEA Bylaws, such policy, amendment, procedure or requirement shall prevail and the conflicting provision in this agreement shall be automatically amended to reflect the prevailing policy, amendment, procedure or requirement.

VI CONTINUATION OF AGREEMENT

This agreement shall remain in force for each subsequent membership year unless terminated in writing by either party prior to September 1 of any NSEA membership year, or amended by mutual consent of both parties.

Agreement between the NSEA and CCCTA

CLARK COUNTY CLASSROOM TEACHERS ASSOCIATION

BY: Gilda M. Brown

TITLE: President CCCTA

DATE: October 23, 1979

NEVADA STATE EDUCATION ASSOCIATION

BY: Mark L. Simpson

TITLE: Executive Director

DATE: 23 October 1979

EXHIBIT 2



Clark County Education Association

the union
of teaching
professionals

4230 McLeod Drive
Las Vegas, NV 89121
Tel. 702/733-3063
800/772-2282
Fax 702/733-0240
www.ccea-nv.org

May 3, 2017

Brian Lee, Executive Director
Nevada Education Association
3511 E Harmon Ave # C,
Las Vegas, NV 89121

Re: Service Agreement Between NSEA and CCEA

Dear Brian,

Pursuant to the terms of the Service Agreement between the Nevada State Education Association and the Clark County Education Association, I write to give you notice to terminate this agreement, unless a successor agreement can be mutually agreed to by the parties.

As a result of the reorganization and extensive decentralization of the Clark County School District, the center of delivery for school services and decision making will be the school organization teams (SOT). Each school precinct will have a leadership team of parents, educators, support staff and a principal. These are massive changes that will stress the existing resources of the Clark County Education Association. We have a pressing need to increase the size of our staff and to expand the services and programs we provide to the licensed professionals we represent. Given our challenge, time is of the essence.

Accordingly, we will need to renegotiate the current Service Agreement and anticipate a meeting with you to discuss these issues. Please accept this letter as our formal notice of termination of the Service Agreement.

Respectively,

A handwritten signature in black ink, appearing to read "Vellardita", with a stylized flourish at the end.

John Vellardita
Executive Director, Clark County Education Association

EXHIBIT 3



Clark County Education Association

the union
of teaching
professionals

4230 McLeod Drive
Las Vegas, NV 89121
Tel. 702/733-3063
800/772-2282
Fax 702/733-0240
www.ccea-nv.org

July 17, 2017

Brian Lee, Executive Director
Nevada Education Association
3511 E Harmon Ave # C,
Las Vegas, NV 89121

Re: Final Notice Re: Service Agreement between NSEA and CCEA

Dear Brian,

On May 3, 2017 CCEA served notice that it was terminating the Service Agreement between CCEA and NSEA. On May 4, 2017 in an email to me your response was:

I believe that the policies of the NSEA allow for the renegotiation of affiliation/service agreements starting on September 15th. I am constrained by our NSEA policies, I will consider this letter a request to start those renegotiations starting as soon as possible after that date.

I cannot stress the importance as well as the urgency to NSEA on the challenges that CCEA is facing with the reorganization of the school district and the impasse arbitration over a successor collective bargaining agreement we are in with Clark County School District. I shared this with you on May 3, 2017 when I wrote:

As a result of the reorganization and extensive decentralization of the Clark County School District, the center of delivery for school services and decision making will be the school organization teams (SOT). Each school precinct will have a leadership team of parents, educators, support staff and a principal. These are massive changes that will stress the existing resources of the Clark County Education Association. We have a pressing need to increase the size of our staff and to expand the services and programs we provide to the licensed professionals we represent. Given our challenge, time is of the essence.

This letter serves notice to NSEA that unless there is a successor agreement in place before the August 31, 2017 all terms and conditions of the agreement shall become null and void. CCEA will take all appropriate measures to advance and defend the interests of our members, to carry out our fiduciary responsibilities, and will not let the absence of a Service Agreement with NSEA impede our efforts.

Respectively,

John Vellardita
Executive Director, Clark County Education Association

EXHIBIT 4



Clark County Education Association

the union
of teaching
professionals

4230 McLeod Drive
Las Vegas, NV 89121
Tel. 702/733-3063
800/772-2282
Fax 702/733-0240
www.ccea-nv.org

August 3, 2017

Brian Lee, Executive Director
Nevada Education Association
3511 E Harmon Ave # C,
Las Vegas, NV 89121

Re: Final Notice: Contract for Dues Remittance

Dear Brian,

On July 26, 2017, you responded to my formal letter requesting to renegotiate the current Service Agreement (Agreement) sent on May 3, 2017 and July 17, 2017. Your letter expressing a claim based on NSEA policies is incorrect as this is a contract matter, because there has not been a mutual agreement to modify the Agreement, and without mutual agreement, the terms and conditions of the Agreement will be null and void upon its expiration on August 31, 2017.

Pursuant to Article II, Section 5(A) of the NSEA ByLaws, *"Payroll deduction is contingent upon the existence of a valid dues transmittal agreement between the local and NSEA."* Similarly, Article VIII, Section 3(F) of the NSEA ByLaws makes clear that affiliation is predicated upon meeting certain requirements, including, *"Hav[ing] a dues transmittal contract with NSEA."* The Agreement serves as the dues transmittal contract, and it is otherwise set to expire unless a successor is negotiated per the terms and conditions of that Agreement. Upon expiration, CCEA is not only legally not obligated to transmit dues, but cannot transmit member dues to NSEA per NSEA's own ByLaws.

To be clear, when the current Agreement between CCEA and NSEA expires on August 31, 2017 there will not be a contract in place between the two organizations to collect and remit dues to NSEA. My question to you is whether NSEA would like to continue to have CCEA collect and transmit dues on its behalf, as it has come to my attention that NSEA is circulating its own membership form for NSEA/NEA to Clark County School District licensed professionals, separate and apart from CCEA membership. NSEA's membership form makes representation on the role of the certified bargaining agent, which in this case is CCEA and CCEA alone, as well as dues transmittal.

NSEA's membership form states in part: *"My signature authorizes my local association to negotiate for me before the school district, as provided in Nevada Statutes...I hereby agree to pay cash for, or herein authorize my employer to deduct from my salary, and pay to the local association, in accordance with the agreed upon payroll deduction procedure...I am revoke this authorization by giving written notice to that effect to my local association..."*

However, if the intent of NSEA is to have CCEA collect and transmit dues to NSEA per your membership, a new Agreement will still need to be in effect, mutually agreed upon through good faith negotiation that addresses: dues collection/remittance and the cost associated with attaining, maintaining, and servicing that membership. Accordingly, CCEA is available on the following dates to negotiate an agreement: August 14-16 and in September the weeks of 6 -10, 11-16, and 18-23, 2017. Please advise on your availability.

Finally, please also note that CCEA has served NSEA with four invoices on July 31, 2017 totally \$467,130.69 and expect payment by August 31, 2017.

Respectively,

A handwritten signature in black ink, appearing to read "John Vellardita", written over a horizontal line.

John Vellardita
Executive Director, Clark County Education Association

Cc:
CCEA Board of Directors

EXHIBIT 5

BYLAWS OF THE NEVADA STATE EDUCATION ASSOCIATION

ARTICLE I: NAME AND PURPOSE

The name of this organization shall be the Nevada State Education Association (NSEA). The purpose of the NSEA shall be to promote the cause of education, the professions of teaching and education support professionals and the welfare of the youth of Nevada and America.

The NSEA is the prominent education voice in Nevada and the protector of its members' professional rights and economic security.

ARTICLE II: MEMBERSHIP

SECTION 1: CLASSES OF MEMBERSHIP

There shall be six classes of membership: Active, Retired, Student, Staff, Reserve and Associate.

A. Active Members

1. Active membership in the NSEA shall be open to any person:
 - a. who is employed by a public school district or other public institution devoted to education in the state of Nevada.
 - b. who is on a limited leave of absence from a public school district, or other public institution devoted to education in the state of Nevada
 - c. who is serving as an elected officer of the NSEA, the National Education Association (NEA), or a local affiliate.
2. Active members shall agree to abide by the Code of Ethics of the Education Profession, support the principles and goals of the NSEA and hold a license in education in Nevada with an earned bachelor's or higher degree, or hold a regular vocational or technical certificate, and, where required, hold or are eligible to hold, a certificate issued by the State Department of Education (This shall not apply to professional personnel who joined before September 1, 1964.), or serve as education support professionals in the employ of any Nevada county school district or in any Nevada institution of higher education.
3. Organizing a specific group of employees of a public educational entity who have no local NSEA affiliate, may occur after discussion with the current NSEA local affiliate as to the purpose of organizing these employees. The current NSEA local affiliate, by vote of its policy-making body, shall determine if these employees will become active members of its local association or establish a separate NSEA local affiliate.
4. Active members on leave of absence from their education position of at least six months have two options with respect to membership:
 - a. They are eligible for active membership with full voting and membership rights; or
 - b. They may become reserve members and forego voting and membership rights.
5. Active members who have been laid off due to a reduction in force (RIF) are eligible to retain their active membership for as long as such persons are eligible to be recalled, or for three years, whichever is longer.
 - a. They are eligible for active membership with full voting and membership rights; or

the work and goals of the Nevada State Education Association are eligible for associate membership. Associate member status shall not be available to those individuals who qualify for other membership status. Associate members shall submit an associate membership application and pay dues as set by the Nevada State Education Association Board. Associate members are ineligible to nominate officers, run for office, or vote in elections or matters of the Union. Associate members may attend meetings if they receive approval from the appropriate governing body. The Nevada State Education Board has the right to determine the benefits and privileges of associate members.

SECTION 2: DUES

The Delegate Assembly shall set NSEA dues for all classes of membership. Between meetings of the annual Assembly, the Board of Directors shall have the authority to establish dues for the non-Active classes of membership until the next meeting of the Delegate Assembly.

SECTION 3: MEMBERSHIP YEAR

The membership year shall be September 1 to August 31.

SECTION 4: REVOCATION OF MEMBERSHIP

In accordance with the due process of law, a Tripartite Review Board, upon recommendation of the NSEA Board, may censure, suspend or expel any member determined to be in violation of the Code of Ethics of the Education Profession. The decision of the Tripartite Review Panel shall be final and binding.

SECTION 5: ENROLLMENT

- A. Membership begins when an applicant signs a payroll deduction form for membership in the United Education Profession and gives that application to an agent of the NSEA. If the applicant elects to be a cash member, his membership becomes effective when NSEA or one of its affiliates receives his dues for the balance of the membership year for NSEA and NEA. Payroll deduction is contingent upon the existence of a valid dues transmittal agreement between the local and NSEA.
- B. Membership shall be continuous until the member resigns from NSEA or fails to remain in good standing.

ARTICLE III: DELEGATE ASSEMBLY

SECTION 1: ANNUAL MEETING

- A. The Delegate Assembly shall meet annually. The time and place shall be established by the Board of Directors.
- B. A majority of its registered delegates shall constitute a quorum for the Delegate Assembly.
- C. The Delegate Assembly is the legislative governing authority of the NSEA. The Assembly shall adopt the budget, amend the bylaws, set NSEA dues for all classes of membership, approve resolutions, and formulate policy statements of the NSEA.
- D. The Delegate Assembly shall elect officers under open nominations and secret ballot procedures.
- E. The Delegate Assembly shall receive and consider reports of the officers, Board of Directors, Executive Director and standing or special committees.
- F. Election rules shall be approved by the Delegate Assembly.

C. Strategic Priorities Standing Committees

1. Government Relations Committee: The Government Relations Committee shall be responsible for the development and implementation of Association programs to secure legislative support for public education, collective bargaining, retirement benefits, and the improvement of statutes and regulations regarding professional practices.
2. Membership Committee: The NSEA Membership Committee is charged with overseeing various membership programs and providing support to recruit new members, maintain current members, and recapture former members and to engage educators in the work of the Association.
3. Instruction and Professional Development Committee: The Instruction and Professional Development Committee shall be responsible for the development and implementation of Association programs to secure and maintain the inherent professional rights of teachers.

SECTION 2:

All Standing Committees shall report to the Delegate Assembly. They shall report to the Board of Directors or provided in these Bylaws, upon the request of the President.

SECTION 3:

The Board of Directors is authorized to determine the method of committee member selection which shall include ethnic-minority representation on each committee.

SECTION 4:

The NSEA President shall be an ex-officio member of all committees.

SECTION 5:

Unless otherwise directed by the Delegate Assembly, the Board of Directors is authorized to establish standing or ad hoc committees.

- A. Delegate Assembly Standing Committees exist to facilitate the operation of the NSEA Delegate Assembly.
- B. Member Advocacy Standing Committees or Programs make recommendations to the governing bodies on matters of concern to the constituencies that they represent.
- C. Strategic Priority Standing Committees advance one or more of NSEA's strategic priorities.

ARTICLE VIII: AFFILIATION

SECTION 1:

The NSEA shall be affiliated with the National Education Association (NEA) under its rules and shall accept as members those persons who join the NEA and the appropriate affiliated local associations where available.

SECTION 2:

A local affiliate shall be granted NSEA status whenever the Board of Directors shall determine that the local affiliate fulfills requirements established either by the Delegate Assembly, the Board of Directors, or both.

SECTION 3:

The NSEA shall affiliate a local association when it meets the following minimum standards:

- A. Each affiliate shall apply the one-person, one-vote principle for representation on its governing bodies except that the affiliate shall make every reasonable effort to have ethnic-minority representation at least proportionate to its ethnic-minority membership;
- B. The affiliate shall conduct all elections with open nominations and a secret ballot;
- C. The affiliate shall require membership in the NSEA and in the NEA;
- D. The affiliate shall have the same membership year as that of the NSEA; and
- E. The affiliate shall guarantee that no member of said affiliate may be censured, suspended, or expelled without a due process hearing, which shall include appropriate appellate procedures.
- F. Have a dues transmittal contract with NSEA.

SECTION 4:

Local affiliate / chapter shall consist of:

- A. an all-inclusive membership, or;
- B. a local teacher association, and/or a group of local teacher associations, or;
- C. professional employees of institutions of higher education, including community and adult education, or;
- D. retired chapters, or;
- E. education support professionals, or;
- F. student chapters.

SECTION 5:

NSEA local affiliates must:

- A. have a minimum of ten (10) active NSEA members, schedule at least one general meeting each year;
- B. adopt bylaws consistent with the Bylaws of the NSEA and NEA;
- C. elect officers;
- D. elect delegates to the Delegate Assembly as provided by these Bylaws; and,
- E. maintain effective contact with NSEA by submitting lists of officers, school representatives, and local committee members by October first (1st) of each year.

SECTION 6:

A copy of the current local association bylaws shall be filed with the NSEA.

SECTION 7:

The NSEA shall not recognize functionally similar local affiliates as listed in SECTION 4 of this article in the same geographic area.

SECTION 8:

No local association may be censured, suspended, or disaffiliated except by due process hearing before the Tripartite Review Panel whose decision shall be final and binding.

SECTION 9:

The Tripartite Review Panel shall have the power to censure, suspend, or disaffiliate a local association for just cause.

SECTION 10:

The Board of Directors may recommend censure, expulsion, disaffiliation, or reinstatement of a local association to the Tripartite Review Panel.

SECTION 11:

The Tripartite Review Panel shall be comprised of three (3) local member association presidents as follows:

- A. The aggrieved party picks one (1) member of the panel. In no case shall the aggrieved party select himself/herself.
- B. The NSEA President picks one (1) member of the panel.
- C. The third member will be selected by means of a striking process by the two (2) members selected for the panel. Names will alternately be struck from the list of remaining local association presidents.
- D. A flip of a coin shall determine the striking order with the last remaining name serving as chairperson of the panel.
- E. The decision of the Tripartite Review Panel shall be final and binding.

SECTION 12:

The Board of Directors shall review the qualifications of affiliated organizations at least every five (5) years.

ARTICLE IX: PARLIAMENTARY AUTHORITY

The rules contained in the current edition of ROBERT'S RULES OF ORDER NEWLY REVISED shall govern the NSEA in all cases to which they are applicable and in which they are not inconsistent with the Bylaws and any special rules of order the NSEA may adopt.

ARTICLE X: AMENDMENTS

SECTION 1:

The NSEA's Delegate Assembly, by a two-thirds (2/3) vote of those present and voting, shall have the power to amend the Bylaws. If authorized by a resolution of the Delegate Assembly, the Board of Directors, by a two-thirds (2/3) vote of those present and voting, have the power to amend the Bylaws.

SECTION 2:

Active members of the NSEA may also amend the Bylaws by a two-thirds (2/3) vote of those voting by initiative petition and referendum.

EXHIBIT 6

Bylaws of the National Education Association of the United States

1. Objectives

1-1. Specific Objectives.

The specific objectives directed toward the achievement of the stated goals of the Association shall be:

- a. To improve the structure of the Association to ensure the full and effective participation of all members, thereby establishing and maintaining an independent, self-governing organization;
- b. To promote continuous improvement of instruction and of curriculum;
- c. To promote and to protect the rights and welfare of its members;
- d. To advance professional rights and to enhance professional responsibilities to further the consistent development and improvement of the profession and its practitioners;
- e. To work among the American people for broad support of education and for improved attitudes toward the profession;
- f. To secure adequate financial support for public education;
- g. To promote the rights and welfare of all students;
- h. To assist each student in realizing his or her maximum potential;
- i. To develop and provide leadership in solving social problems; and
- j. To protect and support its members as employees in disputes with employers or with those acting on behalf of employers.

2. Membership

2-1. Categories.

a. There shall be six (6) categories of membership in the Association: Active, Student, Retired, Substitute, Reserve, and Staff.

b. Active membership shall be open to any person (i) who is employed by or in a public school district, public or private preschool program, public or private college or university, or other public institution devoted primarily to education, regardless of the specific nature of the functions that the person performs at the work site and regardless of who actually employs the person; (ii) who is employed by a public sector employer other than a school district, college or university, or other institution devoted primarily to education but who is employed primarily to perform educational functions; (iii) who is on limited leave of absence from the employment described in items (i) and (ii) above; (iv) who is a member of a state affiliate in the state affiliate's Active (or equivalently designated) membership category; or (v) who is serving as an executive officer of the Association or of a state or local affiliate. The Association shall continue to allow Active membership to those Active members (i) who have been laid off due to a reduction in force for as long as such persons are eligible to be

ballot measures and legislative crises, and forty percent (40%) shall be available for national and state media campaigns to advance the cause of public education and publicize the role of the Association and its affiliates in improving the quality of public education.

Where necessary to avoid legal problems under state law, the Association and a state affiliate may, at the request of the state affiliate, enter into a written agreement providing that the money collected from members of that state affiliate shall not be used to deal with ballot measures, but shall be used only to deal with legislative crises and/or to fund national and state media campaigns. The Executive Committee shall develop guidelines to implement this Bylaw. These guidelines shall be submitted to the Board of Directors, and shall become effective when approved by the Board of Directors.

The NEA president shall make a report regarding the operation of the Ballot Measure/Legislative Crises and Media Campaign Fund, which shall include a financial statement, to each Representative Assembly.

o. Beginning with the 2002–2003 membership year: (1) Active members engaged in or on limited leave of absence from professional educational employment who pay annual dues as calculated pursuant to Bylaw 2-7.a (hereinafter “base annual dues”) shall pay an additional one dollar (\$1) in annual dues; and (2) Active members who pay less than base annual dues, Reserve members, and Staff members shall pay an additional fifty cents (\$.50). These additional dues shall be

allocated to the NEA Foundation for the Improvement of Education.

2-9. Dues Transmittal and Enforcement Procedures.

a. The Association shall enter into contracts with state affiliates governing the transmittal of Association dues. State affiliates shall have the full responsibility for transmitting Association dues from local affiliates on a contractual basis. Local affiliates shall have the full responsibility for transmitting state and Association dues to state affiliates on a contractual basis. Standards and contracts for transmitting dues shall be developed between the state affiliate and each local affiliate.

b. A local shall transmit to a state affiliate and a state affiliate shall transmit to the Association at least forty (40) percent of the Association dues receivable for the year by March 15 and at least seventy (70) percent of the Association dues receivable for the year by June 1; the percentage shall be based upon the last membership count prior to January 15, and upon a membership year beginning September 1, unless the contracted transmittal schedule stipulates otherwise.

(1) A local or state affiliate which becomes delinquent in its contracted transmittal schedule by more than thirty (30) days shall be assessed a penalty of two (2) percent per month on the overdue balance.

(2) Except as otherwise provided in 2-9.b (3) or (4), the delegates representing a state affiliate that has not transmitted at least forty (40) percent of the dues receivable for the year by March 15 and seventy (70) percent of the dues receivable

for the year by June 1 shall have no right to participate in the NEA Representative Assembly at the Annual Meeting other than to (i) participate in elections for Association officers and (ii) vote on increases in Association membership dues.

(3) Except as otherwise provided in 2-9.b (4), if a state affiliate informs the NEA in writing that a local affiliate has failed to transmit the Association dues in accordance with the dates set forth in 2-9.b and such information is verified by the executive director, the delegates of that local shall have no right to participate in the NEA Representative Assembly at the Annual Meeting other than to (i) participate in elections for Association officers and (ii) vote on increases in Association membership dues. In this event, the delegates of the state affiliate shall have full right to participate in the NEA Representative Assembly at the Annual Meeting.

(4) The denial of participatory rights called for in 2-9.b (2) or (3) may be waived by the NEA Executive Committee if the state or local affiliate in question enters into a written contract with the NEA Executive Committee in which it agrees to transmit the delinquent dues on terms that are acceptable to the NEA Executive Committee, provided that the NEA Executive Committee shall not enter into such a contract with a local affiliate until after it has consulted with the relevant state affiliate. The NEA Executive Committee may terminate any waiver granted pursuant to this section if the affiliate fails to comply with the aforesaid contract.

3. Representative Assembly

3-1. Allocation of Delegates.

a. Allocation of delegate credentials to state and local affiliates shall be on the basis of Active membership in the Association as of January 15 of the calendar year in which the Representative Assembly convenes.

Representation from state and local affiliates which provide all-inclusive membership shall be on the basis of proportional representation by education position.

Representation from state and local affiliates which include in their membership more than one (1) of the three (3) job categories eligible for Association Active membership (i.e., nonsupervisory Active members in prekindergarten through secondary instructional positions, education support positions, or higher education faculty positions) may, at the option of the state and local affiliates, be on the basis of proportional representation by job category. A delegate elected to represent an affiliate shall be a member of that affiliate, provided that if additional delegate positions are allocated to a state affiliate on the basis of Active members of the Association within a state who are not also members of the state affiliate, only the latter members of the Association may be elected to such additional delegate positions.

b. Article III of the Constitution shall provide for the allocation of delegate credentials to local affiliates.

c. Article III of the Constitution shall provide for the allocation of delegate credentials to state affiliates.

EXHIBIT 7



CCEA

Clark County Education Association

the union
of teaching
professionals

Constitution & Bylaws

Last revised and amended by the CCEA Association
Representative Council on April 25, 2017.

PREAMBLE

We, the members of the Clark County Education Association, in order that the Association may serve as the local voice for education, advance the cause of education as expressed through CCEA's mission and vision statements, promote professional excellence among educators, recognize the fundamental importance of the educator in the learning process, protect the rights of educators and advance their interests and welfare, secure professional autonomy, unite educators for active citizenship, promote and protect human and civil rights, act as the recognized bargaining agent for licensed personnel in Clark County, and obtain for its members the benefits of an independent, united education profession, do hereby adopt these Bylaws.

ARTICLE I

NAME, GOALS, OBJECTIVES, AND AUTHORITIES FOR GOVERNANCE

Section 1. NAME

The name of this organization shall be the Clark County Education Association, herein called the Association.

Section 2. GOALS AND OBJECTIVES

- A. The goals of the Association shall be as stated in the Preamble. The Association shall have all power necessary and proper to take action for the attainment of these goals.
- B. Nothing in these Bylaws shall be construed to prevent the Association from pursuing objectives which are consistent with the stated goals of the Association. The following are specific objectives:
 - 1. To improve the structure of the Association to ensure the full and effective participation of all members, thereby establishing and maintaining an independent, self-governing organization;
 - 2. To promote and to protect the rights and welfare of its members;
 - 3. To advance professional rights and to enhance professional responsibilities to further the consistent development and improvement of the profession and its practitioners;
 - 4. To work for broad support of education and for improved attitudes toward the profession;
 - 5. To advocate for adequate financial support for public education;

6. To protect and support its members as employees in disputes with employers or with those acting on behalf of employers.

Section 3. GOVERNANCE

The Association shall be governed by its Bylaws and Policies, and such other actions as the Association Representative Council and Executive Board may take consistent therewith.

ARTICLE II

MEMBERSHIP

Section 1. ELIGIBILITY

Any member of the bargaining unit as defined by the CCEA/CCSD Labor Agreement in the Clark County School District may become a member of the Association when evidence of membership in NSEA and NEA is received and an official plan is signed authorizing payment of dues of the certified professional.

Section 2. RIGHTS AND LIMITATIONS

- A. Members shall have the right to full participation.
- B. Any member who transfers from another state during the current school year and whose dues are paid in full and who also belongs to the local, state, and national affiliates shall receive from this Association all the rights and privileges of membership until the beginning of the next membership year, providing the state association from which the member has transferred offers a reciprocal membership. Such membership shall begin with official notification to this Association by the member that said member wishes to exercise membership privileges.
- C. Any member whose professional or occupational position changes shall be transferred to the class of membership applicable to the new position; the member shall not remain in a class of membership for which the member is no longer eligible.
- D. Members who fail to adhere to any of the conditions of membership as stated in Article II of the Bylaws shall be subject to censure, suspension, or expulsion by process of the Review Board as outlined in Article VI.

Members subject to censure, suspension or expulsion shall be guaranteed the right of a due process hearing before the Review Board.

Section 3. ASSOCIATION FISCAL/MEMBERSHIP YEAR

The Association fiscal/membership year shall be from September 1 through August 31.

Section 4. MEMBERSHIP DUES

- A. Dues of members shall be increased/decreased annually based upon the percentage of salary increase to Class A, Step 1 of the teacher salary schedule for the previous fiscal year.
- B. The dues for members of the Association may be altered by the Association Representative Council.
- C. The membership fees for persons eligible for membership who are regularly employed for fifty (50) percent or less of the normal schedule for full-time employee shall be one-half (1/2) of the dues.
- D. The Association shall continue to allow membership to those members laid off due to a reduction in force with reduction in dues of fifty (50) percent. Such eligibility for membership shall continue as long as such persons are eligible to be recalled or for three (3) years, whichever is longer.
- E. The Association may continue to allow full membership to members who are on leave of absence from the Clark County School District during the duration of the leave of absence as long as the member continues to pay full dues.

ARTICLE III

LEGISLATIVE BODY

Section 1. RESPONSIBILITY OF ASSOCIATION REPRESENTATIVE COUNCIL

The Association Representative Council shall be the legislative and policy-forming body of the Association.

Section 2. COMPOSITION OF ASSOCIATION REPRESENTATIVE COUNCIL

- A. The Association Representative Council shall consist of the elected officers, Executive Board, and one or more representatives elected from each school faculty according to the allocation in Article III, Section 3, the Association members of the NSEA Board of Directors, the Association members of the NSEA Delegate Assembly, and NEA Representative Assembly.
- B. Ethnic-minority representation should be proportionate to identified ethnic-minority populations of the Association membership as of April 1 of the preceding Association fiscal year.

Section 3. ALLOCATION FOR ASSOCIATION REPRESENTATIVES

A. Active members in each school shall elect one or more Association Representative(s) according to the following allocation:

- One Association Representative for 1-25 members
- Two Association Representatives for 26-50 members
- Three Association Representatives for 51-75 members
- Four Association Representatives for 76-100 members
- Five Association Representatives for 101-125 members
- Six Association Representatives for 126-150 members
- Seven Association Representatives for 151-175 members
- Eight Association Representatives for 176-200 members

B. All members who do not have representation through a school Association Representative shall meet in groups according to their Other Licensed Personnel (OLP) professional title and elect the corresponding number of Association Representatives per group to represent them in the Association Representative Council. OLP groups include, but are not limited to: speech therapists, physical therapists, nurses, social workers, psychologists, occupational therapists, counselors and audiologists. These groups must apply annually to the Association Representative Council for recognition of their status as a professional titled group and authorization to elect the correct number of Association Representatives according to the following allocation:

These groups must inform the President by November 1 of the number of eligible

- One Association Representative for 1-25 members
- Two Association Representatives for 26-50 members
- Three Association Representatives for 51-75 members
- Four Association Representatives for 76-100 members
- Five Association Representatives for 101-125 members
- Six Association Representatives for 126-150 members
- Seven Association Representatives for 151-175 members
- Eight Association Representatives for 176-200 members

employees and the intent to elect Association Representatives.

C. The election of the Association of Representatives shall be conducted electronically.

Amended 4/201

Section 4. ELECTION OF ASSOCIATION REPRESENTATIVES

- A. The election of Association Representatives shall be conducted at the work site according to open nomination and secret ballot provisions. This election shall be conducted by the current building Association Representative, President or the President's designee. All active members at a given work site will be eligible to vote. This election shall be completed by November 30.
- B. If after the time recognized in subparagraphs (A) no Association Representative is elected to the worksite in the manner prescribed in

subparagraph (A), the President may appoint Association Representatives to those worksites.

- C. If there is an insufficient number of ethnic minorities Association Representatives elected, the Minority Affairs Committee will submit names of ethnic-minority members, in accordance with Article III, Section 2. B., to the President who will appoint the number of Association Representatives needed to comply with NEA's *Achieving Minimum Affiliation Standards*.

Section 5. ALTERNATE ASSOCIATION REPRESENTATIVES

Each work site and represented group shall elect an Active member as an alternate Association Representative for each elected Association Representative.

Section 6. VACANCIES OF ASSOCIATION REPRESENTATIVES

If a vacancy occurs after November 30, and there are no alternates, the President or President's designee shall conduct a democratic election if there is more than one candidate contending for the position(s).

Section 7. MEETINGS OF THE ASSOCIATION REPRESENTATIVE COUNCIL

- A. The Association Representative Council shall meet at least nine (9) times per Association fiscal year.
- B. The time, place, and agenda shall be set by the President.
- C. The agenda for each meeting shall be sent to all Association Representatives in advance of the meeting.
- D. Association Representatives shall have floor and voting privileges at all Association Representative Council meetings. Any active member shall have floor privileges.
- E. Association Representatives present shall constitute a quorum for Association Representative Council meetings.
- F. The Association Representative Council shall adopt for meetings its own internal rules of procedure provided they are not in conflict with these Bylaws or *Robert's Rules of Order, Newly Revised*.

Section 8. SPECIAL MEETINGS

- A. Special meetings of the Association Representative Council may be called by the President, unless a regularly scheduled Association Representative Council meeting is scheduled within three weeks.
- B. The President shall call a special meeting upon written request to the

Executive Board from fifty (50) Association Representatives.

- C. Association Representatives must be given at least ten working days notice of the special meeting. Twenty-five percent (25%) of elected Association Representatives shall constitute a quorum.

Section 9. RESPONSIBILITIES OF THE ASSOCIATION REPRESENTATIVE COUNCIL

- A. The Association Representative Council shall:
 - 1. establish and amend Association Bylaws, Policies, and Election Procedures;
 - 2. establish dues;
 - 3. adopt the annual budget;
 - 4. receive and may act upon Committee Reports;
 - 5. elect member(s) to fill Executive Board vacancy(s) which occur;
 - 6. exercise final authority in all matters of the Association;
 - 7. ratify election results;
 - 8. adopt procedures for the establishment of the Review Board, the order of succession;
 - 9. elect members of the Review Board;
 - 10. receive resignations from the Review Board; and
 - 11. ratify actions taken by the Review Board.
 - 12. establish priorities for NSEA Delegate Assembly
 - 13. establish priorities for NEA Representative Assembly
 - 14. communicate with school precinct and CCEA leadership on key issues
 - 15. commit to a working knowledge of the CCEA/ CCSD Contract

Amended 4/2017

ARTICLE IV

OFFICERS

Section 1. ELECTED OFFICERS

The elected officers of the Association shall consist of the President, Vice President, Secretary, and Treasurer, who shall be voting members of the Executive Board and Association Representative Council.

Section 2. ELIGIBILITY

Membership must be held for at least two (2) Fiscal years immediately preceding the time of seating for a post probationary member to qualify for the offices of President, Vice President, Secretary and Treasurer.

Amended 4/2017

Section 3. LIMITATIONS

No elected officer may hold more than one Association office during his/her term of office.

Section 4. OATH OF OFFICE

All elected officers must take an Oath of Office before their term of office begins and shall comply there in.

Section 5. OFFICERS' DUTIES, TERMS AND VACANCIES

A. President

The President shall be the chief executive officer of the Association. The position of President shall be full-time release. A full-time release President is defined as a member who is elected as President, serving full time as President with no responsibilities for the position from which s/he is being released.

1. Duties

The President shall:

- a. represent the Association at public and professional functions including, but not limited to CCSD Board of Trustees Meetings, or assign at her/his discretion, responsibility for such representation;
- b. set agendas for Association meetings;
- c. appoint all chairpersons and committee members with the confirmation of the Association Representative Council; such chairpersons and members serve at the pleasure of the President;
- d. prepare, with the Budget Committee, a budget for submission to the Association Representative Council for adoption;
- e. sign checks jointly with the Treasurer and/or Vice President;
- f. serve as a member of the Teachers Health Trust Board of Trustees and Retiree Health Trust Board of Trustees;
- g. appoints members to the Teacher Health Trust and Retiree Health Trust Boards of Trustees (to a maximum of 12 years served per board consecutively or intermittently).
- h. serve as an ex-officio member without vote on all committees;
- i. make work site visits each year;
- j. serve as a delegate to the NSEA Delegate Assembly and NEA Representative Assembly by virtue of this office;
- k. serve as an Association member of the TIP Coordinating Council;
- l. direct, in conjunction with the Executive Board, the work of the Executive Director, including writing the Executive Director's

- evaluation; and
- m. perform such other duties as assigned by the Association Representative Council or the Executive Board.

2. Term of Office

The office of President is a two-year term. A member elected to the office of President is eligible for three consecutive terms and shall serve until a successor is elected. The term of President shall begin at the close of business at the NEA/RA in the year in which the election of the President has occurred.

3. Vacancy

If the office of President shall become vacant, the Vice President shall become President. However,

- a. if the vacancy occurs during the first year of that term, a special election for President shall be held during the regular elections to fulfill the rest of that term of office.
- b. if the vacancy occurs during the second year of that term, the Vice President shall fulfill the remainder of that term of the President.

4. Salary

The President will be paid at the daily rate of pay for the highest step in Column V of the Licensed Professional Salary Table, unless the President qualifies to be in a higher class, then the President will be paid the highest step in that class, for a minimum of 220 and no more than 260 days during the Association fiscal year, including vacations and holidays as contained in the staff's contract. Additional benefits will be determined by Association policy.

B. Vice President

The Vice President may be full-time release.

At the September meeting in the odd numbered years, the AR Council will vote to determine whether or not the position of Vice President is full-time released for the following term of office.

A full-time released Vice President is defined as a member who is elected as Vice President serving full-time as Vice President with no responsibilities for the position from which s/he is being released.

1. Duties

The Vice President shall:

- a. act for and on behalf of the President when s/he is unable to perform the duties of that office;
- b. coordinate the activities and reports to the Executive Board, Association Representative Council, and membership by all committees;
- c. shall serve as a delegate to the NSEA Delegate Assembly and to the NEA Representative Assembly by virtue of this office; and
- d. perform such other duties as assigned by the Association Representative Council, the Executive Board, or President.

2. Term of Office

The office of Vice President is a two-year term. A member elected to the office of Vice President is eligible for three consecutive terms and shall serve until a successor is elected. The term of Vice-President shall begin at the close of the NEA/RA in the year that election for Vice President occurs.

3. Vacancy

If the office of Vice President shall become vacant, the Association Representative Council shall elect one of its own to serve as Vice President for the interim period. After the special election for President is concluded, the member who was serving as President shall return to the office of Vice President to fulfill the rest of that term of office. However,

- a. if the Vice President was serving as President during the first year of the President's term, s/he shall return to the office of Vice President upon the ratification of election results by the Association Representative Council.
- b. if the Vice President was serving as President during the second year of the President's term, s/he shall fulfill the remainder of the term of President.
- c. if the Vice President was not serving as President, a special election shall be held during the regular election period to elect a Vice President to fulfill the un-expired term of that office.

4. Salary

- a. If it is determined by the AR Council to elect to have a full-time release Vice President, the following will apply:
The Vice President shall be paid at the daily rate of pay for the highest step in Column V of the Licensed Professional Salary

Table, unless the Vice President qualifies to be in a higher class, then the Vice President will be paid the highest step in that class, based on the days a 9-month teacher is required to work based on the 9-month standard contract. Additional benefits shall be determined by Association policy.

- b. Buyout(s) - If it is determined by the AR Council to elect to not have a full-time release Vice President, then the following will apply:

Buyout days for the Vice President will be determined by the CCEA Executive Board within the CCEA Policy guidelines.

C. Secretary

1. Duties

The Secretary shall:

- a. keep a record of all the proceedings of the Association governance meetings, i.e. General Membership, Executive Board and Association Representative Council;
- b. sign official and legal documents as required;
- c. maintain an official membership roll of the Association;
- d. maintain a file of reports of all individual(s) and/or committee(s) for historical purposes;
- e. conduct a roll call or signature roll when required;
- f. maintain record book(s) in which the bylaws, special rules of order, standing rules, and minutes entered, with any amendments to those documents properly recorded and to have the current record book(s) on hand at every governance meeting (per a. above);
- g. maintain a record of attendance, excused and unexcused absences for required meetings of Executive Board members;
- h. shall serve as a delegate to the NSEA Delegate Assembly and to the NEA Representative Assembly by virtue of this office; and
- i. perform such other duties as assigned by the Association Representative Council, Executive Board and/or President.

2. Term of Office

The office of Secretary is a two-year term. A member elected to the office of Secretary is eligible for three consecutive terms and shall serve until a successor is elected. The term of Secretary shall begin at the close of the NEA/RA in the year that the election for Secretary occurs.

3. Vacancy

If the office of Secretary shall become vacant, the Executive Board shall appoint one of its own to serve as Secretary for the interim period. However,

- a. if the vacancy occurs during the first year of the Secretary's term, a special election for Secretary shall be held during the regular elections to fulfill the rest of the term of office.
- b. if the vacancy occurs during the second year of the Secretary's term, the interim Secretary will fulfill the remainder of the term of office.

D. Treasurer

1. Duties

The Treasurer shall:

- a. hold the funds of the Association and disburse them upon authorization by the Executive Board;
- b. submit financial reports to the Association Representative Council and Executive Board at their regularly scheduled meetings;
- c. assist the President and Budget Committee in preparation of the annual budget;
- d. shall serve as a delegate to the NSEA Delegate Assembly and to the NEA Representative Assembly by virtue of this office; and
- e. perform such other duties as assigned by the Association Representative Council, Executive Board, and/or President.

2. Term of Office

The office of Treasurer is a two-year term. A member elected to the office of Treasurer is eligible for three consecutive terms and shall serve until a successor is elected. The term of Treasurer shall begin at the close of the NEA/RA in the year that the election for Treasurer occurs.

3. Vacancy

If the office of Treasurer shall become vacant, the Executive Board shall appoint one of its own to serve as Treasurer for the interim period. However,

- a. if the vacancy occurs during the first year of the Treasurer's term, a special election for Treasurer shall be held during the regular elections to fulfill the rest of that term of office.

- b. if the vacancy occurs during the second year of the Treasurer's term, the interim Treasurer will fulfill the remainder of the term of office.

Section 6. NOMINATIONS

Members meeting the qualifications may be nominated for the office of President, Vice President, Secretary, or Treasurer. The nominations shall occur at the designated Association Representative Council meeting in the year in which the election of officers is scheduled. The nominees shall be nominated by a nominating committee, or on a nominating form, or from the floor of the Association Representative Council at the nominating meeting and shall follow the adopted procedures of the Association Representative Council.

Section 7. ELECTIONS

- A. Election of officers shall occur in the year in which the election is scheduled.
 - 1. Election for the offices of President and Vice President shall be conducted in even numbered years.
 - 2. Election for the offices of Secretary and Treasurer shall be conducted in odd number years.
- B. Elections of officers shall be conducted by a procedure prescribed by the Election Committee and adopted by the Association Representative Council.
- C. Officers shall be elected by secret ballot.
- D. Officers shall be elected by a majority of valid votes cast.
- E. If the number of candidates equals the number of positions to be filled, the President shall declare such candidates elected directly after nominations close.
- F. In election for single positions with multiple candidates for one position in which no candidate receives a majority vote in the first ballot, the second ballot shall contain the names of the two persons who received the greatest number of votes on the first ballot.

Section 8. IMPEACHMENT

- A. Elected officers of the Association may be impeached for misfeasance, for malfeasance, or for nonfeasance in office.
- B. Impeachment proceedings against an elected officer shall be initiated by written petition submitted to the Review Board by at least 25% of members in the Association.

- C. The Review Board shall establish a due process procedure to implement impeachment proceedings.
- D. After a due process hearing, a two-thirds (2/3) vote of the Review Board shall sustain the charge, and the office shall become vacant.
- E. The officer may appeal the decision to the Association Representative Council.

ARTICLE V

EXECUTIVE BOARD

Section 1. COMPOSITION

- A. The Executive Board shall consist of the four (4) elected officers and sixteen (16) members elected by the current Clark County, Nevada Senate Districts with one (1) member per zone. One (1) representative of Other Licensed Personnel (OLP) will be elected by their peers. All elected members are voting members.

Amended 4/2017

Section 2. ELIGIBILITY

- A. Membership shall be held for at least one (1) Fiscal year immediately proceeding the time of seating to qualify for the Executive Board position.
- B. Membership must be maintained throughout the term of office without a break in service.
 - 1. Break in service includes:
 - a) Retirement
 - b) Termination
 - c) Resignation
 - d) Leave of Absence (other than CCEA, Legislative Service, or leaves protected under Federal and state Law)
 - e) Otherwise no longer employed as a licensed personnel at CCSD
 - 2. Where an elected Board member is no longer eligible under Article V Section 2 of the Bylaws, a vacancy will occur and must be filled pursuant to Article V Section 8 of the Bylaws.

Amended 4/2017

Section 3. OATH OF OFFICE

All elected Executive Board members must take an Oath of Office before their term of office begins and shall comply there in.

Section 4. DUTIES AND FUNCTIONS

Members of the Executive Board shall:

- a. attend all Executive Board meetings;
- b. attend all Association Representative Council meetings;
- c. make necessary communications with Association Representatives/ members in their own region;
- d. manage the affairs of the Association;
- e. review and approve expenditures;
- f. oversee the implementation of policies established by the Association Representative Council;
- g. suggest policies to the Association Representative Council for consideration;
- h. retain legal counsel as deemed necessary;
- i. attend General Membership Meetings;
- j. appoint member(s) to fulfill a vacancy on NSEA Board of Directors; and
- k. perform such other duties as assigned by the Association Representative Council;
- l. perform such other duties designated in the Executive Board policy.

Section 5. TERM OF OFFICE

- A. The term of office for an Executive Board member shall be two years.
- B. An Executive Board member may not serve more than three consecutive terms.
- C. The term of Executive Board member begins at the close of the NEA/RA in the year that the election for that Executive Board seat has occurred.

Section 6. NOMINATIONS

- A. All Executive Board members shall be nominated by a nominating committee, or on a nominating form, or from the floor of the Association Representative Council during the nominating meeting.
- B. Persons seeking nomination for an Executive Board seat shall be employed at a work site within the zone from which election is sought.

Section 7. ELECTIONS

- A. Election of Executive Board members shall occur in the year in which the election is scheduled.
- B. Election of Executive Board members shall be conducted by a procedure prescribed by the Election Committee and adopted by the Association Representative Council.
- C. Executive Board members will be elected by the members in the designated zones by a secret ballot.
- D. Executive Board members shall be elected by a majority of valid votes cast.
- E. If the numbers of candidates equal the number of positions to be filled, the President shall declare the candidate elected directly after nominations close.
- F. In elections for single positions with multiple candidates for one position in which no candidate receives a majority vote in the first ballot, the second ballot shall contain the names of the two persons who received the greatest number of votes on the first ballot.

Section 8. VACANCIES

- A. Vacancies within the ten (10) elected Executive Board members shall be filled by an election in the Association Representative Council for the remainder of the term.
- B. The vacancy shall be announced at the Association Representative Council meeting that immediately follows the vacancy determination.
- C. The election to fulfill the vacancy shall occur at the Association Representative Council meeting following the meeting at which the vacancy is announced.
- D. A member elected to the Executive Board to fulfill the term of a vacated seat in the first half of the term will be eligible to run for two additional consecutive terms; if elected in the second half of the term, the member will be eligible to run for three additional consecutive terms.
- E. If one of the ten (10) elected board members voluntarily transfers out of the zone from which elected, the position shall become vacant and subparagraph A takes effect.
- F. If one of the ten (10) elected board members is involuntarily transferred out of the zone from which elected, the position is not declared vacant and that member shall serve out the term to which elected.

- G. A Board Member's position shall be considered vacant upon four (4) absences within the Association's Fiscal Year* of Executive Board meetings announced at the first Association Representative Council meeting of the school year and upon such a vacancy, subparagraph (a) takes effect.

* Note: Fiscal Year is defined as September 1 to August 31

Section 9. MEETINGS

- A. The Executive Board shall meet on a monthly basis at least 11 times a year, the time and place to be established by the elected officers. A regularly scheduled Executive Board meeting is defined as (a) any meeting announced at the first ARC Meeting of the new school year, and (b) has its own agenda and minutes.
- B. Special meetings may be called by the President or at the request of a majority of the members of the Executive Board.
- C. A majority of the Executive Board members shall constitute a quorum for the consideration of business.

Section 10. BOARD VOTING

- A. Executive Board members must be present in order to cast a vote.
- B. In an emergency situation, the President may conduct a phone poll vote. The results of the phone poll vote must be ratified at the next Executive Board meeting.

Section 11. RECALL

- A. After assuming office, a member of the Executive Board may be recalled for misfeasance, for malfeasance, or for nonfeasance in office.
- B. Recall proceedings against an Executive Board member shall be initiated by written petition submitted to the Review Board by at least 25% of members in the zone.
- C. The Review Board shall establish a due process procedure to implement recall proceedings.
- D. After a due process hearing, a two-thirds (2/3) vote of the Review Board shall sustain the charge, and the office shall become vacant.
- E. The officer may appeal the decision to the Association Representative Council.
- F. A recall election shall be conducted in accordance with rules of procedure

adopted by the Review Board, provided that:

- a. all of the members in that zone as of the date of the recall election shall be eligible to vote;
- b. the recall election shall be by secret ballot; and
- c. two-thirds (2/3) of the valid ballots cast shall be required for a recall.

ARTICLE VI

REVIEW BOARD

Section 1. JUDICIAL BODY

The judicial powers of the Association as described herein shall be vested in the Review Board of nine (9) members.

Section 2. OATH OF OFFICE

All elected Review Board members must take an Oath of Office before their term of office begins and shall comply there in.

Section 3. POWERS

The Jurisdiction of the Review Board shall extend to cases herein defined:

- A. The Review Board shall review the membership numbers and adjustments made in each zone using the *NEA's Achieving Minimum Affiliation Standards* formulae. They shall report their findings to the Association Representative Council by the end of the October Association Representative Council meeting. Zones shall be adjusted by November 1 of each Association year to maintain the affiliate standards of NEA and NSEA.
- B. The Review Board shall have original jurisdiction in the following cases:
 1. Impeachment of an Association officer;
 2. Recall of an Executive Board member;
 3. The censure, suspension, or expulsion of a member;
 4. Review, upon request, of an action of an officer(s), or Executive Board member(s) regarding consistent application of the Bylaws, Policies, and/or Procedures of the Association.
- C. The Review Board shall have the following powers subject to the conditions as herein outlined:
 1. To impeach an officer. The officer shall have the right to appeal to the Association Representative Council;
 2. To recall an Executive Board member. The board member shall have the right to appeal to the Association Representative Council;

3. To censure, suspend, or expel a member. The member shall have the right to appeal to the Association Representative Council;
4. To vacate censure, lift suspension, or re-instate a member;
5. To review the action of the officers, Executive Board or Association Representative Council for consistency with the Bylaws and to recommend the appropriate governing body remedial action if necessary. Requests for review may be made only by the Executive Board or upon the petition of fifty (50) members of the Association Representative Council.
6. To remove from office, suspend, or censure a member elected to any Association position for violation(s) of the Association Election Procedures, Bylaws, policies or procedures.
7. To review the membership numbers in each Executive Board zone as described in the Association Bylaws Article VI, Section 2, Paragraph A.

Section 4. REVIEW BOARD PREROGATIVES

The Review Board shall establish its rules of procedure with the approval of the Association Representative Council. Due process must be guaranteed in all proceedings.

Section 5. REVIEW BOARD ELECTION

- A. Nominations shall be taken from the Association Representative Council floor during the September Association Representative Council meeting. Election by secret ballot of Review Board members will occur during the October Association Representative Council meeting.
- B. If the numbers of candidates equal the number of positions to be filled, the President shall declare the candidate elected directly after nominations close.

Section 6. TERM OF OFFICE

The position of a Review Board member is a three (3) year term. A member elected to serve on the Review Board shall serve no more than two (2) consecutive terms as a Review Board Member and shall serve until a successor is elected. The term shall begin upon election in the year in which the election occurs and end upon the election of a successor.

Section 7. QUALIFICATIONS

Members of the Review Board must be voting members of the Association Representative Council at the time of election and shall serve until a successor is elected. Review Board members may not be a local, state, or national officer, member of the Executive Board, NSEA and/or NEA Board of Directors, or a chairperson of any CCEA committee. At least one (1) year of experience in the Association Representative Council is required prior to election to the Review Board. No person shall be concurrently a member of the Review Board and/or any of the aforementioned bodies.

Section 8. VACANCY

- A. The Association Representative Council is the only body which is eligible to receive a resignation from a Review Board member.
- B. If a vacancy occurs on the Review Board, the following procedures shall be instituted:
 - 1. If a vacancy occurs on the Review Board, the vacancy shall be announced at the next Association Representative Council meeting. Nominations will be accepted at that meeting with the election occurring at the following Association Representative Council meeting.
 - 2. If the vacancy occurs during the first half of the three (3) year term the person filling the vacancy is eligible for one (1) additional term.
 - 3. If the vacancy occurs during the last half of the three (3) year term, the person filling the vacancy is eligible for two (2) additional terms.
 - 4. The end of the first half of a term is defined as the Association Representative Council meeting eighteen (18) months after the election occurred.
 - 5. The last half of a term is defined as the day following the Association Representative Council meeting eighteen (18) months after the elections occurred and through the end of the term.

Section 9. IMPEACHMENT

- A. Members of the Review Board may be impeached for misfeasance, for malfeasance, or for nonfeasance in office.
- B. The process for impeachment of Review Board members shall be as follows:
 - 1. Proceedings against a member of the Review Board shall be initiated by an affirmative vote of the Executive Board.
 - 2. An affirmative vote of at least two-thirds (2/3) of the members of the Executive Board shall be required to sustain a charge following a due process hearing before the Executive Board and the position shall thus become vacant.
 - 3. The member has the right to appeal the Executive Board decision to the Association Representative Council. No member of the Executive Board shall be party to the appellate procedure.

ARTICLE VII

COMMITTEES

Section 1. STANDING COMMITTEES

The Standing Committees of the Association, which are appointed by the President with the confirmation of the Association Representative Council, are as follows:

- 1. Budget Committee
- 2. Bylaws Committee
- 3. Elections Committee
- 4. Member Rights Committee
- 5. Ethnic Minority Affairs Committee
- 6. Negotiations Committee
- 7. Policy Committee
- 8. Scholarship Committee
- 9. Special Education Committee
- 10. Awards Committee
- 11. Government Relations Committee
- 12. Membership Recruitment and Retention Organizing Committee

Other Committees of the Association shall be created based on interest of a minimum of five members.

Section 2. REPORTS

Committees shall report to the Association Representative Council.

Section 3. COMMITTEE MEMBERS

The President shall appoint all committee members with the confirmation of the Association Representative Council. Each Committee shall include ethnic-minority representation.

Section 4. SPECIAL COMMITTEES

The Association Representative Council is authorized to establish Special Committees.

ARTICLE VIII

GENERAL MEMBERSHIP

A general membership meeting shall be held in contract ratification years, other meetings and their purposes shall be established by the Association Representative Council, the Officers, and the Executive Board.

ARTICLE IX

PROFESSIONAL STAFF

The Executive Board shall employ professional staff. The Executive Board shall make an annual report to the Association Representative Council regarding the salary/benefits package(s) of the employed staff.

ARTICLE X

STATE AND NATIONAL AFFILIATION

Section 1. AFFILIATE STATUS

The Association shall maintain affiliate status with the National Education Association and the Nevada State Education Association under the required procedures of each organization.

Section 2. NEA REPRESENTATIVE ASSEMBLY

- A. The office of delegate is a two (2) year term.
- B. Membership shall be informed annually and ballots shall state that nomination to the elected officer positions of the Association includes nomination to the NEA/RA.

- C. Additional delegate allotment to the NEA/RA shall be nominated and elected at the same time and by the same methods as all officers of the Association, following the rules and procedures of the NEA.
- D. A name of the nominee must appear on the ballot in order to serve as a delegate or successor delegate to the NEA/RA.
- E. A successor delegate must be informed as to which delegate she/he is succeeding before attending the NEA/RA. The President is responsible for assisting with the registration of the successor delegate.
- F. As the membership of the Association increases and the Association is allocated additional delegate(s) to the NEA-RA, the Election Committee will determine if that delegate position is a one-year or two-year term to keep an equitable balance of elected delegates each year.

Section 3. NSEA DELEGATE ASSEMBLY

- A. Membership shall be informed annually and ballots shall state that nomination to officer positions of the Association includes nomination to the NSEA/DA.
- B. Additional delegates allotted by the NSEA, beyond the number of officers shall be elected following the rules established by the NSEA.
- C. The nominee's name must appear on the ballot in order to serve as a delegate or successor delegate to the NSEA/DA.
- D. Before attending the NSEA/DA, an alternate shall be informed as to (1) which delegate he/she is replacing; and (2) the length of term of replacement.
- E. As the membership of the Association increases and the Association is allocated additional delegate(s) to the NSEA-DA, the Election Committee will determine if that delegate position is a one-year or two-year term to keep an equitable balance of elected delegates each year.

ARTICLE XI

AMENDMENT OF BYLAWS

Section 1. SUBMISSION OF PROPOSED AMENDMENTS

- A. Amendments to the bylaws must be submitted to the Bylaws Committee by March 1.
- B. Proposed bylaw amendments shall be submitted to the Bylaws Committee for review:

1. by petition signed by at least 50 members; or
 2. by majority vote of the Executive Board; or
 3. by written motion and approval of the Association Representative Council.
- C. The Bylaws Committee may propose Bylaw amendments.
- D. Proposed amendment(s) shall be submitted in written form and referred to the Bylaws Committee for review. The Bylaws Committee shall edit the proposal(s) to conform to the structure and style of the document without changing its substance.
- E. The proposed amendment(s) shall be presented for review at the March Association Representative Council meeting and debated at the April Association Representative Council meeting.

Section 3. VOTING ON AMENDMENTS

- A. Adoption of proposed amendment(s) to these Bylaws shall be by a two-thirds (2/3) vote cast at the April Association Representative Council meeting.
- B. Unless otherwise provided, all amendments shall take effect at the beginning of the Association year following the adoption.

ARTICLE XII

PARLIAMENTARY AUTHORITY

The most recent edition of *Robert's Rules of Order Newly Revised* shall be the authority in all matters of procedure at the Association Representative Council, Executive Board, and general membership meetings, except as otherwise specified in these Bylaws.

ARTICLE XIII

INDEMNIFICATION

The Association shall and hereby does indemnify all present and former officers, directors and employees of the Association for expenses and costs (including attorneys' fees) actually and necessarily incurred by him/her in connection with any claim asserted against him/her, by action in court or otherwise, by reason of his/her being or having been director, officer or employee, except in relation to matters as to which s/he shall have been found guilty of negligence or misconduct in respect to the matter in which indemnity is sought.

ARTICLE XIV

INCORPORATION

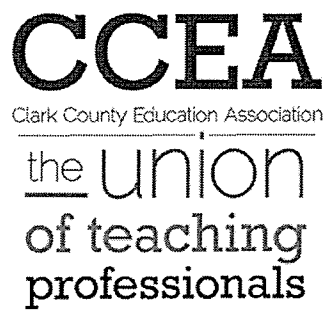
The Association is incorporated in the State of Nevada under statutes NRS 81-410 and NRS 81-540.

ARTICLE XV

DISSOLUTION

Upon the dissolution of the Association, the Executive Board shall, after paying or making provision for the payment of all the liabilities of the Association, dispose of all assets of the Association exclusively for the purpose of the Association or donate the remaining assets to such organizations organized and operated exclusively for charitable, education, or scientific purpose as the Executive board shall determine.

bylaws.fin (4/13/92, 10/16/92, 12/14/93, 4/25/95, 8/21/96, 5/5/97, 5/27/97, 7/30/98, 5/19/99, 5/25/00, 5/22/01, 4/22/03, 07/08/05, 11/06, 5/17/07, 04/28/09, 04/26/11, 04/27/14, 04/28/15)



Clark County Education Association

4230 McLeod Drive, Las Vegas, Nevada 89121

Telephone: 702-733-3063 | Fax: 702-733-0240 | Website: www.ccea-nv.org

*Nevada State Education Association v.
Clark County Education Association*

Case No. 79208

**DOCKETING STATEMENT
PART 6 OF 6**

EXHIBIT 8



NEVADA STATE EDUCATION ASSOCIATION
NATIONAL EDUCATION ASSOCIATION
K-12 Licensed Personnel



Membership Enrollment Form

BELOW TO BE COMPLETED BY MEMBER

LAST NAME [REDACTED]		FIRST NAME [REDACTED]		MIDDLE INITIAL [REDACTED]	
ADDRESS [REDACTED]				LOCAL ASSOCIATION CCEA	
CITY Las Vegas	STATE NV	ZIP CODE [REDACTED]	SOCIAL SECURITY NO. [REDACTED]		
SCHOOL NAME Twain Lakes Elem	SCHOOL PHONE 702 799 4790	HOME PHONE [REDACTED]	E-MAIL ADDRESS [REDACTED]		

* The following information is optional and failure to answer it will in no way affect your membership status, rights or benefits in NEA, NSEA, or your local association.

SEX: <input type="checkbox"/> Male <input checked="" type="checkbox"/> Female	SUBJECT: <input type="checkbox"/> Agriculture <input type="checkbox"/> Art <input type="checkbox"/> Business/Economics Education <input type="checkbox"/> Driver Education <input type="checkbox"/> English <input type="checkbox"/> Foreign Language <input type="checkbox"/> Health/Phys. Educ./Recreation <input type="checkbox"/> Home Economics <input type="checkbox"/> Industrial Arts <input type="checkbox"/> Mathematics/Computer <input type="checkbox"/> Music <input type="checkbox"/> Science <input type="checkbox"/> Social Studies <input checked="" type="checkbox"/> Special Education <input type="checkbox"/> Occupational Education <input type="checkbox"/> General Subjects <input type="checkbox"/> ESL <input type="checkbox"/> Other _____	POSITION: <input checked="" type="checkbox"/> Classroom <input checked="" type="checkbox"/> Teacher/Faculty <input type="checkbox"/> Psychologist <input type="checkbox"/> Counselor <input type="checkbox"/> Nurse <input type="checkbox"/> Librarian <input type="checkbox"/> Speech Pathologist <input type="checkbox"/> Other _____ (identify)	METHOD OF PAYMENT: <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Cash <input checked="" type="checkbox"/> FULL TIME <input type="checkbox"/> HALF TIME <input type="checkbox"/> Retired <input type="checkbox"/> Reserve <input type="checkbox"/> Associate <input type="checkbox"/> Educational Support <input type="checkbox"/> Student <input type="checkbox"/> Other _____
BIRTH DATE: [REDACTED] Month Day Year	REGISTERED VOTER: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes, party affiliation: <input checked="" type="checkbox"/> Democrat <input type="checkbox"/> Independent <input type="checkbox"/> Republican <input type="checkbox"/> Non-Partisan	ETHNIC CODE: <input type="checkbox"/> American Indian/Alaska Native <input checked="" type="checkbox"/> Hispanic <input type="checkbox"/> Caucasian <input type="checkbox"/> Asian <input type="checkbox"/> Pacific Islander <input type="checkbox"/> Black <input type="checkbox"/> Other _____	LEVEL: <input type="checkbox"/> Kindergarten/Preschool <input checked="" type="checkbox"/> Elementary/Intermediate <input type="checkbox"/> Middle/Junior <input type="checkbox"/> High School <input type="checkbox"/> Other _____

The NSEA Delegate Assembly voted in April of 1989 to establish a \$2.00 per month assessment of all members for the political action fund to elect friends of education to state and local office. If you wish to have this deduction made, DO NOTHING ELSE IN THIS SECTION. However, if you'd prefer to place the assessment in the positive image fund or if you would prefer no assessment, then check the appropriate box below. Failure to mark either box will result in the assessment going to the political action fund. This is not tax deductible for federal income tax purposes.

☐ Put my assessment in the positive image fund. ☒ I DO NOT want to be assessed.

NEA Fund for Children and Public Education Authorization for Payroll Deduction

The National Education Association Fund for Children and Public Education collects voluntary contributions from Association members and uses these contributions for political purposes, including, but not limited to, making contributions to and expenditures on behalf of friends of public education who are candidates for federal office. Contributions to The NEA Fund for Children and Public Education are voluntary; making a contribution is neither a condition of employment nor membership in the Association, and members have the right to refuse to contribute without suffering any reprisal. Although The NEA Fund for Children and Public Education requests an annual contribution of \$15, this is only a suggestion. A member may contribute more or less than the suggested amount, or may contribute nothing at all, without it affecting his or her membership status, rights, or benefits in NEA or any of its affiliates. Contributions or gifts to The NEA Fund for Children and Public Education are not deductible as charitable contributions for federal income tax purposes. Federal law requires us to use our best efforts to collect and report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of \$200 in a calendar year. Federal law prohibits The NEA Fund for Children and Public Education from receiving donations from persons other than members of NEA and its affiliates, and their immediate families. All donations from persons other than members of NEA and its affiliates, and their immediate families, will be returned forthwith.

Yes, I want to make an important investment in our future by contributing to the NEA Fund.
I will contribute \$_____ per pay check as a payroll deduction for this purpose.

TO PARTICIPATE IN THE EARLY ENROLLMENT PLAN, PLEASE COMPLETE THE EARLY ENROLLMENT MEMBERSHIP FORM.

My signature authorizes my local association to negotiate for me before the school district, as provided in Nevada Statutes, those items affecting my salary, hours and conditions of employment and to represent me in other matters affecting the professional services of educators and the quality of education.

Payroll Deduction Authorization. With full knowledge of the above, I hereby agree to pay cash for, or herein authorize my employer to deduct from my salary, and pay to the local association, in accordance with the agreed-upon payroll deduction procedure, the professional dues as established annually and the political action contributions in the amounts indicated above for this membership year and each year thereafter, provided that I may revoke this authorization by giving written notice to that effect to my local association between July 1 and July 15 of any calendar year, or as otherwise designated by the negotiated agreement. Dues are paid on an annual basis and, although dues may be deducted from my payroll check(s) in order to provide an easier method of payment, a member is obligated to pay the entire amount of dues for a membership year. I understand that if I resign my membership in my local Association, or in the event of termination, resignation or retirement from employment, I am still obligated to pay the balance of my annual dues and political or positive image contributions for that membership year and such payments will continue to be deducted from my payroll check(s).

Dues and political contributions are not deductible as charitable contributions for federal income tax purposes. Dues may be deductible as a miscellaneous itemized deduction.

[REDACTED SIGNATURE]

MEMBER'S SIGNATURE

8-2-17

DATE

[REDACTED SIGNATURE]

ASSOCIATION AGENT

8-2-17

DATE

WHITE: SCHOOL DISTRICT

YELLOW: LOCAL ASSOCIATION

PINK: NSEA

GOLDENROD: MEMBER

EXHIBIT 9

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Attorneys for CCEA Parties

IN THE EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CLARK COUNTY EDUCATION
ASSOCIATION, VICTORIA COURTNEY,
JAMES FRAZEE, ROBERT B.
HOLLOWOOD, and MARIE NEISESS,

Plaintiffs

v.

NEVADA STATE EDUCATION
ASSOCIATION, DANA GALVIN, RUBEN
MURILLO JR., BRIAN WALLACE, and
BRIAN LEE,

Defendants

Case No.: A-17-761364-C
DEPT. NO.: 4

**AFFIDAVIT OF JOHN VELLARDITA IN
SUPPORT OF CCEA PARTIES'
OPPOSITION TO NSEA PARTIES'
MOTION FOR PARTIAL SUMMARY
JUDGMENT AND COUNTERMOTION
FOR PARTIAL SUMMARY JUDGMENT**

///

///

1 STATE OF NEVADA)
2 COUNTY OF CLARK)

3
4 **AFFIDAVIT OF JOHN VELLARDITA**

5 John Vellardita, being first duly sworn, deposes and says as follows:

6 1. I make this Affidavit in support of the CCEA PARTIES' OPPOSITION TO NSEA
7 PARTIES' MOTION FOR PARTIAL SUMMARY JUDGMENT AND COUNTERMOTION
8 FOR PARTIAL SUMMARY JUDGMENT ("Opposition/Counter-motion").

9 2. I have personal knowledge of the facts set forth herein and am competent to testify
10 thereto.

11 3. I have been the appointed Executive Director of the Clark County Education
12 Association ("CCEA") since 2011. My duties include representing the collective bargaining
13 interests, negotiating collective bargaining agreements and related matters for teachers and
14 licensed professionals employed by the Clark County School District. I have provided expert
15 labor relations advice and guidance in negotiating multiple collective bargaining agreements,
16 representing hundreds of teachers in individual grievance matters, and lobbying the State
17 legislature for funding of teachers' salaries and changes in the education system for Clark County.
18 As the Executive Director, I attend the meetings of the CCEA Executive Board and the
19 Association Representative Council. Victoria Courtney is the elected president of the CCEA.

20 4. As stated in its Constitution and Bylaws, CCEA is an independent and self-
21 governed organization that is the exclusive collective bargaining representative of the licensed
22 professional employees of the Clark County School District ("CCSD") and is the employee
23 organization that serves as the local voice for educators to advance the educational profession,
24 promote professional excellence among educators, protect the rights of educators, advance their
25 interests and welfare, ensure through collective action the advancement of quality public
26 education, and secure professional autonomy.

27 5. Nevada State Education Association ("NSEA") was the state wide affiliate of the
28 CCEA until April 25, 2018.

6. CCEA is the recognized and exclusive bargaining agent for CCSD's licensed professional employees. NSEA is not the recognized and exclusive bargaining agent for CCSD's licensed professional employees.

7. NEA was the national affiliate of both NSEA and CCEA until April 25, 2018.

8. National Education Association ("NEA") is still the national affiliate of NSEA.

9. CCEA has thousands of members, whose dues payments are at the center of this litigation due to a good faith dispute between CCEA and NSEA over the terms of a dues transmittal agreement that expired on September 1, 2017.

10. Members of CCEA pay dues to CCEA pursuant to a membership authorization form ("CCEA Membership Authorization Form"), which dues are deducted from their pay checks by their employer, the CCSD, pursuant to a collective bargaining agreement between CCEA and CCSD.

11. Dues payments are directed to CCEA by CCSD.

12. Dues are then transmitted to NSEA only through a dues transmittal agreement, which is an addendum and incorporated into a services agreement as Addendum A. A true and correct copy of the service agreement is attached to the Opposition/Counter-motion as **Exhibit 1**.

13. Once CCEA transmitted dues to NSEA, NSEA then transmits NEA's portion of those dues to NEA. Only NSEA has a contractual obligation to pay NEA, per NEA's bylaws. True and correct copies of the Bylaws of the Nevada State Education Association, and the Bylaws of the National Education Association are attached the Opposition/Counter-motion as **Exhibits 5 and 6**.

14. CCEA members contributed \$377.66 per year per teacher to NSEA, pursuant to the NSEA Policies and \$189 per year per teacher to the NEA.

15. CCEA notified NSEA of its termination of the dues transmittal agreement and its intent to negotiate a new agreement on May 3, 2017, in a letter from the CCEA Executive Director to the NSEA Executive Director. A true and correct copy of the May 3, 2017 letter is attached to the Opposition/Counter-motion as **Exhibit 2**.

16. The notice from CCEA to NSEA on May 3, 2017, was to terminate the Service

1 Agreement inclusive of Addendum A, which constitutes the dues transmittal contract, under
2 which CCEA members' dues payments were being transmitted by CCEA to NSEA. It was set to
3 expire on August 31, 2017.

4 17. On July 17, 2017 and August 3, 2017, CCEA sent NSEA additional notices of
5 termination, affirming that CCEA terminated the service agreement (inclusive of the dues
6 transmittal agreement) on May 3, 2017, and indicating its desire to renegotiate the Dues
7 Transmittal Agreement. True and correct copies of the July 17 and August 3, 2017 letters are
8 attached to the Opposition/Counter-motion as **Exhibits 3 and 4**.

9 18. CCEA and NSEA have not yet agreed upon a new dues transmittal agreement.

10 19. After the termination of that agreement, CCSD continued to send the employees'
11 dues to CCEA, whereupon the dues were placed into a restricted bank account.

12 20. On April 25, 2018, CCEA voted to disaffiliate from NEA and NSEA, which
13 disaffiliation was approved by 88% of the votes and effective immediately.

14 25. A true and correct copy of CCEA's Constitution and Bylaws is attached the
15 Opposition/Counter-motion as **Exhibit 7**.

16 26. A true and correct copy of the CCEA Membership Authorization Form is attached
17 to the Opposition/Counter-motion as **Exhibit 8**.

18 27. A true and correct copy of the July 26, 2017 letter from NSEA to CCEA is
19 attached to the Opposition/Counter-motion as **Exhibit 11**.

20 28. The Association Representative Council, "ARC" is the legislative and policy –
21 forming body of the Association and consists of elected officers, an Executive Board, and one or
22 more representatives elected from each school faculty. The ARC representatives are selected by
23 open nomination and secret ballot election. The ARC meets one time per year and among its
24 responsibilities are establishing and amending the Associations Bylaws, policies and election
25 procedures, establishing the level of dues to be paid by members, adopting the annual budget and
26 exercising final authority in all matters of the CCEA.

27 29. The elected officers of the CCEA are president, vice president, secretary and
28 treasurer.

1 30. The Executive Board consists of the four elected officers and over sixteen
2 members elected in zones or districts throughout the county.

3 31. The CCEA has been affiliated with a state wide organization, Nevada State
4 Education Association and a national organization, the National Education Association.

5 32. I am aware of and attended the meetings of the Executive Board held in March and
6 April 2018 in which the issues of disaffiliation from the Nevada State Education Association and
7 the National Education Association were discussed and voted upon.

8 33. Pursuant to the CCEA Bylaws, members of CCEA were notified by an email sent
9 to all members on March 24, 2018, of the general membership meeting scheduled for April 25,
10 2018. A true and correct copy is attached hereto as **Exhibit 12**.

11 34. April 14, 2018, the Executive Board of CCEA met to consider a proposed bylaw
12 amendment to set CCEA dues at \$510 per year upon disaffiliation from the NSEA and the NEA
13 and upon CCEA becoming an independent labor organization.

14 35. As of April 14, 2018, the annual dues payments for CCEA members included
15 payments to CCEA, NSEA and NEA and were \$810.50. The \$510 dues payments considered by
16 the dues motion on April 14, 2018, constituted a dues decrease for all CCEA members.

17 36. The Association Representative Council met on April 24, 2018, to consider a by-
18 law change in Article X, Section 1 by removing the word "shall" from the affiliate's status and
19 bylaw provision and inserting the word "may," which meant that the Association may, rather than
20 shall maintain affiliate status with the NSEA and NEA. That change to Article X of the Bylaws
21 was approved. A true and correct copy of the ARC Agenda, April 24, 2018, Bates 14482, is
22 attached hereto as **Exhibit 13**.

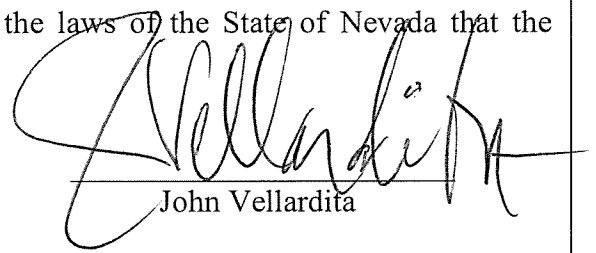
23 37. On April 24, 2018, the Association Representative Council adopted a tentative
24 budget for fiscal year 2018-19, setting the CCEA annual dues rate at \$510 for each member.

25 38. On April 25, 2018, members of the Association at a general membership meeting
26 were advised that the Association Representative Council amended the Bylaws to effectively
27 authorize the disaffiliation from the NSEA and NEA and those union dues would be reduced by
28 an amount of 40 percent a year from \$33.78 per paycheck to \$21.25 per paycheck. On April 25,

2018, the CCEA members were notified by a mass email of this vote and received a second notice of the general membership meeting to take place on that day. A true and correct copy of the April 25, 2018 notice is attached hereto as **Exhibit 14**.

39. At the April 25, 2018, general membership meeting, the members approved a motion to disaffiliate from the NSEA and NEA. As a result of the disaffiliation vote, the dues payments were no longer going to be made to the NSEA or NEA, and there was a consequent reduction of union dues by 40 percent. The reduction of dues was ratified by the CCEA members at that meeting. A true and correct copy of the notice is attached hereto as **Exhibit 15**.

I declare under penalty of perjury and under the laws of the State of Nevada that the foregoing is true and correct.


John Vellardita

SUBSCRIBED and SWORN to before me
this 12th day of December 2018.


NOTARY PUBLIC

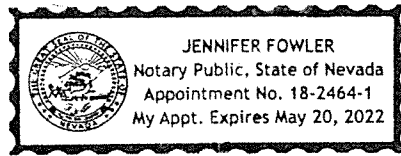


EXHIBIT 10

ORIGINAL

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**DISTRICT COURT
EIGHTH JUDICIAL DISTRICT
CLARK COUNTY, NEVADA**

NEVADA STATE EDUCATION
ASSOCIATION; NATIONAL EDUCATION
ASSOCIATION; RUBEN MURILLO;
ROBERT BENSON; DIANE
DI ARCHANGEL; and JASON WYCKOFF,

Plaintiffs/Counter-Defendants,

vs.

CLARK COUNTY EDUCATION
ASSOCIATION; JOHN VELLARDITA; and
VICTORIA COURTNEY,

Defendants/Counter-Plaintiffs.

Case No.: A-17-761884-C

DEPT. NO.: 31

ORDER

MAY 04 '18 AM 10:32

*JW
31*

1 A hearing having been held on April 23, 2018 on this Court's Order to Show Cause Why
2 an Order for Attachment and Garnishment Should Not Issue stemming from Plaintiffs-Counter
3 Defendants' National Education Association ("NEA") and Nevada State Education Association
4 ("NSEA") Application for Order Directing the Issuance of a Prejudgment Writ of Attachment
5 with Notice (the "Application"), and the Court having considered the Defendants-Counter
6 Plaintiffs' opposition thereto and the pleadings, papers and documents on file herein, and the
7 Court being otherwise fully advised in the premises and good cause appearing therefor, the Court
8 hereby grants the Application as modified, and orders the following relief:
9

10 IT IS HEREBY ORDERED that all funds in the possession of or received by Clark
11 County Education Association ("CCEA") for the 2017-2018 school year in respect to NSEA
12 dues (numerically calculated traditionally at the annual rate of \$376.66) and in respect to NEA
13 dues (numerically calculated traditionally at the annual rate of \$189.00) shall continue to be
14 deposited by CCEA into account number #501014714739 (the "Restricted Account"),
15 maintained at the Bank of America Las Vegas, Nevada Branch (the "Bank") as it has represented
16 to the Court it has done during the course of this litigation.

17 IT IS FURTHER ORDERED that CCEA shall provide NSEA and NEA with a monthly
18 statement starting with the CCEA's reconciliation at the end of April, 2018 showing (1) the
19 balance of funds in the Restricted Account through April 30, 2018, (2) the amount of NSEA and
20 NEA dues received, and (3) a listing by number of members for whom NSEA and NEA dues
21 have been received, and (4) a monthly total of NSEA and NEA dues received. This shall be
22 furnished by CCEA to NSEA and NEA by May 7, 2018. Thereafter, monthly statements
23 showing the balance of funds in the Restricted Account through the end of the month, along with
24 the updated information of items (2), (3) and (4) above, shall be furnished by CCEA to NSEA
25 and NEA by the fifth day of the month after the end of the immediately preceding month,
26 provided, however, if the fifth day of the month falls on a Saturday, Sunday, or legal holiday in
27 the State of Nevada, then such monthly statements and updated information of items (2), (3), and
28

(4) above shall be furnished by CCEA to NSEA and NEA on the next immediately following day that is not a Saturday, Sunday, or legal holiday in the State of Nevada.

IT IS FURTHER ORDERED that all funds on deposit in the Restricted Account with respect to the 2017-2018 NSEA and NEA dues shall remain in the Restricted Account, and that no funds shall be withdrawn, transferred, or disbursed out of the Restricted Account, and the Restricted Account shall not be changed or modified, without a further Order from this Department 31 of this Court.

IT IS FURTHER ORDERED that this Order shall be binding on the parties and their respective successors and assigns.

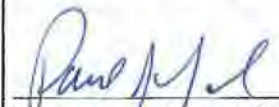
IT IS FURTHER ORDERED that a copy of this Order shall be provided by CCEA to the Bank.

DATED this 10th day of May, 2018.


The Honorable JOANNA S. KISHNER
District Court Judge


Respectfully submitted by,

BOIES SCHILLER FLEXNER LLP


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Attachment 13

Findings of Fact, Conclusions of Law, and Order Granting
Plaintiffs' Motion for Partial Summary Judgment

(Dec. 18, 2018)

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Attorneys for the CCEA Parties

IN THE EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CLARK COUNTY EDUCATION
 ASSOCIATION, VICTORIA COURTNEY,
 JAMES FRAZEE, ROBERT G.
 HOLLOWOOD, and MARIA NEISESS,

Plaintiffs,

vs.

NEVADA STATE EDUCATION
 ASSOCIATION, DANA GALVIN, RUBEN
 MURILLO, JR., BRIAN WALLACE, and
 BRIAN LEE,

Defendants.

NEVADA STATE EDUCATION
 ASSOCIATION; NATIONAL EDUCATION
 ASSOCIATION; RUBEN MURILLO;
 ROBERT BENSON; DIANE
 DI ARCHANGEL; AND JASON WYCKOFF,

Plaintiffs-Counter Defendants,

Case No.: A-17-761364-C
 DEPT. NO.: 4

(consolidated with A-17-761884-C)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Date of Hearing : November 15, 2018
Time of Hearing: 9:00 a.m.

Case No.: A-17-761884-C
 (consolidated with A-17-761364-C)

1 And
2 BRIAN LEE,
3 Counter-Defendant,
4 vs.
5 CLARK COUNTY EDUCATION
6 ASSOCIATION; JOHN VELLARDITA; AND
7 VICTORIA COURTNEY,
8 Defendants-Counter Plaintiffs.

9 The Court, having read and considered Plaintiffs Clark County Education Association
10 (“CCEA”), Victoria Courtney, James Frazee, Robert Hollowood, and Maria Neisess’s (collectively,
11 the “CCEA Parties”) *Motion for Partial Summary Judgment* (“Motion”) filed by the CCEA Parties
12 on June 18, 2018, and all papers filed in support of the Motion; having heard and considered the
13 oral argument of counsel John S. Delikanakis, Esq. and Michael Paretti, Esq. of Snell & Wilmer
14 L.L.P., and Joel D’Alba, Esq. of Asher, Gittler & D’Alba, Ltd. appearing on behalf of the CCEA
15 Parties, and Robert Alexander, Esq. and James Graham Lake, Esq. (telephonically) of Bredhoff &
16 Kaiser, PLLC and Paul J. Lal, Esq. of Boies Schiller Flexner appearing on behalf of Nevada State
17 Education Association (“NSEA”), Dana Galvin, Ruben Murillo, Brian Wallace, and Brian Lee
18 (collectively, the “NSEA Parties”); and with good cause appearing, enters the following findings
19 of fact, conclusions of law and order.

20 FINDINGS OF FACT

21 The Court concludes, under N.R.C.P. 56, that there is no genuine dispute of fact regarding
22 the following:

23 1. CCEA is a democratic organization that is the exclusive collective bargaining
24 representative of the licensed professional employees of the Clark County School District
25 (“CCSD”) and is the employee organization that serves as the local voice for educators to advance
26 the cause of education, promote professional excellence among educators to protect the rights of
27 educators, advance their interests and welfare, and secure professional autonomy.
28

2. CCEA is the recognized and exclusive bargaining agent for CCSD's licensed professional employees.

3. NSEA was the state-wide affiliate of the CCEA.

4. The National Education Association ("NEA") was the national affiliate of the CCEA.

5. NEA remains the national affiliate of NSEA.

6. Members of CCEA pay dues to CCEA pursuant to a membership dues authorization form ("Membership Authorization Form").

7. The Membership Authorization Form provides that:

Payroll Deduction Authorization. With full knowledge of the above, I hereby agree to pay cash for, or herein, authorize my employer to deduct from my salary, and pay to the local association, in accordance with the agreed-upon payroll deduction procedure, the professional dues as established annually and the political action contributions in the amounts indicated above for this membership year and each year thereafter, provided that I may revoke this authorization by giving written notice to that effect to my local association between July 1 and July 15 of any calendar year, or as otherwise designated by the negotiated agreement. Dues are paid on an annual basis and, although dues may be deducted from my payroll check(s) in order to provide an easier method of payment, a member is obligated to pay the entire amount of dues for a membership year. I understand that if I resign my membership in my local Association, or in the event of termination, resignation or retirement from employment, I am still obligated to pay the balance of my annual dues and political or positive image contributions for that membership year and such payments will continue to be deducted from my payroll check(s). (emphasis supplied).

8. Once an individual CCEA member signs the CCEA Membership Authorization Form, CCEA membership dues are then deducted from members' pay checks by their employer, the CCSD, pursuant to a collective bargaining agreement negotiated and agreed to by and between CCEA and CCSD.

9. The membership dues deducted from CCEA members' pay checks are then paid to CCEA by CCSD.

10. A portion of the CCEA membership dues are then transmitted to NSEA through a dues transmittal agreement by and between CCEA and NSEA("Dues Transmittal Agreement"), which is attached as an addendum and incorporated into a negotiated services agreement by and

1 between CCEA and NSEA ("Service Agreement") as Addendum A.

2 11. The Service Agreement incorporates the Dues Transmittal Agreement and provides
3 as follows:

4 CCEA agrees to transmit NSEA and NEA dues, and NSEA-TIP and NEA-PAC
5 contributions to NSEA for each by the tenth business day following the payroll
6 deduction. The agreement is attached as Addendum A.

7 12. In the absence of a Dues Transmittal Agreement, there is no obligation for CCEA
8 to transmit dues to NSEA and per NEA's bylaws, only NSEA has a contractual obligation to pay
9 NEA.

10 13. The Service Agreement incorporates and the Dues Transmittal Agreement and
11 together provide for the quid pro quo exchange between CCEA and NSEA. The Service Agreement
12 sets forth the services and financial payments that NSEA will provide to CCEA in exchange for
13 transmittal of dues that CCEA sends to NSEA, as set forth in both the Service Agreement - Dues
14 Transmittal Agreement.

15 14. Specifically, paragraph 1 of the Service Agreement states that CCEA will transmit
16 dues to NSEA and the following paragraph (paragraph 2) provides that in exchange, NSEA will
17 transmit grants to CCEA.

18 15. The Service Agreement and the Dues Transmittal Agreement are a single integrated
19 agreement that allows either party to unilaterally terminate and seek to renegotiate the terms of the
20 agreement.

21 16. Specifically, the Service Agreement provides that:

22 The term of this agreement shall be from September 1 to August 31. This
23 Agreement shall be automatically renewed on an annual basis, **unless either party**
24 **shall give written notice of termination to the other party, with evidence of**
25 **receipt by the other party no later than thirty (30) days prior to the anniversary**
26 **date of the Agreement. Should either party give notice of termination as**
27 **provided alone, then this Agreement shall terminate on the anniversary date**
28 unless a successor agreement has been mutually agreed to by the parties. (emphasis
supplied).

17. The relevant anniversary date is September 1, 2017.

18. Similarly, the Dues Transmittal Agreement provides that "[t]his agreement shall

1 remain in force for each subsequent membership year unless terminated in writing by either
2 party prior to September 1 of any NSEA membership year, or amended by mutual consent of
3 both parties.” (emphasis supplied).

4 19. The NSEA membership year runs from September 1 to August 31.

5 20. On May 3, 2017, CCEA gave notice to NSEA and its officers of an intent to
6 terminate the Service Agreement and the Dues Transmittal as follows:

7 Pursuant to the terms of the Service Agreement between the Nevada State Education
8 Association and the Clark County Education Association, I write to give you notice
9 to terminate this agreement, unless a successor agreement can be mutually agreed
10 to by the parties....Please accept this letter as our formal notice of termination of the
Service Agreement.

11 21. On July 17, 2017 and August 3, 2017, CCEA sent NSEA two additional letters
12 providing for notice of the intent to terminate the Service Agreement and the Due Transmittal
13 Agreement. Specifically, the July 17, 2017, letter stated in pertinent part that:

14 On May 3, 2017 CCEA served notice that it was terminating the Service Agreement
15 between CCEA and NSEA.....This letter serves notice to NSEA that unless there is
16 a successor agreement in place before the August 31, 2017 all terms and conditions
of the agreement shall become null and void.

17 The August 3, 2017, letter stated in pertinent part that:

18 Your letter expressing a claim based on NSEA policies is incorrect as this is a
19 contract matter, there has not been a mutual agreement to modify the Agreement,
20 and without mutual agreement, the terms and conditions of the Agreement will be
21 null and void upon its expiration on August 31, 2017....**The Agreement serves as**
the dues transmittal contract, and it is otherwise set to expire unless a successor
is negotiated per the terms and conditions of that Agreement. Upon expiration,
22 CCEA is not only legally not obligated to transmit dues, but cannot transmit member
23 dues to NSEA per NSEA's own ByLaws. To be clear, when the current Agreement
24 between CCEA and NSEA expires on August 31, 2017 there will not be a contract
in place between the two organizations to collect and remit dues to NSEA.
(emphasis supplied).

25 22. On April 25, 2018, CCEA voted to disaffiliate from NEA and NSEA.

26 23. Any finding of fact which should be construed as a conclusion of law shall be
27 construed as such.

24. Any conclusion of law which should be construed as a finding of fact shall be construed as such.

CONCLUSIONS OF LAW

A. Standard for Summary Judgment

25. The Court will render judgment “forthwith if the pleadings together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Nevada Rule of Civil Procedure 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986.)

26. “A factual dispute is genuine when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party.” *Wood v. Safeway*, 121 Nev. 724, 731 (2005).

27. The moving party bears the initial burden of showing the absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 323.

28. To meet this burden, the moving party may either produce evidence affirmatively demonstrating the absence of such evidence or point out a lack of evidence to support the nonmoving party’s case. *Id.* at 325.

29. Once this burden is met, the burden shifts to the nonmoving party to present evidence demonstrating the existence of a genuine issue of material fact. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986).

B. CCEA Terminated the Service Agreement and Dues Transmittal Agreement within the Contractually-Permitted Timeframe Prior to September 1, 2017.

30. “Questions of contract construction, in the absence of ambiguity or other factual issues, are suitable for determination by summary judgment.” *See Nelson v. California State Auto. Ass’n Inter-Ins. Bureau*, 114 Nev. 345, 347, 956 P.2d 803, 805 (1998) *S. Tr. Mortg. Co. v. K & B Door Co.*, 104 Nev. 564, 568, 763 P.2d 353, 355 (1988) (“[W]here a document is clear and unambiguous, the court must construe it from the language therein.”); *Chwialkowski v. Sachs*, 108 Nev. 404, 406, 834 P.2d 405, 406 (1992) (same); *Renshaw v. Renshaw*, 96 Nev. 541, 543, 611, P.2d 1070, 1071 (1980) (same); *Ellison v. California State Auto Ass’n*, 106 Nev. 601, 603, 797 P.2d 975, 977 (1990) (same); *Watson v. Watson*, 95 Nev. 495, 496, 596 P.2d 507, 508 (1979) (“Courts

are bound by language which is clear and free from ambiguity and cannot, using guise of interpretation, distort plain meaning of agreement.”).

THE COURT FINDS AS FOLLOWS:

31. The Service Agreement and Dues Transmittal Agreement ~~as an integrated agreement~~ expressly allow unilateral termination by either party, and those termination provisions are clear and unambiguous.

32. The May 3, 2017, July 17, 2017, and August 3, 2017 letters served to terminate both the Service Agreement and Dues Transmittal Agreement, which termination occurred within the required contractual timeframe.

33. The foregoing termination notices caused both the Service Agreement and Dues Transmittal Agreement to expire on August 31, 2017.

34. In light of the foregoing termination and expiration, CCEA owed no duties to NSEA or NEA under the Service Agreement and Dues Transmittal Agreement to collect and/or transmit membership dues on NSEA or NEA’s behalf on or after September 1, 2017, nor did NSEA or NEA have any obligation to CCEA on or after September 1, 2017, to perform pursuant to the Service Agreement and Dues Transmittal Agreement, and, in fact, there is no dispute that NSEA and NEA ceased to perform under the Service Agreement and Dues Transmittal Agreement on or after September 1, 2017.

35. There are no genuine issues of material fact concerning whether the Service Agreement and Dues Transmittal Agreement were terminated.

36. The NSEA Parties have not made any showing that the CCEA Parties are not entitled to summary judgment as a matter of law.

37. Pursuant to Nevada Rule of Civil Procedure 56, the CCEA Parties are entitled to summary judgment in their favor and against the NSEA Parties on their declaratory relief claim.

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Motion is GRANTED in its entirety, and summary judgment is entered in favor of the CCEA Parties on

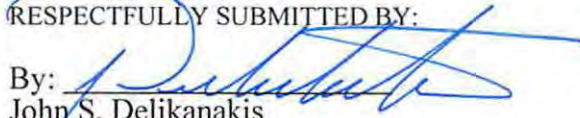
1 their claim for Declaratory Relief. Judgment will be entered pursuant to this order as follows:
2 (1) The termination provisions of the Service Agreement and Dues Transmittal Agreement are
3 clear and unambiguous, (2) CCEA's May 3, 2017, July 17, 2017, and August 3, 2017 letters
4 notifying NSEA of the termination of the Service Agreement and Dues Transmittal Agreement
5 are equally clear and unambiguous, (3) the Service Agreement and Dues Transmittal
6 Agreement were terminated by CCEA within the required contractual timeframe, (4) this
7 termination caused both agreements to expire on August 31, 2017, and (5) in light of the
8 foregoing termination and expiration, CCEA owed no duties to NSEA or NEA under the
9 Service Agreement and Dues Transmittal Agreement to collect and/or transmit membership
10 dues on NSEA or NEA's behalf on or after September 1, 2017, nor did NSEA or NEA have any
11 obligation to CCEA on or after September 1, 2017, to perform pursuant to the Service Agreement
12 and Dues Transmittal Agreement, and, in fact, there is no dispute that NSEA and NEA ceased to
13 perform under the Service Agreement and Dues Transmittal Agreement on or after September 1,
14 2017.

15
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17 DATED: 12-18-18, 2018

18 
19 THE HONORABLE JUDGE KERRY EARLEY
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28

1 SNELL & WILMER L.L.P.

2 RESPECTFULLY SUBMITTED BY:

3 By: 
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22 *Attorneys for the CCEA Parties*

23 APPROVED AS TO FORM AND CONTENT BY:

24 By: To submit competing order
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Attachment 14

Notice of Entry of Findings of Fact, Conclusions of Law, and
Order Granting Plaintiffs' Motion for Partial Summary
Judgment

(Dec. 20, 2018)

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IN THE EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CLARK COUNTY EDUCATION
ASSOCIATION, VICTORIA COURTNEY,
JAMES FRAZEE, ROBERT G.
HOLLOWOOD, and MARIA NEISESS,

Plaintiffs,

vs.

NEVADA STATE EDUCATION
ASSOCIATION, DANA GALVIN, RUBEN
MURILLO, JR., BRIAN WALLACE, and
BRIAN LEE,

Defendants.

NEVADA STATE EDUCATION
ASSOCIATION; NATIONAL EDUCATION
ASSOCIATION; RUBEN MURILLO;
ROBERT BENSON; DIANE
DI ARCHANGEL; AND JASON WYCKOFF,

Plaintiffs-Counter Defendants,

Case No.: A-17-761364-C
DEPT. NO.: 4

(consolidated with A-17-761884-C)

**NOTICE OF ENTRY OF FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND
ORDER GRANTING PLAINTIFFS'
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

Case No.: A-17-761884-C
(consolidated with A-17-761364-C)

1 And
2 BRIAN LEE,
3 Counter-Defendant,
4 vs.
5 CLARK COUNTY EDUCATION
6 ASSOCIATION; JOHN VELLARDITA; AND
7 VICTORIA COURTNEY,
8 Defendants-Counter Plaintiffs.

9 PLEASE TAKE NOTICE that Findings of Fact, Conclusions of Law, and Order Granting
10 Plaintiffs' Motion for Partial Summary Judgment were entered in the above-captioned matter on
11 December 20, 2018, a copy of which is attached hereto.

12 DATED this 20th day of December, 2018.

13 SNELL & WILMER L.L.P.

14 By: /s/ Michael Paretti
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CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT** by the method indicated below:

<u>XX</u>	Odyssey E-File & Serve	_____	Federal Express
_____	U.S. Mail	_____	U.S. Certified Mail
_____	Facsimile Transmission	_____	Hand Delivery
_____	Email Transmission	_____	Overnight Mail

and addressed to the following:

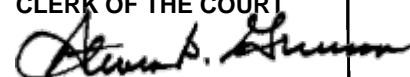
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DATED this 20th day of December, 2018.

/s/ Maricris Williams
An Employee of Snell & Wilmer L.L.P

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Attorneys for the CCEA Parties

IN THE EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CLARK COUNTY EDUCATION
ASSOCIATION, VICTORIA COURTNEY,
JAMES FRAZEE, ROBERT G.
HOLLOWOOD, and MARIA NEISESS,

Plaintiffs,

vs.

NEVADA STATE EDUCATION
ASSOCIATION, DANA GALVIN, RUBEN
MURILLO, JR., BRIAN WALLACE, and
BRIAN LEE,

Defendants.

NEVADA STATE EDUCATION
ASSOCIATION; NATIONAL EDUCATION
ASSOCIATION; RUBEN MURILLO;
ROBERT BENSON; DIANE
DI ARCHANGEL; AND JASON WYCKOFF,

Plaintiffs-Counter Defendants,

Case No.: A-17-761364-C
DEPT. NO.: 4

(consolidated with A-17-761884-C)

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER GRANTING
PLAINTIFFS' MOTION FOR PARTIAL
SUMMARY JUDGMENT**

**Date of Hearing : November 15, 2018
Time of Hearing: 9:00 a.m.**

Case No.: A-17-761884-C
(consolidated with A-17-761364-C)

1 And
2 BRIAN LEE,
3 Counter-Defendant,
4 vs.
5 CLARK COUNTY EDUCATION
6 ASSOCIATION; JOHN VELLARDITA; AND
7 VICTORIA COURTNEY,
8 Defendants-Counter Plaintiffs.

9 The Court, having read and considered Plaintiffs Clark County Education Association
10 ("CCEA"), Victoria Courtney, James Frazee, Robert Hollowood, and Maria Neisess's (collectively,
11 the "CCEA Parties") *Motion for Partial Summary Judgment* ("Motion") filed by the CCEA Parties
12 on June 18, 2018, and all papers filed in support of the Motion; having heard and considered the
13 oral argument of counsel John S. Delikanakis, Esq. and Michael Paretti, Esq. of Snell & Wilmer
14 L.L.P., and Joel D'Alba, Esq. of Asher, Gittler & D'Alba, Ltd. appearing on behalf of the CCEA
15 Parties, and Robert Alexander, Esq. and James Graham Lake, Esq. (telephonically) of Bredhoff &
16 Kaiser, PLLC and Paul J. Lal, Esq. of Boies Schiller Flexner appearing on behalf of Nevada State
17 Education Association ("NSEA"), Dana Galvin, Ruben Murillo, Brian Wallace, and Brian Lee
18 (collectively, the "NSEA Parties"); and with good cause appearing, enters the following findings
19 of fact, conclusions of law and order.

20 FINDINGS OF FACT

21 The Court concludes, under N.R.C.P. 56, that there is no genuine dispute of fact regarding
22 the following:

23 1. CCEA is a democratic organization that is the exclusive collective bargaining
24 representative of the licensed professional employees of the Clark County School District
25 ("CCSD") and is the employee organization that serves as the local voice for educators to advance
26 the cause of education, promote professional excellence among educators to protect the rights of
27 educators, advance their interests and welfare, and secure professional autonomy.
28

2. CCEA is the recognized and exclusive bargaining agent for CCSD's licensed professional employees.

3. NSEA was the state-wide affiliate of the CCEA.

4. The National Education Association ("NEA") was the national affiliate of the CCEA.

5. NEA remains the national affiliate of NSEA.

6. Members of CCEA pay dues to CCEA pursuant to a membership dues authorization form ("Membership Authorization Form").

7. The Membership Authorization Form provides that:

Payroll Deduction Authorization. With full knowledge of the above, I hereby agree to pay cash for, or herein, authorize my employer to deduct from my salary, and pay to the local association, in accordance with the agreed-upon payroll deduction procedure, the professional dues as established annually and the political action contributions in the amounts indicated above for this membership year and each year thereafter, provided that I may revoke this authorization by giving written notice to that effect to my local association between July 1 and July 15 of any calendar year, or as otherwise designated by the negotiated agreement. Dues are paid on an annual basis and, although dues may be deducted from my payroll check(s) in order to provide an easier method of payment, a member is obligated to pay the entire amount of dues for a membership year. I understand that if I resign my membership in my local Association, or in the event of termination, resignation or retirement from employment, I am still obligated to pay the balance of my annual dues and political or positive image contributions for that membership year and such payments will continue to be deducted from my payroll check(s). (emphasis supplied).

8. Once an individual CCEA member signs the CCEA Membership Authorization Form, CCEA membership dues are then deducted from members' pay checks by their employer, the CCSD, pursuant to a collective bargaining agreement negotiated and agreed to by and between CCEA and CCSD.

9. The membership dues deducted from CCEA members' pay checks are then paid to CCEA by CCSD.

10. A portion of the CCEA membership dues are then transmitted to NSEA through a dues transmittal agreement by and between CCEA and NSEA("Dues Transmittal Agreement"), which is attached as an addendum and incorporated into a negotiated services agreement by and

1 between CCEA and NSEA ("Service Agreement") as Addendum A.

2 11. The Service Agreement incorporates the Dues Transmittal Agreement and provides
3 as follows:

4 CCEA agrees to transmit NSEA and NEA dues, and NSEA-TIP and NEA-PAC
5 contributions to NSEA for each by the tenth business day following the payroll
6 deduction. The agreement is attached as Addendum A.

7 12. In the absence of a Dues Transmittal Agreement, there is no obligation for CCEA
8 to transmit dues to NSEA and per NEA's bylaws, only NSEA has a contractual obligation to pay
9 NEA.

10 13. The Service Agreement incorporates and the Dues Transmittal Agreement and
11 together provide for the quid pro quo exchange between CCEA and NSEA. The Service Agreement
12 sets forth the services and financial payments that NSEA will provide to CCEA in exchange for
13 transmittal of dues that CCEA sends to NSEA, as set forth in both the Service Agreement - Dues
14 Transmittal Agreement.

15 14. Specifically, paragraph 1 of the Service Agreement states that CCEA will transmit
16 dues to NSEA and the following paragraph (paragraph 2) provides that in exchange, NSEA will
17 transmit grants to CCEA.

18 15. The Service Agreement and the Dues Transmittal Agreement are a single integrated
19 agreement that allows either party to unilaterally terminate and seek to renegotiate the terms of the
20 agreement.

21 16. Specifically, the Service Agreement provides that:

22 The term of this agreement shall be from September 1 to August 31. This
23 Agreement shall be automatically renewed on an annual basis, **unless either party**
24 **shall give written notice of termination to the other party, with evidence of**
25 **receipt by the other party no later than thirty (30) days prior to the anniversary**
26 **date of the Agreement. Should either party give notice of termination as**
27 **provided alone, then this Agreement shall terminate on the anniversary date**
28 unless a successor agreement has been mutually agreed to by the parties. (emphasis
supplied).

17. The relevant anniversary date is September 1, 2017.

18. Similarly, the Dues Transmittal Agreement provides that "[t]his agreement shall

1 remain in force for each subsequent membership year unless terminated in writing by either
2 party prior to September 1 of any NSEA membership year, or amended by mutual consent of
3 both parties.” (emphasis supplied).

4 19. The NSEA membership year runs from September 1 to August 31.

5 20. On May 3, 2017, CCEA gave notice to NSEA and its officers of an intent to
6 terminate the Service Agreement and the Dues Transmittal as follows:

7 Pursuant to the terms of the Service Agreement between the Nevada State Education
8 Association and the Clark County Education Association, I write to give you notice
9 to terminate this agreement, unless a successor agreement can be mutually agreed
10 to by the parties....Please accept this letter as our formal notice of termination of the
11 Service Agreement.

12 21. On July 17, 2017 and August 3, 2017, CCEA sent NSEA two additional letters
13 providing for notice of the intent to terminate the Service Agreement and the Due Transmittal
14 Agreement. Specifically, the July 17, 2017, letter stated in pertinent part that:

15 On May 3, 2017 CCEA served notice that it was terminating the Service Agreement
16 between CCEA and NSEA.....This letter serves notice to NSEA that unless there is
17 a successor agreement in place before the August 31, 2017 all terms and conditions
18 of the agreement shall become null and void.

19 The August 3, 2017, letter stated in pertinent part that:

20 Your letter expressing a claim based on NSEA policies is incorrect as this is a
21 contract matter, there has not been a mutual agreement to modify the Agreement,
22 and without mutual agreement, the terms and conditions of the Agreement will be
23 null and void upon its expiration on August 31, 2017....**The Agreement serves as**
24 **the dues transmittal contract, and it is otherwise set to expire unless a successor**
25 **is negotiated per the terms and conditions of that Agreement.** Upon expiration,
26 CCEA is not only legally not obligated to transmit dues, but cannot transmit member
27 dues to NSEA per NSEA's own ByLaws. To be clear, when the current Agreement
28 between CCEA and NSEA expires on August 31, 2017 there will not be a contract
in place between the two organizations to collect and remit dues to NSEA.
(emphasis supplied).

22. On April 25, 2018, CCEA voted to disaffiliate from NEA and NSEA.

23. Any finding of fact which should be construed as a conclusion of law shall be
construed as such.

24. Any conclusion of law which should be construed as a finding of fact shall be construed as such.

CONCLUSIONS OF LAW

A. Standard for Summary Judgment

25. The Court will render judgment “forthwith if the pleadings together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Nevada Rule of Civil Procedure 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986.)

26. “A factual dispute is genuine when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party.” *Wood v. Safeway*, 121 Nev. 724, 731 (2005).

27. The moving party bears the initial burden of showing the absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 323.

28. To meet this burden, the moving party may either produce evidence affirmatively demonstrating the absence of such evidence or point out a lack of evidence to support the nonmoving party’s case. *Id.* at 325.

29. Once this burden is met, the burden shifts to the nonmoving party to present evidence demonstrating the existence of a genuine issue of material fact. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986).

B. CCEA Terminated the Service Agreement and Dues Transmittal Agreement within the Contractually-Permitted Timeframe Prior to September 1, 2017.

30. “Questions of contract construction, in the absence of ambiguity or other factual issues, are suitable for determination by summary judgment.” *See Nelson v. California State Auto. Ass’n Inter-Ins. Bureau*, 114 Nev. 345, 347, 956 P.2d 803, 805 (1998) *S. Tr. Mortg. Co. v. K & B Door Co.*, 104 Nev. 564, 568, 763 P.2d 353, 355 (1988) (“[W]here a document is clear and unambiguous, the court must construe it from the language therein.”); *Chwialkowski v. Sachs*, 108 Nev. 404, 406, 834 P.2d 405, 406 (1992) (same); *Renshaw v. Renshaw*, 96 Nev. 541, 543, 611, P.2d 1070, 1071 (1980) (same); *Ellison v. California State Auto Ass’n*, 106 Nev. 601, 603, 797 P.2d 975, 977 (1990) (same); *Watson v. Watson*, 95 Nev. 495, 496, 596 P.2d 507, 508 (1979) (“Courts

1 are bound by language which is clear and free from ambiguity and cannot, using guise of
2 interpretation, distort plain meaning of agreement.”).

3 **THE COURT FINDS AS FOLLOWS:**

4 31. The Service Agreement and Dues Transmittal Agreement ~~as an integrated~~
5 ~~agreement~~ expressly allow unilateral termination by either party, and those termination provisions
6 are clear and unambiguous.

7 32. The May 3, 2017, July 17, 2017, and August 3, 2017 letters served to terminate both
8 the Service Agreement and Dues Transmittal Agreement, which termination occurred within the
9 required contractual timeframe.

10 33. The foregoing termination notices caused both the Service Agreement and Dues
11 Transmittal Agreement to expire on August 31, 2017.

12 34. In light of the foregoing termination and expiration, CCEA owed no duties to NSEA
13 or NEA under the Service Agreement and Dues Transmittal Agreement to collect and/or transmit
14 membership dues on NSEA or NEA’s behalf on or after September 1, 2017, nor did NSEA or NEA
15 have any obligation to CCEA on or after September 1, 2017, to perform pursuant to the Service
16 Agreement and Dues Transmittal Agreement, and, in fact, there is no dispute that NSEA and NEA
17 ceased to perform under the Service Agreement and Dues Transmittal Agreement on or after
18 September 1, 2017.

19 35. There are no genuine issues of material fact concerning whether the Service
20 Agreement and Dues Transmittal Agreement were terminated.

21 36. The NSEA Parties have not made any showing that the CCEA Parties are not entitled
22 to summary judgment as a matter of law.

23 37. Pursuant to Nevada Rule of Civil Procedure 56, the CCEA Parties are entitled to
24 summary judgment in their favor and against the NSEA Parties on their declaratory relief claim.

25 **ORDER**

26 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the Motion is
27 **GRANTED** in its entirety, and summary judgment is entered in favor of the CCEA Parties on
28


1 their claim for Declaratory Relief. Judgment will be entered pursuant to this order as follows:
2 (1) The termination provisions of the Service Agreement and Dues Transmittal Agreement are
3 clear and unambiguous, (2) CCEA's May 3, 2017, July 17, 2017, and August 3, 2017 letters
4 notifying NSEA of the termination of the Service Agreement and Dues Transmittal Agreement
5 are equally clear and unambiguous, (3) the Service Agreement and Dues Transmittal
6 Agreement were terminated by CCEA within the required contractual timeframe, (4) this
7 termination caused both agreements to expire on August 31, 2017, and (5) in light of the
8 foregoing termination and expiration, CCEA owed no duties to NSEA or NEA under the
9 Service Agreement and Dues Transmittal Agreement to collect and/or transmit membership
10 dues on NSEA or NEA's behalf on or after September 1, 2017, nor did NSEA or NEA have any
11 obligation to CCEA on or after September 1, 2017, to perform pursuant to the Service Agreement
12 and Dues Transmittal Agreement, and, in fact, there is no dispute that NSEA and NEA ceased to
13 perform under the Service Agreement and Dues Transmittal Agreement on or after September 1,
14 2017.

15
16
17 DATED: 12-18-18, 2018

18 
19 THE HONORABLE JUDGE KERRY EARLEY
20
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1 SNELL & WILMER L.L.P.

2 RESPECTFULLY SUBMITTED BY:

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23 APPROVED AS TO FORM AND CONTENT BY:

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Attorneys for the NSEA Parties

Attachment 15

Findings of Fact, Conclusions of Law, and Order Granting in
Part and Denying in Part the NSEA Parties' Motion for Partial
Reconsideration of the December 20 Findings of Fact,
Conclusions of Law, and Order

(June 24, 2019)

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Attorneys for the CCEA Parties

**IN THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

CLARK COUNTY EDUCATION
ASSOCIATION, VICTORIA COURTNEY,
JAMES FRAZEE, ROBERT G.
HOLLOWOOD, and MARIA NEISESS,

Plaintiffs,

vs.

NEVADA STATE EDUCATION
ASSOCIATION, DANA GALVIN, RUBEN
MURILLO, JR., BRIAN WALLACE, and
BRIAN LEE,

Defendants.

Case No.: A-17-761364-C
DEPT. NO.: 4

(consolidated with A-17-761884-C)

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER GRANTING IN
PART AND DENYING IN PART THE
NSEA PARTIES' MOTION FOR
PARTIAL RECONSIDERATION OF
THE DECEMBER 20 FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND
ORDER**

**Date of Hearing : May 9, 2019
Time of Hearing: 9:00 a.m.**

NEVADA STATE EDUCATION
ASSOCIATION; NATIONAL EDUCATION
ASSOCIATION; RUBEN MURILLO;
ROBERT BENSON; DIANE
DI ARCHANGEL; AND JASON WYCKOFF,

Plaintiffs-Counter Defendants,

And

BRIAN LEE,

Counter-Defendant,

vs.

CLARK COUNTY EDUCATION
ASSOCIATION; JOHN VELLARDITA; AND
VICTORIA COURTNEY,

Defendants-Counter Plaintiffs.

Case No.: A-17-761884-C
(consolidated with A-17-761364-C)

The Court, having read and considered Nevada State Education Association (“NSEA”), National Education Association (“NEA”), Dana Galvin, Ruben Murillo, Jr., Brian Wallace, Brian Lee, Robert Benson, Diane Di Archangel and Jason Wyckoff (collectively “NSEA Parties”) Motion for Partial Reconsideration of the December 20 Findings of Fact, Conclusions of Law, and Order (“Motion for Reconsideration”), filed January 10, 2019; the Clark County Education Association (“CCEA”), Victoria Courtney, James Frazee, Robert Hollowood, and Maria Neisess’s (collectively, the “CCEA Parties”) Opposition to the Motion for Reconsideration, filed February 25, 2019; the NSEA Parties’ Reply in Support of the Motion for Reconsideration, filed April 4, 2019; and all other papers filed in support of the foregoing; having heard and considered the oral argument of counsel John S. Delikanakis, Esq., Bradley Austin, Esq. and Michael Paretti, Esq. of Snell & Wilmer L.L.P., and Joel D’Alba, Esq. of Asher, Gittler & D’Alba, Ltd. appearing on behalf of the CCEA Parties, and Robert Alexander, Esq. and James Graham Lake, Esq. of Bredhoff & Kaiser, PLLC and Paul J. Lal, Esq. of Boies Schiller Flexner appearing on behalf of the NSEA Parties, and with good cause appearing, enters the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

1. The CCEA Parties filed a Motion for Partial Summary Judgment (“MPSJ”) on June 18, 2018 seeking summary judgment on their claim for Declaratory Relief.

1 2. The NSEA Parties filed their Opposition to the MPSJ on July 20, 2018.
2
3 3. The CCEA Parties filed their Reply in Support of the MPSJ on August 14, 2018.
4
5 4. The Court entertained oral argument on the MPSJ on November 15, 2018 – with the
6 consolidated hearing spanning nearly two-and-a-half hours in length (beginning at 9:06 am and
7 concluding at 11:30 am).

8 5. Following the hearing, the Court issued a Minute Order on November 15, 2018,
9 granting the CCEA Parties' MPSJ and directing CCEA's counsel to draft a proposed order.

10 6. The Parties subsequently exchanged redlines of a proposed order but were unable to
11 reach a consensus.

12 7. On December 6, 2018, CCEA submitted its proposed order, along with a redline
13 from NSEA, highlighting for the Court all of the specific changes that the NSEA Parties requested.

14 8. On December 7, 2018, the NSEA Parties submitted a competing order, along with
15 a seven-page, single spaced letter – much of which contained arguments identical to those found in
16 the instant Motion for Reconsideration.

17 9. After reviewing both competing orders, the redline of the NSEA Parties' proposed
18 changes, and the NSEA Parties' seven-page letter, the Court entered its Findings of Fact,
19 Conclusions of Law, and Order granting the CCEA Parties' Motion for Partial Summary Judgment
20 on December 20, 2018.

21 10. Pertinent to the Motion for Reconsideration, the December 20, 2018, Findings of
22 Fact, Conclusions of Law, and Order provides:

- 23 a. Paragraph 6: "Members of CCEA pay dues to CCEA pursuant to a
24 membership dues authorization form ('Membership Authorization Form')."
25 b. Paragraph 8: "Once an individual CCEA member signs the CCEA
26 Membership Authorization Form, CCEA membership dues are then
27 deducted from members' pay checks by their employer, the CCSD, pursuant
28 to a collective bargaining agreement negotiated and agreed to by and
between CCEA and CCSD."

- c. Paragraph 9: "The membership dues deducted from CCEA members' pay checks are then paid to CCEA by CCSD."
- d. Paragraph 10: "A portion of the CCEA membership dues are then transmitted to NSEA through a dues transmittal agreement by and between CCEA and NSEA('Dues Transmittal Agreement'), which is attached as an addendum and incorporated into a negotiated services agreement by and between CCEA and NSEA ('Service Agreement') as Addendum A."
- e. Paragraph 12: "In the absence of a Dues Transmittal Agreement, there is no obligation for CCEA to transmit dues to NSEA and per NEA's bylaws, only NSEA has a contractual obligation to pay NEA."

11. Any finding of fact which should be construed as a conclusion of law shall be construed as such.

12. Any conclusion of law which should be construed as a finding of fact shall be construed as such.

CONCLUSIONS OF LAW

A. Standard for Reconsideration

13. "A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous." *Masonry & Tile Contractors Ass'n of S. Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997) (internal citations omitted.).

14. "Only in very rare instances in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached should a motion for rehearing be granted." *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976).

15. Further, a petition for rehearing may not be utilized as a vehicle to reargue matters considered and decided in the court's initial opinion. *Matter of Estate of Herrmann*, 100 Nev. 149, 151, 679 P.2d 246, 247 (1984).

1 16. A decision is erroneous “when although there is evidence to support it, the reviewing
2 court on the entire evidence is left with the definite and firm conviction that a mistake has been
3 committed.” *Union America Mortgage and Equity v. McDonald*, 97 Nev. 210,211-212, 626 P.2d
4 1272, 1273 (1981), quoting *United States v. Gypsum Co.*, 333 U.S. 364, 395 (1948).

5 **B. Paragraph 6 of the December 20 Order**

6 17. Paragraph 6 of the Court’s December 20, 2018, Findings of Fact, Conclusions of
7 Law, and Order did not classify the subject enrollment form as a CCEA enrollment form.

8 18. The Court did not interpret the findings of fact in Paragraph 6 to limit NSEA or
9 NEA’s rights.

10 19. Substantially different evidence has not been subsequently introduced, and the
11 Court’s decision is not clearly erroneous.

12 20. Accordingly, the Court denies the NSEA Parties’ Motion for Reconsideration with
13 respect to Paragraph 6.

14 **C. Paragraphs 8-10 of the December 20 Order**

15 21. Paragraphs 8-10 of the Court’s December 20, 2018, Findings of Fact, Conclusions
16 of Law, and Order explained the mechanisms as to how membership dues were transmitted from
17 CCSD to CCEA, NSEA, and NEA prior to CCEA’s termination of the Service Agreement and
18 Dues Transmittal Agreement.

19 22. Substantially different evidence has not been subsequently introduced, and the
20 Court’s decision is not clearly erroneous.

21 23. Accordingly, the Court denies the NSEA Parties’ Motion for Reconsideration with
22 respect to Paragraphs 8-10, but does so without prejudice to ruling on the parties’ pending motions
23 for summary judgment.

24 **D. Paragraph 12 of the December 20 Order**

25 24. Paragraph 12 of the Court’s December 20, 2018, Findings of Fact, Conclusions of
26 Law, and Order did not serve as a basis in any way for the Court’s ruling on the CCEA Parties’
27 MPSJ.
28

25. Accordingly, because Paragraph 12 did not serve as a basis for the Court's ruling on the CCEA Parties' MPSJ, the Court grants the NSEA Parties' Motion for Reconsideration with respect to Paragraph 12 and amends the December 20, 2018, Findings of Fact, Conclusions of Law, and Order to omit Paragraph 12.

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

That the NSEA Parties' Motion for Reconsideration is **GRANTED IN PART** with respect to Paragraph 12 and the Court amends its December 20, 2018, Findings of Fact, Conclusions of Law, and Order to omit Paragraph 12; and


That the remainder of the NSEA Parties' Motion for Reconsideration, specifically regarding Paragraphs 6, 8, 9, and 10 of the Court's December 20, 2018, Findings of Fact, Conclusions of Law, and Order, is **DENIED**.

DATED: June 24, 2019


THE HONORABLE JUDGE KERRY EARLEY

SNELL & WILMER L.L.P.

RESPECTFULLY SUBMITTED BY:

By: 
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7 APPROVED AS TO FORM AND CONTENT BY:

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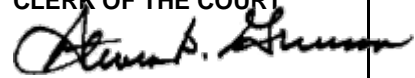
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Attachment 16

Notice of Entry of Findings of Fact, Conclusions of Law, and
Order Granting in Part and Denying in Part the NSEA Parties'
Motion for Partial Reconsideration of the December 20 Findings
of Fact, Conclusions of Law, and Order

(June 28, 2019)



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*Attorneys for Plaintiffs Clark County Education Association,
Victoria Courtney, James Frazee, Robert G. Hollowood and
Maria Neisess*

IN THE EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CLARK COUNTY EDUCATION
ASSOCIATION, VICTORIA COURTNEY,
JAMES FRAZEE, ROBERT G.
HOLLOWOOD, and MARIA NEISESS,

Plaintiffs,

vs.

NEVADA STATE EDUCATION
ASSOCIATION, DANA GALVIN, RUBEN
MURILLO, JR., BRIAN WALLACE, and
BRIAN LEE,

Defendants.

Case No.: A-17-761364-C
DEPT. NO.: 4

(consolidated with A-17-761884-C)

**NOTICE OF ENTRY OF FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND
ORDER GRANTING IN PART AND
DENYING IN PART THE NSEA
PARTIES' MOTION FOR PARTIAL
RECONSIDERATION OF THE
DECEMBER 20, 2018 FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND
ORDER**

1 NEVADA STATE EDUCATION
2 ASSOCIATION; NATIONAL EDUCATION
3 ASSOCIATION; RUBEN MURILLO;
4 ROBERT BENSON; DIANE
5 DI ARCHANGEL; AND JASON WYCKOFF,

6 Plaintiffs-Counter Defendants,

7 And

8 BRIAN LEE,

9 Counter-Defendant,

10 vs.

11 CLARK COUNTY EDUCATION
12 ASSOCIATION; JOHN VELLARDITA; AND
13 VICTORIA COURTNEY,

14 Defendants-Counter Plaintiffs.

Case No.: A-17-761884-C
(consolidated with A-17-761364-C)

15 PLEASE TAKE NOTICE that Findings of Fact, Conclusions of Law, and Order Granting
16 in Part and Denying in Part the NSEA Parties' Motion for Partial Reconsideration of the
17 December 20, 2018 Findings of Fact, Conclusions of Law, and Order were entered in the above-
18 captioned matter on June 28, 2019, a copy of which are attached hereto.

19 DATED this 28th day of June, 2019.

20 SNELL & WILMER L.L.P.

21 By: /s/ Michael Paretti

22 John S. Delikanakis

23 Nevada Bar No. 5928

24 Michael Paretti

25 Nevada Bar No. 13926

26 Brad T. Austin

27 Nevada Bar No. 13064

28 SNELL & WILMER L.L.P.

3883 Howard Hughes Parkway, Suite 1100

Las Vegas, NV 89169

Attorneys for Plaintiffs

1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen
3 (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be
4 served a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF**
5 **FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING IN PART AND DENYING**
6 **IN PART THE NSEA PARTIES' MOTION FOR PARTIAL RECONSIDERATION OF**
7 **THE DECEMBER 20, 2018 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND**
8 **ORDER** by the method indicated below:

9 <u>XX</u>	Odyssey E-File & Serve	_____	Federal Express
10 _____	U.S. Mail	_____	U.S. Certified Mail
11 _____	Facsimile Transmission	_____	Hand Delivery
12 _____	Email Transmission	_____	Overnight Mail

13 and addressed to the following:

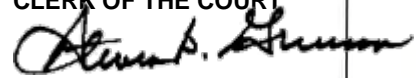
14
15 Richard J. Pocker
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19 Las Vegas, NV 89101
Email: rpocker@bsflp.com
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Email: mcdrexler@bredhoff.com
Attorneys for Defendants

20 DATED this 28th day of June, 2019.

21 /s/ Maricris Williams
22 An Employee of Snell & Wilmer L.L.P.

23 4832-9232-3227.1



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26 *Attorneys for the CCEA Parties*

27 **IN THE EIGHTH JUDICIAL DISTRICT COURT**

28 **CLARK COUNTY, NEVADA**

CLARK COUNTY EDUCATION
ASSOCIATION, VICTORIA COURTNEY,
JAMES FRAZEE, ROBERT G.
HOLLOWOOD, and MARIA NEISESS,

Plaintiffs,

vs.

NEVADA STATE EDUCATION
ASSOCIATION, DANA GALVIN, RUBEN
MURILLO, JR., BRIAN WALLACE, and
BRIAN LEE,

Defendants.

Case No.: A-17-761364-C
DEPT. NO.: 4

(consolidated with A-17-761884-C)

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER GRANTING IN
PART AND DENYING IN PART THE
NSEA PARTIES' MOTION FOR
PARTIAL RECONSIDERATION OF
THE DECEMBER 20 FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND
ORDER**

**Date of Hearing : May 9, 2019
Time of Hearing: 9:00 a.m.**

Snell & Wilmer

LLP
LAW OFFICES
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, Nevada 89169
702.784.5200

NEVADA STATE EDUCATION
ASSOCIATION; NATIONAL EDUCATION
ASSOCIATION; RUBEN MURILLO;
ROBERT BENSON; DIANE
DI ARCHANGEL; AND JASON WYCKOFF,

Plaintiffs-Counter Defendants,

And

BRIAN LEE,

Counter-Defendant,

vs.

CLARK COUNTY EDUCATION
ASSOCIATION; JOHN VELLARDITA; AND
VICTORIA COURTNEY,

Defendants-Counter Plaintiffs.

Case No.: A-17-761884-C
(consolidated with A-17-761364-C)

The Court, having read and considered Nevada State Education Association (“NSEA”), National Education Association (“NEA”), Dana Galvin, Ruben Murillo, Jr., Brian Wallace, Brian Lee, Robert Benson, Diane Di Archangel and Jason Wyckoff (collectively “NSEA Parties”) Motion for Partial Reconsideration of the December 20 Findings of Fact, Conclusions of Law, and Order (“Motion for Reconsideration”), filed January 10, 2019; the Clark County Education Association (“CCEA”), Victoria Courtney, James Frazee, Robert Hollowood, and Maria Neisess’s (collectively, the “CCEA Parties”) Opposition to the Motion for Reconsideration, filed February 25, 2019; the NSEA Parties’ Reply in Support of the Motion for Reconsideration, filed April 4, 2019; and all other papers filed in support of the foregoing; having heard and considered the oral argument of counsel John S. Delikanakis, Esq., Bradley Austin, Esq. and Michael Paretti, Esq. of Snell & Wilmer L.L.P., and Joel D’Alba, Esq. of Asher, Gittler & D’Alba, Ltd. appearing on behalf of the CCEA Parties, and Robert Alexander, Esq. and James Graham Lake, Esq. of Bredhoff & Kaiser, PLLC and Paul J. Lal, Esq. of Boies Schiller Flexner appearing on behalf of the NSEA Parties, and with good cause appearing, enters the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

1. The CCEA Parties filed a Motion for Partial Summary Judgment (“MPSJ”) on June 18, 2018 seeking summary judgment on their claim for Declaratory Relief.

1 2. The NSEA Parties filed their Opposition to the MPSJ on July 20, 2018.
2
3 3. The CCEA Parties filed their Reply in Support of the MPSJ on August 14, 2018.
4
5 4. The Court entertained oral argument on the MPSJ on November 15, 2018 – with the
6 consolidated hearing spanning nearly two-and-a-half hours in length (beginning at 9:06 am and
7 concluding at 11:30 am).

8 5. Following the hearing, the Court issued a Minute Order on November 15, 2018,
9 granting the CCEA Parties' MPSJ and directing CCEA's counsel to draft a proposed order.

10 6. The Parties subsequently exchanged redlines of a proposed order but were unable to
11 reach a consensus.

12 7. On December 6, 2018, CCEA submitted its proposed order, along with a redline
13 from NSEA, highlighting for the Court all of the specific changes that the NSEA Parties requested.

14 8. On December 7, 2018, the NSEA Parties submitted a competing order, along with
15 a seven-page, single spaced letter – much of which contained arguments identical to those found in
16 the instant Motion for Reconsideration.

17 9. After reviewing both competing orders, the redline of the NSEA Parties' proposed
18 changes, and the NSEA Parties' seven-page letter, the Court entered its Findings of Fact,
19 Conclusions of Law, and Order granting the CCEA Parties' Motion for Partial Summary Judgment
20 on December 20, 2018.

21 10. Pertinent to the Motion for Reconsideration, the December 20, 2018, Findings of
22 Fact, Conclusions of Law, and Order provides:

- 23 a. Paragraph 6: "Members of CCEA pay dues to CCEA pursuant to a
24 membership dues authorization form ('Membership Authorization Form')."
- 25 b. Paragraph 8: "Once an individual CCEA member signs the CCEA
26 Membership Authorization Form, CCEA membership dues are then
27 deducted from members' pay checks by their employer, the CCSD, pursuant
28 to a collective bargaining agreement negotiated and agreed to by and
between CCEA and CCSD."

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- c. Paragraph 9: "The membership dues deducted from CCEA members' pay checks are then paid to CCEA by CCSD."
- d. Paragraph 10: "A portion of the CCEA membership dues are then transmitted to NSEA through a dues transmittal agreement by and between CCEA and NSEA('Dues Transmittal Agreement'), which is attached as an addendum and incorporated into a negotiated services agreement by and between CCEA and NSEA ('Service Agreement') as Addendum A."
- e. Paragraph 12: "In the absence of a Dues Transmittal Agreement, there is no obligation for CCEA to transmit dues to NSEA and per NEA's bylaws, only NSEA has a contractual obligation to pay NEA."

11. Any finding of fact which should be construed as a conclusion of law shall be construed as such.

12. Any conclusion of law which should be construed as a finding of fact shall be construed as such.

CONCLUSIONS OF LAW

A. Standard for Reconsideration

13. "A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous." *Masonry & Tile Contractors Ass'n of S. Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997) (internal citations omitted.).

14. "Only in very rare instances in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached should a motion for rehearing be granted." *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976).

15. Further, a petition for rehearing may not be utilized as a vehicle to reargue matters considered and decided in the court's initial opinion. *Matter of Estate of Herrmann*, 100 Nev. 149, 151, 679 P.2d 246, 247 (1984).

1 16. A decision is erroneous “when although there is evidence to support it, the reviewing
2 court on the entire evidence is left with the definite and firm conviction that a mistake has been
3 committed.” *Union America Mortgage and Equity v. McDonald*, 97 Nev. 210,211-212, 626 P.2d
4 1272, 1273 (1981), quoting *United States v. Gypsum Co.*, 333 U.S. 364, 395 (1948).

5 **B. Paragraph 6 of the December 20 Order**

6 17. Paragraph 6 of the Court’s December 20, 2018, Findings of Fact, Conclusions of
7 Law, and Order did not classify the subject enrollment form as a CCEA enrollment form.

8 18. The Court did not interpret the findings of fact in Paragraph 6 to limit NSEA or
9 NEA’s rights.

10 19. Substantially different evidence has not been subsequently introduced, and the
11 Court’s decision is not clearly erroneous.

12 20. Accordingly, the Court denies the NSEA Parties’ Motion for Reconsideration with
13 respect to Paragraph 6.

14 **C. Paragraphs 8-10 of the December 20 Order**

15 21. Paragraphs 8-10 of the Court’s December 20, 2018, Findings of Fact, Conclusions
16 of Law, and Order explained the mechanisms as to how membership dues were transmitted from
17 CCSD to CCEA, NSEA, and NEA prior to CCEA’s termination of the Service Agreement and
18 Dues Transmittal Agreement.

19 22. Substantially different evidence has not been subsequently introduced, and the
20 Court’s decision is not clearly erroneous.

21 23. Accordingly, the Court denies the NSEA Parties’ Motion for Reconsideration with
22 respect to Paragraphs 8-10, but does so without prejudice to ruling on the parties’ pending motions
23 for summary judgment.

24 **D. Paragraph 12 of the December 20 Order**

25 24. Paragraph 12 of the Court’s December 20, 2018, Findings of Fact, Conclusions of
26 Law, and Order did not serve as a basis in any way for the Court’s ruling on the CCEA Parties’
27 MPSJ.
28

25. Accordingly, because Paragraph 12 did not serve as a basis for the Court's ruling on the CCEA Parties' MPSJ, the Court grants the NSEA Parties' Motion for Reconsideration with respect to Paragraph 12 and amends the December 20, 2018, Findings of Fact, Conclusions of Law, and Order to omit Paragraph 12.

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

That the NSEA Parties' Motion for Reconsideration is **GRANTED IN PART** with respect to Paragraph 12 and the Court amends its December 20, 2018, Findings of Fact, Conclusions of Law, and Order to omit Paragraph 12; and


That the remainder of the NSEA Parties' Motion for Reconsideration, specifically regarding Paragraphs 6, 8, 9, and 10 of the Court's December 20, 2018, Findings of Fact, Conclusions of Law, and Order, is **DENIED**.

DATED: January 24, 2019


THE HONORABLE JUDGE KERRY EARLEY

SNELL & WILMER L.L.P.

RESPECTFULLY SUBMITTED BY:

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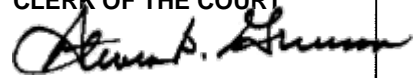
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16 *Attorneys for the NSEA Parties*
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Attachment 17

Findings of Fact, Conclusions of Law, and Order Granting
CCEA Parties' Motion to Alter or Amend Court's May 11, 2018
Order Pursuant to NRCP 59(e) and 60(b)
(July 1, 2019)



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Attorneys for the CCEA Parties

IN THE EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CLARK COUNTY EDUCATION
 ASSOCIATION, VICTORIA COURTNEY,
 JAMES FRAZEE, ROBERT G.
 HOLLOWOOD, and MARIA NEISESS,

Plaintiffs,

vs.

NEVADA STATE EDUCATION
 ASSOCIATION, DANA GALVIN, RUBEN
 MURILLO, JR., BRIAN WALLACE, and
 BRIAN LEE,

Defendants.

Case No.: A-17-761364-C
 DEPT. NO.: 4

(consolidated with A-17-761884-C)

**FINDINGS OF FACT, CONCLUSIONS
 OF LAW, AND ORDER GRANTING
 CCEA PARTIES' MOTION TO ALTER
 OR AMEND COURT'S MAY 11, 2018
 ORDER PURSUANT TO NRCP 59(E) and
 60(B)**

**Date of Hearing : May 9, 2019
 Time of Hearing: 9:00 a.m.**

NEVADA STATE EDUCATION
ASSOCIATION; NATIONAL EDUCATION
ASSOCIATION; RUBEN MURILLO;
ROBERT BENSON; DIANE
DI ARCHANGEL; AND JASON WYCKOFF,

Plaintiffs-Counter Defendants,

And

BRIAN LEE,

Counter-Defendant,

vs.

CLARK COUNTY EDUCATION
ASSOCIATION; JOHN VELLARDITA; AND
VICTORIA COURTNEY,

Defendants-Counter Plaintiffs.

Case No.: A-17-761884-C
(consolidated with A-17-761364-C)

The Court, having read and considered the Clark County Education Association (“CCEA”), Victoria Courtney, James Frazee, Robert Hollowood, and Maria Neisess’s (collectively, the “CCEA Parties”) Motion to Alter or Amend the Court’s May 11, 2018, Order Pursuant to NRCP 59(E) and NRCP 60(B) (“Motion”), filed December 12, 2018; Nevada State Education Association (“NSEA”), National Education Association (“NEA”), Dana Galvin, Ruben Murillo, Jr., Brian Wallace, Brian Lee, Robert Benson, Diane Di Archangel and Jason Wyckoff’s (collectively “NSEA Parties”) Opposition to the Motion, filed January 23, 2019; the CCEA Parties’ Reply in support of the Motion, filed April 4, 2019; and all other papers filed in support of the foregoing; having heard and considered the oral argument of counsel John S. Delikanakis, Esq., Bradley Austin, Esq. and Michael Parette, Esq. of Snell & Wilmer L.L.P., and Joel D’Alba, Esq. of Asher, Gittler & D’Alba, Ltd. appearing on behalf of the CCEA Parties, and Robert Alexander, Esq. and James Graham Lake, Esq. of Bredhoff & Kaiser, PPLC and Paul J. Lal, Esq. of Boies Schiller Flexner appearing on behalf of the NSEA Parties, and with good cause appearing, enters the following findings of fact, conclusions of law and order.

///

FINDINGS OF FACT

1. On March 30, 2018, the NSEA Parties filed an Application for Order Directing the Issuance of a Prejudgment Writ of Attachment with Notice (the “Application”), which the CCEA Parties opposed.

2. In opposition, the CCEA Parties represented to the Court that CCEA had been placing the dues at issue into a restricted account since the inception of this lawsuit.

3. The Honorable Judge Joanna Kishner entertained oral argument on the Application on April 23, 2018, and issued an equitable order on May 11, 2018, ordering as follows:

- a. That all funds in the possession of or received by CCEA for the 2017-2018 school year in respect to NSEA dues (numerically calculated traditionally at the annual rate of \$376.66) and in respect to NEA dues (numerically calculated traditionally at the annual rate of \$189.00) shall continue to be deposited by CCEA into account number ending in -4739 (the “Restricted Account”), maintained at the Bank of America Las Vegas, Nevada Branch (the “Bank”) as CCEA has represented to the Court it had done during the course of this litigation; and
- b. That all funds on deposit in the Restricted Account with respect to the 2017-2018 NSEA and NEA dues shall remain in the Restricted Account, and that no funds shall be withdrawn, transferred, or disbursed out of the Restricted Account, and the Restricted Account shall not be changed or modified, without a further Order from this Department 31¹ of this Court.
- c. The Restricted Account Order further required CCEA to provide NSEA and NEA with a monthly statement from the Restricted Account.

¹ The May 11, 2018, Order makes specific reference to Department 31 because at the time it was issued, two separate actions between the NSEA Parties and CCEA Parties were proceeding in Departments 28 and 31. On June 29, 2018 – after the Order was issued, the Department 31 action was consolidated into the Department 28 action upon motion by the CCEA Parties. On July 2, 2018, the consolidated action was reassigned to Department 1. Upon CCEA Parties’ peremptory challenge, and on July 9, 2018, the consolidated action was ultimately assigned to this Department. Thus, this Department is the proper Department to issue this order.

1 4. On June 18, 2018, the CCEA Parties filed a Motion for Partial Summary Judgment
2 on their declaratory relief claim.

3 5. On December 20, 2018, the Court granted the CCEA Parties' Motion for Partial
4 Summary Judgment, finding that: (1) the termination provisions of the underlying Service
5 Agreement and Dues Transmittal Agreement are clear and unambiguous, (2) CCEA's letters
6 notifying NSEA of the termination of the Service Agreement and Dues Transmittal Agreement are
7 equally clear and unambiguous, (3) the Service Agreement and Dues Transmittal Agreement were
8 terminated by CCEA within the required contractual timeframe, (4) this termination caused both
9 agreements to expire on August 31, 2017, and (5) in light of the foregoing termination and
10 expiration, CCEA owed no duties to NSEA/NEA under the Service Agreement or Dues Transmittal
11 Agreement to collect and/or transmit membership dues on NSEA/NEA's behalf on or after
12 September 1, 2017.

13 6. Court subsequently considered the NSEA Parties Motion for Partial Summary
14 Judgment on Conversion (filed November 9, 2018), the CCEA Parties' Countermotion for Partial
15 Summary Judgment (filed December 12, 2018), and the NSEA Parties' Motion for Partial Summary
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17 these motions on May 9, 2019, and issued its ruling from the bench at the hearing, granting the
18 CCEA Parties' Motion for Partial Summary Judgment in its entirety, and denying the NSEA
19 Parties' Motions for Partial Summary Judgment on Conversion and Bylaws in their entirety.²

20 7. Any finding of fact which should be construed as a conclusion of law shall be
21 construed as such.

22 8. Any conclusion of law which should be construed as a finding of fact shall be
23 construed as such.

24 ///

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² The Court's findings are subsequently being incorporated into a Findings of Fact, Conclusions
28 of Law, and Order to be entered concurrently herewith. The findings and conclusions in that order
are incorporated herein by reference.

CONCLUSIONS OF LAW

A. Standard for Reconsideration

9. “A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous.” *Masonry and Tile Contractors Ass'n v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486 (1997).

10. Rule 59(e) motions have been interpreted as “cover[ing] a broad range of motions, [with] the only real limitation on the type of motion permitted [being] that it must request a substantive alteration of the judgment, not merely correction of a clerical error, or relief of a type wholly collateral to the judgment.” *AA Primo Builders, LLC v. Washington*, 245 P.3d 1190, 1193 (Nev. 2010).

11. “Among the ‘basic grounds’ for a Rule 59(e) motion are ‘correct[ing] manifest errors of law or fact,’ ‘newly discovered or previously unavailable evidence,’ the need ‘to prevent manifest injustice,’ or a ‘change in controlling law’.” *Id.* (citing *Coury v. Robison*, 115 Nev. 84, 124–27, 976 P.2d 518 (1999)). *See also*, *Lytle v. Rosemere Estates Prop. Owners*, 314 P.3d 946, 948 (Nev. 2013) (holding that Rule 59(e) applies to any appealable order).³ The requirements for filing a Rule 59(e) motion are minimal; in addition to being timely filed (no later than 10 days after service of written notice of entry of the judgment), the motion must “be in writing, . . . state with particularity [its] grounds [and] set forth the relief or order sought.” *Id.* at 1192.

12. NRCP 60(b) states that:

(b) On motion and upon such terms as are just, the court may relieve a party or a party’s legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment is void; or, (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that an injunction should have prospective application. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than 6 months after the proceeding

³ Because this Court’s Order is injunctive in nature, it is appealable. *See* NRAP 3A(b)(3).

1 was taken or the date that written notice of entry of the judgment or order
2 was served. A motion under this subdivision (b) does not affect the finality
3 of a judgment or suspend its operation. This rule does not limit the power of
4 a court to entertain an independent action to relieve a party from a judgment,
5 order, or proceeding, or to set aside a judgment for fraud upon the court.
6 Writs of coram nobis, coram vobis, audita querela, and bills of review and
bills in the nature of a bill of review, are abolished, and the procedure for
obtaining any relief from a judgment shall be by motion as prescribed in
these rules or by an independent action.

7 **B. The CCEA Parties Are Entitled to Modification of the May 11, 2018, Order**

8 13. The Court has already determined that, as a matter of law: (1) the termination
9 provisions of the underlying Service Agreement and Dues Transmittal Agreement are clear and
10 unambiguous, (2) CCEA's letters notifying NSEA of the termination of the Service Agreement and
11 Dues Transmittal Agreement are equally clear and unambiguous, (3) the Service Agreement and
12 Dues Transmittal Agreement were terminated by CCEA within the required contractual timeframe,
13 (4) this termination caused both agreements to expire on August 31, 2017, and (5) in light of the
14 foregoing termination and expiration, CCEA owed no duties to NSEA/NEA under the Service
15 Agreement or Dues Transmittal Agreement to collect and/or transmit membership dues on
16 NSEA/NEA's behalf on or after September 1, 2017.

17 14. As determined by the Court in denying the NSEA Parties' Motions for Partial
18 Summary Judgment on Bylaws and Conversion, and granting the CCEA Parties' Motion for Partial
19 Summary Judgment, NSEA and NEA have no legal or contractual right to the funds held in the
20 Restricted Account under the NSEA or NEA Bylaws, which Bylaws expressly rely upon the
21 (terminated) Dues Transmittal Agreement for any obligation to transmit dues.

22 15. As determined by the Court in denying the NSEA Parties' Motions for Partial
23 Summary Judgment on Bylaws and Conversion, and granting the CCEA Parties' Motion for Partial
24 Summary Judgment, NSEA and NEA have no legal or contractual right to the funds held in the
25 Restricted Account under the Membership Authorization Form, which Form is only between CCEA
26 and the individual members.

27 16. As determined by the Court in denying the NSEA Parties' Motions for Partial
28 Summary Judgment on Bylaws and Conversion, and granting the CCEA Parties' Motion for Partial

Summary Judgment, NSEA/NEA have no equitable right to the funds held in the Restricted Account

17. In light of this Court's findings that CCEA owed no duties to NSEA or NEA under the Service Agreement or Dues Transmittal Agreement to collect and/or transmit membership dues on NSEA/NEA's behalf on or after September 1, 2017, and that in the absence of a Dues Transmittal Agreement, there is no obligation for CCEA to transmit dues to NSEA or NEA, the underlying basis for the Court's May 11, 2018, Order no longer exists.

18. As such, the Court vacates the Restricted Account Order in its entirety and permits CCEA to disgorge and return the funds held in the Restricted Account to the individual CCEA members (including the individual NSEA Parties) from whom they were collected.

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

That the CCEA Parties Motion is **GRANTED**;

That the Court's May 11, 2018, Order is **VACATED**; and

That CCEA shall return the funds held in the Restricted Account to CCEA's members, including any interest that accrued while the subject funds were held in the Restricted Account.

That this Order is stayed for 14 days of notice of entry, to permit NEA and NSEA to move for a stay pending appeal of this Order. If NEA and NSEA move in this Court for a stay of this Order within 14 days of notice of entry, this Order will remain stayed until disposition of the motion.

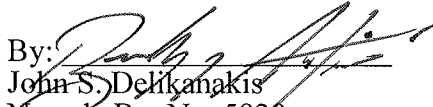
DATED: July 1, 2019


THE HONORABLE JUDGE KERRY EARLEY

A-17-761364-C

1 SNELL & WILMER L.L.P.

2 RESPECTFULLY SUBMITTED BY:

3 By: 
4 John S. Delikanakis
Nevada Bar No. 5928
5 Bradley T. Austin
Nevada Bar No. 13064
6 Michael Parette
Nevada Bar No. 13926
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14 1630 South Commerce Street, Suite 1-A
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15 *Attorneys for the CCEA Parties*

17 APPROVED AS TO FORM AND CONTENT BY:

19 By:
20 Richard J. Pocker
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21 Paul J. Lal
Nevada Bar No. 3755
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22 300 South Fourth Street, Suite 800
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24 Matthew Clash-Drexler (*pro hac vice*)
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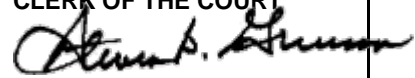
26 *Attorneys for the NSEA Parties*

27 4830-2271-3497

Attachment 18

Notice of Entry of Findings of Fact, Conclusions of Law, and
Order Granting CCEA Parties' Motion to Alter or Amend
Court's May 11, 2018 Order Pursuant to NRCP 59(e) and 60(b)

(July 3, 2019)



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jad@ulaw.com

*Attorneys for Plaintiffs Clark County Education Association, Victoria Courtney,
James Frazee, Robert G. Hollowood and Maria Neissess*

**IN THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

CLARK COUNTY EDUCATION
ASSOCIATION, VICTORIA COURTNEY,
JAMES FRAZEE, ROBERT G.
HOLLOWOOD, and MARIA NEISESS,

Plaintiffs,

vs.

NEVADA STATE EDUCATION
ASSOCIATION, DANA GALVIN, RUBEN
MURILLO, JR., BRIAN WALLA CE, and
BRIAN LEE,

Defendants.

NEVADA STATE EDUCATION
ASSOCIATION; NATIONAL EDUCATION
ASSOCIATION; RUBEN MURILLO; ROBERT
BENSON; DIANE DI ARCHANGEL; AND
JASON WYCKOFF,

Plaintiffs-Counter Defendants,

Case No.: A-17-761364-C
DEPT. NO.: 4
(consolidated with A-17-761884-C)

**NOTICE OF ENTRY OF FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND
ORDER GRANTING CCEA PARTIES'
MOTION TO ALTER OR AMEND
COURT'S MAY 11, 2018 ORDER
PURSUANT TO NRCP 59(E) AND 60(B)**

Case No.: A-17-761884-C
(consolidated with A-17-761364-C)

1 And
2 BRIAN LEE,
3 Counter-Defendant,
4 vs.
5 CLARK COUNTY EDUCATION
6 ASSOCIATION; JOHN VELLARDITA; AND
7 VICTORIA COURTNEY,
8 Defendants-Counter Plaintiffs.

9 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL:

10 PLEASE TAKE NOTICE that the attached Findings of Fact, Conclusions of Law, and
11 Order Granting CCEA Parties' Motion to Alter or Amend Court's May 11, 2018 Order Pursuant to
12 NRCP 59(E) and 60(B) was entered in the above-referenced action on the 3rd day of July, 2019.

13 DATED this 3rd day of July, 2019.

14 SNELL & WILMER L.L.P.

15 By: /s/ Brad Austin

16 John S. Delikanakis (Nevada Bar No. 5928)
17 Michael Paretti (Nevada Bar No. 13926)
18 Brad T. Austin (Nevada Bar No. 13064)

19 Joel A. D' Alba (*pro hac vice*)
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26 Nevada Bar No. 14434
27 McCracken, STEMERMAN
28 & HOLSBERRY, LLP
1630 South Commerce Street, Suite 1-A
Las Vegas, NV 89102
Attorneys for Plaintiffs

1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen
3 (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be
4 served a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF**
5 **FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING CCEA PARTIES'**
6 **MOTION TO ALTER OR AMEND COURT'S MAY 11, 2018 ORDER PURSUANT TO**
7 **NRCP 59(E) AND 60(B)** by the method indicated below:

8 <u>XX</u>	Odyssey E-File & Serve	_____	Federal Express
9 _____	U.S. Mail	_____	U.S. Certified Mail
10 _____	Facsimile Transmission	_____	Hand Delivery
11 _____	Email Transmission	_____	Overnight Mail

12 and addressed to the following:

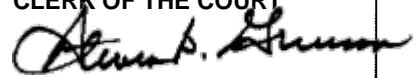
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Email: rpocker@bsflp.com
18 Email: plal@bsflp.com
Attorneys for Defendants

Robert Alexander (*pro hac vice*)
Matthew Clash-Drexler (*pro hac vice*)
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Email: mcdrexler@bredhoff.com
Email: glake@bredhoff.com
Attorneys for Defendants

19
20 DATED this 3rd day of July, 2019.

21 /s/ Ruby Lengsavath
22 An Employee of Snell & Wilmer L.L.P.

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24
25
26
27
28
4812-2658-2427.1



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Attorneys for the CCEA Parties

IN THE EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CLARK COUNTY EDUCATION
 ASSOCIATION, VICTORIA COURTNEY,
 JAMES FRAZEE, ROBERT G.
 HOLLOWOOD, and MARIA NEISESS,

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vs.

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 ASSOCIATION, DANA GALVIN, RUBEN
 MURILLO, JR., BRIAN WALLACE, and
 BRIAN LEE,

Defendants.

Case No.: A-17-761364-C
 DEPT. NO.: 4

(consolidated with A-17-761884-C)

**FINDINGS OF FACT, CONCLUSIONS
 OF LAW, AND ORDER GRANTING
 CCEA PARTIES' MOTION TO ALTER
 OR AMEND COURT'S MAY 11, 2018
 ORDER PURSUANT TO NRCP 59(E) and
 60(B)**

**Date of Hearing : May 9, 2019
 Time of Hearing: 9:00 a.m.**

1 NEVADA STATE EDUCATION
2 ASSOCIATION; NATIONAL EDUCATION
3 ASSOCIATION; RUBEN MURILLO;
4 ROBERT BENSON; DIANE
5 DI ARCHANGEL; AND JASON WYCKOFF,

6 Plaintiffs-Counter Defendants,

7 And

8 BRIAN LEE,

9 Counter-Defendant,

10 vs.

11 CLARK COUNTY EDUCATION
12 ASSOCIATION; JOHN VELLARDITA; AND
13 VICTORIA COURTNEY,

14 Defendants-Counter Plaintiffs.

Case No.: A-17-761884-C
(consolidated with A-17-761364-C)

15 The Court, having read and considered the Clark County Education Association (“CCEA”),
16 Victoria Courtney, James Frazee, Robert Hollowood, and Maria Neisess’s (collectively, the
17 “CCEA Parties”) Motion to Alter or Amend the Court’s May 11, 2018, Order Pursuant to NRCP
18 59(E) and NRCP 60(B) (“Motion”), filed December 12, 2018; Nevada State Education Association
19 (“NSEA”), National Education Association (“NEA”), Dana Galvin, Ruben Murillo, Jr., Brian
20 Wallace, Brian Lee, Robert Benson, Diane Di Archangel and Jason Wyckoff’s (collectively “NSEA
21 Parties”) Opposition to the Motion, filed January 23, 2019; the CCEA Parties’ Reply in support of
22 the Motion, filed April 4, 2019; and all other papers filed in support of the foregoing; having heard
23 and considered the oral argument of counsel John S. Delikanakis, Esq., Bradley Austin, Esq. and
24 Michael Parette, Esq. of Snell & Wilmer L.L.P., and Joel D’Alba, Esq. of Asher, Gittler & D’Alba,
25 Ltd. appearing on behalf of the CCEA Parties, and Robert Alexander, Esq. and James Graham
26 Lake, Esq. of Bredhoff & Kaiser, PPLC and Paul J. Lal, Esq. of Boies Schiller Flexner appearing
27 on behalf of the NSEA Parties, and with good cause appearing, enters the following findings of
28 fact, conclusions of law and order.

///

FINDINGS OF FACT

1. On March 30, 2018, the NSEA Parties filed an Application for Order Directing the Issuance of a Prejudgment Writ of Attachment with Notice (the “Application”), which the CCEA Parties opposed.

2. In opposition, the CCEA Parties represented to the Court that CCEA had been placing the dues at issue into a restricted account since the inception of this lawsuit.

3. The Honorable Judge Joanna Kishner entertained oral argument on the Application on April 23, 2018, and issued an equitable order on May 11, 2018, ordering as follows:

- a. That all funds in the possession of or received by CCEA for the 2017-2018 school year in respect to NSEA dues (numerically calculated traditionally at the annual rate of \$376.66) and in respect to NEA dues (numerically calculated traditionally at the annual rate of \$189.00) shall continue to be deposited by CCEA into account number ending in -4739 (the “Restricted Account”), maintained at the Bank of America Las Vegas, Nevada Branch (the “Bank”) as CCEA has represented to the Court it had done during the course of this litigation; and
- b. That all funds on deposit in the Restricted Account with respect to the 2017-2018 NSEA and NEA dues shall remain in the Restricted Account, and that no funds shall be withdrawn, transferred, or disbursed out of the Restricted Account, and the Restricted Account shall not be changed or modified, without a further Order from this Department 31¹ of this Court.
- c. The Restricted Account Order further required CCEA to provide NSEA and NEA with a monthly statement from the Restricted Account.

¹ The May 11, 2018, Order makes specific reference to Department 31 because at the time it was issued, two separate actions between the NSEA Parties and CCEA Parties were proceeding in Departments 28 and 31. On June 29, 2018 – after the Order was issued, the Department 31 action was consolidated into the Department 28 action upon motion by the CCEA Parties. On July 2, 2018, the consolidated action was reassigned to Department 1. Upon CCEA Parties’ peremptory challenge, and on July 9, 2018, the consolidated action was ultimately assigned to this Department. Thus, this Department is the proper Department to issue this order.

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22 8. Any conclusion of law which should be construed as a finding of fact shall be
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² The Court's findings are subsequently being incorporated into a Findings of Fact, Conclusions
28 of Law, and Order to be entered concurrently herewith. The findings and conclusions in that order
are incorporated herein by reference.

CONCLUSIONS OF LAW

A. Standard for Reconsideration

9. “A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous.” *Masonry and Tile Contractors Ass'n v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486 (1997).

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(b) On motion and upon such terms as are just, the court may relieve a party or a party’s legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment is void; or, (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that an injunction should have prospective application. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than 6 months after the proceeding

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7 **B. The CCEA Parties Are Entitled to Modification of the May 11, 2018, Order**

8 13. The Court has already determined that, as a matter of law: (1) the termination
9 provisions of the underlying Service Agreement and Dues Transmittal Agreement are clear and
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15 Agreement or Dues Transmittal Agreement to collect and/or transmit membership dues on
16 NSEA/NEA's behalf on or after September 1, 2017.

17 14. As determined by the Court in denying the NSEA Parties' Motions for Partial
18 Summary Judgment on Bylaws and Conversion, and granting the CCEA Parties' Motion for Partial
19 Summary Judgment, NSEA and NEA have no legal or contractual right to the funds held in the
20 Restricted Account under the NSEA or NEA Bylaws, which Bylaws expressly rely upon the
21 (terminated) Dues Transmittal Agreement for any obligation to transmit dues.

22 15. As determined by the Court in denying the NSEA Parties' Motions for Partial
23 Summary Judgment on Bylaws and Conversion, and granting the CCEA Parties' Motion for Partial
24 Summary Judgment, NSEA and NEA have no legal or contractual right to the funds held in the
25 Restricted Account under the Membership Authorization Form, which Form is only between CCEA
26 and the individual members.

27 16. As determined by the Court in denying the NSEA Parties' Motions for Partial
28 Summary Judgment on Bylaws and Conversion, and granting the CCEA Parties' Motion for Partial

Summary Judgment, NSEA/NEA have no equitable right to the funds held in the Restricted Account

17. In light of this Court's findings that CCEA owed no duties to NSEA or NEA under the Service Agreement or Dues Transmittal Agreement to collect and/or transmit membership dues on NSEA/NEA's behalf on or after September 1, 2017, and that in the absence of a Dues Transmittal Agreement, there is no obligation for CCEA to transmit dues to NSEA or NEA, the underlying basis for the Court's May 11, 2018, Order no longer exists.

18. As such, the Court vacates the Restricted Account Order in its entirety and permits CCEA to disgorge and return the funds held in the Restricted Account to the individual CCEA members (including the individual NSEA Parties) from whom they were collected.

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

That the CCEA Parties Motion is **GRANTED**;

That the Court's May 11, 2018, Order is **VACATED**; and

That CCEA shall return the funds held in the Restricted Account to CCEA's members, including any interest that accrued while the subject funds were held in the Restricted Account.

That this Order is stayed for 14 days of notice of entry, to permit NEA and NSEA to move for a stay pending appeal of this Order. If NEA and NSEA move in this Court for a stay of this Order within 14 days of notice of entry, this Order will remain stayed until disposition of the motion.

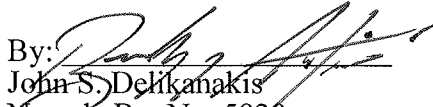
DATED: July 1, 2019


THE HONORABLE JUDGE KERRY EARLEY

A-17-761364-C

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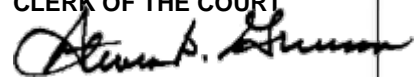
26 *Attorneys for the NSEA Parties*

27 4830-2271-3497

Attachment 19

Findings of Fact, Conclusions of Law, and Order Granting the Clark County Education Association Parties' Motion for Partial Summary Judgment and Denying the Nevada State Education Association Parties' Motions for Partial Summary Judgment

(July 1, 2019)



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IN THE EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

18 CLARK COUNTY EDUCATION
19 ASSOCIATION, VICTORIA COURTNEY,
20 JAMES FRAZEE, ROBERT G.
21 HOLLOWOOD, and MARIA NEISESS,

Plaintiffs,

vs.

22 NEVADA STATE EDUCATION
23 ASSOCIATION, DANA GALVIN, RUBEN
24 MURILLO, JR., BRIAN WALLACE, and
25 BRIAN LEE,

Defendants.

Case No.: A-17-761364-C
DEPT. NO.: 4

(consolidated with A-17-761884-C)

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER GRANTING
THE CLARK COUNTY EDUCATION
ASSOCIATION PARTIES' MOTION
FOR PARTIAL SUMMARY JUDGMENT
AND DENYING THE NEVADA STATE
EDUCATION ASSOCIATION PARTIES'
MOTIONS FOR PARTIAL SUMMARY
JUDGMENT**

**Date of Hearing : May 9, 2019
Time of Hearing: 9:00 a.m.**

1 NEVADA STATE EDUCATION
2 ASSOCIATION; NATIONAL EDUCATION
3 ASSOCIATION; RUBEN MURILLO;
4 ROBERT BENSON; DIANE
5 DI ARCHANGEL; AND JASON WYCKOFF,

6 Plaintiffs-Counter Defendants,

7 And

8 BRIAN LEE,

9 Counter-Defendant,

10 vs.

11 CLARK COUNTY EDUCATION
12 ASSOCIATION; JOHN VELLARDITA; AND
13 VICTORIA COURTNEY,

14 Defendants-Counter Plaintiffs.

Case No.: A-17-761884-C
(consolidated with A-17-761364-C)

15 The Court, having read and considered Nevada State Education Association ("NSEA"),
16 National Education Association ("NEA"), Dana Galvin, Ruben Murillo, Jr., Brian Wallace, Brian
17 Lee, Robert Benson, Diane Di Archangel and Jason Wyckoff (collectively "NSEA Parties") Motion
18 for Partial Summary Judgment ("NSEA Motion for Partial Summary Judgment on Conversion"),
19 filed November 9, 2018; the NSEA Parties' Motion for Partial Summary Judgment ("NSEA Motion
20 for Partial Summary Judgment on Bylaws"), filed January 23, 2019; and Clark County Education
21 Association ("CCEA"), Victoria Courtney, James Frazee, Robert Hollowood, and Maria Neisess's
22 (collectively, the "CCEA Parties") Countermotion for Partial Summary Judgment ("CCEA
23 Countermotion for Partial Summary Judgment") filed by the CCEA Parties on December 12, 2018,
24 and all papers filed in support of the foregoing Motions; having heard and considered the oral
25 argument of counsel John S. Delikanakis, Esq., Bradley Austin, Esq. and Michael Paretti, Esq. of
26 Snell & Wilmer L.L.P., and Joel D'Alba, Esq. of Asher, Gittler & D'Alba, Ltd. appearing on behalf
27 of the CCEA Parties, and Robert Alexander, Esq. and James Graham Lake, Esq. of Bredhoff &
28 Kaiser, PPLC and Paul J. Lal, Esq. of Boies Schiller Flexner appearing on behalf of the NSEA
Parties, and with good cause appearing, enters the following findings of fact, conclusions of law
and order.

FINDINGS OF FACT

The Court concludes, under N.R.C.P. 56, that there is no genuine dispute of fact regarding the following:

1. CCEA is a democratic organization that is the exclusive collective bargaining representative of the licensed professional employees of the Clark County School District (“CCSD”) and is the employee organization that serves as the local voice for educators to advance the cause of education, promote professional excellence among educators to protect the rights of educators, advance their interests and welfare, and secure professional autonomy.

2. CCEA is the recognized and exclusive bargaining agent for CCSD’s licensed professional employees.

3. NSEA was the state-wide affiliate of the CCEA.

4. The NEA was the national affiliate of the CCEA.

5. Members of CCEA pay dues to CCEA pursuant to a membership dues authorization form (“Membership Authorization Form”).

6. The Membership Authorization Form provides that:

Payroll Deduction Authorization. With full knowledge of the above, I hereby agree to pay cash for, or herein, authorize my employer to deduct from my salary, and pay to the local association, in accordance with the agreed-upon payroll deduction procedure, the professional dues as established annually and the political action contributions in the amounts indicated above for this membership year and each year thereafter, provided that I may revoke this authorization by giving written notice to that effect to my local association between July 1 and July 15 of any calendar year, or as otherwise designated by the negotiated agreement. Dues are paid on an annual basis and, although dues may be deducted from my payroll check(s) in order to provide an easier method of payment, a member is obligated to pay the entire amount of dues for a membership year. I understand that if I resign my membership in my local Association, or in the event of termination, resignation or retirement from employment, I am still obligated to pay the balance of my annual dues and political or positive image contributions for that membership year and such payments will continue to be deducted from my payroll check(s).

7. Once an individual CCEA member signs the Membership Authorization Form, CCEA membership dues are then deducted from members’ pay checks by their employer, the

1 CCSD, pursuant to a collective bargaining agreement negotiated and agreed to by and between
2 CCEA and CCSD.

3 8. The membership dues deducted from CCEA members' pay checks are then paid to
4 CCEA by CCSD.

5 9. A portion of the membership dues were then transmitted to NSEA through a dues
6 transmittal agreement by and between CCEA and NSEA ("Dues Transmittal Agreement"), which
7 is attached as an addendum and incorporated into a negotiated services agreement by and between
8 CCEA and NSEA ("Service Agreement") as Addendum A.

9 10. The Service Agreement incorporates the Dues Transmittal Agreement and provides
10 as follows:

11 CCEA agrees to transmit NSEA and NEA dues, and NSEA-TIP and NEA-PAC
12 contributions to NSEA for each by the tenth business day following the payroll
13 deduction. The agreement is attached as Addendum A.

14 11. The Service Agreement incorporates and the Dues Transmittal Agreement and
15 together provide for the quid pro quo exchange between CCEA and NSEA. The Service Agreement
16 sets forth the services and financial payments that NSEA will provide to CCEA in exchange for
17 transmittal of dues that CCEA sends to NSEA, as set forth in both the Service Agreement – Dues
18 Transmittal Agreement.

19 12. Specifically, paragraph 1 of the Service Agreement states that CCEA will transmit
20 dues to NSEA and the following paragraph (paragraph 2) provides that in exchange, NSEA will
21 transmit grants to CCEA.

22 13. The Service Agreement and the Dues Transmittal Agreement allow either party to
23 unilaterally terminate and seek to renegotiate the terms of the agreement.

24 14. Specifically, the Service Agreement provides that:

25 The term of this agreement shall be from September 1 to August 31. This
26 Agreement shall be automatically renewed on an annual basis, unless either party
27 shall give written notice of termination to the other party, with evidence of receipt
28 by the other party no later than thirty (30) days prior to the anniversary date of the
Agreement. Should either party give notice of termination as provided alone, then
this Agreement shall terminate on the anniversary date unless a successor agreement
has been mutually agreed to by the parties.

1 15. The relevant anniversary date is September 1, 2017.

2 16. Similarly, the Dues Transmittal Agreement provides that “[t]his agreement shall
3 remain in force for each subsequent membership year unless terminated in writing by either party
4 prior to September 1 of any NSEA membership year, or amended by mutual consent of both
5 parties.”

6 17. The NSEA membership year runs from September 1 to August 31.

7 18. On May 3, 2017, CCEA gave notice to NSEA and its officers of an intent to
8 terminate the Service Agreement and the Dues Transmittal as follows:

9
10 Pursuant to the terms of the Service Agreement between the Nevada State Education
11 Association and the Clark County Education Association, I write to give you notice
12 to terminate this agreement, unless a successor agreement can be mutually agreed
13 to by the parties....Please accept this letter as our formal notice of termination of the
14 Service Agreement.

15 19. On July 17, 2017 and August 3, 2017, CCEA sent NSEA two additional letters
16 providing for notice of the intent to terminate the Service Agreement and the Dues Transmittal
17 Agreement. Specifically, the July 17, 2017, letter stated in pertinent part that:

18 On May 3, 2017 CCEA served notice that it was terminating the Service Agreement
19 between CCEA and NSEA.....This letter serves notice to NSEA that unless there is
20 a successor agreement in place before the August 31, 2017 all terms and conditions
21 of the agreement shall become null and void.

22 The August 3, 2017, letter stated in pertinent part that:

23 Your letter expressing a claim based on NSEA policies is incorrect as this is a
24 contract matter, there has not been a mutual agreement to modify the Agreement,
25 and without mutual agreement, the terms and conditions of the Agreement will be
26 null and void upon its expiration on August 31, 2017....The Agreement serves as
27 the dues transmittal contract, and it is otherwise set to expire unless a successor is
28 negotiated per the terms and conditions of that Agreement. Upon expiration, CCEA
is not only legally not obligated to transmit dues, but cannot transmit member dues
to NSEA per NSEA’s own ByLaws. To be clear, when the current Agreement
between CCEA and NSEA expires on August 31, 2017 there will not be a contract
in place between the two organizations to collect and remit dues to NSEA.

29 20. On March 24, 2018, CCEA members were given notice of a dues issue to be
30 presented at a general membership meeting to be held on April 25, 2018.

31 21. On April 14, 2018, the Executive Board of CCEA met to consider a proposed bylaw

1 amendment to set CCEA dues at \$510 per year immediately upon disaffiliation from the NSEA and
2 the NEA and upon CCEA becoming an independent labor organization.

3 22. Prior to the termination of the Service Agreement and Dues Transmittal Agreement,
4 the annual dues payments for CCEA members included payments to CCEA, NSEA and NEA and
5 were \$810.50. The \$510 dues payments considered by the dues motion on April 14, 2018,
6 constituted a dues decrease for all CCEA members.

7 23. On April 24, 2018, the CCEA Association Representative Council ("ARC") met to
8 consider, among other things, bylaws changes. The ARC approved a motion to change Article X,
9 Section 1 of the CCEA Bylaws by removing the word "shall" from the affiliate's status and bylaw
10 provision and inserting the "may," which meant that the Association may, rather than shall,
11 maintain affiliate status with the NSEA and NEA. That change to Article X of the Bylaws was
12 approved.

13 24. On April 24, 2018, the ARC adopted a tentative budget for fiscal year 2018-2019,
14 setting the CCEA annual dues rate at \$510 for each member, which budget would take effect
15 immediately upon disaffiliation from NSEA and NEA.

16 25. On April 25, 2018, members of the Association at a general membership meeting
17 were advised that the ARC amended the Bylaws to permit members to effectively authorize the
18 disaffiliation from the NSEA and NEA and upon disaffiliation members' union dues would be
19 reduced from \$33.78 per paycheck to \$21.25 per paycheck.

20 26. On April 25, 2018, the CCEA members were notified by a mass email of this vote
21 and received a second notice of the general membership meeting to that place on that day.

22 27. During CCEA's April 25, 2018, general membership meeting, CCEA's members
23 approved a motion to disaffiliate from the NSEA and NEA, and to reduce the union dues as set
24 forth above.

25 28. CCEA disaffiliated from NSEA and NEA on April 25, 2018, and the foregoing dues
26 reduction took effect immediately upon disaffiliation.

27 29. After the termination of the Dues Transmittal Agreement, but prior to CCEA's April
28

1 25, 2018, disaffiliation from NSEA and NEA, CCSD continued to send the employees' dues to
2 CCEA, whereupon the dues were placed into a restricted bank account ("Sequestered Funds") –
3 with CCEA seeking via the instant litigation a declaratory determination from the Court as to the
4 rightful owner of the funds, and NSEA asserting via the instant litigation a right to the funds under
5 contract, conversion, and unjust enrichment causes of action.

6 30. On May 11, 2018, and to preserve the status quo while the CCEA Parties'
7 declaratory relief claim was pending with the Court, the Court required that: (1) all funds in the
8 possession of or received by CCEA for the 2017-2018 school year in respect to NSEA dues and in
9 respect to NEA dues be deposited into a restricted account, "as [CCEA] has represented to the
10 Court it has done during the course of this litigation"; (2) that no funds shall be withdrawn,
11 transferred, or disbursed out of the Restricted Account, and the Restricted Account shall not be
12 changed or modified, without a further Order from the Court; and (3) that CCEA provide a monthly
13 account statement to the NSEA Parties.

14 31. On December 20, 2018, pursuant to a Motion for Partial Summary Judgment filed
15 by the CCEA Parties, this Court held that the May 3, July 17, and August 3, 2017 termination
16 notices caused both the Service Agreement and Dues Transmittal Agreement to terminate and
17 expire on August 31, 2017.

18 32. The Court further held that in light of the foregoing termination and expiration,
19 CCEA owed no duties to NSEA or NEA under the Service Agreement and Dues Transmittal
20 Agreement to collect and/or transmit membership dues on NSEA or NEA's behalf on or after
21 September 1, 2017, nor did NSEA or NEA have any obligation to CCEA on or after September 1,
22 2017, to perform pursuant to the Service Agreement and Dues Transmittal Agreement, and that
23 there was no dispute that NSEA and NEA ceased to perform under the Service Agreement and
24 Dues Transmittal Agreement on or after September 1, 2017.

25 33. Any finding of fact which should be construed as a conclusion of law shall be
26 construed as such.
27
28

34. Any conclusion of law which should be construed as a finding of fact shall be construed as such.

CONCLUSIONS OF LAW

A. Standard for Summary Judgment

35. The Court will render judgment “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Nevada Rule of Civil Procedure 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986.)

36. “A factual dispute is genuine when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party.” *Wood v. Safeway*, 121 Nev. 724, 731 (2005).

37. The moving party bears the initial burden of showing the absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 323.

38. To meet this burden, the moving party may either produce evidence affirmatively demonstrating the absence of such evidence or point out a lack of evidence to support the nonmoving party’s case. *Id.* at 325.

39. Once this burden is met, the burden shifts to the nonmoving party to present evidence demonstrating the existence of a genuine issue of material fact. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986).

B. NSEA Parties’ Claim for Conversion

40. “Conversion is defined as exerting wrongful ‘dominion over another’s personal property or wrongful interference with the owner’s dominion.’” *Larsen v. B.R. Enters., Inc.*, 104 Nev. 252, 254, 757 P.2d 354, 356 (1988). *See also, Bader v. Cerri*, 96 Nev. 352, 356, 609 P.2d 314, 317 (1980), *overruled on other grounds by Evans v. Dean Witter Reynolds, Inc.*, 116 Nev. 598, 5 P.3d 1043 (2000) (“A conversion occurs whenever there is a serious interference to a party’s rights in his property”); *M.C. Multi-Family Dev., L.L.C. v. Crestdale Associates, Ltd.*, 124 Nev. 901, 910–11, 193 P.3d 536, 542–43 (2008) (defining conversion as “a distinct act of dominion wrongfully exerted over another’s personal property in denial of, or inconsistent with his title or rights therein or in derogation, exclusion, or defiance of such title or rights.”).

1 41. A precondition to bringing a claim for conversion is that the claimant must be the
2 rightful owner of the property.

3 42. NSEA and NEA have no legal or contractual right to the Sequestered Funds under
4 the Service Agreement or Dues Transmittal Agreement, which agreements were terminated prior
5 to September 1, 2017.

6 43. NSEA and NEA have no legal or contractual right to the Sequestered Funds under
7 the NSEA or NEA Bylaws, which Bylaws expressly rely upon the (terminated) Dues Transmittal
8 Agreement for any obligation to transmit dues.

9 44. NSEA and NEA have no legal or contractual right to the Sequestered Funds under
10 the Membership Authorization Form, which Form is only between CCEA and the individual
11 members.

12 45. NSEA/NEA have no equitable right to the Sequestered Funds, or any other funds
13 CCEA collected on behalf of its members after September 1, 2017.

14 46. In light of the foregoing, NSEA/NEA are not the rightful owners of, and have no
15 legal or equitable right to, the Sequestered Funds and as a result, cannot meet the rightful owner
16 element.

17 47. There are no genuine issues of material fact precluding summary judgment in the
18 CCEA Parties' favor on the NSEA Parties' claim for conversion.

19 48. The NSEA Parties have not made any showing that the CCEA Parties are not entitled
20 to summary judgment as a matter of law.

21 49. Pursuant to Nevada Rule of Civil Procedure 56, the CCEA Parties are entitled to
22 summary judgment in their favor and against the NSEA Parties on the NSEA Parties' claim for
23 conversion.

24 **C. NSEA Parties' Claim for Unjust Enrichment**

25 50. The essential elements of unjust enrichment are "a benefit conferred on the
26 defendant by the plaintiff, appreciation by the defendant of such benefit, and acceptance and
27 retention by the defendant of such benefit under circumstances such that it would be inequitable for
28

1 him to retain the benefit without payment of the value thereof.” *Leasepartners Corp. v. Robert L.*
2 *Brooks Tr. Dated Nov. 12, 1975*, 113 Nev. 747, 755, 942 P.2d 182, 187 (1997).

3 51. Similar to a claim for conversion, the claimant must have an underlying right to the
4 property/funds at issue. *See id.* (one of the essential elements for unjust enrichment is “a benefit
5 conferred on the defendant by the plaintiff”).

6 52. Furthermore, “an action based on a theory of unjust enrichment is not available when
7 there is an express, written contract, because no agreement can be implied when there is an express
8 agreement.” *See Leasepartners Corp. v. Robert L. Brooks Trust Dated November 12, 1975*, 113
9 Nev. 747, 755-56, 942 P.2d 182, 187 (1997); *Lipshie v. Tracy Investment Co.*, 93 Nev. 370, 379,
10 566 P.2d 819, 824 (1977) (“To permit recovery by quasi-contract where a written agreement exists
11 would constitute a subversion of contractual principles.”) (emphasis supplied). 66 Am.Jur.2d
12 Restitution § 11 (1973) (“The doctrine of unjust enrichment or recovery in quasi contract applies
13 to situations where there is no legal contract but where the person sought to be charged is in
14 possession of money or property which in good conscience and justice he should not retain but
15 should deliver to another.”).

16 53. For the reasons set forth under the claim for conversion – which findings are
17 incorporated herein by reference – NSEA and NEA do not have standing to assert a claim for unjust
18 enrichment because they do not have an ownership interest or underlying right to the Sequestered
19 Funds.

20 54. To the extent the unjust enrichment claim is asserted on behalf of Parties Murillo,
21 Benson, Di Archangel, and Wyckoff (“Teacher Parties”), such claim fails for the following
22 independent reasons:

- 23 a. First, the Teacher Parties’ claim for unjust enrichment fails because an express,
24 written contract governs the parties’ relationship – specifically, the Membership
25 Authorization Form; thus, no equitable agreement can be implied.
- 26 b. Second, the Teacher Parties’ claim for unjust enrichment fails for lack of
27 damages. Specifically:
28

- i. Simultaneous with granting the CCEA Parties' Motion for Partial Summary Judgment, this Court also granted the CCEA Parties' Motion to Alter or Amend the Restricted Account Order, which Order provides, in part, that CCEA will return the Sequestered Funds to the individual CCEA members, the teachers, inclusive of the Teacher Parties. Further, the Order provides that CCEA will return to the Teacher Parties their full CCEA dues for the entire 2017-2018 membership year.
- ii. The Teacher Parties, therefore, have not suffered any cognizable damages.

55. There are no genuine issues of material fact precluding summary judgment in the CCEA Parties' favor on the NSEA Parties' claim for unjust enrichment.

56. The NSEA Parties have not made any showing that the CCEA Parties are not entitled to summary judgment as a matter of law.

57. Pursuant to Nevada Rule of Civil Procedure 56, the CCEA Parties are entitled to summary judgment in their favor and against the NSEA Parties on the NSEA Parties' claim for unjust enrichment.

D. NSEA Parties' Claim for Breach of NSEA, NEA, and CCEA Bylaws

58. "Questions of contract construction, in the absence of ambiguity or other factual issues, are suitable for determination by summary judgment." *See Nelson v. California State Auto. Ass'n Inter-Ins. Bureau*, 114 Nev. 345, 347, 956 P.2d 803, 805 (1998) *S. Tr. Mortg. Co. v. K & B Door Co.*, 104 Nev. 564, 568, 763 P.2d 353, 355 (1988) ("[W]here a document is clear and unambiguous, the court must construe it from the language therein."); *Chwialkowski v. Sachs*, 108 Nev. 404, 406, 834 P.2d 405, 406 (1992) (same); *Renshaw v. Renshaw*, 96 Nev. 541, 543, 611, P.2d 1070, 1071 (1980) (same); *Ellison v. California State Auto Ass'n*, 106 Nev. 601, 603, 797 P.2d 975, 977 (1990) (same); *Watson v. Watson*, 95 Nev. 495, 496, 596 P.2d 507, 508 (1979) ("Courts are bound by language which is clear and free from ambiguity and cannot, using guise of interpretation, distort plain meaning of agreement.").

1 59. As previously determined by this Court in its December 20, 2018 Order, the Service
2 Agreement and Dues Transmittal Agreement were terminated by CCEA within the required
3 contractual timeframe, which termination caused both agreements to expire on August 31, 2017.

4 60. But-for the Service and Dues Transmittal Agreements (which this Court found
5 expired on August 31, 2017, due to CCEA's termination), CCEA is not subject to the NSEA/NEA
6 Bylaws, nor are NSEA/NEA parties to the CCEA Bylaws.

7 61. Accordingly, no contractual relationship between CCEA and NSEA/NEA –
8 inclusive of any contractual relationship created by the NSEA/NEA/CCEA Bylaws – existed on or
9 after September 1, 2017.

10 62. In the absence of a Dues Transmittal Agreement, there is no obligation for CCEA
11 to transmit dues to NSEA and per NEA's bylaws, only NSEA has a contractual obligation to pay
12 NEA.

13 63. Accordingly, because CCEA was not bound by NSEA/NEA Bylaws after
14 September 1, 2017, and because NSEA/NEA are not parties to the CCEA Bylaws, there can be no
15 breach by CCEA and NSEA/NEA's breach of contract claims fail. *Clark Cty. V. Bonanza No. 1*,
16 96 Nev. 643, 648–49, 615 P.2d 939, 943 (1980) (“As a general rule, none is liable upon a contract
17 except those who are parties to it.”).

18 64. There are no genuine issues of material fact precluding summary judgment in the
19 CCEA Parties' favor on the NSEA Parties' claim for breach of NSEA/NEA/CCEA Bylaws.

20 65. The NSEA Parties have not made any showing that the CCEA Parties are not entitled
21 to summary judgment as a matter of law.

22 66. Pursuant to Nevada Rule of Civil Procedure 56, the CCEA Parties are entitled to
23 summary judgment in their favor and against the NSEA Parties on the NSEA Parties' claim for
24 breach of NSEA/NEA/CCEA Bylaws.

25 **E. NSEA Parties' Claim for Fraud**

26 67. The elements for fraud are: “(1) A false representation made by the defendant; (2)
27 Defendant's knowledge or belief that the representation is false (or insufficient basis for making
28

1 the representation); (3) Defendant's intention to induce the plaintiff to act or to refrain from acting
2 in reliance upon the misrepresentation; (4) Plaintiff's justifiable reliance upon the
3 misrepresentation; and (5) Damage to the plaintiff resulting from such reliance." *Bulbman, Inc. v.*
4 *Nevada Bell*, 108 Nev. 105, 110–11, 825 P.2d 588, 592 (1992).

5 68. "A plaintiff has the burden of proving each element of fraud claim by clear and
6 convincing evidence." *Id.*

7 69. "Where an essential element of a claim for relief is absent, the facts, disputed or
8 otherwise, as to other elements are rendered immaterial and summary judgment is proper." *Id.*
9 (granting summary judgment for defendant on plaintiff's fraud claim because plaintiff could not
10 present a triable issue of material fact as to every element of fraud).

11 70. Simultaneous with granting the CCEA Parties' Motion for Partial Summary
12 Judgment, this Court also granted the CCEA Parties' Motion to Alter or Amend the Restricted
13 Account Order, which Order provides, in part, that CCEA return the Sequestered Funds to the
14 individual CCEA members, the teachers, inclusive of the Teacher Parties.

15 71. Furthermore, as to the Teacher Parties only, and pursuant to the CCEA Parties offer
16 in their briefing and in open court, this Court orders that CCEA return the entire membership years'
17 worth of dues to the Teacher Parties, which totals \$810.50 per individual Teacher Party within 30
18 days of entry of this Order, or final review of this Order by any appellate court, whichever is later.

19 72. The Teacher Parties cannot establish damages related to their fraud cause of action.

20 73. There exists no genuine dispute of material fact that the Teacher Parties failed to
21 establish any fact supporting punitive damages and thus, are not entitled to punitive damages as a
22 matter of law.

23 74. There are no genuine issues of material fact precluding summary judgment in the
24 CCEA Parties' favor on the NSEA Parties' claim for fraud.

25 75. The NSEA Parties have not made any showing that the CCEA Parties are not entitled
26 to summary judgment as a matter of law.

27 76. Pursuant to Nevada Rule of Civil Procedure 56, the CCEA Parties are entitled to
28

summary judgment in their favor and against the NSEA Parties on the NSEA Parties' claim for fraud.

F. Unauthorized mid-year increase in CCEA dues.

77. The Constitution and Bylaws of the CCEA are the main source of governance for the CCEA and controls as to the how and when dues payments can be charged and the procedures for their alteration.

78. As the governing rules for the Union, the CCEA Constitution and Bylaws constitute a contract between the CCEA and its members, and this is a recognized labor and contract law principle. *Hickman v. Kline*, 71 Nev. 55, 279 P.2d 662,669 (1955) (union's constitution "amounts to a binding agreement between the union and its members"); *United Ass'n of Journeymen v. Local 334*, 452 U.S. 615, 619-11 (1981).

79. The CCEA Constitution and Bylaws state that CCEA "shall be governed by its Bylaws and Policies, and such other actions as the Association Representative Council and Executive Board may take consistent therewith." Article I, Section 3.

80. Under the Constitution and Bylaws, the Association Representative Council ("ARC") is the legislative and policy body of the Association. Article III Section 1.

81. As such, the ARC has the authority to alter dues for members of the Association. Article II, Section 4.

82. Here, the ARC and CCEA properly altered the dues payments during the 2017-18 fiscal year in April 2018, which alteration was approved by the majority of the members voting at the April 25, 2018, General Membership Meeting ("Dues Alteration").

83. The Dues Alteration was permitted by the CCEA Bylaws and the Membership Authorization Form does not supersede the CCEA Bylaws, nor does it serve to limit or prohibit the Dues Alteration.

84. The foregoing Dues Alteration took effect immediately upon disaffiliation, as set forth in the uncontested April 1, 2019 Affidavit of John Vellardita.

85. There are no genuine issues of material fact precluding summary judgment in the

CCEA Parties' favor on the NSEA Parties' claim for unauthorized mid-year dues increase.

86. The NSEA Parties have not made any showing that the CCEA Parties are not entitled to summary judgment as a matter of law.

87. Pursuant to Nevada Rule of Civil Procedure 56, the CCEA Parties are entitled to summary judgment in their favor and against the NSEA Parties on the NSEA Parties' claim for unauthorized mid-year dues increase.

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

That the CCEA Parties' Countermotion for Partial Summary Judgment is **GRANTED** in its entirety and summary judgment is entered in favor of the CCEA Parties on the NSEA Parties' claims for conversion, unjust enrichment, breach of NSEA/NEA/CCEA Bylaws, fraud, and unauthorized mid-year dues increase.

That the NSEA Motion for Partial Summary Judgment on Conversion is **DENIED**; and

That the NSEA Motion for Partial Summary Judgment on Bylaws is **DENIED**.

That this Order disposes of all remaining claims in Case No. A-17-761884-C.

That Final Judgment under NRCP 58 € will be entered in Case No. A-17-761884-C in favor of the CCEA Parties and against the NSEA Parties.

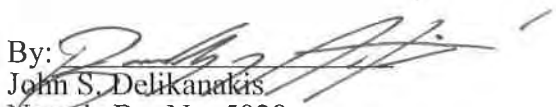
DATED: July 1, 2019


THE HONORABLE JUDGE KERRY EARLEY

A-17-761364-C

1 SNELL & WILMER L.L.P.

2 RESPECTFULLY SUBMITTED BY:

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6 Bradley T. Austin
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25 APPROVED AS TO FORM AND CONTENT BY:

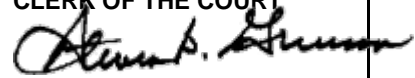
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Attachment 20

Notice of Entry of Findings of Fact, Conclusions of Law, and
Order Granting the Clark County Education Association Parties'
Motion for Partial Summary Judgment and Denying the Nevada
State Education Association Parties' Motions for Partial
Summary Judgment

(July 3, 2019)



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*Attorneys for Plaintiffs Clark County Education Association, Victoria Courtney,
James Frazee, Robert G. Hollowood and Maria Neissess*

**IN THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

CLARK COUNTY EDUCATION
ASSOCIATION, VICTORIA COURTNEY,
JAMES FRAZEE, ROBERT G.
HOLLOWOOD, and MARIA NEISESS,

Plaintiffs,

vs.

NEVADA STATE EDUCATION
ASSOCIATION, DANA GALVIN, RUBEN
MURILLO, JR., BRIAN WALLA CE, and
BRIAN LEE,

Defendants.

NEVADA STATE EDUCATION
ASSOCIATION; NATIONAL EDUCATION
ASSOCIATION; RUBEN MURILLO; ROBERT
BENSON; DIANE DI ARCHANGEL; AND
JASON WYCKOFF,

Plaintiffs-Counter Defendants,

Case No.: A-17-761364-C
DEPT. NO.: 4
(consolidated with A-17-761884-C)

**NOTICE OF ENTRY OF FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND
ORDER GRANTING THE CLARK
COUNTY EDUCATION ASSOCIATION
PARTIES' MOTION FOR PARTIAL
SUMMARY JUDGMENT AND
DENYING THE NEVADA STATE
EDUCATION ASSOCIATION PARTIES'
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

Case No.: A-17-761884-C
(consolidated with A-17-761364-C)

1 And
2 BRIAN LEE,
3 Counter-Defendant,
4 vs.
5 CLARK COUNTY EDUCATION
6 ASSOCIATION; JOHN VELLARDITA; AND
7 VICTORIA COURTNEY,
8 Defendants-Counter Plaintiffs.

9 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL:

10 PLEASE TAKE NOTICE that the attached Findings of Fact, Conclusions of Law, and
11 Order Granting the Clark County Education Association Parties' Motion for Partial Summary
12 Judgment and Denying the Nevada State Education Association Parties' Motion for Partial
13 Summary Judgment was entered in the above-referenced action on the 3rd day of July, 2019.

14 DATED this 3rd day of July, 2019.

15 SNELL & WILMER L.L.P.

16 By: /s/ Brad Austin

17 John S. Delikanakis (Nevada Bar No. 5928)
18 Michael Paretti (Nevada Bar No. 13926)
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Attorneys for Plaintiffs

1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen
3 (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be
4 served a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF**
5 **FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING THE CLARK COUNTY**
6 **EDUCATION ASSOCIATION PARTIES' MOTION FOR PARTIAL SUMMARY**
7 **JUDGMENT AND DENYING THE NEVADA STATE EDUCATION ASSOCIATION**
8 **PARTIES' MOTION FOR PARTIAL SUMMARY JUDGMENT** by the method indicated
9 below:

10 <u>XX</u>	Odyssey E-File & Serve	_____	Federal Express
11 _____	U.S. Mail	_____	U.S. Certified Mail
12 _____	Facsimile Transmission	_____	Hand Delivery
13 _____	Email Transmission	_____	Overnight Mail

14 and addressed to the following:

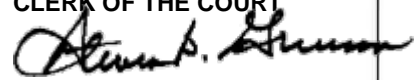
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22 DATED this 3rd day of July, 2019.

23 /s/ Ruby Lengsavath
24 An Employee of Snell & Wilmer L.L.P.

25 4852-0219-2795.1
26
27
28



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IN THE EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CLARK COUNTY EDUCATION
ASSOCIATION, VICTORIA COURTNEY,
JAMES FRAZEE, ROBERT G.
HOLLOWOOD, and MARIA NEISESS,

Plaintiffs,

vs.

NEVADA STATE EDUCATION
ASSOCIATION, DANA GALVIN, RUBEN
MURILLO, JR., BRIAN WALLACE, and
BRIAN LEE,

Defendants.

Case No.: A-17-761364-C
DEPT. NO.: 4

(consolidated with A-17-761884-C)

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER GRANTING
THE CLARK COUNTY EDUCATION
ASSOCIATION PARTIES' MOTION
FOR PARTIAL SUMMARY JUDGMENT
AND DENYING THE NEVADA STATE
EDUCATION ASSOCIATION PARTIES'
MOTIONS FOR PARTIAL SUMMARY
JUDGMENT**

**Date of Hearing : May 9, 2019
Time of Hearing: 9:00 a.m.**

1 NEVADA STATE EDUCATION
2 ASSOCIATION; NATIONAL EDUCATION
3 ASSOCIATION; RUBEN MURILLO;
ROBERT BENSON; DIANE
DI ARCHANGEL; AND JASON WYCKOFF,

4 Plaintiffs-Counter Defendants,

5 And

6 BRIAN LEE,

7 Counter-Defendant,

8 vs.

9 CLARK COUNTY EDUCATION
ASSOCIATION; JOHN VELLARDITA; AND
10 VICTORIA COURTNEY,

11 Defendants-Counter Plaintiffs.

Case No.: A-17-761884-C
(consolidated with A-17-761364-C)

12 The Court, having read and considered Nevada State Education Association ("NSEA"),
13 National Education Association ("NEA"), Dana Galvin, Ruben Murillo, Jr., Brian Wallace, Brian
14 Lee, Robert Benson, Diane Di Archangel and Jason Wyckoff (collectively "NSEA Parties") Motion
15 for Partial Summary Judgment ("NSEA Motion for Partial Summary Judgment on Conversion"),
16 filed November 9, 2018; the NSEA Parties' Motion for Partial Summary Judgment ("NSEA Motion
17 for Partial Summary Judgment on Bylaws"), filed January 23, 2019; and Clark County Education
18 Association ("CCEA"), Victoria Courtney, James Frazee, Robert Hollowood, and Maria Neisess's
19 (collectively, the "CCEA Parties") Countermotion for Partial Summary Judgment ("CCEA
20 Countermotion for Partial Summary Judgment") filed by the CCEA Parties on December 12, 2018,
21 and all papers filed in support of the foregoing Motions; having heard and considered the oral
22 argument of counsel John S. Delikanakis, Esq., Bradley Austin, Esq. and Michael Paretti, Esq. of
23 Snell & Wilmer L.L.P., and Joel D'Alba, Esq. of Asher, Gittler & D'Alba, Ltd. appearing on behalf
24 of the CCEA Parties, and Robert Alexander, Esq. and James Graham Lake, Esq. of Bredhoff &
25 Kaiser, PPLC and Paul J. Lal, Esq. of Boies Schiller Flexner appearing on behalf of the NSEA
26 Parties, and with good cause appearing, enters the following findings of fact, conclusions of law
27 and order.
28

FINDINGS OF FACT

The Court concludes, under N.R.C.P. 56, that there is no genuine dispute of fact regarding the following:

1. CCEA is a democratic organization that is the exclusive collective bargaining representative of the licensed professional employees of the Clark County School District (“CCSD”) and is the employee organization that serves as the local voice for educators to advance the cause of education, promote professional excellence among educators to protect the rights of educators, advance their interests and welfare, and secure professional autonomy.

2. CCEA is the recognized and exclusive bargaining agent for CCSD’s licensed professional employees.

3. NSEA was the state-wide affiliate of the CCEA.

4. The NEA was the national affiliate of the CCEA.

5. Members of CCEA pay dues to CCEA pursuant to a membership dues authorization form (“Membership Authorization Form”).

6. The Membership Authorization Form provides that:

Payroll Deduction Authorization. With full knowledge of the above, I hereby agree to pay cash for, or herein, authorize my employer to deduct from my salary, and pay to the local association, in accordance with the agreed-upon payroll deduction procedure, the professional dues as established annually and the political action contributions in the amounts indicated above for this membership year and each year thereafter, provided that I may revoke this authorization by giving written notice to that effect to my local association between July 1 and July 15 of any calendar year, or as otherwise designated by the negotiated agreement. Dues are paid on an annual basis and, although dues may be deducted from my payroll check(s) in order to provide an easier method of payment, a member is obligated to pay the entire amount of dues for a membership year. I understand that if I resign my membership in my local Association, or in the event of termination, resignation or retirement from employment, I am still obligated to pay the balance of my annual dues and political or positive image contributions for that membership year and such payments will continue to be deducted from my payroll check(s).

7. Once an individual CCEA member signs the Membership Authorization Form, CCEA membership dues are then deducted from members’ pay checks by their employer, the

1 CCSD, pursuant to a collective bargaining agreement negotiated and agreed to by and between
2 CCEA and CCSD.

3 8. The membership dues deducted from CCEA members' pay checks are then paid to
4 CCEA by CCSD.

5 9. A portion of the membership dues were then transmitted to NSEA through a dues
6 transmittal agreement by and between CCEA and NSEA ("Dues Transmittal Agreement"), which
7 is attached as an addendum and incorporated into a negotiated services agreement by and between
8 CCEA and NSEA ("Service Agreement") as Addendum A.

9 10. The Service Agreement incorporates the Dues Transmittal Agreement and provides
10 as follows:

11 CCEA agrees to transmit NSEA and NEA dues, and NSEA-TIP and NEA-PAC
12 contributions to NSEA for each by the tenth business day following the payroll
13 deduction. The agreement is attached as Addendum A.

14 11. The Service Agreement incorporates and the Dues Transmittal Agreement and
15 together provide for the quid pro quo exchange between CCEA and NSEA. The Service Agreement
16 sets forth the services and financial payments that NSEA will provide to CCEA in exchange for
17 transmittal of dues that CCEA sends to NSEA, as set forth in both the Service Agreement – Dues
18 Transmittal Agreement.

19 12. Specifically, paragraph 1 of the Service Agreement states that CCEA will transmit
20 dues to NSEA and the following paragraph (paragraph 2) provides that in exchange, NSEA will
21 transmit grants to CCEA.

22 13. The Service Agreement and the Dues Transmittal Agreement allow either party to
23 unilaterally terminate and seek to renegotiate the terms of the agreement.

24 14. Specifically, the Service Agreement provides that:

25 The term of this agreement shall be from September 1 to August 31. This
26 Agreement shall be automatically renewed on an annual basis, unless either party
27 shall give written notice of termination to the other party, with evidence of receipt
28 by the other party no later than thirty (30) days prior to the anniversary date of the
Agreement. Should either party give notice of termination as provided alone, then
this Agreement shall terminate on the anniversary date unless a successor agreement
has been mutually agreed to by the parties.

1 15. The relevant anniversary date is September 1, 2017.

2 16. Similarly, the Dues Transmittal Agreement provides that “[t]his agreement shall
3 remain in force for each subsequent membership year unless terminated in writing by either party
4 prior to September 1 of any NSEA membership year, or amended by mutual consent of both
5 parties.”

6 17. The NSEA membership year runs from September 1 to August 31.

7 18. On May 3, 2017, CCEA gave notice to NSEA and its officers of an intent to
8 terminate the Service Agreement and the Dues Transmittal as follows:

9
10 Pursuant to the terms of the Service Agreement between the Nevada State Education
11 Association and the Clark County Education Association, I write to give you notice
12 to terminate this agreement, unless a successor agreement can be mutually agreed
13 to by the parties....Please accept this letter as our formal notice of termination of the
14 Service Agreement.

15 19. On July 17, 2017 and August 3, 2017, CCEA sent NSEA two additional letters
16 providing for notice of the intent to terminate the Service Agreement and the Dues Transmittal
17 Agreement. Specifically, the July 17, 2017, letter stated in pertinent part that:

18 On May 3, 2017 CCEA served notice that it was terminating the Service Agreement
19 between CCEA and NSEA.....This letter serves notice to NSEA that unless there is
20 a successor agreement in place before the August 31, 2017 all terms and conditions
21 of the agreement shall become null and void.

22 The August 3, 2017, letter stated in pertinent part that:

23 Your letter expressing a claim based on NSEA policies is incorrect as this is a
24 contract matter, there has not been a mutual agreement to modify the Agreement,
25 and without mutual agreement, the terms and conditions of the Agreement will be
26 null and void upon its expiration on August 31, 2017....The Agreement serves as
27 the dues transmittal contract, and it is otherwise set to expire unless a successor is
28 negotiated per the terms and conditions of that Agreement. Upon expiration, CCEA
is not only legally not obligated to transmit dues, but cannot transmit member dues
to NSEA per NSEA’s own ByLaws. To be clear, when the current Agreement
between CCEA and NSEA expires on August 31, 2017 there will not be a contract
in place between the two organizations to collect and remit dues to NSEA.

29 20. On March 24, 2018, CCEA members were given notice of a dues issue to be
30 presented at a general membership meeting to be held on April 25, 2018.

31 21. On April 14, 2018, the Executive Board of CCEA met to consider a proposed bylaw

1 amendment to set CCEA dues at \$510 per year immediately upon disaffiliation from the NSEA and
2 the NEA and upon CCEA becoming an independent labor organization.

3 22. Prior to the termination of the Service Agreement and Dues Transmittal Agreement,
4 the annual dues payments for CCEA members included payments to CCEA, NSEA and NEA and
5 were \$810.50. The \$510 dues payments considered by the dues motion on April 14, 2018,
6 constituted a dues decrease for all CCEA members.

7 23. On April 24, 2018, the CCEA Association Representative Council ("ARC") met to
8 consider, among other things, bylaws changes. The ARC approved a motion to change Article X,
9 Section 1 of the CCEA Bylaws by removing the word "shall" from the affiliate's status and bylaw
10 provision and inserting the "may," which meant that the Association may, rather than shall,
11 maintain affiliate status with the NSEA and NEA. That change to Article X of the Bylaws was
12 approved.

13 24. On April 24, 2018, the ARC adopted a tentative budget for fiscal year 2018-2019,
14 setting the CCEA annual dues rate at \$510 for each member, which budget would take effect
15 immediately upon disaffiliation from NSEA and NEA.

16 25. On April 25, 2018, members of the Association at a general membership meeting
17 were advised that the ARC amended the Bylaws to permit members to effectively authorize the
18 disaffiliation from the NSEA and NEA and upon disaffiliation members' union dues would be
19 reduced from \$33.78 per paycheck to \$21.25 per paycheck.

20 26. On April 25, 2018, the CCEA members were notified by a mass email of this vote
21 and received a second notice of the general membership meeting to that place on that day.

22 27. During CCEA's April 25, 2018, general membership meeting, CCEA's members
23 approved a motion to disaffiliate from the NSEA and NEA, and to reduce the union dues as set
24 forth above.

25 28. CCEA disaffiliated from NSEA and NEA on April 25, 2018, and the foregoing dues
26 reduction took effect immediately upon disaffiliation.

27 29. After the termination of the Dues Transmittal Agreement, but prior to CCEA's April
28

1 25, 2018, disaffiliation from NSEA and NEA, CCSD continued to send the employees' dues to
2 CCEA, whereupon the dues were placed into a restricted bank account ("Sequestered Funds") –
3 with CCEA seeking via the instant litigation a declaratory determination from the Court as to the
4 rightful owner of the funds, and NSEA asserting via the instant litigation a right to the funds under
5 contract, conversion, and unjust enrichment causes of action.

6 30. On May 11, 2018, and to preserve the status quo while the CCEA Parties'
7 declaratory relief claim was pending with the Court, the Court required that: (1) all funds in the
8 possession of or received by CCEA for the 2017-2018 school year in respect to NSEA dues and in
9 respect to NEA dues be deposited into a restricted account, "as [CCEA] has represented to the
10 Court it has done during the course of this litigation"; (2) that no funds shall be withdrawn,
11 transferred, or disbursed out of the Restricted Account, and the Restricted Account shall not be
12 changed or modified, without a further Order from the Court; and (3) that CCEA provide a monthly
13 account statement to the NSEA Parties.

14 31. On December 20, 2018, pursuant to a Motion for Partial Summary Judgment filed
15 by the CCEA Parties, this Court held that the May 3, July 17, and August 3, 2017 termination
16 notices caused both the Service Agreement and Dues Transmittal Agreement to terminate and
17 expire on August 31, 2017.

18 32. The Court further held that in light of the foregoing termination and expiration,
19 CCEA owed no duties to NSEA or NEA under the Service Agreement and Dues Transmittal
20 Agreement to collect and/or transmit membership dues on NSEA or NEA's behalf on or after
21 September 1, 2017, nor did NSEA or NEA have any obligation to CCEA on or after September 1,
22 2017, to perform pursuant to the Service Agreement and Dues Transmittal Agreement, and that
23 there was no dispute that NSEA and NEA ceased to perform under the Service Agreement and
24 Dues Transmittal Agreement on or after September 1, 2017.

25 33. Any finding of fact which should be construed as a conclusion of law shall be
26 construed as such.
27
28

34. Any conclusion of law which should be construed as a finding of fact shall be construed as such.

CONCLUSIONS OF LAW

A. Standard for Summary Judgment

35. The Court will render judgment “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Nevada Rule of Civil Procedure 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986.)

36. “A factual dispute is genuine when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party.” *Wood v. Safeway*, 121 Nev. 724, 731 (2005).

37. The moving party bears the initial burden of showing the absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 323.

38. To meet this burden, the moving party may either produce evidence affirmatively demonstrating the absence of such evidence or point out a lack of evidence to support the nonmoving party’s case. *Id.* at 325.

39. Once this burden is met, the burden shifts to the nonmoving party to present evidence demonstrating the existence of a genuine issue of material fact. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986).

B. NSEA Parties’ Claim for Conversion

40. “Conversion is defined as exerting wrongful ‘dominion over another’s personal property or wrongful interference with the owner’s dominion.’” *Larsen v. B.R. Enters., Inc.*, 104 Nev. 252, 254, 757 P.2d 354, 356 (1988). *See also, Bader v. Cerri*, 96 Nev. 352, 356, 609 P.2d 314, 317 (1980), *overruled on other grounds by Evans v. Dean Witter Reynolds, Inc.*, 116 Nev. 598, 5 P.3d 1043 (2000) (“A conversion occurs whenever there is a serious interference to a party’s rights in his property”); *M.C. Multi-Family Dev., L.L.C. v. Crestdale Associates, Ltd.*, 124 Nev. 901, 910–11, 193 P.3d 536, 542–43 (2008) (defining conversion as “a distinct act of dominion wrongfully exerted over another’s personal property in denial of, or inconsistent with his title or rights therein or in derogation, exclusion, or defiance of such title or rights.”).

1 41. A precondition to bringing a claim for conversion is that the claimant must be the
2 rightful owner of the property.

3 42. NSEA and NEA have no legal or contractual right to the Sequestered Funds under
4 the Service Agreement or Dues Transmittal Agreement, which agreements were terminated prior
5 to September 1, 2017.

6 43. NSEA and NEA have no legal or contractual right to the Sequestered Funds under
7 the NSEA or NEA Bylaws, which Bylaws expressly rely upon the (terminated) Dues Transmittal
8 Agreement for any obligation to transmit dues.

9 44. NSEA and NEA have no legal or contractual right to the Sequestered Funds under
10 the Membership Authorization Form, which Form is only between CCEA and the individual
11 members.

12 45. NSEA/NEA have no equitable right to the Sequestered Funds, or any other funds
13 CCEA collected on behalf of its members after September 1, 2017.

14 46. In light of the foregoing, NSEA/NEA are not the rightful owners of, and have no
15 legal or equitable right to, the Sequestered Funds and as a result, cannot meet the rightful owner
16 element.

17 47. There are no genuine issues of material fact precluding summary judgment in the
18 CCEA Parties' favor on the NSEA Parties' claim for conversion.

19 48. The NSEA Parties have not made any showing that the CCEA Parties are not entitled
20 to summary judgment as a matter of law.

21 49. Pursuant to Nevada Rule of Civil Procedure 56, the CCEA Parties are entitled to
22 summary judgment in their favor and against the NSEA Parties on the NSEA Parties' claim for
23 conversion.

24 **C. NSEA Parties' Claim for Unjust Enrichment**

25 50. The essential elements of unjust enrichment are "a benefit conferred on the
26 defendant by the plaintiff, appreciation by the defendant of such benefit, and acceptance and
27 retention by the defendant of such benefit under circumstances such that it would be inequitable for
28

1 him to retain the benefit without payment of the value thereof.” *Leasepartners Corp. v. Robert L.*
2 *Brooks Tr. Dated Nov. 12, 1975*, 113 Nev. 747, 755, 942 P.2d 182, 187 (1997).

3 51. Similar to a claim for conversion, the claimant must have an underlying right to the
4 property/funds at issue. *See id.* (one of the essential elements for unjust enrichment is “a benefit
5 conferred on the defendant by the plaintiff”).

6 52. Furthermore, “an action based on a theory of unjust enrichment is not available when
7 there is an express, written contract, because no agreement can be implied when there is an express
8 agreement.” *See Leasepartners Corp. v. Robert L. Brooks Trust Dated November 12, 1975*, 113
9 Nev. 747, 755-56, 942 P.2d 182, 187 (1997); *Lipshie v. Tracy Investment Co.*, 93 Nev. 370, 379,
10 566 P.2d 819, 824 (1977) (“To permit recovery by quasi-contract where a written agreement exists
11 would constitute a subversion of contractual principles.”) (emphasis supplied). 66 Am.Jur.2d
12 Restitution § 11 (1973) (“The doctrine of unjust enrichment or recovery in quasi contract applies
13 to situations where there is no legal contract but where the person sought to be charged is in
14 possession of money or property which in good conscience and justice he should not retain but
15 should deliver to another.”).

16 53. For the reasons set forth under the claim for conversion – which findings are
17 incorporated herein by reference – NSEA and NEA do not have standing to assert a claim for unjust
18 enrichment because they do not have an ownership interest or underlying right to the Sequestered
19 Funds.

20 54. To the extent the unjust enrichment claim is asserted on behalf of Parties Murillo,
21 Benson, Di Archangel, and Wyckoff (“Teacher Parties”), such claim fails for the following
22 independent reasons:

- 23 a. First, the Teacher Parties’ claim for unjust enrichment fails because an express,
24 written contract governs the parties’ relationship – specifically, the Membership
25 Authorization Form; thus, no equitable agreement can be implied.
- 26 b. Second, the Teacher Parties’ claim for unjust enrichment fails for lack of
27 damages. Specifically:
28

- i. Simultaneous with granting the CCEA Parties' Motion for Partial Summary Judgment, this Court also granted the CCEA Parties' Motion to Alter or Amend the Restricted Account Order, which Order provides, in part, that CCEA will return the Sequestered Funds to the individual CCEA members, the teachers, inclusive of the Teacher Parties. Further, the Order provides that CCEA will return to the Teacher Parties their full CCEA dues for the entire 2017-2018 membership year.
- ii. The Teacher Parties, therefore, have not suffered any cognizable damages.

55. There are no genuine issues of material fact precluding summary judgment in the CCEA Parties' favor on the NSEA Parties' claim for unjust enrichment.

56. The NSEA Parties have not made any showing that the CCEA Parties are not entitled to summary judgment as a matter of law.

57. Pursuant to Nevada Rule of Civil Procedure 56, the CCEA Parties are entitled to summary judgment in their favor and against the NSEA Parties on the NSEA Parties' claim for unjust enrichment.

D. NSEA Parties' Claim for Breach of NSEA, NEA, and CCEA Bylaws

58. "Questions of contract construction, in the absence of ambiguity or other factual issues, are suitable for determination by summary judgment." *See Nelson v. California State Auto. Ass'n Inter-Ins. Bureau*, 114 Nev. 345, 347, 956 P.2d 803, 805 (1998) *S. Tr. Mortg. Co. v. K & B Door Co.*, 104 Nev. 564, 568, 763 P.2d 353, 355 (1988) ("[W]here a document is clear and unambiguous, the court must construe it from the language therein."); *Chwialkowski v. Sachs*, 108 Nev. 404, 406, 834 P.2d 405, 406 (1992) (same); *Renshaw v. Renshaw*, 96 Nev. 541, 543, 611, P.2d 1070, 1071 (1980) (same); *Ellison v. California State Auto Ass'n*, 106 Nev. 601, 603, 797 P.2d 975, 977 (1990) (same); *Watson v. Watson*, 95 Nev. 495, 496, 596 P.2d 507, 508 (1979) ("Courts are bound by language which is clear and free from ambiguity and cannot, using guise of interpretation, distort plain meaning of agreement.").

1 59. As previously determined by this Court in its December 20, 2018 Order, the Service
2 Agreement and Dues Transmittal Agreement were terminated by CCEA within the required
3 contractual timeframe, which termination caused both agreements to expire on August 31, 2017.

4 60. But-for the Service and Dues Transmittal Agreements (which this Court found
5 expired on August 31, 2017, due to CCEA's termination), CCEA is not subject to the NSEA/NEA
6 Bylaws, nor are NSEA/NEA parties to the CCEA Bylaws.

7 61. Accordingly, no contractual relationship between CCEA and NSEA/NEA –
8 inclusive of any contractual relationship created by the NSEA/NEA/CCEA Bylaws – existed on or
9 after September 1, 2017.

10 62. In the absence of a Dues Transmittal Agreement, there is no obligation for CCEA
11 to transmit dues to NSEA and per NEA's bylaws, only NSEA has a contractual obligation to pay
12 NEA.

13 63. Accordingly, because CCEA was not bound by NSEA/NEA Bylaws after
14 September 1, 2017, and because NSEA/NEA are not parties to the CCEA Bylaws, there can be no
15 breach by CCEA and NSEA/NEA's breach of contract claims fail. *Clark Cty. V. Bonanza No. 1*,
16 96 Nev. 643, 648–49, 615 P.2d 939, 943 (1980) (“As a general rule, none is liable upon a contract
17 except those who are parties to it.”).

18 64. There are no genuine issues of material fact precluding summary judgment in the
19 CCEA Parties' favor on the NSEA Parties' claim for breach of NSEA/NEA/CCEA Bylaws.

20 65. The NSEA Parties have not made any showing that the CCEA Parties are not entitled
21 to summary judgment as a matter of law.

22 66. Pursuant to Nevada Rule of Civil Procedure 56, the CCEA Parties are entitled to
23 summary judgment in their favor and against the NSEA Parties on the NSEA Parties' claim for
24 breach of NSEA/NEA/CCEA Bylaws.

25 **E. NSEA Parties' Claim for Fraud**

26 67. The elements for fraud are: “(1) A false representation made by the defendant; (2)
27 Defendant's knowledge or belief that the representation is false (or insufficient basis for making
28

1 the representation); (3) Defendant's intention to induce the plaintiff to act or to refrain from acting
2 in reliance upon the misrepresentation; (4) Plaintiff's justifiable reliance upon the
3 misrepresentation; and (5) Damage to the plaintiff resulting from such reliance." *Bulbman, Inc. v.*
4 *Nevada Bell*, 108 Nev. 105, 110–11, 825 P.2d 588, 592 (1992).

5 68. "A plaintiff has the burden of proving each element of fraud claim by clear and
6 convincing evidence." *Id.*

7 69. "Where an essential element of a claim for relief is absent, the facts, disputed or
8 otherwise, as to other elements are rendered immaterial and summary judgment is proper." *Id.*
9 (granting summary judgment for defendant on plaintiff's fraud claim because plaintiff could not
10 present a triable issue of material fact as to every element of fraud).

11 70. Simultaneous with granting the CCEA Parties' Motion for Partial Summary
12 Judgment, this Court also granted the CCEA Parties' Motion to Alter or Amend the Restricted
13 Account Order, which Order provides, in part, that CCEA return the Sequestered Funds to the
14 individual CCEA members, the teachers, inclusive of the Teacher Parties.

15 71. Furthermore, as to the Teacher Parties only, and pursuant to the CCEA Parties offer
16 in their briefing and in open court, this Court orders that CCEA return the entire membership years'
17 worth of dues to the Teacher Parties, which totals \$810.50 per individual Teacher Party within 30
18 days of entry of this Order, or final review of this Order by any appellate court, whichever is later.

19 72. The Teacher Parties cannot establish damages related to their fraud cause of action.

20 73. There exists no genuine dispute of material fact that the Teacher Parties failed to
21 establish any fact supporting punitive damages and thus, are not entitled to punitive damages as a
22 matter of law.

23 74. There are no genuine issues of material fact precluding summary judgment in the
24 CCEA Parties' favor on the NSEA Parties' claim for fraud.

25 75. The NSEA Parties have not made any showing that the CCEA Parties are not entitled
26 to summary judgment as a matter of law.

27 76. Pursuant to Nevada Rule of Civil Procedure 56, the CCEA Parties are entitled to
28

summary judgment in their favor and against the NSEA Parties on the NSEA Parties' claim for fraud.

F. Unauthorized mid-year increase in CCEA dues.

77. The Constitution and Bylaws of the CCEA are the main source of governance for the CCEA and controls as to the how and when dues payments can be charged and the procedures for their alteration.

78. As the governing rules for the Union, the CCEA Constitution and Bylaws constitute a contract between the CCEA and its members, and this is a recognized labor and contract law principle. *Hickman v. Kline*, 71 Nev. 55, 279 P.2d 662,669 (1955) (union's constitution "amounts to a binding agreement between the union and its members"); *United Ass'n of Journeymen v. Local 334*, 452 U.S. 615, 619-11 (1981).

79. The CCEA Constitution and Bylaws state that CCEA "shall be governed by its Bylaws and Policies, and such other actions as the Association Representative Council and Executive Board may take consistent therewith." Article I, Section 3.

80. Under the Constitution and Bylaws, the Association Representative Council ("ARC") is the legislative and policy body of the Association. Article III Section 1.

81. As such, the ARC has the authority to alter dues for members of the Association. Article II, Section 4.

82. Here, the ARC and CCEA properly altered the dues payments during the 2017-18 fiscal year in April 2018, which alteration was approved by the majority of the members voting at the April 25, 2018, General Membership Meeting ("Dues Alteration").

83. The Dues Alteration was permitted by the CCEA Bylaws and the Membership Authorization Form does not supersede the CCEA Bylaws, nor does it serve to limit or prohibit the Dues Alteration.

84. The foregoing Dues Alteration took effect immediately upon disaffiliation, as set forth in the uncontested April 1, 2019 Affidavit of John Vellardita.

85. There are no genuine issues of material fact precluding summary judgment in the

CCEA Parties' favor on the NSEA Parties' claim for unauthorized mid-year dues increase.

86. The NSEA Parties have not made any showing that the CCEA Parties are not entitled to summary judgment as a matter of law.

87. Pursuant to Nevada Rule of Civil Procedure 56, the CCEA Parties are entitled to summary judgment in their favor and against the NSEA Parties on the NSEA Parties' claim for unauthorized mid-year dues increase.

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

That the CCEA Parties' Countermotion for Partial Summary Judgment is **GRANTED** in its entirety and summary judgment is entered in favor of the CCEA Parties on the NSEA Parties' claims for conversion, unjust enrichment, breach of NSEA/NEA/CCEA Bylaws, fraud, and unauthorized mid-year dues increase.

That the NSEA Motion for Partial Summary Judgment on Conversion is **DENIED**; and

That the NSEA Motion for Partial Summary Judgment on Bylaws is **DENIED**.

That this Order disposes of all remaining claims in Case No. A-17-761884-C.

That Final Judgment under NRCP 58 € will be entered in Case No. A-17-761884-C in favor of the CCEA Parties and against the NSEA Parties.

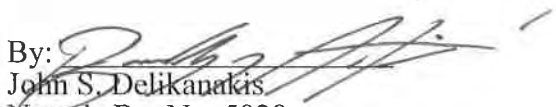
DATED: July 1, 2019


THE HONORABLE JUDGE KERRY EARLEY

A-17-761364-C

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