IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 79208

Nevada State Education Association; National Education Association; Ruben Murillo, Jr.; Robert Benson; Diane Di Archangel; and Jason Wyckoff,
Appellants,

v.

Clark County Education Association; John Vellardita; and Victoria Courtney,
Respondents.

Appeal from Final Judgment and Dissolution of Injunction
District Court Case No. A-17-761884-C
Eighth Judicial District Court of Nevada

APPELLANTS' OPENING BRIEF

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NRAP 26.1 DISCLOSURE STATEMENT

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

National Education Association
Nevada State Education Association

Neither entity has a parent corporation or is a subsidiary or affiliate of a publicly owned corporation.

The following law firm have partners or associates who appeared on behalf of the Appellants or are expected to appear on their behalf in this Court:

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Dated this 3rd day of February, 2020.

By: /s/ Debbie Leonard

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JURISDICTIONAL STATEMENT

The district court entered judgment on all claims brought by the Appellants (the "NSEA Parties") on July 1, 2019, and notice of entry of the judgment was served on July 3, 2019. The NSEA Parties filed their notice of appeal on July 15, 2019. The notice of appeal was timely under NRAP 4(a)(1), and appellate jurisdiction exists under NRAP 3A(b)(1). While an action brought by respondents Clark County Education Association ("CCEA"), John Vellardita, and Victoria Courtney (collectively, the "CCEA Parties") (Case No. A-17-761364-C) was consolidated with this case (Case No. A-17-761884-C), and is still pending before the district court, there has been an appealable final judgment in this case, over which the Court has appellate jurisdiction. *See In re Estate of Sarge*, 134 Nev. 866, 870-71, 423 P.3d 718, 722 (2018).

In addition, this Court has jurisdiction to review, pursuant to NRAP 3A(b)(3), the district court's July 3, 2019 dissolution of an injunction put into place on May 10, 2018.

ROUTING STATEMENT

This case presents issues of statewide importance regarding the interpretation of a major state public-sector labor union's bylaws. Specifically, this case addresses the local affiliate's obligation to transmit to the state affiliate the membership dues paid by over 10,000 teachers and other school employees for the benefits of their

unified membership in the local, state and national unions. This case also presents the Court an opportunity to establish Nevada jurisprudence on settled common law doctrines of contract interpretation and conversion. As a result, the case is presumptively retained by the Supreme Court. *See* NRAP 17(a)(12).

INTRODUCTION

This case involves contract and tort claims arising from a dispute between a local labor union and its state and national affiliates over the transmittal of membership dues paid by Clark County School District ("CCSD") employees. During the pertinent period at issue here, the local, state, and national unions had unified membership, meaning that employees joined all three unions and authorized the payment of dues to the local, state, and national affiliates for their membership in each. Members authorized payment of their unified dues by payroll deduction to the local union, Clark County Education Association ("CCEA"), which by contract was obligated to transmit the state and national dues portions to the state affiliate, Nevada State Education Association ("NSEA"). In turn, NSEA transmitted the national dues portion to the national affiliate, the National Education Association ("NEA").

Between August 2017 and April 2018, CCEA collected the state and national dues of CCSD employees (totaling $4,131,738.47) but did not transmit those dues to either the state or national affiliate. This lawsuit followed. Eight months after

CCEA ceased transmitting the state and national portion of the dues paid by members, CCEA voted on April 25, 2018 to disaffiliate from NEA and NSEA.

The following four documents define the contractual obligations between and among CCEA, NSEA and NEA pertinent to this case:

1. The NSEA Bylaws, which, *inter alia*, obligate local affiliates like CCEA to maintain a dues transmittal agreement. VII(1104-05, Art. VIII § 3(F)).

2. The NEA Bylaws, which mandate that local affiliates "shall require membership in the [NEA] and in its state or local affiliate where eligible," and which also require local affiliates to transmit state and NEA dues. VII(1211-12, Sec. 8-7).

3. A Dues Transmittal Agreement ("Transmittal Agreement") entered into in 1979 between CCEA (then known as CCCTA) and NSEA, in which CCEA was designated as NSEA's "authorized agent for the purpose of collecting and transmitting NSEA and NEA dues." IV(623-26). The Transmittal Agreement committed CCEA to "collect or cause to be collected NSEA/NEA dues from NSEA/NEA members and [to] transmit or have transmitted all NSEA/NEA dues." IV(623).

4. A Service Agreement entered into in 1999 between NSEA and CCEA (the "Service Agreement"), which, among other things, detailed the

funding NSEA would provide to CCEA and how the parties would cooperate and coordinate to advance members' interests. The Service Agreement expressly stated that the Transmittal Agreement "between [NSEA] and CCEA is continued without change." IV(628-31).

The district court interpreted the NSEA and NEA Bylaws and the Transmittal and Service Agreements contrary to basic contract principles and ruled that, as a matter of law, CCEA had no obligation to transmit to NSEA the national and state dues that it collected from August 2017 until its April 2018 disaffiliation. The district court incorrectly concluded that CCEA had unilaterally terminated the Transmittal Agreement and, according to the district court, that termination voided CCEA's other contractual obligations to continue to transmit NSEA and NEA dues while CCEA remained affiliated with NSEA and NEA. The district court's reasoning does not withstand scrutiny, and its decision should be reversed. The plain contract language and basic principles of conversion law require that summary judgment for NEA and NSEA be entered instead.

STATEMENT OF ISSUES

1. Whether the record permitted the District Court to find, as a matter of law, that CCEA terminated the Transmittal Agreement where:

   a. CCEA gave notice only of its intent to terminate the separate, later-executed, Service Agreement;

b. The Service Agreement stated expressly that the Transmittal Agreement "is continued without change"; and

c. The NSEA Bylaws, which control any conflicting Transmittal Agreement provisions, expressly mandated that local affiliates like CCEA maintain a dues collection and transmittal agreement.

2. Whether CCEA breached the NSEA Bylaws and NEA Bylaws, both of which require that local affiliates have in place a dues transmittal agreement, by:

a. CCEA's purported termination of the Transmittal Agreement without entering into a successor agreement; and

b. CCEA's refusal to remit NSEA and NEA dues that CCEA had collected from CCEA/NSEA/NEA union members.

3. Whether the district court erred in holding that CCEA's duties under the NEA and NSEA Bylaws expired on September 1, 2017, the date CCEA purported to terminate the Transmittal Agreement, even though CCEA did not disaffiliate from NEA and NSEA until April 25, 2018.

4. Whether keeping and refusing to remit to NSEA monies CCEA collected from union members to satisfy their NSEA and NEA dues obligations, monies to which CCEA disclaimed any rights, constitutes conversion of NSEA and NEA's dues and unjustly enriched CCEA.

5. Whether CCEA's representation to the district court that it would pay back to the individual plaintiff teachers the monies it obtained through fraudulent inducement renders the teachers' fraud claims legally deficient.

STATEMENT OF THE CASE

The NSEA Parties brought this suit in September 2017 following CCEA's failure to remit the NSEA and NEA union dues CCEA collected. I(12, 53-66). The NSEA Parties asserted claims for breach of contract, conversion, unjust enrichment, and fraud in the inducement. *See id*.

In May 2018, the district court (Judge Kishner) entered an order that required CCEA to maintain the NSEA and NEA dues collected during the August 2017 to April 2018 time period (the "Disputed Dues") in a restricted account (the "Restricted Account") that could not be used by CCEA until further order of the court ("the Injunction"). III(514-19). CCEA eventually deposited $4,131,738.47 into the Restricted Account. V(800).

On the parties' motions for summary judgment, and through orders entered December 20, 2018, and July 3, 2019, the district court (Judge Earley) granted summary judgment to CCEA Parties on all claims brought by the NSEA Parties. VI(1018-1029), IX(1551-1569). The district court also granted the CCEA Parties' motion to alter or amend the Injunction but, after further motion practice, stayed that order pending appeal. IX(1574-83). This appeal involves the NSEA Parties'

challenge to the district court's summary judgment rulings and dissolution of the Injunction. IX(1570-73).

STATEMENT OF FACTS

I. The Parties and their Relationships

A. The Teachers' Membership in CCEA, NSEA, and NEA

NEA is a nationwide professional-employee organization that represents education professionals throughout the country. VII(1125 ¶¶ 3-4, 1186 ¶ 8). It acts as the parent union to approximately 52 state affiliates and 15,370 local affiliates. VII(1186 ¶ 8). NSEA is the Nevada-state affiliate of NEA. VII(1104). For at least four decades, CCEA was a local affiliate of NSEA and NEA. VII(1125-26 ¶¶ 3-5). CCEA was and remains the collective bargaining representative of educational professionals in the Clark County School District ("CCSD"). VII(1125 ¶ 3). On April 26, 2018, after a vote of its membership, CCEA informed NEA and NSEA of its disaffiliation from NEA and NSEA. VII(1126 ¶ 5, 1130).

At the time this lawsuit was filed in 2017, Plaintiffs/Appellants Ruben Murillo, Jr., Robert Benson, Diane Di Archangel, and Jason Wyckoff, like approximately 10,000 other employees in the CCSD, were members of the three affiliated unions (NEA at the national level, NSEA at the state level, and CCEA at the local level). III(555-57), VI(1036 ¶ 5), VII(1224 ¶ 5). During the relevant period, NEA, NSEA, and CCEA had operated within a unified membership structure, which

means that teachers joining CCEA or another NEA local affiliate union also joined the state (NSEA) and national (NEA) affiliate. VII(1054 ¶ 4, 1186 ¶ 7). Through their membership in NEA and its affiliates, the teachers were entitled to all the rights and benefits of this unified membership. VII(1054 ¶ 4), VI(1039-46).

As members of the unified organizations, the teachers were obligated to pay annual dues for their membership in each. VII(1125 ¶ 4). The organizations' membership year corresponded to the school year and ran from September 1 to August 31. VII(1066, 1092, 1126 ¶ 6, 1195). Members had the option to pay dues either as an annual lump sum at the beginning of the membership year or incrementally through semi-monthly payroll deduction installments. VII(1126).

Members joined NEA/NSEA/CCEA through a Membership Authorization Form by which members committed to pay their annual union dues (as well as any other voluntary contributions to which members agreed). III(552-57), VI(1003). If they chose to pay their annual dues through incremental payroll deduction (as nearly all did), they so indicated on the Membership Authorization Form, which directed CCSD to deduct from their paychecks each pay period the pro rata dues assessed by the three unified organizations and to remit those dues to CCEA. *Id*. The Membership Authorization Form prominently identified NEA and NSEA and noted that, while the dues payroll deduction included an incremental option, membership

was annual, and teachers were obligated to pay the annual dues regardless of whether their membership continued throughout the school year. *Id*.

B. The Relationships Among NEA, NSEA and CCEA

1. *The Affiliation Relationship*

The NEA unified membership structure was established by the bylaws of each of the three organizations, which the parties acknowledge are enforceable contracts. I(87 ¶ 26), IV(589 ¶¶ 60-64). While CCEA was affiliated with NEA and NSEA, the CCEA Bylaws made "evidence of membership in NSEA and NEA" a precondition of teachers' CCEA membership and required CCEA to conform with the bylaws of NEA and NSEA. VII(1065, 1084). The NSEA Bylaws require that "[a]ctive members of the NSEA shall also be members of the [NEA] and of a local association where available." VII(1091). And the NEA Bylaws mandate that local affiliates "shall require membership in the NEA and in its state or local affiliate where eligible." VII(1212, Sec. 8-11).

This unified membership structure is not unique to Nevada. Each of NEA's state and local affiliates operates according to the unified membership structure established by the organizations' governing documents. VII(1186 ¶ 8). As in Nevada, members of each of these local affiliates are also members of the state affiliate and of NEA. *Id*. And each of these local affiliates follows the same dues transmittal process: per the NEA Bylaws, the local association collects dues on

behalf of itself, the state affiliate, and NEA and then transmits the state and NEA dues to the state affiliate. VII(1186-87 ¶¶ 7-14, 1199-1200).

The NEA Bylaws also provide for the efficient and prompt payment and distribution of member dues among the three levels of affiliates. Section 2-9 of the NEA Bylaws requires local affiliates to serve as collection agents for unified membership dues and sets forth the general process governing dues transmittal. VII(1199-1200).

The NSEA bylaws similarly address the duties of affiliates to transmit dues. Article VIII, section 3 of the NSEA Bylaws provides that "NSEA shall affiliate a local association when it meets the following minimum standards . . . [h]ave a dues transmittal contract with NSEA." VII(1104-05). This affiliate obligation was added through a 2015 amendment, following on the heels of a 2014 dispute in which CCEA threatened to withhold the NSEA dues it had collected from members if NSEA did not provide CCEA additional financial support. VII(1056-57 ¶¶ 14-16, 1113); *see also* IV(649-50).

2. *The NSEA-CCEA Dues Relationship*

Consistent with the unified membership structure described above, before the events giving rise to this lawsuit, CCEA operated as a dues collection agent for NSEA and NEA. IV(623), VII(1055 ¶¶ 7-8). It collected the aggregate dues deducted from teachers' paychecks by CCSD, retained the portion representing its

own assessed dues, and remitted to NSEA the dues amounts assessed by NSEA and NEA. *Id*. NSEA then remitted the NEA dues to NEA. *Id*. This procedure was in place for decades.

Since 1979, this procedure was dictated by the Transmittal Agreement. *Id*. The Transmittal Agreement designated CCEA as NSEA's "authorized agent for the purpose of collecting and transmitting NSEA and NEA dues"; allowed CCEA to collect dues via payroll deductions; and committed CCEA to "collect or cause to be collected NSEA/NEA dues from NSEA/NEA members and [to] transmit or have transmitted all NSEA/NEA dues" to NSEA. IV(623). As to duration, the Transmittal Agreement provided that it would "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." IV(625). The Transmittal Agreement also expressly provided that the Agreement would be automatically amended to conform to, and avoid conflict with, any subsequent NSEA Bylaws amendment. *Id*.

3. *The NSEA-CCEA Service Relationship*

As it did with other local affiliates that represented NSEA members, NSEA provided CCEA with various forms of support and assistance, memorialized in a separate contract between the two associations known as the "Service Agreement." IV(628-31). The Service Agreement contained various provisions that focused on

certain aspects of the NSEA-CCEA relationship, in particular, the funding NSEA would provide to CCEA. IV(628-31). The Service Agreement also addressed CCEA and NSEA's efforts to cooperate and coordinate to advance members' interests. *Id*.

The very first paragraph of the Service Agreement referenced the 1979 Dues Transmittal Agreement and expressly provided that "[t]he membership collecting and processing agreement of October 1979, between [NSEA] and CCEA *is continued without change*." IV(628) (emphasis added). The Transmittal Agreement was attached as an addendum to the Service Agreement. IV(632-35). The Service Agreement contained its own termination provisions, different from those in the Transmittal Agreement. *Compare* IV(631) *with* IV(634).

II. The Instant Dispute

On May 3, 2017, CCEA's Executive Director, John Vellardita, sent a letter to NSEA's Executive Director, Brian Lee, demanding to renegotiate the Service Agreement between the organizations so that CCEA could obtain additional resources from NSEA. IV(618 ¶ 24, 637). Mr. Vellardita also threatened to terminate the Service Agreement in the absence of it being renegotiated to CCEA's satisfaction. IV(637). The May 3, 2017 letter did not reference the Transmittal Agreement. *Id*.

On July 17, 2017, Vellardita sent a second letter to Lee, reiterating that "on May 3, 2017, CCEA served notice that it was terminating the Service Agreement

between CCEA and NSEA." IV(619 ¶ 25, 639). The July 17, 2017 letter further stated that "[t]his letter serves notice to NSEA that unless there is a successor agreement in place before the August 31, 2017 [*sic*] all terms and conditions of the agreement shall become null and void." IV(639). On August 3, 2017, Vellardita sent Lee a third letter, referencing again his May 3 letter that discussed terminating the Service Agreement. IV(619 ¶ 27, 641-42). The August 3, 2017 letter, like the previous two, did not reference the Transmittal Agreement; however, the letter did contend that "[u]pon expiration [of the Service Agreement], CCEA is not only legally not obligated to transmit dues, but cannot transmit member dues to NSEA per NSEA's own Bylaws." IV(641).

The CCEA/NSEA/NEA membership year began on September 1, 2017. VII(1126 ¶ 6). As it had done in years past, CCEA collected existing and new members' dues paid through payroll deduction, including the portion that satisfied the members' obligations to NSEA and NEA. VII(1127 ¶¶ 15-16). Nevertheless, CCEA refused to remit to NSEA the NSEA/NEA portion, despite acknowledging that those monies constituted NSEA and NEA membership dues. VII(1127-28 ¶ 17); *see also* II(287 ¶ 15); V(677 ¶ 15); V(685-90) (describing check details as "NEA & NSEA DUES COLLECTED FROM MEMBERS"); V(695-711) (cataloguing collection of NEA and NSEA dues); VII(1141) (explaining that CCEA is "merely escrowing collected dues of both" NSEA and NEA); VII(1144; 1146; 1152) (CCEA

Executive Board motion to "place the dues collected on behalf of NSEA in an escrow account"); VII(1229) (explaining "[t]he money is waiting to be sent to NSEA and NEA"). Instead of transmitting the dues to NSEA, CCEA held the money in a bank account over which it had control and indicated that it would release the monies to NSEA once the parties reached a new funding arrangement under the Service Agreement that was satisfactory to CCEA. II(287 ¶ 15); V(677 ¶ 15; 692-93; 834-36) (bank records showing dues held in CCEA business checking account).

On April 25, 2018, CCEA held a membership meeting at which a majority of members in attendance voted to disaffiliate from NSEA and NEA. VII(1061; 1269; 1275; 1284). CCEA gave NSEA and NEA notice of its disaffiliation the following day, stating that it "will no longer have any contractual relationship with NSEA and NEA." VII(1061).

III. The Parties' Consolidated Lawsuits

CCEA brought suit on September 12, 2017, claiming that NSEA had breached the NSEA Bylaws by failing to provide certain information to CCEA. I(21-31). This claim was premised on the NSEA Bylaws constituting a continuing contract between CCEA and NSEA as affiliated unions. I(26-27). CCEA also requested a declaratory judgment that its termination of the Service Agreement terminated its contractual duty to transmit NEA and NSEA dues to NSEA. I(27-29).

The NSEA Parties brought the action that is the subject of this appeal on September 21, 2017, alleging breach of contract, unjust enrichment, conversion, and fraud. I(53-66). At the heart of the parties' dispute is whether CCEA's collection of NSEA and NEA dues, but refusal to remit those dues to NSEA (and, by extension, to NEA) during the 2017-2018 school year, was unlawful. On the CCEA Parties' motion, the cases were consolidated on June 27, 2018. I(4).

On June 18, 2018, CCEA brought a motion for partial summary judgment in its suit (District Court Case No. A-17-761364), seeking a ruling that it terminated the Service Agreement and Transmittal Agreement effective August 31, 2017 and that it had no duty thereafter to collect NSEA and NEA dues or to transmit those dues to NSEA under those agreements. VI(1022-29). The district court granted CCEA's motion on December 20, 2018. VI(1018-29).

Separately, the parties filed cross motions for summary judgment in the NSEA Parties' suit (District Court Case No. A-17-761884-C), which were heard on May 9, 2019. VIII(1289). The NSEA Parties moved for summary judgment on their conversion claim and their contract-based claims that CCEA breached the NEA and NSEA Bylaws. IX(1551-69). CCEA moved for summary judgment on all of the NSEA Parties' remaining claims. *Id*. The district court denied the NSEA Parties' summary judgment motion and granted CCEA's summary judgment motion in its

entirety, entering final judgment in favor of CCEA in this case (A-17-761884-C) on July 3, 2019. IX(1551-69).

Concurrently with its summary judgment motion, CCEA filed a motion to alter or amend the Injunction. CCEA's motion asked for leave to disgorge the Disputed Dues from the Restricted Account and to return the dues money to individual teachers. IX(1540-50). The district court granted that motion as well but stayed the order pending this appeal. *Id.*; IX(1574-83). The district court also stayed the proceedings in the consolidated case brought by CCEA (A-17-761364) pending appeal. I(9).

SUMMARY OF ARGUMENT

For over eight months during which it remained an NEA and NSEA affiliate, CCEA collected NEA and NSEA dues, but to gain leverage in its effort to renegotiate the Service Agreement, CCEA refused to turn over those dues to NSEA. CCEA's actions in holding those dues hostage—which CCEA frankly acknowledged it had no right to keep—breached the NEA and NSEA Bylaws and the Transmittal Agreement and constituted conversion, as a matter of law. As a result, the district court should have entered summary judgment for NSEA and NEA, not CCEA.

The contrary result below rested on multiple fundamental legal errors. First, the district court erroneously concluded that the Transmittal Agreement and Service Agreement constituted a single integrated document, such that by terminating the

Service Agreement, CCEA also terminated the Transmittal Agreement. This conclusion is unsupported by the plain language of the contracts and runs afoul basic principles of contract law. Because the Service Agreement unambiguously stated that the Transmittal Agreement entered 20 years earlier "continued without change," as a matter of law, the Transmittal Agreement was not incorporated into the Service Agreement, and the two were not integrated into one. As a result, CCEA's notice of termination of the Service Agreement did not also terminate the separate and independent Transmittal Agreement.

Second, the district court ignored the Transmittal Agreement language that deemed it automatically amended to conform to any conflicting NSEA Bylaw amendment. Thus, after NSEA amended its Bylaws in 2015 to require local affiliates to maintain a dues transmittal agreement, CCEA could only unilaterally terminate the Transmittal Agreement if a successor dues transmittal agreement were in place. Notwithstanding that CCEA remained an NSEA affiliate after it purported to terminate the Transmittal Agreement, it failed to execute a replacement contract. In light of the plain contract language and the absence of a successor agreement, the district court's conclusion that CCEA could and did unilaterally terminate the Transmittal Agreement was an additional legal error.

Even if CCEA could be deemed to have terminated the Transmittal Agreement effective September 1, 2017, the district court still should have granted

summary judgment to NSEA and NEA and denied summary judgment to CCEA on their respective breach of Bylaws claims. During the time it remained an NEA and NSEA affiliate, CCEA remained bound by the NSEA and NEA Bylaws, whether or not the Transmittal Agreement was terminated. Basic contract law principles dictate that a party may not absolve itself of its contract obligations simply by failing to perform them. Until its April 2018 disaffiliation, CCEA's duty under the Bylaws to collect and remit the NSEA and NEA portions of members' dues remained unchanged. The district court erred when concluding otherwise.

Third, wholly independent of the *contracts* that required transmittal of the NSEA and NEA membership dues, CCEA's conduct also constituted conversion. It is undisputed that CCEA collected NSEA and NEA dues from union members prior to its disaffiliation yet retained that money in bank accounts under its control rather than transmit the money to NSEA and NEA, the entities owed the dues. The district court erroneously concluded that CCEA's termination of the Transmittal Agreement somehow also extinguished NSEA's and NEA's legal right to the monies paid by NSEA and NEA members for their membership in the state and national unions.

This conclusion ignored the fundamental distinction between NSEA and NEA's property rights to the dues teachers paid in satisfying their NEA and NSEA membership obligation, and NSEA and NEA's separate contractual right against CCEA to enforce the process by which CCEA had to *transmit* those dues. The

conversion claim (and corresponding unjust enrichment claim) rests on NSEA's and NEA's property interest in those dues, a legal interest that cannot be extinguished by CCEA.

Finally, the district court erred in granting summary judgment to CCEA on the fraud claim asserted by individual teacher members. According to the district court, as a matter of law, the teachers could not satisfy the damages element of fraud because CCEA represented that it would refund the dues it had induced them, through its misrepresentation, to pay. An alleged wrongdoer such as CCEA cannot avoid liability for its wrongdoing by promising to make the victims whole at some point in the future. Because the district court's conclusion was not only legally erroneous but also defied common sense, summary judgment in favor of CCEA must be reversed. At a minimum, genuine issues of material fact remain that foreclose summary judgment on the teachers' fraud claim.

ARGUMENT

I. Standards of Review

Courts may grant summary judgment only where the movant shows that there is "no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." NRCP 56(c). The district court's orders granting summary judgment to CCEA Parties on all claims brought by NSEA Parties are subject to *de novo* review. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026,

1029 (2005). This Court independently reviews both the district court's factual findings and legal conclusions, and no deference is due to the findings of the district court. *Id*. Similarly, contract interpretation is a matter of law subject to *de novo* review. *Grand Hotel Gift Shop v. Granite State Ins. Co.*, 108 Nev. 811, 815, 839 P.2d 599, 602 (1992).

II. The District Court Erred in Granting Summary Judgment to the CCEA Parties on Termination of the Dues Transmittal Agreement

The district court granted partial summary judgment to CCEA based on the erroneous premise 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." VI(1027 ¶ 34) (emphasis added). To reach this conclusion, the district court determined that the Service Agreement and Transmittal Agreement "are a single integrated agreement that allows either party to unilaterally terminate and seek to renegotiate the terms of the agreement." VI(1024 ¶ 15). From this flawed proposition, the district court erroneously found that CCEA effectively terminated the purportedly integrated agreement through its May 3, July 17, and August 3, 2017 letters. VI(1027 ¶¶ 32-33).

Compounding this error, the district court incorrectly concluded that CCEA's written notices regarding the Service Agreement unambiguously must be read, as a matter of law, to have terminated both the Service Agreement and the Transmittal

Agreement. VI(1025 ¶¶ 32-33). The district court also ignored the Transmittal Agreement's provision that yielded to any conflicting amendments to the NSEA Bylaws. *See id.* Where the record shows that the NSEA Bylaws were amended in 2015 specifically to mandate locals like CCEA to maintain a dues transmittal agreement as an affiliation requirement, the district court's interpretation of the Transmittal Agreement cannot stand. VII(1056-57, 1105).

A. The Transmittal Agreement and Service Agreement Are Not a Single Integrated Agreement

The district court's conclusion that the Transmittal Agreement and Service Agreement constituted "a single integrated agreement" contravenes the language of both documents and fundamental rules of contract construction. Under Nevada law, merely appending one agreement to another does not alone make them a single contract. *See*, *e.g.*, *MMAWC, LLC v. Zion Wood Obi Wan Trust*, 135 Nev. Adv. Op. 38, 448 P.3d 568, 572 (2019) (looking at the plain language of two agreements to determine if the parties intended to incorporate one into the other); *Collins v. Union Fed. Sav. & Loan Ass'n*, 99 Nev. 284, 292, 662 P.2d 610, 615 (1983) (same). In *MMAWC*, the Court deemed a contract incorporated by reference because one agreement clearly and expressly stated that the other is "attached hereto and *incorporated herein*." *MMAWC*, 448 P.3d at 572 (emphasis added). Those are not the facts here.

Similarly, one contract's mere reference to an earlier contract does not automatically incorporate the referenced contract terms. *See generally Bank of Columbia v. Patterson's Adm'r*, 11 U.S. 299, 304 (1813) ("It is quite impossible to contend that the mere recital of a prior, in a later agreement, after it has been executed, extinguishes the former").

> A new contract with reference to the subject matter of a former one does not supersede the former and destroy its obligations, *except in so far as the new one is inconsistent therewith*, when it is evident from an inspection of the contracts and from an examination of the circumstances that the parties did not intend the new contract to supersede the old, but intended it as supplementary thereto.

Acequia, Inc. v. Prudential Ins. Co. of Am., 226 F.3d 798, 803 (7th Cir. 2000), quoting *Silver Syndicate, Inc. v. Sunshine Mining Co.*, 611 P.2d 1011 (Idaho 1979) (emphasis in original) (internal quotations omitted).

Rather, contracts will generally be "construed together" only if the "separate instruments [are] so interrelated as to be considered one contract." *R.W.L. Enters. v. Oldcastle, Inc.*, 226 Cal. Rptr. 3d 677, 683 (Cal. Ct. App. 2017) (quotation marks omitted). And that determination "depends on the parties' intent as it existed at the time of contracting," such that for one contract to be incorporated into or subsumed by another "the reference must be clear and unequivocal." *Id*. at 683. Thus, courts will consider terms incorporated into a contract if "'[t]he incorporating contract[ ] use[s] language that is express and clear, so as to leave no ambiguity about the identity of the document being referenced, nor any reasonable doubt about the fact

that the referenced document is being incorporated into the contract.'" *Royer v. Baytech Corp.*, No. 3:11-CV-00833-LRH-WGL, 2012 WL 3231027, at *4 (D. Nev. Aug. 3, 2012) (quoting *Northrop Grumman Info. Tech., Inc. v. United States*, 535 F.3d 1339, 1344 (Fed. Cir. 2008)).

Here, the 1979 Transmittal Agreement was attached to the 1999 Service Agreement as an addendum, but the Service Agreement did *not* state that the Transmittal Agreement or its terms were incorporated into, subsumed, or terminated by the newer agreement. IV(628-35). To the contrary, the Service Agreement expressly stated that Transmittal Agreement "*is continued without change*." IV(628) (emphasis added). Given this language, the district court contravened basic contract law when concluding, as a matter of law, that the Transmittal Agreement and Service Agreement became a single integrated agreement. *See MMAWC*, 448 P.3d at 572; *R.W.L. Enters.*, 226 Cal. Rptr. 3d at 683.

Other provisions of the two agreements reinforce their retained separateness. For example, while the Service Agreement may be terminated only upon notice by a party 30 days prior to the anniversary date of the agreement, the Transmittal Agreement requires only that termination be made in writing prior to September 1 of the membership year. *Compare* IV(631) *with* IV(625). Additionally, the Transmittal Agreement contains a provision that it is "automatically amended to reflect," *inter alia*, conflicting provisions of the NSEA Bylaws, as amended.

IV(634). The Service Agreement, by contrast, contains no such language. IV(628-31).

In other words, the Service Agreement reveals no "express and clear" statement incorporating or subsuming the Transmittal Agreement. *Royer*, 2012 WL 3231027, at *4. In the absence of such an express statement, it was error for the district court to conclude as a matter of law that the two contracts were "a single integrated agreement." VI(1024 ¶ 15). Indeed, the plain language of the Service Agreement that the Transmittal Agreement "continues without change" compels the opposite result. *See Acequia*, 226 F.3d at 803; *cf. MMAWC*, 448 P.3d at 572.

The district court's conclusion is even less defensible in the face of each agreement's purpose and structure. The Service Agreement's stated purpose was to "identify[] basic levels of services and assistance to be provided … *to CCEA by NSEA* . . . [and] to set forth understandings and responsibilities of NSEA and CCEA *regarding the delivery of those services*." IV(628) (emphasis added). By contrast, CCEA entered into the Transmittal Agreement "for the purpose of collecting and transmitting" NSEA and NEA dues, and it was through the Transmittal Agreement that NSEA designated CCEA as 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 [CCEA]." IV(623). For this reason as well, the district court should have reached the conclusion that the agreements were not

integrated, and summary judgment for CCEA should be reversed. *See R.W.L. Enters.*, 226 Cal. Rptr. 3d at 683; *Margrave v. Dermody Props., Inc.*, 110 Nev. 824, 827, 878 P.2d 291, 293 (1994) (citation omitted) (reversing grant of summary judgment where several pertinent contract terms referred to "rights" without specifying rights to which they referred).

B. CCEA's Written Communications Prior to September 1, 2017 Evidenced Only an Intent to Terminate the Service Agreement, not the Transmittal Agreement

Because the Service Agreement and Transmittal Agreement cannot, as a matter of law, be considered "a single integrated agreement," CCEA's May 3, July 17, and August 3, 2017 letters purporting to terminate the Service Agreement effective August 31, 2017 were insufficient to adequately notify NSEA and NEA that CCEA intended to terminate the Transmittal Agreement. IV(637-642).

Given the potentially severe impact on bilateral contractual relationships, courts strictly construe contract provisions that give one party the unilateral right to terminate a contract relationship. Different courts articulate the standard slightly differently, but they uniformly require that a party seeking to terminate a contract according to its terms must do so clearly for the termination to be effective. *See, e.g.*, *Cedar Rapids Television Co. v. MCC Iowa LLC*, 560 F.3d 734, 739 n.4 (8th Cir. 2009) ("a notice of termination must be clear, definite, unambiguous and unequivocal" (quotation marks omitted)); *Wells v. 10-X Mfg. Co.*, 609 F.2d 248, 256

(6th Cir. 1979) ("under the law of Michigan a notice to rescind or terminate a contract must be clear and unambiguous, with the unquestionable purpose of insisting on the rescission.") (interpreting Michigan law); *T.P. Leasing Corp. v. Baker Leasing Corp.*, 732 S.W.2d 480, 482 (Ark. 1987) ("notice of termination, in order to be effective, must be clear, unambiguous, and unequivocal"); *Stovall v. Publishers Paper Co.*, 584 P.2d 1375, 1377 (Or. 1978) ("a notice of the rescission or termination of a contract, to be effective as such, must be clear and unambiguous, conveying an unquestionable purpose to insist on the rescission" (quotation marks omitted)).

When a party is less than clear about its termination, summary judgment should be denied. *See Benefit Servs. of Ohio, Inc. v. Trumbull Cty. Comm'rs*, No. 2003-T-0045, 2004 WL 2376479, at *7-8 (Ohio Ct. App. Oct. 22, 2004) (concluding that "a genuine issue of material fact [existed] as to the issue of termination" where the letters allegedly terminating the contract did not appear to have actually provided "written notice of termination"); *see also Trinity Health v. N. Cent. Emergency Servs.*, 662 N.W.2d 280, 286 (N.D. 2003) (assessing whether a series of ambiguous communications constituted a termination of the contract, and concluding that "[n]ot only can rational arguments be made for different interpretations of the contract, there are genuine issues of material fact about . . . whether or not Trinity Health terminated the contract. Those issues preclude summary judgment.").

The district court did not identify the language on which it relied to find that CCEA provided notice of the Transmittal Agreement's termination, and the three letters in question do not reference the Transmittal Agreement, much less give the necessary written notice of its termination. IV(637-642). Rather, those three letters purport only to terminate the 1999 Service Agreement. IV(637) (May 3, 2017 letter) (referencing terms of Service Agreement and stating, "Please accept this letter as our formal notice of termination of the *Service Agreement*." (emphasis added)); IV(639) (July 17, 2017 letter) (giving notice that CCEA was terminating the Service Agreement between CCEA and NSEA); IV(641-42) (August 3, 2017 letter)) (referencing two prior letters' requests to renegotiate Service Agreement, and noting "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").

The letters do not mention the Transmittal Agreement at all. IV(637-642). Nothing in these three letters, therefore, satisfies the clear, definite and unambiguous notice that unilateral termination traditionally requires. *See Cedar Rapids Television*, 560 F.3d at 739 n.4. As a result, the district court's conclusion that CCEA terminated the Transmittal Agreement as a matter of law should be reversed. VI(1027).

C. Because the Transmittal Agreement Was Automatically Amended by the 2015 NSEA Bylaws Amendment, CCEA Was Required to Execute a Successor Dues Transmission Agreement as a Condition of Terminating the Transmittal Agreement

Even assuming the district court could have found as a matter of law that CCEA's notice of its intent to terminate the Service Agreement was somehow sufficient to notify NSEA/NEA that it was also terminating the Transmittal Agreement, the district court erred by failing to consider, much less give effect to, the conflicting requirements of the 2015 NSEA Bylaw amendment. The NSEA and NEA Bylaws are enforceable contracts among affiliated unions. *See generally United Ass'n of Journeymen & Apprentices of the Plumbing and Pipefitting Indus. v. Local 334*, 452 U.S. 615, 619-21 (1981). Because Nevada courts may look to the circumstances surrounding its adoption in discerning the meaning of a contract term, *see Washoe Cty. Sch. Dist. v. White*, 133 Nev. 301, 303-04, 396 P.3d 834, 838 (2017), the impetus for the 2015 amendment is relevant here.

The record reflects that, in 2015, shortly after CCEA had threatened to withhold NSEA and NEA dues unless NSEA provided CCEA additional financial support, the NSEA Delegate Assembly (which included CCEA delegate representatives) adopted a bylaw amendment to require that all affiliates have "a dues transmittal contract with NSEA" as an affiliation requirement. VII(1104-5, 1113). This provision is crucial, as NSEA amended its Bylaws to require all local affiliates to maintain a dues transmittal agreement in order to avoid the precise type

of gamesmanship in which CCEA was engaging. VII(1056-57 ¶¶ 14-16). The district court's ruling would permit CCEA to have remained an NSEA affiliate (as it did through April 2018) without maintaining a dues transmittal agreement, in direct conflict with the 2015 amendment to the NSEA Bylaws. VII(1056-57 ¶¶ 14-16).

Here, the Transmittal Agreement and the Bylaws each and together created a dues collection-agent relationship between NSEA and CCEA. IV(623-25), VII(1104-05). Consistent with those purposes and interests in maintaining uniform guidance in the affiliation relationship, the Transmittal Agreement included the following provision:

> [AMMENDMENT [*sic*] 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*.

IV(625) (emphasis added). Stated differently, the Transmittal Agreement itself requires that its terms—including the termination provision—give way to conflicting provisions in the NSEA Bylaws. *Id.*

The district court disregarded that the Transmittal Agreement adopted and, by its clear language, automatically conformed to any conflicting NSEA Bylaw

amendments. IV(625). Yet courts are to give express and unequivocal adoption-by-reference provisions their intended effect. *See Univ. of Nev. v. Stacey*, 116 Nev. 428, 432, 997 P.2d 812, 814 (2000) (treating "administrative documents," including organizational bylaws, as incorporated by reference into contract); *Orleans Hornsilver Mining Co. v. Le Champ D'Or French Gold Mining Co.*, 52 Nev. 92, 284 P. 307, 309 (1930); *see also Royer*, 2012 WL 3231027, at *4 (finding terms of second document as being imported into contract because it did so in "express and clear" terms, and left "no ambiguity about the identity of the document being referenced, nor any reasonable doubt about the fact that the referenced document is being incorporated into the contract").

Given that the Transmittal Agreement clearly incorporates and must yield to any bylaw amendments, it must be read to limit the unilateral termination right to those circumstances that comply with the 2015 NSEA Bylaw Amendment – namely, where a successor or replacement dues transmittal agreement is in place. *See Univ. of Nev.*, 116 Nev. at 432, 997 P.2d at 814. Because there was no successor dues transmittal agreement in place, the district court erred in finding that CCEA could and did terminate the Transmittal Agreement.

III. The District Court Erred in Granting Summary Judgment to the CCEA Parties and Denying Summary Judgment to NEA and NSEA on the Contract-Based Bylaws Claims

The district court's summary judgment rulings in CCEA's favor on the NSEA and NEA Bylaws claims rested on the incongruous proposition that, *because* CCEA terminated the Transmittal Agreement effective September 1, 2017, and *because* doing so was inconsistent with both the NEA and NSEA Bylaws, CCEA was freed from its contract obligations in the Bylaws that bind every NEA and NSEA affiliate. IX(1565 ¶¶ 59-63). As articulated by the district court, "But-for the Service and Dues Transmittal Agreements (which this Court found expired on August 31, 2017, due to CCEA's termination), CCEA is not subject to the NSEA/NEA Bylaws, nor are NSEA/NEA parties to the CCEA Bylaws." IX(1565 ¶ 60). The district court gave no explanation for this conclusion, and no plausible explanation exists for how CCEA could remain an NSEA/NEA affiliate, yet not be subject to their Bylaws.

To the extent one can guess the district court's reasoning, the ruling appears to be based on the unsupported notion that because the NSEA and NEA Bylaws required local affiliates to maintain a dues transmittal agreement with NSEA, nonperformance of that duty itself provided CCEA license to be treated as "not subject to" the contractual obligations of the Bylaws. IX(1565 ¶ 60). But nothing in either set of Bylaws provides local affiliates such a right. *See generally* VII*(*1090-1110, 1191-1221). And basic contract law principles preclude that result.

To permit a breaching party to deem a contract terminated *because of its own breach*, notwithstanding the detriment to the non-breaching party, turns basic contract law on its head. "It would seem to be elementary that, where a contract contemplates action by a party, he cannot absolve himself of liability by failing or refusing to take the action." *Stevens v. Howard D. Johnson Co.*, 181 F.2d 390, 393 (4th Cir. 1950); *see also In re Peanut Crop Ins. Litig.*, 524 F.3d 458, 474 (4th Cir. 2008) ("'It is a principle of fundamental justice that if a promisor is himself the cause of the failure of performance . . . of a condition upon which his own liability depends, he cannot take advantage of the failure'" (quoting *Fuller Co. v. Brown*, 15 F.2d 672, 678 (4th Cir. 1926) (quoting 2 *Williston on Contracts* ¶ 677)); *See also generally* Restatement (Second) of Contracts § 235(2) ("When performance of a duty under a contract is due any non-performance is a breach.").[1]

Where CCEA continued to consider itself a party to the NSEA and NEA Bylaws—and sought to assert rights under the Bylaws—up until its disaffiliation on

[1] And even were the continuing existence of an agreement between CCEA and NSEA a "condition" of either the NEA or NSEA Bylaws—which it is not, *see infra* n.2—CCEA's nonfulfillment of that condition may be treated by NEA and NSEA both as a breach of CCEA's duties *and* a precondition to *NEA's* and *NSEA's* obligations under the Bylaws, not as a precondition to CCEA performing its own duties. *See, e.g., Weber v. N. Loup Pub. Power and Irrigation Dist.*, 854 N.W.2d 263, 273 (Neb. 2014) ("A term can be both the duty to be performed under a contract and a condition precedent to a contractual counterparty's duty. . . . In general, the result of the nonfulfillment of a condition is that the other party's liability is discharged, whereas the nonperformance of a promise gives the other party a damages remedy." (citing Restatement (Second) of Contracts §225(3))).

April 25, 2018, it could not sidestep its obligations under the Bylaws simply by purporting to terminate the Transmittal Agreement. I(87 ¶ 26), IV(589 ¶¶ 60-64).

A. CCEA Remained a Local Affiliate and Party to the NEA and NSEA Bylaws Until CCEA's Disaffiliation on April 25, 2018

In that CCEA did not disaffiliate until April 25, 2018, prior to that time, it remained a local affiliate of NSEA and NEA and subject to their respective Bylaws. IX(1559 ¶ 28). The NEA and NSEA Bylaws are enforceable contracts that bound CCEA during the time it was their local affiliate. *See generally United Ass'n of Journeymen & Apprentices*, 452 U.S. at 619-21.

The undisputed evidence demonstrates that all parties, including CCEA, considered CCEA a party to, and bound by, the NSEA and NEA Bylaws until its disaffiliation in April 2018. VI(1007 ¶ 7); VII(1269; 1275; 1284); *compare* VII(1084 Art. X § 1) *with* VII(1175 Art. X § 1) (after disaffiliation CCEA amended the provisions of its own Bylaws that required affiliation with NEA and NSEA and that made CCEA subject to their Bylaws). Indeed, not until its April 26, 2018 letter notifying NSEA and NEA of its immediate disaffiliation did CCEA announce that, "effective immediately CCEA is no longer affiliated with [NSEA] and [NEA] and accordingly, we will *no longer* have any contractual relationship with NSEA and NEA." VII(1061) (emphasis added). In other words, CCEA admitted that, until it disaffiliated, it had contractual obligations under the Bylaws to its state and national affiliates. *See id.*

Even after it purported to terminate the Transmittal Agreement, CCEA still recognized its continued contractual commitments under the NSEA Bylaws. For example, CCEA's own 2017 complaint asserted claims for breach of the NSEA Bylaws, alleging (using the present tense) that "CCEA *is* a local affiliate of the NSEA" and "[t]he bylaws of the NSEA *constitute* a contractual relationship between the NSEA and its local affiliate, the CCEA[.]" I(24 ¶ 14, 26 ¶ 26, 35 ¶ 14, 37 ¶ 26, 85 ¶ 14, 87 ¶ 26) (emphasis added); *see also* I(102-03 ¶¶ 35, 39); II(193-94 ¶¶ 60, 64); II(236-37 ¶ 60, 64); IV(589 ¶¶ 60, 64) (CCEA admitting that the NSEA and NEA Bylaws represented contracts binding on NEA and NSEA-affiliated unions); *see also* II(210-15, 253-57) (CCEA counterclaims relying on NSEA Bylaws); IV(606 ¶ 75) (alleging "CCEA and NEA have a special contractual relationship in that the CCEA is a local affiliated labor organization of the statewide labor organization NSEA"); II(270-78) (filing for a preliminary injunction against NSEA to enjoin NSEA from amending NSEA's Bylaws, alleging that the challenged amendment infringed on CCEA's contractual rights as affiliate under NSEA Bylaws and, if injunction not granted, CCEA *would be subject to NSEA Bylaws as amended*). This evidence cannot be squared with the district court's conclusion that CCEA's termination of the Service Agreement and Transmittal Agreement somehow released CCEA from its contractual obligations under the NSEA and NEA Bylaws. IX(1565 ¶ 60).

B. CCEA Breached the NEA Bylaws

In that CCEA remained bound by the NEA Bylaws until it disaffiliated on April 25, 2018, its conduct must, as a matter of law, be deemed a contract breach. Section 2-9 of the NEA Bylaws sets forth the "Dues Transmittal and Enforcement Procedures," which provide:

> 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.

VII(1199-1200) (emphasis added). NEA's representative submitted an affidavit in the district court explaining that the purpose of section 2-9 is to regulate the relationship of the parent organization (NEA) with its state and local affiliates with respect to the affiliates' financial duties to the parent organization under the unified membership structure. VII(1187 ¶¶ 9-14). A court's review of "a union's interpretation of its own governing documents and regulations is highly deferential."

Bldg. Material & Dump Truck Drivers, Local 420 v. Traweek, 867 F.2d 500, 511 (9th Cir. 1989).

Section 2-9(a) of the NEA Bylaws imposed two duties on CCEA: (a) CCEA had "full responsibility" to transmit to NSEA the NEA and NSEA dues it collected, *and* (b) CCEA had a duty to maintain a contract with NSEA pursuant to which it would carry out its dues transmission duties. VII(1199-1200). By remaining a local affiliate until April 25, 2018 and continuing to collect, but refusing to transmit, the NEA and NSEA dues, CCEA was in direct violation of these contract obligations.

CCEA's failure to transmit the NEA and NSEA dues placed it in breach of Section 2-9(b) as well. Section 2-9(b) imposes a mandatory default transmission schedule, requiring that a local affiliate like CCEA "*shall*" transmit 40% of the dues by March 15 and 70% of the dues by June 1 of the school year. VII(1200) (emphasis added). The word "shall" is an unambiguous command. *See Adkins v. Oppio*, 105 Nev. 34, 37, 769 P.2d 62, 64 (1989). While the final independent clause of section 2-9(b) provides state and local affiliates leeway to alter the default *measurement date* for determining the membership count to which the 40% and 70% transmittal obligations refer, the local's obligations to *make* the 40% and 70% dues transmittals in March and June are not subject to alteration by the local and state affiliates. VII(1200). CCEA's failure to transmit NSEA and NEA members' dues for the 2017-

2018 membership year was in breach of sections 2-9(a) and 2-9(b) of the NEA Bylaws.

C. If CCEA Terminated the Transmittal Agreement, CCEA Breached the NSEA Bylaws

Assuming *arguendo* that CCEA terminated the Transmittal Agreement effective September 1, 2017 (which the NSEA Parties dispute), CCEA breached the NSEA Bylaws from that time until its disaffiliation on April 25, 2018. Article VIII, section 3 of the NSEA Bylaws provides that "NSEA shall affiliate a local association when it meets the following minimum standards . . . *Have a dues transmittal contract with NSEA*." VII(1104-05) (emphasis added). Based on this plain language, CCEA itself admitted that, *even after* it purported to terminate the Transmittal Agreement, a "dues remittance contract is required by NSEA's by-laws." VII(1120-22).

The history of this bylaw provision further confirms this reading. As noted above, the genesis of the 2015 NSEA Bylaw amendment was to address CCEA's 2014 threat to withhold from NSEA dues money collected on NSEA's behalf and to "place NSEA in compliance with the NEA Bylaws." *See supra* at 11. If the district court's ruling that CCEA effectively terminated the Transmittal Agreement effective September 1, 2017 is not reversed, then in addition to breaching the NEA Bylaws, CCEA also breached the NSEA Bylaws by failing to maintain a dues agreement for the 2017-2018 membership year.

D. The District Court's Basis for Ruling That "CCEA [Was] Not Subject to the NSEA/NEA Bylaws" Defies Common Sense

The district court's conclusion that CCEA could evade its affiliate obligations under the Bylaws by terminating the Transmittal Agreement turns contract principles on their head. The notion that one may escape one's contractual obligations merely by refusing to perform them is simply incorrect: Failing to perform a duty under a contract does not permit the non-performing party to terminate its obligations under the contract; rather, it renders the non-performing party in breach. Restatement (Second) of Contracts § 235(2) ("[W]hen performance of a duty under a contract is due, any non-performance is a breach."); *accord Franconia Assocs. v. United States*, 536 U.S. 129, 143 (2002); *see also Goldston v. AMI Invs., Inc.*, 98 Nev. 567, 569, 655 P.2d 521, 523 (1982) (failure to tender timely performance constituted breach of contract).

In other words, the district court's conclusion that "[b]ut-for the Service and Dues Transmittal Agreements (which this Court found expired on August 31, 2017, due to CCEA's termination), CCEA is not subject to the NSEA/NEA Bylaws" has it *exactly backwards*. IX(1565 ¶ 60). The existence of a dues transmittal agreement is not a condition precedent to the enforceability of the NEA and NSEA Bylaws. Rather, CCEA's obligation to maintain a dues transmittal agreement stemmed from its then-*existing* duties under the NEA and NSEA Bylaws.

CCEA could not rely on its own nonperformance of a contract obligation to create some implied "condition precedent" to nullify the contract it failed to perform. *See generally NGA #2 LLC v. Rains*, 113 Nev. 1151, 1157-59, 946 P.2d 163, 167-68 (1997) (if one party's breach of contract obligation, performance of which is a condition precedent to second party's performance, *second* party's –not first party's– performance may be excused by the first party's breach). The law is clear that a party cannot rely on the non-occurrence of a condition to excuse its own performance obligations if it had responsibility for that non-occurrence. *See* Restatement (Second) of Contracts § 245 (1979) ("Where a party's breach by non-performance contributes materially to the non-occurrence of a condition of one of his duties, the non-occurrence is excused"); *NLRB v. Local 554, Graphic Comms. Int'l Union*, 991 F.2d 1302 (7th Cir. 1993) (because local union did not present ratified collective bargaining agreement to international union for approval, local was precluded from relying on international's non-approval of agreement for failure to perform its obligations under agreement, even if international's approval was condition to agreement's validity) (citing Restatement (Second) §245). *See also supra* at 32-33.[2] The district court's contrary conclusion is the proverbial "tail wagging the dog."

[2] The district court made no findings as to whether the dues transmittal agreement obligation imposed on local affiliates was a "condition precedent," and courts are loath to find promises to be "conditions precedent." *See generally Standard Oil of Cal. v. Perkins*, 347 F.2d 379, 382 (9th Cir. 1965) (unless parties clearly state that a contract promise constitutes a condition precedent, a court will not imply that it is).

So long as CCEA remained an affiliate of NEA and NSEA, which it undisputedly did until April 25, 2018, it remained obligated to comply with the NEA and NSEA Bylaws. The district court's holding that CCEA was not bound by the NSEA and NEA Bylaws after September 1, 2017 constitutes reversible error. Given that this was the only basis for denying NEA and NSEA's summary judgment motion as to their Bylaws claims, summary judgment should have been entered in their favor.

IV. The District Court Erred in Granting Summary Judgment to the CCEA Parties and Denying Summary Judgment to the NSEA Parties on the Conversion Claim

The district court's summary judgment rulings on the NSEA Parties' conversion claim rested on the erroneous premise that, absent a contract right under the Transmittal Agreement, NSEA and NEA had no other legal interest in the Disputed Dues. IX(1562 ¶¶ 42-46). This conclusion confuses NSEA's and NEA's property interest in the Disputed Dues with CCEA's contractual obligation to transmit them.

A claim for conversion arises when a party exerts wrongful "dominion over another's personal property or wrongful interference with the owner's dominion." *Larson v. B.R. Enters., Inc.*, 104 Nev. 252, 254, 757 P.2d 354, 356 (1988) (quoting

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In any event, even if the dues contract maintenance obligation *was* a condition precedent, it would have excused only NEA and NSEA, *not CCEA*, from performing their duties under the Bylaws. *See supra* n.1.

Bader v. Cerri, 96 Nev. 352, 357 n.1, 609 P.2d 314, 317 n.1 (1980)). This includes circumstances in which one party obtains another's property without permission and exercises dominion over it in a manner that wrongfully interferes with the other's right over the property. *See WMCV Phase 3, LLC v. Shushok & McCoy, Inc.,* 750 F. Supp. 2d 1180, 1195-96 (D. Nev. 2010) (conversion arising from wrongful collection of, and failure to remit, funds meant for another party). Conversion also arises when one originally obtains possession of property lawfully but fails to remit that property to its rightful owner. *See* Restatement (Second) of Torts § 237 (bailee who refuses to surrender chattel on demand is liable for conversion).

Independent of any contract-based obligation, therefore, the tort of conversion recognizes the duty not to take or keep another's property without consent. *See e.g., Giles v. Gen. Motors Acceptance Corp.*, 494 F.3d 865, 880 (9th Cir. 2007) (under Nevada law, party withholding property in arguable violation of contract could be separately liable for conversion); *see also Yeiser Research & Dev. LLC v. Teknor Apex Co.*, 281 F. Supp. 3d 1021, 1051 (S.D. Cal. 2017) ("[C]laims for unjust enrichment, conversion, and unfair competition generally do not require the existence of a contract."). Thus, in *Giles*, the Ninth Circuit, applying Nevada law, confronted a conversion claim brought by a car dealership against its financing company. 494 F.3d at 880. The financing company had placed a hold on the dealership's open accounts after the dealership failed to pay the financing company

certain amounts owing on vehicles that had been sold or leased. *Id*. at 879. The dealership contended that the financing company had no right to hold funds in its open accounts, alleging conversion. In its defense, the financing company argued the conversion claim was "intertwined with the parties' prior contracts" and therefore should be dismissed. *Id.* at 880. The Ninth Circuit rejected this argument, holding that the financing company had "an independent duty imposed under tort law not to take [the dealership's] property without legal authority to do so." *Id*.

Even more on point here is the Nevada federal district court decision in *Hester v. Vision Airlines, Inc.*, No. 2:09-cv-0117-RLH-RJJ, 2011 WL 856871 (D. Nev. Mar. 9, 2011), which applied Nevada law to conclude that plaintiffs asserted a viable conversion claim even though they were unaware of diverted funds earmarked for them. In *Hester*, the court held that an employer airline could be held liable for conversion when it retained money earmarked by a third party for the airline's employees. *Id*. at *3. Third-party contractors provided the employer (Vision Airlines) money to be directed as hazard pay towards Vision's employees (crewmembers who worked flights traveling in and out of Afghanistan and Iraq). *Id*. at *1. Although no contract existed between Vision and its employees respecting this money (and no contract at all between the employees and the third-party contractors), *id*. at *2-3, it was sufficient for purposes of conversion liability that Vision "knew and understood" it had received the earmarked funds "for the benefit

of those employees who served a[s] crew members on-board the flights to Baghdad and Kabul [but] wrongfully retain[ed] that money for its own benefit," *id*.

Here, NSEA's and NEA's conversion claim arose from CCEA's refusal to remit NSEA and NEA dues that CCEA collected from NSEA and NEA members from September 2017 until CCEA's disaffiliation on April 25, 2018. IV(663-64 ¶¶ 10-12). During that time, the members indisputably remained NSEA and NEA members. *See, e.g.,* II(276-78) (CCEA describing harm to members from proposed NSEA Bylaws amendment); VII(1229) (CCEA explaining members have the "benefits of all three entities," in response to teacher's concern that he was not a member of NSEA/NEA). On that basis alone, the NSEA/NEA dues collected by CCEA are the property of NSEA and NEA. *See* Restatement (Second) of Torts § 237.

In the Injunction, Judge Kishner described these Disputed Dues as money received by CCEA "for the 2017-2018 school year in respect to NSEA dues . . . and in respect to NEA dues." III(518). Nevertheless, in granting summary judgment in CCEA's favor on the conversion claim, Judge Earley incorrectly interpreted the Membership Authorization Form signed by teachers for membership in all three affiliated unions to conclude that "NSEA/NEA are not the rightful owners of, and have no legal or equitable right to, the [Disputed Dues]." IX(1562 ¶ 46). The district court's rationale for this conclusion is not supported by the facts or the law.

A. The Membership Authorization Form Supports the NSEA Parties' Position That CCEA Exercised Unlawful Dominion Over the Disputed Dues

The district court's reliance on the Membership Authorization Form to grant summary judgment for CCEA on NSEA/NEA's conversion claim failed to acknowledge the unified membership structure the form effectuated. By executing the form, teachers and other CCSD personnel joined NEA, NSEA, and CCEA and committed to pay annual union dues to each in return for their membership in all three organizations. III (552-57), VI(1003), VII(1126-27 ¶¶ 10-12). Members signed the Membership Authorization Form to confirm their membership in, and to authorize the deduction from their paycheck of membership dues owed to, all three unions. III(552-57), VI(1003). Despite this plain purpose, the district court inexplicably concluded that the form "is only between CCEA and the individual members." IX(1562 ¶ 44). Based on that faulty premise, the district court then jumped to the conclusion that NSEA and NEA had no legal right to dues money CCEA collected on their behalf pursuant to their members' authorization. *Id*. ¶ 46.

In addition to undermining the purpose of the form, the district court's conclusion is contradicted by the form's language. The form includes "Nevada State Education Association" and "National Education Association" at the top of the page and displays their logos. III(552-57), VI(1003). Some, but not all, of the authorization forms also contain CCEA's logo. *Id*. The form states that failure to fill

out demographic information requested "will in no way affect your membership status, rights or benefits in NEA, NSEA, or CCEA." *Id*. The only inference that can be drawn from the membership form is that by executing their membership, teachers were enrolling in NEA, NSEA and CCEA and accepting the attendant membership dues obligations. *See id.*

Additionally, teachers must execute the membership form in triplicate, with one copy specifically designated for NSEA. III(552-557). The form also includes provisions to authorize additional voluntary withdrawals apart from mandatory dues specifically to NEA and NSEA programs but assures that declining to authorize these voluntary NEA and NSEA withdrawals will not affect a member's rights in NSEA or NEA. *Id*. The membership forms were distributed and collected on behalf of NSEA and NEA, in addition to CCEA, by agents representing all three unions. VI(1032 ¶¶ 3-5).

These features of the authorization form reflect the unified membership structure, under which members in CCEA were (until disaffiliation) also required to maintain membership in NSEA and NEA, with concomitant obligations to each association. *See supra* at 8-10. And it is undisputed that the union membership relationship—and its attendant dues payment obligations—constitute a binding contract between the member and each of the three affiliated unions they joined. *See Int'l Ass'n of Machinists v. Gonzales*, 356 U.S. 617, 618-19 (1958) (discussing that

"membership in a labor union constitutes a contract between the member and the union"). In that the Membership Authorization Form reflected the unified membership relationship among the unions, the district court incorrectly relied on the form for its mistaken conclusion that the NEA and NSEA dues collected from members by CCEA were not legally owed to NSEA and NEA.

B. CCEA's Own Statements Demonstrate its Recognition of NSEA's and NEA's Legal Interest in the Disputed Dues

The record is peppered with CCEA's admissions that NEA and NSEA had the legal right to the dues CCEA collected on their behalf. *See, e.g.*, III(386, 391, 402) (CCEA representative's testimony that it had been collecting *NSEA and NEA* dues and could only lower members' dues obligation (representing 70% of the members' dues) by disaffiliating from NSEA and NEA; upon CCEA's disaffiliation, "it would no longer need [sic] to collect 70 percent of the current amount that a member pays"); *see also* II(252 ¶ 31), IV(604-05 ¶ 57) (allegations in CCEA's pleadings that the dues it was withholding were dues members designated as NSEA and NEA dues, that "funds in this restricted account are subject to the resolution of this litigation *and will be disbursed to the NSEA and the NEA upon completion of this litigation*," and that "Since September 1, 2017, *Dues designated for NSEA* in the amount of 0.6 percent of the teachers' average salary and *dues money for NEA* have been deducted from paychecks of the licensed professionals of the Clark County School District and have been placed in a restricted account…." (emphasis added)).

CCEA made similar representations to the member teachers. VII(1141). During the litigation, CCEA's Executive Director assured members that their NEA and NSEA membership was not endangered by CCEA temporarily keeping the NSEA and NEA membership dues the teachers had paid:

> Currently, CCEA is in litigation with NSEA and NEA, and merely escrowing collected *dues of both organizations* while negotiating a successor dues transmittal agreement pursuant to the terms of the agreement and in accordance with NSEA/NEA Bylaws and Policies. . . . Dues are not a requirement for 'active' NSEA or NEA membership, where the *dues have been paid*, but held in escrow pending a negotiation of a successor Dues Transmittal Agreement.

VII(1141) (emphasis added); *see also* VII(1144) (CCEA counsel representing that a bank account had been established "to hold *NSEA and NEA dues money*," that "the dues money *for NSEA and the NEA* was placed into" the account, and that "[a]ll of the *NSEA and NEA dues money* deducted from employee pay checks" was being placed into the account).[3] Given CCEA's admissions that the Disputed Dues belonged to NSEA and NEA, the district court's grant of summary judgment to CCEA on the conversion claim must be reversed, and summary judgment should instead be entered in favor of NSEA and NEA.

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[3] *See also* II(287 ¶ 15) (describing CCEA's collection of "due [*sic*] payments for NSEA and NEA" "[s]ince the expiration of the dues transmittal agreement"); VI(883) (CCEA counsel confirming that teachers enrolled to pay dues to CCEA, NSEA, and NEA); VI(1009 ¶ 35) (describing dues breakdown); VII(1146) (describing breakdown of three associations' dues); VII(1152) (recommending escrow of NSEA dues); VII(1178) (check detail describing "NEA & NSEA DUES COLLECTED FROM MEMBERS") (capitalization in the original).

V. The District Court Erred in Granting Summary Judgment to CCEA Parties on the Unjust Enrichment Claim

The district court's decision that NSEA and NEA had no claim for unjust enrichment rested entirely on the flawed conversion ruling. As stated by the district court, "For the reasons set forth under the claim for conversion – which findings are incorporated herein by reference – NSEA and NEA do not have standing to assert a claim for unjust enrichment because they do not have an ownership interest or underlying right to the [Disputed Dues]." IX(1563 ¶ 53). Because the district court's ruling on the unjust enrichment claim derived from the faulty premise that NSEA and NEA had no ownership interest in the Disputed Dues, it was likewise error and should be vacated.[4]

VI. The District Court Erred in Granting Summary Judgment to CCEA Parties on the Teachers' Fraud Claim

The individual union members made a sufficient showing to prevent summary judgment on their fraud claim against CCEA. The teachers contended that:

(a) In 2017, CCEA intended to stop transmitting NSEA and NEA dues to NSEA at the same time it was inducing teachers through affirmative representations and omissions to (i) join CCEA/NSEA/NEA and authorize payroll dues deduction

[4] Unlike the conversion claim, the unjust enrichment claim was brought in alternative to the NSEA Parties' breach of contract claims. III(537 ¶ 74). If the Court holds that CCEA breached the Transmittal Agreement or the NEA and NSEA Bylaws and directs the district court to award appropriate money damages, there would be no need to also grant NSEA and NEA equitable relief on the unjust enrichment claim.

for the 2017-2018 school year; and (ii) maintain their membership during the July 2017 drop window, during which existing members had to decide whether to drop their union membership;

(b) CCEA also knew that its failure to transmit NSEA and NEA dues would jeopardize its members' good standing in NSEA and NEA;

(c) CCEA concealed these facts from the teachers to induce them to either join the union or not drop their existing membership and their consent to payroll deduction for the 2017-2018 school year;

(d) the teachers, in reliance on CCEA's misrepresentations and omissions, became or remained CCEA union members and continued to pay dues for their CCEA//NSEA/NEA membership; and

(e) the teachers would not have joined or remained members had they known CCEA did not intend to transmit the NSEA and NEA dues they paid for NSEA and NEA membership, thereby jeopardizing the individual plaintiffs' good standing in those organizations. III(539-41).

To establish fraud, a plaintiff must provide evidence to show: (1) a statement or omission by a defendant that amounts to misrepresentation; (2) the defendant's knowledge or belief of the representation's falsity; (3) an intention to induce the plaintiff to act or to refrain from acting in reliance upon the misrepresentation; (4) the plaintiff's justifiable reliance upon the misrepresentation; and (5) damage to the

plaintiff resulting from such reliance. *Bulbman, Inc. v. Nevada Bell*, 108 Nev. 105, 111, 825 P.2d 588, 592 (1992).

The district court granted summary judgment to CCEA on this claim based entirely on its conclusion that "[t]he Teacher Parties cannot establish damages related to their fraud cause of action." IX(1566 ¶¶ 70-72). Yet the district court's sole basis for this conclusion was that CCEA had agreed "in open court" that, *at the end of the litigation*, CCEA would repay these teachers the entire dues money CCEA collected from the teachers for their 2017-2018 membership. *Id*. The district court's fraud ruling was also based on its conclusion that the Teacher Parties "failed to establish any fact supporting punitive damages," on which they had the "burden of proving each element by clear and convincing evidence." *Id*. ¶¶ 68, 73. None of the district court's stated reasons justified summary judgment against the teachers on their fraud claim.

A. A Wrongdoer Cannot Avoid Fraud Liability Based on a Statement That it Will Return Funds It Obtained Through its Misrepresentations

Permitting a party that took (and retains) funds through an actionable misrepresentation to avoid liability based on a commitment to refund the ill-gotten monies at some later date cannot be squared with the tort of fraud. Indeed, to do so would create an incentive for parties to engage in fraudulent behavior, secure in the knowledge that they might escape liability simply by promising to return the wrongfully obtained funds if ever sued. This is especially problematic given that

fraud damages include more than just the monies lost through the fraud itself. *See S.J. Amoroso Cost. Co. v. Lazovich and Lazovich*, 107 Nev. 294, 298, 810 P.2d 775, 777-78 (1991) (fraud claim may give rise to punitive damages); NRS 17.130 (damages include prejudgment interest on fraud losses). "There is no justice in allowing the perpetrator of a fraud to avoid the related consequences of punitive charges attendant with his fraudulent acts simply by paying the actual damages claimed by the defrauded after a bitter lawsuit and before the jury returns what appears to be a certain verdict." *Fullington v. Equilon Enter., LLC*, 210 Cal. App. 4th 667, 685-86 (Cal. Ct. App. 2012).

The undisputed facts show that the teachers lost the use of the monies CCEA wrongfully induced them to pay, and they would not have paid those dues had they known the truth about CCEA's plans to hold the dues indefinitely and jeopardize the teachers' good standing in NSEA and NEA. VI(1036-37), VII(1224-25). CCEA did not even attempt to rebut these undisputed facts. VI(996-97), VII(1253-56). The teachers have therefore made a sufficient showing of fraud damages to survive summary judgment. *See Bulbman*, 108 Nev. at 111, 825 P.2d at 592.

It is also undisputed that CCEA has not repaid the teachers the damages arising from CCEA's fraud. Instead, CCEA has only given them a *promise* of repayment. IX(1566 ¶¶ 70-71). The fact that CCEA promised to repay the teachers' damages did not erase the existence of those damages. *See* Black's Law Dictionary

(11th ed. 2019) (defining "damages" as "[m]oney claimed by, or ordered to be paid to, a person as compensation for loss or injury"). For this reason, the district court's conclusion that the record establishes no damages to sustain a cause of action for fraud should be vacated.

Even had CCEA actually refunded the dues money that CCEA fraudulently collected, summary judgment still would not be justified. The weight of the case law shows that courts routinely allow fraud causes of action to go forward, even though the plaintiff has already recovered compensation that would fully offset any compensatory damage award arising from the fraud. *See Fullington*, 210 Cal. App. 4th at 687-89 (collecting authority holding that "a plaintiff may pursue a second suit even after receiving full satisfaction of judgment in a first suit"); *S.J. Amoroso Cost. Co.,* 107 Nev. at 298, 810 P.2d at 777-78 (even where losses from fraud were zero after recovery of damages on breach of contract claim, fraud claim remained viable to seek punitive damages). The district court's summary judgment on the teachers' fraud claim was therefore error for this additional reason.

B. The Teachers Provided Sufficient Evidence of Punitive Damages to Prevent Summary Judgment on the Fraud Claim

The district court also incorrectly based its summary judgment on the conclusion that the "Teacher Parties failed to establish any fact supporting punitive damages." IX(1566 ¶ 73). Contrary to what this statement implies, no heightened showing of liability is required for a plaintiff to recover punitive damages on a fraud

claim. *See Bulbman*, 108 Nev. at 111, 825 P.2d at 592. Upon proving fraud, a plaintiff may be awarded punitive damages. *See* NRS 42.005(1) (exemplary and punitive damages to be awarded where "defendant has been guilty of . . . fraud"); *S.J. Amoroso Const. Co.*, 107 Nev. at 297 (verdict for fraud, without any "qualifying adjective," such as "aggravated," supported punitive damages award).

The teachers submitted documentary evidence and sworn declarations to establish they were fraudulently induced to maintain their membership in CCEA for the 2017-2018 school year, on the premise that CCEA would transmit their NSEA and NEA dues to NSEA. VI(1035-51), VII(1223-36). The record also included evidence that, as early as May 2017, CCEA was planning to stop transmitting NSEA and NEA dues to NSEA. V(618 ¶ 24, 637). It was error to conclude as a matter of law that the teacher parties could not be entitled to punitive damages if they proved their claim at trial.[5]

CONCLUSION

The district court's orders granting summary judgment to CCEA on all claims brought by the NSEA Parties were riddled with legal errors and cannot stand.

[5] To be sure, the individual plaintiffs have an ultimate burden to prove the elements of fraud by "clear and convincing evidence," *see, e.g., Fergason v. Las Vegas Metro. Police Dep't*, 131 Nev. 939, 364 P.3d 592 (2015). But the district court did *not* grant summary judgment on the basis that the summary judgment record would not permit a jury to find that the individual plaintiffs had made a sufficiently clear showing of fraud, but rather on the erroneous determination that a heightened showing of fraud is necessary to recover punitive damages. IX(1566 ¶ 73).

Accordingly, NSEA Parties request that the Court (1) reverse and vacate the district court's order granting CCEA summary judgment; (2) reverse and vacate the district court's order denying NEA's and NSEA's summary judgment motion for breach of the NEA's and NSEA's Bylaws and for conversion; (3) order the district court to enter judgment in favor of NEA and NSEA on their claims for breach of the NEA's and NSEA's Bylaws and for conversion; and (4) remand to the district court for further proceedings on Appellants' claims with respect to breach of the Transmittal Agreement and fraud. Additionally, because the district court's order granting CCEA's motion to alter or amend the Injunction was based entirely on its grant of summary judgment to CCEA on NSEA Parties' substantive claims, the Court should also vacate that order as well.

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document filed in case no. 79208 does not contain the social security number of any person.

Dated this 3rd day of February, 2020.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type-style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in 14-point font, Times New Roman style. I further certify that this brief complies with the type-volume limitation of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it contains 12,712 words.

Pursuant to NRAP 28.2, I hereby certify that I have read this brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that this brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 3rd day of February, 2020.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Leonard Law, PC, and that on this 3rd day of February, 2020, a copy of the foregoing APPELLANTS' OPENING BRIEF was electronically filed with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing system (E-Flex). Participants in the case who are registered with E-Flex as users will be served by the EFlex system and others not registered will be served via U.S. mail as follows:

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